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A Time Limit on Rape

When a woman says yes and then changes her mind, how fast must a man stop before it's a crime?

By JENINNE LEE-ST. JOHN

IF A WOMAN CONSENTS TO HAVING SEX with a man but then during intercourse says no, and the man continues, is it rape?

The answer depends on where you live. The highest courts of seven states, including Connecticut and Kansas, have ruled that a woman may withdraw her consent at any time, and if the man doesn't stop, he is committing rape. Illinois has become the first state to pass legislation giving a woman that right to change her mind. But in Maryland—as well as in North Carolina—when a woman says yes, she can't take it back once sex has begun—or, at least, she can't call the act rape.

That was the recent ruling by Maryland's Court of Special Appeals in a case that may soon make its way to the state's highest court and that has captured the attention of feminists and legal experts across the country. Advocates for victims' rights insist it's not just a matter of allowing a woman to have a change of heart. If the law doesn't recognize a woman's right to say no during sex, they say, there is no recourse for a woman who begins to feel pain or who learns her partner isn't wearing a condom or has HIV. Those who are wary of these measures say they're not arguing against having a man stop immediately when a woman no longer wants to have sex, but with how to define *immediately*.

When the California Supreme Court handed down a ruling in 2003 that codified the withdrawal of consent during sex, Justice Janice Rogers Brown, the lone dissenter, raised that very question. "The majority relies heavily on [the defendant's] failure to desist immediately," she wrote in her minority opinion. "But it does not tell us how soon would have been soon enough. Ten seconds? Thirty? A minute?" Mel Feit, executive director of the National Center for Men, a male-advocacy group based in Old Bethpage, N.Y., says biology is a factor. "At a certain point during arousal, we don't have complete control over our ability to stop," he says. "To equate that with brutal, violent rape weakens the whole concept of rape." His group has created a "consensual sex contract" to be signed before intercourse.

Victims' rights activists don't buy the loss-of-control argument. "It's insulting to

men to say they can't stop," says Lisae C. Jordan, legislative counsel for the Maryland Coalition Against Sexual Assault. "Any one of us who's had a toddler walk in on them knows that that's not true. Or a teenager who's had a parent walk in—they stop pretty quickly." Still, even advocates concede it's hard to set a time frame in which sex must cease after consent is taken back. "I don't know where that bright line is," says Scott

climax. The judge said it was for them to decide. They convicted the defendant of first-degree rape, among other sex offenses.

But the appellate court, citing a 1980 rape ruling based on the English common-law idea of "the initial de-flowering of the woman as the real harm," unanimously ordered a new trial, essentially stating that how fast was not the issue, nor was whether the accuser had said no *during* intercourse. In Maryland, rape is determined at the beginning of the sex act, and therefore consent is officially given at that point. The court wrote, "It was the act of penetration that was the essence of the crime of rape; after this initial infringement upon the responsible male's interest in a woman's sexual and reproductive functions, any further



ILLUSTRATION FOR TIME BY GERARD DUBOIS

Even advocates of the law concede it's hard to set a time frame in which sex must cease after consent is taken back

Berkowitz of the Rape Abuse and Incest National Network. "We'll leave that to juries to decide what's reasonable in each case."

The murkiness surrounding what's reasonable has deepened further with the Maryland case, which was tried in 2004. The accuser and the defendant agree that after he began to penetrate her and she wanted him to stop, he did so within a matter of seconds and did not climax. Even so, during deliberations, the jury sent a note to the judge asking if it was rape if a female changed her mind during the sex to which she consented and the man continued until

injury was considered to be less consequential. The damage was done."

This logic has inflamed feminists and editorial-page writers. "The decision is philosophically from another century, from a time when our rape laws were based on the concept of women being property of men," says Berkowitz, whose organization will push for a legislative remedy if Maryland's highest court doesn't reverse the ruling. In the meantime, the defendant is serving a five-year sentence, and the legal world continues to debate how quickly—if at all—a man must go when a woman says no. ■