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## 01-07-1977 Clerk Memo

Unknown

*Law clerk, US Supreme Court*

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

One of Justice Brennan's clerks came to speak to me about the case this afternoon. He claimed the decision had the following peculiarities:

1. As written, the resp loses because he did not adequately allege falsehood. The remedy envisioned by the decision, however, seems to be that a successful plaintiff would get a hearing before the police board to determine whether the records are true. Thus the federal court need not and would not determine if the records are false. At first glance, at least, it seems somewhat odd to bar a suit because of a failure to assert a fact that need not be decided by the federal court.

2. <sup>As noted above,</sup> If resp had alleged falsehood adequately, then the decision suggests that if successful his remedy would be a hearing before the police review board. No mention is made about a cause of action for damages for the harm that was cause<sup>-d</sup> the plaintiff by the loss of jobs. And it would seem odd to send the case to a review board to decide if the records were false, in light of the board's interest in not having ~~the~~ damages assessed.

I see nothing to the first point: there would be no point to the hearing in this case if the records were true. There may be something to the second point, however.

I mentioned the problem I detected with regard to prejudicial, but irrelevant, true information in the file.

Is it possible for you to suggest the inclusion of a footnote along the lines of the one I drafted, but to postpone joining for a while?

RM        1/7/77