

1-25-1977

01-25-1977 Justice Brennan, Concurring

William J. Brennan
US Supreme Court Justice

Follow this and additional works at: <http://ir.library.illinoisstate.edu/coddvvelger>



Part of the [Criminal Law Commons](#)

Recommended Citation

Brennan, W.J. Justice Brennan, Concurring, Codd v. Velger, 429 U.S. 624 (1977). Box 367, Harry A. Blackmun Papers, Manuscript Division, Library of Congress, Washington, D.C.

This Opinion is brought to you for free and open access by the U.S. Supreme Court papers, Justice Blackmun at ISU ReD: Research and eData. It has been accepted for inclusion in Codd v. Velger, 429 U.S. 624 (1977) by an authorized administrator of ISU ReD: Research and eData. For more information, please contact ISURed@ilstu.edu.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

1st DRAFT

Circulated: 1/25/77

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 75-812

Michael J. Codd, Police Commissioner, City of New York, et al.,
Petitioners,
v.
Elliott H. Velger.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1977]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion but add these words for emphasis. As the Court accurately notes, *ante*, at 1, throughout this litigation respondent consistently has prayed for equitable relief and damages for the injury resulting from the dissemination of stigmatizing material that remained in his employment file when his employment was terminated without a hearing as required by *Board of Regents v. Roth*, 408 U. S. 564 (1972).¹ Today's holding is that respondent's claim under 42 U. S. C. § 1983 cannot prevail because "at no stage of this litigation,"² *ante*, at 5, has he "raise[d] an issue about the

¹ Although the amended complaint altered respondent's substantive theory, he continued to seek reinstatement and damages.

² The Court appropriately makes clear that it is not calling for an "overly technical application of the rules of pleading." *Ante*, at 5. Indeed, there may be instances where a plaintiff reasonably cannot be held responsible for failing to *plead* falsity in his complaint. For example, in this instance, respondent cannot be faulted for his failure to plead falsity, since his complaint alleged that he "does not know the contents of his personnel file and has never seen or been advised of any derogatory matter placed in his file." App., 51a. Thus, his undoing occurred, according to the Court, in the later "stage[s] of this litigation," when he learned of the specific contents of the employment file but made little effort "to raise an issue about the substantial accuracy of the report." *Ante*, at 5.