***Connecticut v. Menillo* (1975) - Per Curiam -** 9/0.

The *Connecticut v. Menillo* Court
[The same Court as *Roe* & *Doe* & *Bigelow*.]
Unanimous:
Blackmun, Burger, Douglas, Brennan, Stewart, Marshall, Powell, White and Rehnquist.

Issue: Can a State criminalize performing an abortion by a **non**-physician?

Held: Yes.

Reasoning: A jury convicted Patrick Menillo, a non-physician with no medical training, of attempting to procure an abortion in violation of Connecticut's criminal abortion statute. The Connecticut Supreme Court overturned Menillo's conviction, holding that under the decisions in *Roe*[1] and *Doe*[2], the Connecticut statute was "null and void." The Connecticut court misinterpreted *Roe* and *Doe*...Conn. Gen. Stat. Rev. §53-29 provides:

> "**Any person** who [procures an abortion], unless the same is necessary to preserve the woman's life or that of her unborn child, shall be fined not more than one thousand dollars or imprisoned in the State Prison not more than five years or both."

[1]Case 9A-AP-4 on this website.

[2]Case 9A-AP-5 on this website.

In *Roe,* we held that a Texas statute which permitted termination of pregnancy at any stage only to save the life of the expectant mother, unconstitutionally restricted a woman's **right to an abortion**.

As previously stated, this is "poor form." There is no "right to an abortion" *per se*.

We went on to state that as a result of the unconstitutionality of that statute, the Texas abortion statutes had to fall "as a unit" and it is that statement which the Connecticut Supreme Court and courts in some other States have read to require the invalidation of their own statutes even as applied to abortions performed by nonphysicians. In context, however, our statement had no such effect. **Jane Roe had sought to have an abortion "performed by a competent, licensed physician, under safe, clinical conditions" and our opinion recognized only her <u>right to an abortion</u> under those circumstances**. That the Texas statutes fell as a unit meant only that they could not be enforced...in contravention of a woman's right to a clinical abortion by medically competent personnel. We did not hold the Texas statutes unenforceable against a nonphysician abortionist, for the case did not present the issue. The rationale of our decision supports continued enforceability of criminal abortion statutes against nonphysicians. *Roe* teaches that a State cannot restrict a decision by a woman, with the advice of her <u>physician</u>, to terminate her pregnancy during the first trimester because neither its interest in maternal health nor its interest in the potential life of the fetus is sufficiently great at that stage. But the insufficiency of the State's interest in maternal health is predicated upon the first trimester abortion's being as safe for the woman as normal childbirth at term, and that predicate holds true only if the abortion is performed by medically competent personnel under conditions insuring maximum safety for the woman. Even during the first trimester of pregnancy, therefore, prosecutions for abortions conducted by nonphysicians infringe upon no realm of personal privacy secured by the Constitution against state interference. And after the first trimester the ever increasing state interest in maternal health provides additional justification for such prosecutions.