

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

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No. 75-44  
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From: Mr. Justice Stevens

Circulated: 5126176

Robert Burrell, et al., )  
                                  ) )  
                          Petitioners, )  
                                  ) )  
                          v.                  ) )  
                                  ) )  
Milton McCray, et al.   )

Recirculated: \_\_\_\_\_  
On Writ of Certiorari to the  
United States Court of  
Appeals for the Fourth  
Circuit.

[June 1976]

MR. JUSTICE STEVENS, concurring.

Had I been a member of the Court when the petition for certiorari was presented, I would have voted to deny because the opinion of the United States Court of Appeals for the Fourth Circuit correctly states the applicable law. For the same reason, I voted to affirm after oral argument. Although I did not vote to dismiss the writ as improvidently granted, I do not dissent from that action for two reasons.

First, it is my understanding that at least one member of the Court who voted to grant certiorari has now voted to dismiss the writ; accordingly, the action of the Court does not impair the integrity of the Rule of Four.

Second, just as the Court's broad control of its discretionary docket includes the power to dismiss the writ because circumstances disclosed by a careful study of the record were not fully apprehended at the time the writ was granted, The Monrosa v. Carbon Black, Inc., 359 U.S. 180, 183, so also, we

should retain the power to take like action when our further study of the law discloses that there is no need for an opinion of this Court on the questions presented by the petition. Even though I agree with Mr. Justice Brennan that the questions in this case are important, I am nevertheless persuaded that the state of the law applicable to the facts disclosed by this record is sufficiently clear that the dismissal of the writ is a permissible exercise of the Court's discretionary power.