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## 01-25-1977 Justice Brennan, Concurring

William J. Brennan  
*US Supreme Court Justice*

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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

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**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).<sup>1</sup> Today's holding is that respondent's claim under 42 U. S. C. § 1983 cannot prevail because "at no stage of this litigation,"<sup>2</sup> *ante*, at 5, has he "raise[d] an issue about the

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

<sup>2</sup> 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.