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02-01-1977 Justice Stevens, Dissenting

John Paul Stevens
US Supreme Court Justice

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To: The Chief Justice HAB
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
— Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

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 STEVENS, dissenting.

There are three aspects of the Court's disposition of this case with which I disagree. First, I am not persuaded that a person who claims to have been "stigmatized" by the State without being afforded due process need allege that the charge against him was false in order to state a cause of action under 42 U. S. C. § 1983. Second, in my opinion the Court should not assume that this respondent was stigmatized, because the District Court's contrary finding was not clearly erroneous. Third, I would remand the case to the Court of Appeals to consider the claim that respondent had a property interest in his job, since that court did not decide this issue.

I

The Court holds that ~~petitioner's~~ failure to allege falsity negates his right to damages for the State's failure to give him a hearing. This holding does not appear to rest on the view that ~~petitioner~~ has no right to a hearing unless the charge against him is false.¹ If it did, it would represent a

¹The Court indicates, *ante*, at 2 n.*, that its holding is premised on the form of relief sought. If falsity were a precondition to the existence of a constitutional violation, the form of relief would be irrelevant. For to grant any relief, the federal court would first have to determine that

respondent's

a discharged employee