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A Question of Choice

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A QUESTION OF CHOICE. By Sarah Weddington. New York: G.P. Putnam's Sons. 1992. Pp. 306. \$21.95.

As a third-year law student in 1967, Sarah Weddington got pregnant. Afraid to disappoint her parents and unprepared to assume the responsibility of raising a child, she traveled with her future husband to "a dirty, dusty Mexican border town to have an abortion, fleeing the law that made abortion illegal in Texas" (p. 11). She followed a stranger down dirt alleys where, before losing consciousness, she prayed, "I hope I don't die" (p. 14). Spared the sickness and death that often accompanied illegal abortions, she "was one of the lucky ones."¹ Five years later, Weddington argued *Roe v. Wade*² before the Supreme Court and secured American women's right to abortion. She has spent the rest of her career trying to preserve that right.

Threatened by legislative proposals, anti-abortion protestors, a conservative judiciary, and twelve years of Republican rule in the White House, women's right to choose has come perilously close to extinction. Such attacks on *Roe* spurred Weddington to write her story and that of the pro-choice movement. Weddington's *A Question of Choice* serves as both a potent reminder of pre-*Roe* days and as a call to action for pro-choice activists today. Her book is neither a feminist indictment of power relations in American society, nor a work of legal theory. Rather, it is primarily a personal, heartfelt account of a lawyer who feels passionately that "[w]ithout the ability to control their reproductive capacity, women [can]not fully control education, employment, family size, or their own physical and psychological well-being" (p. 84).

The first half of the book describes the grassroots feminist movement in Austin, Texas, that culminated in *Roe v. Wade*, tracing the strategies and stumbling blocks that faced the pro-choice agenda. Despite Weddington's pedestrian prose style, the energy and momentum empowering the feminist movement enliven the pages of her story. The second half of the book outlines the denouement that followed *Roe* when interest group momentum shifted to anti-choice forces. A catalogue of the legal and political attacks on *Roe*, this part of the book lacks the narrative energy of the preceding chapters. Moreover, lawyers may find the case law discussion superficial, as Weddington clearly aims to make it accessible to lay readers. Despite this sometimes tedious litany, Weddington eventually bounces back with a spir-

1. P. 14. Until publishing *A Question of Choice*, Weddington had not revealed her abortion to anyone other than her ex-husband. See David J. Garrow, *She Put the v in Roe v. Wade*, N.Y. TIMES, Sept. 27, 1992, § G at 20.

2. 410 U.S. 113 (1973).

ited attack on the anti-choice movement and a practical plan for fighting back.

The daughter of a small-town Texas preacher, Weddington played the organ and sang in the church choir, but she knew early on that she did not yearn for a traditional lifestyle. Unlike many women of her generation, she "did not envision marriage and children as [her] primary future" (p. 18). She chafed against many of the restrictions put on young women at the time (pp. 19-20), finding freedom only in riding horses on the Texas plains (p. 18). Rebuffing the dean of her small liberal arts college, who advised her that law school would be too strenuous for a woman (p. 19), Weddington arrived at the University of Texas Law School as one of five women in her entering class of 120 (p. 23).

The law school was no more hospitable. There were "horror stories about professors who refused to call on women students — who, they said, would quit practicing to get married, thus denying an education to men who would stay in the profession" (p. 22). Moreover, law firms would not hire female students, even those with high grades (p. 23). Yet the same forces restricting women like Weddington ended up spurring a rebellion. In the women's lounge at the law school, women gathered and found they were not alone in their concerns (p. 23). When a copy of *Our Bodies, Our Selves* reached Austin, graduate women formed a discussion group of "women who, each in her own way, were searching for more choices" (p. 25). Whereas Weddington had once resigned herself to sexism as "the way it is" (p. 24), she soon realized that other women felt as she did and change seemed possible. "My energy began to flow . . . when I sat with a consciousness-raising group and saw that many other women were experiencing the same injustices" (p. 24). The seeds for *Roe* had been sown.

In describing these heady days of the growing feminist movement, Weddington's book shines. Her personal awakening parallels that of the movement at large — vividly demonstrating the potential of the connection between the personal and the political. She brings us back to a time when women could not obtain information about birth control, let alone abortions, and she demonstrates the drastic consequences of such constrained options.

As Weddington describes it, "*Roe v. Wade* started at a garage sale, amid paltry castoffs" (p. 35). Raising money for an underground abortion referral project, a group of volunteers began discussing their increasing frustration with Texas anti-abortion laws. Not only were the women scared of being prosecuted for their efforts, but they also feared they were not reaching all women with unwanted pregnancies (pp. 36-37). Saddled with these concerns, they turned to Weddington, fresh out of law school, for legal advice (p. 38). Her research ultimately convinced the group that the federal courts were the best ave-

nue for seeking change,³ and they asked Weddington to serve as their lawyer in filing a lawsuit (p. 44). Initially, Weddington did not think she was right for the job because her experience consisted of a few uncontested divorces and uncomplicated wills (p. 45). Yet she was "the best free legal help available" (p. 46), and she and her husband felt strongly about preventing others from going through the harrowing experience of seeking an illegal abortion (p. 46). In the end her inexperience served her well; "[she] did not fully appreciate that the odds were stacked against [the] endeavor" (p. 47), so she took the challenge.

Weddington and Linda Coffee, a law school classmate, successfully argued *Roe* before a three-judge district court that agreed with their claim that the Texas abortion laws were unconstitutional.⁴ The *Houston Post* reported on their legal victory, stating: "If their day in court proves anything, it certainly proves that genteel Southern ladies can indeed be very good lawyers" (p. 70). Appeals in *Roe* were filed, and Weddington focused her energies in the meantime on legislative and political organizing (pp. 73-80).

Many cases challenging abortion laws were pending across the country, but the Supreme Court granted certiorari for *Roe v. Wade*, along with the Georgia case *Doe v. Bolton*.⁵ Weddington was excited: "we had a chance to win in the U.S. Supreme Court" (p. 81). Weddington describes the frantic efforts to prepare briefs and arguments, humbly giving credit to all who worked on the case: her husband, several classmates, other public interest lawyers, professors, and numerous groups who submitted amicus briefs (pp. 85-108). The group's strategy was simple — they put in every point the Court might find persuasive,⁶ but their effort was massive and involved participants from across the country. Weddington recounts the day, and the pivotal thirty minutes, in which she argued for a constitutional right to abortion, "[t]hirty minutes to reach somehow across a three-foot abyss between the modest lectern behind which I would stand and the long

3. The group had been particularly impressed with the success of a campus underground newspaper, *The Rag*, in federal litigation challenging university restrictions on its sale. "The victory was interpreted by Austin activists to mean that the federal court system was a possible route for achieving justice." P. 26.

4. Although Weddington and Coffee won the constitutional argument, the three-judge federal district court declined to issue an injunction that would order the state to stop prosecutions. Pp. 68-69. As a result, Henry Wade, the county district attorney, refused to stop prosecuting under the Texas laws. P. 69. The denial of an injunction allowed Weddington and Coffee to seek a direct appeal to the Supreme Court under statutes no longer in effect. P. 69.

5. 410 U.S. 179 (1973).

6. P. 96. Weddington explains that the *Roe* lawyers did not use arguments based on equal protection because the Supreme Court had not yet applied the Fourteenth Amendment to gender discrimination when *Roe* was filed. The first case to do so, *Reed v. Reed*, 404 U.S. 71 (1971), was decided just days before *Roe* was argued in the district court. P. 117. Weddington believes that "the privacy argument continues to carry the most weight." P. 261.

bench where the justices would sit in their black robes. Thirty minutes to find a way to touch the hearts and minds of those men" (p. 108).

By the time the Supreme Court handed down its decision, and after the case had been reargued at the Justices' request, Weddington had been sworn in as a member of the Texas legislature (p. 45). In anticipation of judicial defeat, pro-choice feminists had turned their attention to the legislatures to secure abortion rights, and Weddington ran for office as a pro-choice candidate (pp. 123-29). However, the Supreme Court then declared the constitutional right to abortion in *Roe* and thus pro-choice advocates' worst fears did not materialize. Weddington was elated. The victory, she states, "solidified my faith in law, the court process, and the wisdom of our nation's founders; the system they had created was resilient, and had proved its ability to adapt to changing times" (p. 152). Moreover, Weddington "could hardly believe that at twenty-seven years of age [she] had won an important Supreme Court case."⁷

Weddington's elation was short-lived. Access to abortion remained a severe problem (pp. 172-74), and "the attack on abortion availability was heating up" (p. 178). At the same time, after the tremendous focus on winning *Roe*, "those who had been active dispersed and chose a variety of other matters to work on. The day *Roe* was decided, in fact, the positioning of the forces for and against choice began to reverse" (p. 175). While pro-choice forces "were at the top of the seesaw" (p. 211) when *Roe* was decided, that trend reversed. "By 1989 . . . the opposition to abortion was at the top, as a result of being better funded, more vigilant and passionate, and of having elected presidents who agreed with them in [the 1980s]" (p. 211).

Weddington spends far more time tracing this *Roe* aftermath than in fleshing out the details of her own career, which has been both trail-blazing and illustrious. Besides serving in the Texas legislature — where Ann Richards was her chief administrative assistant (p. 189) — Weddington worked as counsel to the U.S. Department of Agriculture (p. 190) and as a White House assistant to Jimmy Carter in charge of placing women in federal positions (pp. 193-94). In addition, Weddington was president of the National Abortion Rights Action League, where the "newly animated opposition kept us constantly busy, and we often felt under siege" (p. 182).

Unfortunately, Weddington downplays these aspects of her career. As a woman whose career began and rose with the feminist movement, more reflection on her personal experiences would have illuminated

7. P. 151. Later, Weddington somewhat ruefully notes:

On the one hand, it is unnatural to have reached one's professional peak at twenty-seven, and I do wonder if it's even possible to do something to top that victory. On the other hand, I take tremendous pride in the gift all of us who together won *Roe* were able to give other generations.

P. 290.

both that era and the sacrifices made by her generation of feminists. Throughout the book, Weddington tells her tale with sincerity and humility. Yet her book lacks the self-reflection that typically accompanies autobiographies. For instance, she dismisses her divorce with a few paragraphs, noting: "I cannot help but believe my public successes were a major factor in the failure of my marriage" (p. 187), a telling statement whose implications she does not explore further. Thus, *A Question of Choice* suffers most from what it lacks. This lack of depth results from the uneasy truce Weddington adopts, attempting to relate both her personal experiences and the larger story of *Roe v. Wade*. Ultimately, the former contributes most meaningfully to the voluminous literature on the abortion debate.

In a few spots Weddington sounds surprisingly old-fashioned. Twice she confoundingly asserts that her husband was smarter than she (pp. 12, 187); she describes her outfit on the day she argued *Roe* (p. 109); and she expresses pride in being accepted as one of the boys (p. 189). However, to her credit, Weddington recognizes this "generation gap." She notes that "[y]oung women today have a far stronger sense of self and their right to make decisions for themselves than my generation did at that age" (p. 241). Thus, Weddington firmly grounds herself in her generation, making no apologies for her brand of feminism.

It may be hard for young women today to identify with the indignities suffered by professional women in Weddington's era — when, for instance, a woman could not get a credit card without her husband's signature (p. 24). Weddington's book convincingly demonstrates the degree to which younger women owe a debt to her groundbreaking generation. At the same time, in a decade in which women are scrambling to retain the core right to reproductive freedom, Weddington makes clear how much they have yet to achieve. Demonstrating the tension between feminist accomplishments and frustrations, Weddington's book reflects on the past but looks to the future. "We must educate the generations who do not remember circumstances before *Roe v. Wade* about the abortion issue, and we must motivate them and those who do remember to make reproductive rights a priority" (pp. 240-41).

Although Weddington states that "in [her] mind *Roe* is already gone" (p. 236), if women today commit themselves to the task she defined so well, Weddington may have to change her mind.

—Michele A. Estrin