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
Mr. Justice Stevens

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-44

Circulated: _____

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Robert Burrell et al., Petitioners, *v.* Milton McCray et al. } 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.