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William H. Rehnquist
US Supreme Court Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 4, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-812, Codd v. Velger

I propose to change footnote 1 of the current draft so as to read as follows:

Respondent's amended complaint did not seek a delayed Roth hearing to be conducted by his former employer at which he would have the opportunity to refute the charge in question. Board of Regents v. Roth, 408 U.S. 564, 573. The oral request for such a hearing by respondent's counsel during a colloquy with the court, noted by Justice Stevens, post, at _____, n.7, was certainly not regarded by Judge Werker as an amendment to the complaint. App., at 110a. See Fed. R. Civ. P. 15(a).

The relief sought in the respondent's complaint was premised on the assumption that the failure to accord such a hearing when it should have been accorded entitled him to obtain reinstatement and damages resulting from the denial of such hearing. We therefore have no occasion to consider the allocation of the burden of pleading and proof of the necessary issues as between the federal forum and the administrative hearing where such relief is sought.

This is in response to the referenced suggestion in John's dissent; I shall wait to tally the votes in response to my memo of February 3 before circulating a final version of footnote 2.

Sincerely,

