

How Much Jail Time?

BURIED AMONG PRAIRIE DOGS AND AMATEUR animation shorts on YouTube is a curious little mini-documentary shot in front of an abortion clinic in Libertyville, Ill. The man behind the camera is asking demonstrators who want abortion criminalized what the penalty should be for a woman who has one nonetheless. You have rarely seen people look more

gobsmacked. It's as though the guy has asked them to solve quadratic equations. Here are a range of responses: "I've never really thought about it." "I don't have an answer for that." "I don't know." "Just pray for them."

You have to hand it to the questioner; he struggles manfully. "Usually when things are illegal there's a penalty attached," he explains patiently. But he can't get a single person to be decisive about the crux of a matter they have been approaching with absolute certainty.

A new public-policy group called the National Institute for Reproductive Health wants to take this contradiction and make it the centerpiece of a national conversation, along with a slogan that stops people in their tracks: how much time should she do? If the Supreme Court decides abortion is not protected by a constitutional guarantee of privacy, the issue will revert to the states. If it goes to the states, some, perhaps many, will ban abortion. If abortion is made a crime, then surely the woman who has one is a criminal. But, boy, do the doctrinaire suddenly turn squirrely at the prospect of throwing women in jail.

"They never connect the dots," says Jill June, president of Planned Parenthood of Greater Iowa. But her organization urged voters to do just that in the last gubernatorial election, in which the Republican contender believed abortion should be illegal even in cases of rape and incest. "We wanted him to tell the women of Iowa exactly how much time he expected them to serve in jail if they had an abortion," June recalled. Chet Culver, the Democrat who unabashedly favors legal abortion, won that race, proving that choice can be a winning issue if you force people to stop evading the hard facts. "How have we

come this far in the debate and been oblivious to the logical ramifications of making abortion illegal?" June says.

Perhaps by ignoring or infantilizing women, turning them into "victims" of their own free will. State statutes that propose punishing only a physician suggest the woman was merely some addled bystander who happened to find herself in the wrong stirrups at the wrong time. Such a view seemed to be a vestige of the past until the Supreme Court handed down its most recent abortion decision upholding a federal prohibition on a specific procedure. Jus-

If abortion is made a crime, then the woman who has one is a criminal. But, boy, do the doctrinaire turn squirrely about throwing women in jail.

tice Anthony Kennedy, obviously feeling excessively paternal, argued that the ban protected women from themselves. "While we find no reliable data to measure the phenomenon," he wrote, "it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained."

Even with "no reliable data," he went on to conclude that "severe depression and loss of esteem can follow." (Apparently, no one has told Justice Kennedy about the severe depression and loss of esteem that can follow bearing and raising a baby you can't afford and didn't want.) Luckily, there still remains one justice on the court who has actually been pregnant, and



Ruth Bader Ginsburg roared back with a dissent that called Kennedy's caveat about regret an "anti-abortion shibboleth" and his opinion a reflection of "ancient notions about women's place in the family and under the Constitution—ideas that have long since been discredited."

Those ancient notions undergird the refusal to confront the logical endpoint of criminalization. Lawmakers in a number of states have already passed or are considering statutes designed to outlaw abortion if *Roe* is overturned. But almost none hold the woman, the person who set the so-called crime in motion, accountable. Is the message that women are not to be held responsible for their actions? Or is it merely that those writing the laws understand that if women were going to jail, the vast majority of Americans would violently object? Watch the demonstrators in Libertyville try to worm their way out of the hypocrisy: It's murder, but she'll get her punishment from God. It's murder, but it depends on her state of mind. It's murder, but the penalty should be ... counseling?

The great thing about video is that you can see the mental wheels turning as these people realize that they somehow have overlooked something central while they were slinging certainties. Nearly 20 years ago, in a presidential debate, George Bush the elder was asked this very question, whether in making abortion illegal he would punish the woman who had one. "I haven't sorted out the penalties," he said lamely. Neither, it turns out, has anyone else. But there are only two logical choices: hold women accountable for a criminal act by sending them to prison, or refuse to criminalize the act in the first place. If you can't countenance the first, you have to accept the second. You can't have it both ways.