

SUPREME COURT OF LOUISIANA

No. 02-OK-2918

State of Louisiana

versus

Deborah Foster

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF WEST BATON ROUGE**

VICTORY, J., dissenting

I dissent from the recall of the writ and the writ denial. In my view, the trial court’s verbal order regarding the recordation of grand jury testimony in all cases is before us and is not moot. The United States Supreme Court has recognized certain exceptions to the mootness doctrine which this Court has always considered when resolving issues of justiciability. *Cat’s Meow, Inc. v. City of New Orleans Through Dept. of Finance*, 98-0601 (La. 10/20/98), 720 So.2d. 1186. One of these exceptions exists if and when there is a significant issue that is “capable of repetition yet evading review.” *Richmond Newspapers, Inc v. Virginia*, 448 U.S. 555, 567-569, 100 S.Ct. 2814, 2822-23 (1980). Although the defendant in this case pled guilty, thus ending the controversy in her case, the discretion that a trial judge has in ordering grand jury proceedings to be recorded is an issue that may consistently evade our review. Thus, it is clear that the action of the trial court should not be ignored on the basis of mootness, but rather should be resolved, as this issue is now properly before us. In my view the Trial Court does not have the discretion to order the recordation of testimony before the grand jury in any case, much less in all

cases, absent a showing that such recordation is necessary under the circumstances presented.