

**IN THE SUPREME COURT OF TEXAS**

=====  
No. 97-0661  
=====

JAMES MILTON MALONE, JAMES D. MALONE, MILTON C. MALONE, PHILLIP G.  
MALONE, AND MARY ELIZABETH JOHNSON, PETITIONERS

v.

CHRISTOPHER FOSTER, M.D., BILL CHRISTENSEN, M.D., AND BAYLOR  
UNIVERSITY MEDICAL CENTER, RESPONDENTS

=====  
ON APPLICATION FOR WRIT OF ERROR TO THE  
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS  
=====

**Argued on December 3, 1997**

JUSTICE BAKER concurring in Part I.

I agree with the Court's opinion about excluding testimony and striking jurors for cause. For the reasons I expressed in *Treviño v. Ortega*, \_\_\_ S.W.2d \_\_\_, I concur with the Court's opinion about an evidence spoliation cause of action.

\_\_\_\_\_  
James A. Baker,  
Justice

OPINION DELIVERED: June 5, 1998