

9/25/01

**SUPREME COURT OF LOUISIANA**

**No. 01-CC-2498**

**GLORIA SCOTT, ET AL.**

**v.**

**THE AMERICAN TOBACCO COMPANY, ET AL.**

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH  
CIRCUIT, PARISH OF ORLEANS

KIMBALL, J., concurring in part, dissenting in part.

I agree with the majority that La. Code Civ. P. art. 1765(3) does not set forth a per se rule which requires automatic disqualification of a prospective juror with a family member who is a potential class member. However, I dissent from the finding that the trial judge abused his discretion in this matter. While some of the answers may cause question from the cold record before us, I believe that the trial judge who has the ability to observe the mannerisms, tone of voice and body language of each juror is in a better position to make those judgments than this Court. Additionally, I do not believe it is the function of this Court to micro-manage the selection of a jury in this manner. Therefore, I would uphold the trial court's findings on these jurors.