

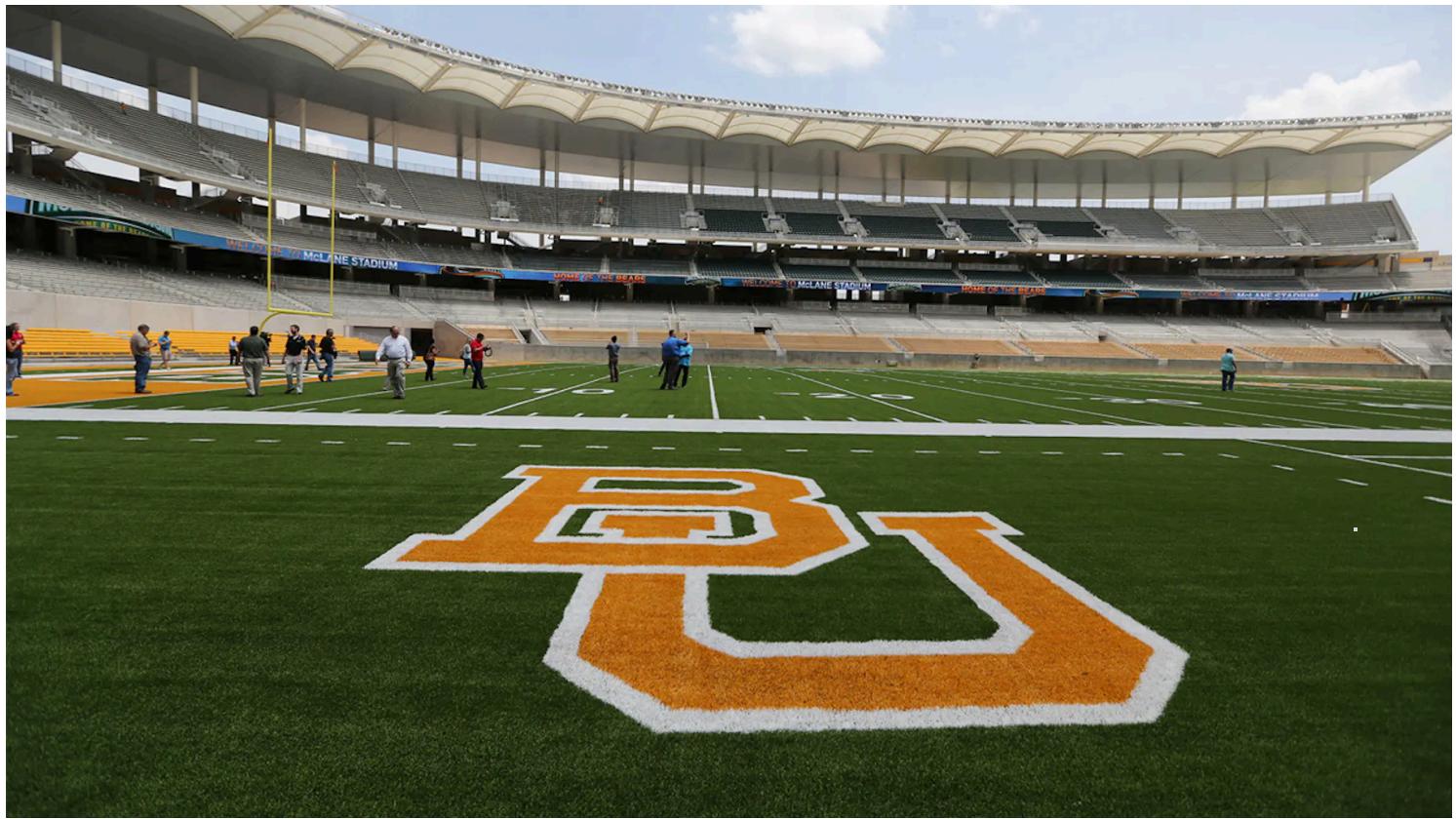
SPORTS

Silence at Baylor

A much-talked-about football player at Baylor University—whom coaches “expect back” this fall—is currently on trial for the sexual assault of a fellow student. Questions now swirl around what the program knew and when they knew it.

By Jessica Luther and Dan Solomon

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AP Photo | Waco Tribune Herald, Rod Aydelotte

Editor's note: This piece has been updated below to reflect that Samuel Ukwuachu was found guilty of second-degree sexual assault on August 20, 2015.

In early June, Baylor defensive coordinator Phil Bennett was a guest speaker at a luncheon in Fort Worth for the Baylor Sports Network. During his speech, he dropped a bit of long-anticipated information about the team's plans: He expected defensive end Sam Ukwuachu—a Freshman All-American who transferred in 2013 from Boise State to Baylor only to miss 2014, his first eligible season with the Bears, for unspecified reasons—to finally take the field. It was a significant announcement for a program that's a favorite pick to clinch one of four College Football Playoff spots, and it was reported by a breathless sports media eager to talk up head coach Art Briles' program. No one questioned Bennett's assertion that Ukwuachu was expected to play—even though Ukwuachu was due to stand trial in Waco for sexual assault in just a few weeks, and if convicted, could spend up to twenty years in prison.

No one questioned it because no one outside of Baylor knew. Ukwuachu was indicted on June 25, 2014, on two counts of sexual assault against a female Baylor student athlete, and for the next year, the legal process played out without mention of Ukwuachu's felony charge by the press or from school officials, even though it was all in the public record.

So were the following facts: That Ukwuachu transferred to Baylor in May 2013 because he had been kicked off the Boise State team for a previous incident of violence involving a female student; that Ukwuachu claimed after the transfer was announced that Baylor's coaches "knew everything" about what happened in Idaho; and, as indicated by court documents obtained by *Texas Monthly*, the two programs had some communication regarding Ukwuachu in which Boise State officials expressed reticence about supporting the player's efforts to get back on the field.

As a player, Ukwuachu has been cast as a star in the making. As recently as August 4, CBS Sports' BearsTruth Baylor fan blog listed the role of the DE as their top defensive storyline for the team. But the circumstances surrounding the school's treatment of the allegations—from the nature of its disciplinary investigation and the fact that it characterized his indictment for sexual assault as "some issues" when explaining that he wouldn't be on

the active roster to start the 2014 season, to allowing him to continue doing conditioning work with the team after his indictment last June—suggest a school and a program that were, at best, very much in denial about the seriousness of the criminal charges he now faces.

Jury selection in Ukwuachu's trial began Monday, and during *in limine* motions to determine what evidence would be admissible, assistant district attorney Hilary Laborde, who is prosecuting the case, told 54th District Judge Matt Johnson that Baylor's own investigation into the accusations against Ukwuachu involved interviewing just Ukwuachu, his accuser, and one friend of each, and that the school never saw the rape kit collected by the sexual assault nurse examiner. The woman Ukwuachu is accused of sexually assaulting went to the hospital and talked to the police on October 20, 2013, the day after the encounter. But after the school's investigation (so insufficient, according to the court, that the judge sustained a motion from the prosecution to restrict the defense from referencing it during the trial), Baylor took no action to discipline Ukwuachu, even while charges were still pending. From Baylor's brief investigation, to its failure to consider disciplinary action, to its defensive coordinator's statements this summer about the player's expected return, the school's idea of how to respond to serious rape allegations is seriously out of step with that of the courts.

The night of October 19, 2013, was Homecoming Weekend for Baylor. The Bears had just beaten Iowa State 71-7. After Iowa State forced a punt on the team's first possession, Baylor scored touchdowns on every one of its next eight possessions. Iowa State only scored with 47 seconds left in the game, and Baylor even matched that touchdown with a 97-yard score on the ensuing kickoff return to close out the night. Ukwuachu, who was ineligible to play the 2013 season because of NCAA rules regarding transfer students, was celebrating nonetheless—as was an 18-year-old student whom McLennan County* Court documents refer to as Jane Doe, who went to a

party at Waco's downtown convention center, where many of her fellow students were celebrating.

The two were friendly, and shortly before two in the morning, Ukwuachu texted Doe, who replied to his message by saying that she would call him. During her testimony Tuesday, she said that she had called him moments later and agreed to go with him to get something to eat or to go to another party—but after he picked her up that night, he turned the wrong way out of her apartment complex and drove her to his apartment instead. Doe's testimony regarding what happened in his apartment is disturbing. She described Ukwuachu as extremely agitated, getting angry with his dog and with a friend on the phone, who was in from out of town. After she resisted his initial advances, Doe testified, he began to grab her. “He was using all of his strength to pull up my dress and do stuff to me,” she said. “He had me on my stomach on the bed, and he was on top of me.” Doe testified that he pulled her dress up, pulled her underwear to the side, and forced her legs open with his toes, her head pressed between his bed and his desk, then forced himself inside of her. Doe was a virgin at the time.

Texts between Ukwuachu and Doe from earlier in the week, before the encounter, were also revealed to the jury during trial. In those messages, Doe is unambiguous that she is not interested in a physical or romantic relationship with Ukwuachu; he sent her messages like “we have unfinished business,” in reference to a previous encounter, which she characterized as Ukwuachu trying to put “moves” on her. She replied “I don’t think we need finish any business” and “let’s just chill.”

The night at his apartment, she testified, “I was screaming stop and no.” According to her testimony, after he finished, he told her “This isn’t rape,” asked her if she was going to call the police, and left her to find a ride. Two of Doe’s friends arrived in the middle of the night to pick her up, at which point she told them that Ukwuachu had raped her. The next day, Doe went to the hospital and was subject to a sexual assault nurse examination, which found vaginal injuries including redness, bleeding, and friction injuries.

This isn't the first violent incident that Ukwuachu has been accused of. In documents from May 2013 obtained by *Texas Monthly*, Marc Paul, the assistant athletics director at Boise State University, recounts advising to Ukwuachu's then-girlfriend in Boise that she stay away from the house the two shared for several nights, after he put his fist through a window while drunk. Paul also makes plans for how to get police protection for the couple's other housemate, who received threatening text messages from Ukwuachu. Handwritten notes in a document from a Boise State source also refer to times that Ukwuachu would get verbally abusive over "small irritants" like a spilled drink, and note that the woman he lived with acknowledged that she would "probably not" admit it if the abuse were physical. It ends with the words "NOT healthy relationship!" underlined.

Following the incident with the window, Ukwuachu—just a year removed from his Freshman All-American season—was kicked off the team by Boise State head coach Chris Petersen for repeated violations of team rules.

The same month, in an interview with football recruiting website Rivals.com after he announced his transfer to Baylor, Ukwuachu talked about returning home to his native Texas. He said he had gone through "some personal problems" and that the coaching staff at Baylor "knew everything and were really supportive." It's impossible to know what Ukwuachu means by "everything," but six-foot-four pass rushers who are voted Freshman All-American and win starting jobs on programs the quality of Boise State's don't often find themselves suddenly without a team. Regardless of whether Ukwuachu's statement that Baylor's coaches "knew everything" is accurate, when the program sought a waiver that would have allowed Ukwuachu to play for the Bears without waiting the mandatory one-year period required of most transfer students, Boise State informed the school that they would not be providing a letter of support.

Ukwuachu's arrival at Baylor was met with great fanfare. Fan blogs celebrated the transfer, and his addition to the team came just as Briles' program was heating up: the team was about to begin back-to-back 11-2 seasons, and they had just broken ground on the construction of the

gorgeous, state-of-the-art McLane Stadium. But in addition to sitting out the 2013 season because he couldn't be granted a waiver, Ukwuachu also missed the 2014 season for reasons the school never specified.

The reason that Ukwuachu missed the 2014 season is because of the indictment on two counts of felony sexual assault, a fact that Ukwuachu's attorney, Jonathan Sibley, confirmed in the press more than a year after the indictment was issued.

Baylor officials either knew, or should have known, that Ukwuachu had a history of violent incidents at Boise State. The football program knew that even though he was a rising star and a defensive starter for the Broncos, he had been kicked off that team following a 4.5-sack, 7 tackle-for-loss season. And in August 2013, Chad Jackson, a senior associate athletic director at Baylor, was informed by John Cunningham, an associate athletic director at Boise State, that Ukwuachu's previous school did not support any waivers to get the player back on the field. When Briles' program brought Ukwuachu to Baylor, they did so amid media reports that the player had a disciplinary history that his previous program took seriously enough to kick him off the team.

Baylor's treatment of the charges against Ukwuachu aren't consistent with a program that takes those charges seriously. Coach Briles and Bennett declined comment to *Texas Monthly* regarding Ukwuachu's case, but Phil Bennett, the team's defensive coordinator, *did* comment in June, and his comment was that he expected to see Ukwuachu on the field in the fall. We don't know why Bennett was publicly espousing his belief that Ukwuachu would be notching up sacks in 2015 even while he was privately aware that the player could well be on his way to a 20 year prison sentence. But this also isn't the first instance of Baylor's football program failing to take rape accusations against its players seriously—or of Waco law enforcement making questionable decisions when they involve accusations against Baylor football players, as well.

In 2012, a Baylor linebacker named Tevin Elliott was arrested for sexual assault. At the time of his arrest, Briles said only that the player would be suspended because he had “violated a team policy” and that he’d have no further comment. After Elliott’s conviction on two counts of sexual assault—in a trial that included four other witnesses who said that Elliott had raped them too—details about how the school had reacted to the victim’s claims prior to Elliott’s conviction began to trickle out. The Baylor Lariat quoted the victim’s mother as saying that the school “was not helpful in guiding her daughter during this academically stressful time,” and that the accuser lost her scholarship following the assault. The paper went on to cite the prosecutor, who claimed that “Waco Police Department detectives failed to follow through with victim interviews.”

That’s a playbook that’s familiar in Ukwuachu’s case, as well. While Jane Doe went to the hospital immediately following her encounter with Ukwuachu and spoke with an officer there, detectives suspended the case after taking a report and investigating. But it wasn’t until months later that the details made their way to a prosecutor’s desk—and once they finally did, assistant district attorney Hilary Laborde found enough in the investigation to pursue felony sexual assault charges against Ukwuachu. The incident between Ukwuachu and Doe occurred on October 20, 2013, but he wasn’t indicted until June 25 of the following year. (In Elliott’s case, it took the police two weeks from the time the victim reported the incident to the time he was arrested.)

Per testimony from her counselor at Baylor, Cheryl Wooten, Doe was diagnosed with post-traumatic stress disorder following the encounter. When Doe sought to avoid Ukwuachu on campus, the school didn’t move him out of the classes or tutoring sessions the two shared—instead, she had to adjust her schedule. Eventually, Doe found her own scholarship reduced, and she transferred to another university after the 2013-14 school year, while Ukwuachu graduated in May. (If Ukwuachu is acquitted at trial, he’ll be playing football as a graduate student.)

It took eight months for Ukwuachu to be indicted, but that indictment *also* went unreported for more than a year. That's significant when you consider that Waco is a city with a population smaller than 130,000, and the man accused of felony sexual assault is a football player for one of the nation's top programs. Local sports media seemed curiously incurious about Ukwuachu's suspension for a violation of team rules, though rumors certainly indicated that some people on the school's campus knew which team rule Ukwuachu violated: **Baylor fan boards included students telling each other things like** "you're hearing the same things that I'm hearing and it's serious" and "If you like guys like Tevin Elliot[t], then you want Ukwuachu on this team." Yet still, it would seem no local reporters on the Baylor beat managed to make the trip to the downtown courthouse to type the name "Ukwuachu" to confirm if the rumors were true.

Transparency was further muddled when Laborde filed for, and received, a gag order preventing herself, Sibley, or Ukwuachu from talking to the press. In fact, almost no one connected with the case was willing to speak on the record—multiple interview requests to Laborde, Sibley, Boise State associate athletic director Marc Paul, Baylor head coach Art Briles, Baylor defensive coordinator Phil Bennett, and Baylor Associate Dean for Student Conduct Bethany McCraw were all declined. Even a Freedom of Information Act request filed by *Texas Monthly* with the Waco Police Department for documents relating to the department's investigation and Ukwuachu's arrest following his indictment was met with a letter declaring that all information outside of the Incident Report following Doe's visit to Hillcrest Hospital the day after her encounter with Ukwuachu was exempt from the law requiring disclosure.

Meanwhile, the details about the investigation conducted by Baylor that came out during the trial reveal one that was shockingly brief: It involved reading text messages, looking at a polygraph test Ukwuachu had independently commissioned—which is rarely admissible in court—and contacting Ukwuachu, Doe, and one witness on behalf of each of them. Ukwuachu's roommate, Peni Tagive, is the primary witness in his defense. During opening statements, Sibley—Ukwuachu's attorney—claimed that

Tagive would be able to testify that he had been present at the time of the incident, and neither saw nor heard any signs of the struggle that Doe claims ensued. During her testimony, Doe stated several times that she doesn't believe that Tagive was in the apartment, and prosecutor Robert F. Moody said in his opening statement that "We're not going to call him, because we don't believe he's trustworthy." Part of the reason Moody might not trust Tagive's testimony is that after Tagive—a running back for the Bears—was subpoenaed, he spent two nights in jail for contempt of court after he failed to appear for his grand jury summons, and was required to wear an ankle monitor upon his release to ensure that he would appear to testify. Tagive's statements may have been considered persuasive to Baylor in its investigation, but he clearly went to some lengths to avoid making them under oath.

We don't know yet whether Sam Ukwuachu will be convicted of the charges against him—but we know that the program recently (and eagerly) expressed its intention to add the six-foot-four pass rusher to their rotation at defensive end in time for the season opener at SMU. What we do know is that Baylor took a chance on a player they had every reason to suspect had previously presented a threat to students at another campus, and let Baylor's students assume the risk that entailed. When a student at Baylor leveled accusations of sexual assault against the player, the school's investigation—in which the burden of proof is significantly lower than in a court of law—ended without action, despite the fact that the McLennan County District Attorney's Office found cause to take the matter all the way to a trial on second degree felony charges. We know that officials in Baylor's football program describe rape accusations against players on the team as "some issues" or "violating a team rule," the same language they might use to describe a player who broke curfew—even after the player has been accused, indicted, arrested, and, in the case of Tevin Elliott, convicted. We know that the Waco Police Department took months to bring the case to a prosecutor, but that when they *did* present the case to the DA's office, the DA took the felony charges all the way to court. We know that the Waco sports media, charged with covering one of the country's most prominent football programs, failed to report on charges against a much-heralded new transfer

for nearly fourteen months, even though those charges were readily accessible to anyone who searched his name at the McLennan County Courthouse. We know that when asked about Ukwuachu a few weeks ahead of his scheduled trial date, rather than acknowledge the charges or decline to comment, Baylor defensive coordinator Phil Bennett told Baylor fans that the team was expecting to have him on the field.

And we know that, when asked about Ukwuachu by the *Waco Tribune-Herald* after news of the charges finally broke—more than a year after the initial indictment—Baylor head coach Art Briles told reporters, “I like the way we’ve handled it as a university, an athletic department, and a football program.”

Update (8/20/15 8:31pm): Samuel Ukwuachu was found guilty of second-degree sexual assault. He is expected to be sentenced on August 21, 2015. Following the conviction, Baylor University’s assistant vice president for media communications sent the following statement:

Acts of sexual violence contradict every value Baylor University upholds as a caring Christian community. In recent years we have joined university efforts nationally to prevent campus violence against women and sexual assault, to actively support survivors of sexual assault with compassion and care, and to take action against perpetrators. We have established and fully staffed a Title IX office that employs a Title IX Coordinator and two full-time investigators. Maintaining a safe and caring community is central to Baylor’s mission and at the heart of our commitment to our students, faculty and staff.

***Correction:** A previous version of this article misspelled McLennan County. We regret the error.