

SUPREME COURT OF LOUISIANA

No. 98-KK-2277

IN RE: GRAND JURY

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

VICTORY, J., dissenting

In my view, the Court should dismiss this case. The majority is affirming a court of appeal decision to remand this case to a state trial judge, who, after a contradictory hearing, will render an advisory opinion as to whether or not the action already taken by the state trial court was proper. Such an opinion will not be used by any state court to further any state proceedings, will not be used by any state court to attempt to reclaim possession of the materials released, and will not serve to keep the materials released from “disclosure to additional personnel and by the continued access of those to whom the materials have already been disclosed.” Slip. Opinion at p. 11 (citing *In re Grand Jury Investigation No. 78-184*, 642 F.2d 1184, 1187-1188, *affirmed*, 463 U.S. 418, 103 S.Ct. 3113 (1981)). There is no evidence that there has been any significant number of releases of grand jury materials in the past by state officials without a showing of “compelling necessity,” nor that there will be in the future.

The appropriateness of the disclosure and the resulting consequences will ultimately have to be addressed by the federal court exercising jurisdiction over the defendants’ case. This can be done using the settled state and federal law cited by the majority. It serves no state interest for our state judges to use their valuable time and resources rendering advisory opinions in this case when the “horse is out of the barn,” we will not order federal officials to return the materials or even stop using them, and the federal courts ultimately will make all the decisions that really matter. We should not allow our courts to be used in this way, and should dismiss this case, leaving the

defendants in the federal case to raise these matters in federal court.

Accordingly, I respectfully dissent.