



Defendants Cary Gray, Ron Murff, and David Harper (collectively “the Baylor Regents”) file their Original Answer to Plaintiff’s Original Petition and show the following:

### **INTRODUCTION**

Former Baylor Head Football Coach Art Briles recently filed a defamation action against three Baylor Regents that was untruthful and without merit. This lawsuit, filed by Colin Shillinglaw, Baylor Assistant Athletics Director for Football Operations, makes similar false claims and has no basis in fact. Following the admirable decision yesterday by Coach Briles to dismiss his case in a separate court, the last thing Baylor Regents wish to do is wade into more frivolous litigation. Yet, the egregious allegations in Colin Shillinglaw’s lawsuit suggest that he and other former members of the Baylor football staff under Coach Briles all have been defamed. This leaves the Baylor Regents with no choice but to defend themselves in this proceeding and to set the record straight.

Colin Shillinglaw's defamation claims amount to nothing more than a public relations smokescreen intended to hide the truth about how Shillinglaw, Coach Briles and others created a culture within the football program that shielded players from University discipline for alleged offenses ranging from drug use and academic cheating to assault. It is without dispute that Baylor had a wildly successful football program in which the vast majority of the players conducted themselves with distinction and honor, on and off the field. But, while helping to direct and support a successful football program, Shillinglaw also served as a pivotal figure in an internal disciplinary system that was in the words of Coach Briles “in-house when it should have been open house.” This, in turn, fostered an environment in which football players were shielded from the University disciplinary system and, when combined with Baylor’s existing Title IX deficiencies, led to reports of sexual assaults and other disciplinary problems involving football players being mishandled or not reported to appropriate Baylor personnel.

Without any evidence, Shillinglaw has sued the University, four Baylor Regents, the Interim President, the Vice President for Finance & Administration and the Pepper Hamilton law firm claiming they conspired to defame him by impugning the reputation of the football program and its administration. He alleges this “defamation-by-association” has seriously damaged him in the football coaching world. Truth, however, is an absolute defense to a defamation action. And, as he already knows, Shillinglaw's present difficulties are of his own doing, not the result of anything the Baylor Regents have said or done.

In Shillinglaw’s pleadings, he claims that the Baylor Regents defamed him by criticizing the culture of the football program even though he is never mentioned by name or position in any of the challenged articles or statements. Shillinglaw contends that any criticism of the culture of the football program or the way it was administered is a criticism of him personally. He alleges in his pleading that he was inextricably intertwined with Coach Briles and how he administered the football program.

Their friendship dates back to 1988, when they both worked at Stephenville High School. Shillinglaw was head athletics trainer when Briles became head football coach. There they worked together for 11 years until Coach Briles left. When Briles became head football coach at the University of Houston in 2003, he hired Shillinglaw as head of football operations and did the same in 2007, when he became Baylor's head football coach. As the head of football operations, Shillinglaw's official responsibilities included overseeing all team travel arrangements, tracking scholarships, coordinating player housing, liaising with academic support services, planning budgets and supervising administrative personnel.

Importantly, Shillinglaw was also integrally involved with player discipline in a football program that became a disciplinary black hole. When Coach Briles, Shillinglaw or others were

alerted to misconduct, they routinely did not report these incidents to University officials outside the football program (these officials outside the football program worked in the Office of Judicial Affairs, which is responsible for investigating and administering student discipline, and the Title IX Office, which in November 2014 assumed responsibility for investigating allegations of physical and sexual assault). Briles, Shillinglaw, and others set up a structure within football that often insulated Briles from knowing about misconduct. In those circumstances when information about acts of misconduct bubbled its way up to him, Briles encouraged Shillinglaw and others on his staff to keep the problems internal to the program and not alert other campus authorities. For example, when confronted with allegations of a gang rape against some of his players, Briles made no real attempt to determine if his players were responsible, to report them to authorities outside the Athletics Department or to make sure his players were punished, if warranted.

In addition to these troubling disclosures, the Board was informed that Shillinglaw did not fully cooperate with the Pepper Hamilton investigators in an attempt to keep them from learning about a particularly disturbing failure to report a football player's misconduct to Baylor officials outside of athletics. Based on these facts and others detailed below, the Board of Regents recommended the removal of Briles and suggested that the Administration review Shillinglaw's continued employment. The Board determined new leadership was in order for Baylor's football program going forward.

Rather than accept the harsh truth and move on, Shillinglaw filed this lawsuit and, therefore, put the Baylor Regents in the position of having to set out in detail the factual realities that support the position in which Shillinglaw placed himself and others.

#### **BRIEF FACTUAL OVERVIEW**

The Board of Regents was largely unaware of the extent of the football program's shortcomings in responding to Title IX and sexual assault complaints until an August 2015 *Texas*

*Monthly* article made alarming allegations. That same month, a McLennan County jury convicted football player Sam Ukwuachu of sexual assault using the criminal standard of “beyond a reasonable doubt.” Following the criminal conviction, the Regents asked why Baylor's Judicial Affairs Office had previously cleared Ukwuachu of sexual assault using a lower “preponderance of the evidence” burden of proof under Title IX. Shortly thereafter, President Kenneth Starr concluded, and the Board of Regents agreed, that the University needed an independent and outside investigation to determine how it had responded to allegations in the Ukwuachu matter (as well as other cases of alleged sexual assault), and whether the school was complying with Title IX guidance provided by the U.S. Department of Education. President Starr ultimately recommended hiring Pepper Hamilton, a well-respected outside law firm, to perform the investigation. The Board of Regents agreed.

In May 2016, Pepper Hamilton presented findings that horrified and stunned the Board of Regents. As a part of the broader institutional failures, the investigation uncovered evidence that Coach Briles, Shillinglaw, and others in the football program had developed, enabled, and encouraged a culture within the football program that deliberately insulated players from the normal University disciplinary process. The result was a system in which football players accused of misconduct were treated differently than students outside the program.

Even though Pepper Hamilton did a truly independent and incredibly thorough investigation, supporters of the Briles’ regime decided to attack the messenger rather than deal with the tragedy of the message. They demanded details from the Pepper Hamilton investigation and accused the Regents of exaggerating the extent of sexual assaults by football players. The Board of Regents was conflicted about how much specific information to make public and

ultimately decided to release a lengthy summary called “Findings of Fact.”<sup>1</sup> While it represented an unprecedented institutional *mea culpa* within higher education and offered a self-critical summary on the subject of Title IX compliance, the Findings of Fact deliberately was silent about the underlying details. The Regents decided to omit these details primarily out of respect for the privacy of the victims. They also wanted to avoid violating a number of privacy laws, including the Family Educational Rights and Privacy Act (FERPA), the Violence Against Women Act (VAWA), Title IX confidentiality requirements, assurances of confidentiality given by the Pepper Hamilton investigators and Baylor confidentiality guidelines.

The Board of Regents believed the Findings of Fact demonstrated the need for making leadership changes, and that by concentrating on the implementation of the recommendations from Pepper Hamilton, the Baylor community could place its focus on the future rather than dwell on the tragedies of the past. By instituting these reforms, the Regents would create an environment that would assure present and future students, as well as the public at large, that allegations of sexual misconduct would be sensitively and appropriately handled, and that Baylor students would be safe going forward. Though these beliefs may have been overly optimistic in light of the ensuing media and public firestorm, they are the reasons why the Regents allowed the Findings of Fact to be the University’s definitive statement on the crisis.

In declining to engage with the Baylor community and the media following the announcements in May 2016, the Board unwittingly seeded an outcry among Baylor’s constituencies, including some of Baylor’s most ardent supporters. Some, including Briles loyalists, have used the silence as an opportunity to question the quality and objectivity of Pepper

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<sup>1</sup> Exhibit A.

Hamilton's investigation. Supporters of the Briles regime began propagating an inaccurate and self-serving picture of what had occurred. Yet, it was not until the resignation of Patty Crawford, Baylor's first Title IX Coordinator, and her very public (and largely untrue) criticisms, that the Board concluded Baylor could no longer remain silent. The Board not only felt a need but an obligation to speak up to correct the public record. Failing to respond could have jeopardized the very real progress Baylor has made in dealing with its handling of sexual assault allegations. The Board decided to provide details that would demonstrate that it had no choice other than to take drastic steps to change the culture in the football program.

To accomplish this in the most effective way, the Board hired a nationally recognized media consultant, G.F.BUNTING+CO, to help formulate responses to incoming media inquiries. By responding to inquiries from selected media outlets, the Regents attempted to provide additional information to correct the record and work on restoring confidence in the investigation and recommendations for moving forward. This more transparent public relations strategy led to many of the truthful articles at issue in this lawsuit.

Rather than accept the unflattering truth, Shillinglaw has decided to sue, claiming that the carefully considered disclosures about the football program are false and have damaged his reputation. Although Briles tried a similar tactic, he quickly dismissed his baseless lawsuit, no doubt fearing the truthful response to his allegations.

Shillinglaw's lawsuit, however, compels the Baylor Regents to provide even more detail about those documented allegations, as well as what Coach Briles, Shillinglaw, and certain of assistants did to foster a non-compliant culture within the football program.

## FACTUAL BACKGROUND

### A. Why Baylor hired Pepper Hamilton to investigate troubling allegations.

One of the most important figures in Baylor's Title IX controversy was a football player who never played a down for the Bears. Sam Ukwuachu was a standout defensive end who transferred from Boise State University back to his home state of Texas in 2013.

After sitting out the 2013 season as required under NCAA rules, Ukwuachu should have been in training camp in the summer of 2014. Instead, Coach Briles suspended Ukwuachu from the team after a McLennan County grand jury indicted him in June 2014 on two counts of felony sexual assault.

Ukwuachu's story became major news after a lengthy article in the August 2015 issue of *Texas Monthly*. Under the headline "Silence at Baylor," the article reported Ukwuachu's indictment, his impending trial, and the University's allegedly botched internal investigation of his background at Boise State.

The article claimed Boise State administrators had kicked Ukwuachu out of school because of repeated misconduct issues. According to the article, no one at Baylor had thoroughly investigated Ukwuachu's background. Worse, the article claimed that Baylor Athletics had known about Ukwuachu's arrest and indictment, but had never disclosed that fact or explained why he sat out the 2014 season.

The *Texas Monthly* story also detailed the circumstances surrounding the felony sexual assault convictions of another football player, Tevin Elliott, who was sentenced in January 2014 to 20 years in prison. While Regents and Athletics officials had considered the Elliott conviction an isolated case, the magazine linked it to the Ukwuachu case as evidence of a pattern of obfuscation when it came to allegations of sexual violence involving members of the Baylor football team.



The day *Texas Monthly* published the article, a jury convicted Ukwuachu of second-degree sexual assault. When he was sentenced to six months in jail and 10 years of felony probation, President Starr issued a statement acknowledging that, while “we are living in a golden era at Baylor,” the University would launch an internal inquiry to examine its handling of the Ukwuachu case.

President Starr asked Jeremy Counsellor, a law professor who also served as Baylor’s Faculty Athletics Representative under NCAA provisions, to lead the investigation and report back to him. President Starr said he would then determine “what additional action to take.” As a former prosecutor, Counsellor soon advised that the sexual assault problem was beyond anything he or Baylor should handle internally.

Counsellor drafted a memo recommending that Baylor hire independent<sup>21</sup> investigators outside the control of the Administration and reporting directly to the Board of Regents. President Starr agreed and immediately asked his staff to research the best law firm for the job. It recommended Pepper Hamilton.

**B. Who Pepper Hamilton is and what the firm was asked to do.**

The Pepper Hamilton law firm has been hired by a wide range of schools embroiled in sexual assault scandals including UC Berkeley, the University of North Carolina, Amherst College and Occidental College. Leading the Pepper Hamilton team are Gina Maisto Smith and Leslie M. Gomez, law firm partners and two nationally recognized Title IX experts. Each of them is a highly seasoned former state prosecutor with extensive experience in investigating and prosecuting sexual assault cases. They had developed a national reputation for investigating and advising universities throughout the country on compliance with Title IX requirements, and recommending procedures to respond to sexual assault allegations.

On September 2, 2015, the Board of Regents announced it had retained Pepper Hamilton's services. The law firm's charge was to conduct an independent external review of Baylor's response to Title IX and related compliance issues through the lens of specific cases. Pepper Hamilton was not assigned to probe every single sexual assault allegation at Baylor. It was not charged with determining the total number of alleged sexual assaults that were reported or allegedly occurred during a set time period. And it was not asked to determine the guilt or innocence of any or all of those accused of sexual assault. For this reason, Pepper Hamilton did not interview any of the accused.

The vehicle for Pepper Hamilton's task was a "stress test" of Baylor's institutional response under Title IX. To conduct this stress test, Pepper Hamilton would identify and review a subset of specific cases focusing on Baylor's institutional response and compliance (or lack thereof) with Title IX. After analyzing these test cases, Pepper Hamilton would provide detailed recommendations for improving Baylor's Title IX compliance in responding to sexual and domestic assault allegations. Baylor granted Pepper Hamilton unfettered access to personnel and University records, and instructed the law firm to follow the facts wherever they might lead.

During the next nine months, Pepper Hamilton interviewed more than 65 people, including Baylor administrators, staff members, and current and former students, including alleged victims of sexual assault. Many individuals were interviewed on multiple occasions – one witness was questioned five times; another one during the course of four days – with the direction of the probe evolving as new leads turned up. Coach Briles and Shillinglaw were both interviewed separately on two different occasions. In addition to those interviews, the Pepper Hamilton team reviewed and catalogued more than one million pieces, or 26.5 terabytes, of information. Pepper Hamilton

employed a special security consultant to capture images on 52 laptops and 62 mobile devices.

Overall, the data collected included:

- Email messages;
- Text and voice messages;
- Police reports;
- Trial transcripts;
- Judicial Affairs and Title IX files;
- Current and prior Baylor policies and procedures;
- Personnel files;
- Student records;
- Past and present training and education materials;
- Previous internal and external audits;
- Baylor Title IX Task Force documents.

At the Board's regular quarterly meeting in February 2016, Pepper Hamilton provided a preliminary briefing focused on the Ukwuachu case. The facts demonstrated that, contrary to the *Texas Monthly* article, the University had adequately checked into Ukwuachu's background. The investigation determined Baylor had taken the proper steps to obtain Ukwuachu's student records from Boise State. Although Ukwuachu had allegedly beaten and choked a girlfriend while enrolled at Boise State, this fact was unknown to Baylor or Boise State officials until the victim testified at his trial in August 2015.

However, while the report on Ukwuachu's transfer exonerated Baylor of any recruiting wrongdoing, Pepper Hamilton advised the Board that the results of its investigation into other cases would not be so encouraging. The law firm warned that Baylor's handling of Ukwuachu's

sexual assault charge, as well as other cases being examined by Pepper Hamilton, could have a major impact on the school and could present the Board with some very difficult decisions.

By April 2016, Pepper Hamilton informed the Board that it had enough information to provide findings of fact and make recommendations to the Board. Again, it is important to note that this did not mean the law firm had identified *all* alleged sexual assaults. To determine the next steps, nine Regents – the Chair, Vice Chair and chairs of the Board’s various committees – traveled to Philadelphia for a preliminary briefing on May 2.

For more than eight hours, Pepper Hamilton’s team discussed the findings. It disclosed the Title IX failures at Baylor and discussed the specifics of case studies of alleged sexual assaults by individual football players. These studies included an analysis into the allegations of gang rapes by football players and other disciplinary issues uncovered within the Athletics program. Pepper Hamilton also described the psychological strain on victims of the assaults. The findings stunned and deeply saddened the Regents to such an extent that several openly wept as they tried to absorb what they were hearing.

The Regents in attendance at the May 2 meeting decided the findings were so dire the Board could not delay in addressing the problems. The group believed the Regents needed to respond much sooner than the six months it would take for Pepper Hamilton to prepare a lengthy written report with substantial supporting documentation. Pepper Hamilton’s investigative team then traveled to Waco to deliver a full verbal presentation of the findings to the entire Board.

**C. What the Board learned from the Pepper Hamilton investigation.**

On May 11 and 12, Pepper Hamilton delivered a comprehensive 10-hour presentation to the Board with a detailed recitation of much of the evidence the law firm had collected. The Board was shocked. It was learning things that it had never known before. “It was really horrifying to

sit through hour after hour of that,” Regent Kim Stevens later told “60 Minutes Sports” in an interview. “After those days and meetings were over, I really felt like I’d been hit by a truck.”

**1. The investigation uncovered an endemic culture in the football program of attempting to conceal and avoid reporting disciplinary problems involving players.**

While examining how the University responded to Title IX requirements, Pepper Hamilton kept coming across examples of other misconduct within the football program. It found that such player misconduct had been systematically brushed off or kept away from Judicial Affairs – the University body charged with the responsibility of investigating and disciplining student misconduct. The football program was a black hole into which reports of misconduct such as drug use, physical assault, domestic violence, brandishing of guns, indecent exposure and academic fraud disappeared. In all, investigators compiled a lengthy list of such offenses, which had gone largely unknown to the rest of the University. These cases showed that Coach Briles, Shillinglaw, and certain of his assistants had enabled a culture within the program that treated football players differently by making sure they would not face the normal disciplinary processes and consequences that regular students would have faced. The law firm found evidence that Briles relied on Shillinglaw to line up legal representation for players who had run-ins with the law.

Pepper Hamilton discovered this see-no-evil, report-no-evil system that buried numerous examples of misconduct, other than sexual assault allegations. Pepper Hamilton presented the following evidence showing the football program’s attempts to avoid the normal University disciplinary process:

- On April 8, 2011, after a freshman defensive tackle was cited for illegal consumption of alcohol, Coach Briles sent a text message to an assistant coach: “Hopefully he’s under radar enough they won’t recognize name – did he get ticket from Baylor police or Waco? ... Just trying to keep him away from our judicial affairs folks....”

- On February 11, 2013, an assistant coach notified Coach Briles of a claim by a female student-athlete that a football player brandished a gun at her. Coach Briles responded: “what a fool – she reporting to authorities” The assistant coach texted back: “She’s acting traumatized ... Trying to talk her calm now... Doesn’t seem to want to report though.” Coach Briles texted: “U gonna talk to [the player].” The assistant coach concluded: “Yes sir, just did. Caught him on the way to class... Squeezed him pretty good.” The matter was never reported to Judicial Affairs.
- On September 13 2013, Shillinglaw sent a text to Coach Briles about a player who got a massage and “supposedly exposed himself and asked for favors. She [masseuse] has a lawyer but wants us to handle with discipline and counseling.” Coach Briles’ first response was “What kind of discipline... She a stripper?” When Shillinglaw said the player made the request at a salon and spa while getting a massage, Coach Briles wrote, “Not quite as bad.”
- On September 20, 2013, after a player was arrested for assault and threatening to kill a non-athlete, a football operations staff official tried to talk the victim out of pressing criminal charges. Meanwhile, Coach Briles texted Athletics Director Ian McCaw: “Just talked to [the player] – he said Waco PD was there – said they were going to keep it quiet – Wasn’t a set up deal... I’ll get shill (Shillinglaw) to ck on Sibley (local attorney Jonathan Sibley).” Athletics Director Ian McCaw replied: “That would be great if they kept it quiet!”
- In October 2013, Shillinglaw and Briles discussed their efforts to intervene on behalf of a player who was suspended for repeated drug violations. "Bottom line, he has to meet with (Vice President for Student Life Kevin) Jackson tomorrow morning. If Jackson does not reinstate President will," Shillinglaw wrote.
- On May 14, 2014, after Coach Briles learned from an assistant coach that a player had been caught selling drugs, he texted: “I’m hoping it will take care of itself – if not we can discuss best way to move on it.” The offense was never reported to Judicial Affairs and Coach Briles arranged for the player to transfer to another school. The assistant coach texted: “Him just hanging around Waco scares me. [Another school] will take him. Knows baggage.”
- On August 15, 2015, after a player was arrested for possession of marijuana, Coach Briles texted an assistant coach: “Shit – how about that – he’s gonna b (sic) in the system now – let me know what you think we should do... I can get shill (Shillinglaw) to call Sibley or we can.... Do we know who complained?” The assistant coach responded that the complainant was the superintendent at the player’s apartment complex. Coach Briles replied: “We need to know who supervisor is and get him to alert us first.”

At some point, Pepper Hamilton stopped collecting such examples, which were not directly within the scope of its engagement. There could be dozens more, but Pepper Hamilton believed it had compiled enough to support a conclusion that those in charge of the football program, including Shillinglaw, improperly covered up disciplinary problems other than sexual assault.

**2. The investigation showed that the football program exhibited an underwhelming and cavalier response to allegations of sexual assault and missed opportunities to discover alleged sexual assault problems.**

As stated in the Findings of Fact:

The choices made by football staff and athletics leadership, in some instances, posed a risk to campus safety and the integrity of the University. In certain instances, including reports of a sexual assault by multiple football players, athletics and football personnel affirmatively chose not to report sexual violence and dating violence to an appropriate administrator outside of athletics. In those instances, football coaches or staff met directly with a complainant and/or a parent of a complainant and did not report the misconduct. As a result, no action was taken to support complainants, fairly and impartially evaluate the conduct under Title IX, address identified cultural concerns within the football program, or protect campus safety once aware of a potential pattern of sexual violence by multiple football players.

Below is a summary of several sexual assault cases that led to this finding by Pepper Hamilton. In addition to the cases detailed below, there were others the law firm presented to the Board that also contributed to its decision to change Baylor's leadership.

**a. Tevin Elliott**

Between his enrollment at Baylor in the fall of 2009 and his arrest and expulsion in the spring of 2012, defensive lineman Tevin Elliott allegedly assaulted five students. During this period, President Starr, Coach Briles, and other Athletics Department officials missed numerous opportunities to remove Elliott from campus.

On Halloween 2009, Elliott allegedly sexually assaulted a Baylor student. His victim did not report the incident for three years until after other Elliott victims had come forward.

Elliott's second alleged sexual assault occurred on March 19, 2011 outside a Waco bar and involved a student from another university. The student immediately went to Waco Police. By this time, Elliott also was in academic trouble. On March 23, 2011, the Provost's office notified Elliott of his suspension for the Fall 2011 semester for a second honor-code violation for plagiarism. That made him ineligible for the football season. Elliott failed to respond to an April appeal deadline.

On June 11 – more than two months after the appeal deadline had passed – Coach Briles personally took up Elliott's cause. The coach notified President Starr in an email that Elliott wanted to appeal the suspension. The unusual request by Coach Briles triggered concern among top Baylor administrators, who complained to President Starr and among themselves that overturning Elliott's suspension after the appeal deadline would send a message that athletes were above the rules.

Even Elliott's July 18 appeal letter was suspect. It appeared to have been authored by an academic advisor in the Athletics Department. Nevertheless, President Starr ignored the decision of his Provost and overturned the suspension. In another break with policy, President Starr put Elliott under the probationary watch of the Athletics Department and not Judicial Affairs, which was responsible for overseeing enforcement of Baylor's Honor Code. This resulted in the Athletics Department becoming the sole arbiter of whether Elliott was complying with the probationary terms and what consequences he should suffer if he failed to do so. "Please understand that should you have another violation of University policy, this may well result in your suspension or expulsion from the University," President Starr wrote Elliott.

President Starr's decision prompted a Judicial Affairs official to complain that the Athletics Department had oversight for monitoring probation requirements for football players and this



presented a different standard for athletes than for other students. The official's fears were well founded. That fall, Elliott had attendance problems, was in danger of flunking his human performance class and was caught cheating on quizzes. This violated President Starr's probation orders and Elliott's academic plan. But two top Athletics officials shrugged it off. "Wow, what is this kid thinking?" an Athletics Department official wrote on October 21, 2011 to his boss, Ian McCaw. "Unbelievable!" McCaw replied. The Athletics Department's unwillingness to crack down enabled Elliott to stay at Baylor and play football.

On September 28, a Waco-area community college student filed a police report accusing Elliott of poking her with a broom handle and pinning her against a wall with his torso. When Waco police informed their Baylor counterparts, BUPD questioned Elliott and he denied the allegations.

On April 1, 2012, Elliott's fourth alleged victim – another Baylor student – filed a criminal complaint with Waco Police accusing the player of raping her three days before. On April 10, the victim went to Baylor's Office of Judicial Affairs. And on April 15, a fifth victim went to a local hospital emergency room and reported to a forensic nurse that Elliott had raped her during a party at another player's apartment. That same day, the nurse notified a person she believed to be in Judicial Affairs of the alleged rape and added that she had treated other victims of Elliott.

News of the April 15 attack reached Coach Briles the next day. Elliott "firmly denies even knowing the girl," an assistant coach texted Coach Briles. But, after interviewing the player the next day, the assistant coach told Coach Briles that Elliott "admitted he lied to us. He was with her and said when she said stop he did." "Wow – not good – I'll call you later," Coach Briles replied. Later, the assistant coach texted Coach Briles: "Tevin just called and told me Waco PD

took him down to swab his mouth. He also went to see a lawyer who took his case. I would think he will be charged pretty quick.” Briles responded: “Dang it.”

Coach Briles did not notify Judicial Affairs or take any action for ten days, until a *Waco Tribune-Herald* reporter inquired about Elliott’s status and whether he had been suspended. On April 27, the Athletics Department issued a two-paragraph statement announcing that Elliott had been suspended indefinitely from football for an unspecified “violation of team policy.” Three days later, Elliott was arrested. On May 21, Baylor notified Elliott that he had been expelled and banned from campus.

In August 2012, a McLennan County grand jury indicted Elliott on two counts of sexual assault related to the April 15 attack. Weeks before his trial, Elliott asked Coach Briles in a text message if he would testify on his behalf. “We need to get your name cleared ... Always all in with my players,” replied Coach Briles, who did not appear in court. On January 23, 2014, a jury convicted Elliott on two counts of felony sexual assault and a judge sentenced him to the maximum 20 years in prison.

**b. Shawn Oakman**

Shawn Oakman transferred to Baylor in July 2012 after his dismissal earlier that year from Penn State’s football team. He was dismissed after being charged with retail theft, disorderly conduct and harassment for accosting a female clerk at an off-campus convenience store and leaving without paying for a meal. Oakman’s troubled past was no secret: Oakman himself told the *Waco Tribune-Herald* that Baylor was his “last chance.”

Despite Oakman’s background, the Athletics Department never requested his Penn State student file. Baylor Athletics relied, instead, on an observation by the previous coach who had kicked Oakman off the Penn State team. “When I was hired as Head Coach, there were 5 or 6 names that kept showing up on disciplinary lists. Shawn Oakman’s name was one of these names.

He was also involved in a couple of police matters. At that point, I decided to dismiss him from the team. This was something that a head coach who was just hired has to do at some point. I believe that Shawn is a decent kid that should be allowed to play this season. I am sure that he has learned his lesson.” Coach Briles forwarded the email to the Athletics Department’s senior compliance officer, stating: “Here we go.”

Oakman sat out the 2012 season, as required by NCAA transfer rules. On January 10, 2013, a Baylor student filed a complaint with the Waco PD Family Violence Unit alleging that Oakman had argued with her, called her a “slut” and a “whore,” slammed her into a brick wall, and shoved her face into her bed.

She also notified the football program about the alleged incident, personally delivering a copy of the Waco Police Department report to Shillinglaw, and two other people she believed to be assistant football coaches. There was no evidence that Shillinglaw or anyone in the football program shared the report with Baylor officials outside of the Athletics Department. Worse, when Pepper Hamilton questioned Shillinglaw about the incident and showed him evidence of his involvement, Shillinglaw insisted he did not recall anything about it.

Within days, the Waco PD closed the case after the Baylor student said she did not want to press charges and left the state.

The woman returned to Baylor for the summer session and Fall 2013 semester, but on each occasion withdrew after encounters with Oakman. The woman claimed that Oakman pushed her down some stairs the first time and punched a hole in a wall the second time.

In January 2015, the student and her mother met with a learning accommodation specialist. After that meeting, the specialist immediately contacted Baylor Judicial Affairs, the Title IX office, Student Life and the Office of General Counsel. Describing the student, the specialist wrote: “I

haven't seen a student as scared and upset as she was in a long time. She mentioned that she lives in constant fear, 24 hours a day she is scared that [Oakman] or his friends will come beat her up. The mom also talked about Baylor protecting the guy because he is a Baylor football player and that he had an assault record before he was at Baylor.”

Citing an unspecified “violation of team rules,” the Athletics Department announced that Oakman was suspended for the 2015 season opener against SMU. Oakman went on to play the rest of the season and graduated in December 2015. On April 1, Oakman allegedly sexually assaulted a Baylor student in his apartment, and 12 days later, the former football player was arrested by Waco police. He is awaiting trial. It was after this arrest that word of the 2013 dating violence incident leaked to the media. Rivals.com, a football website, obtained a Waco Police report of the alleged beating incident and the *Dallas Morning News* published a story about it on April 25, 2016.

**c. Gang rape allegations**

Soon after Baylor hired Pepper Hamilton, the law firm was informed of reported gang rapes committed by football players. Pepper Hamilton investigated to determine when and how these allegations were reported, and how the University responded to them.

The earliest report of a gang rape surfaced in April 2013, when a Baylor student-athlete confided to her coach that five football players had raped her at an off-campus party in early 2012. According to the coach, the student-athlete told him that the incident started with one football player and the other players were soon “all over her.” She identified each player who had participated. The coach wrote the names on a piece of paper.

Assuring the student-athlete he would make sure this would never happen to her again, the coach went immediately to Ian McCaw. The Athletics Director listened to the coach describe the

student-athlete's accusation and looked at the list of names the coach had compiled. McCaw then told him to go to Coach Briles.

When he did, Coach Briles studied the names on the piece of paper. "Those are some bad dudes," Coach Briles told the coach. "Why was she around those guys?" Coach Briles offered no defense of his players and told the coach he should have his student-athlete inform the police and prosecute.

The victim's coach went back to McCaw, who incorrectly told the coach it was up to the victim to take action. McCaw told the coach that if the student did not press charges there was nothing else they could do. McCaw suggested that the coach also could have the student-athlete call the Baylor General Counsel's office – and McCaw had his assistant provide the phone number. When the coach relayed the number to the student-athlete and her mother, they declined to make the call.

Still, the student-athlete and her mother continued to raise her case within the Athletics Department. The student-athlete told another member of the Baylor athletic staff that she had been sexually assaulted as a freshman. There is no evidence this staff member reported the allegation. Her mother also met with an assistant football coach at an off-campus deli. During the conversation, the mother provided the names of two of the five football players who allegedly had participated in the gang rape.

Returning to his office, the assistant football coach summoned the two players and questioned them. They admitted to "fooling around," calling it "just a little bit of playtime." But they insisted they did not harm the student and that the conduct was consensual. The assistant football coach also said that he contacted other Baylor coaches, whose apparent response was to

engage in victim-blaming. He concluded that the accusations of the gang rape were in a “gray area” and there was no definitive evidence of sexual assault.

Pepper Hamilton found no evidence that anyone, including Coach Briles, notified Judicial Affairs, BUPD, or anyone else outside of Athletics of the allegation. If someone had called or visited Judicial Affairs it would be reflected in its records because Judicial Affairs logs each call and visit. It also sends out internal email notifications about any alleged Title IX or Honor Code violation. Recent follow-up inquiries found no records showing that anyone – McCaw, Coach Briles, the other coach, or any other member of the Athletics Department – reported the 2013 allegation to Judicial Affairs,

When initially interviewed by Pepper Hamilton, Coach Briles said he recalled only “bits and pieces” of the gang rape allegation. In follow-up interviews, Coach Briles said he did not remember meeting the coach but recalled hearing about the victim because she had been in his office about another incident. Later, Coach Briles, the victim’s coach, and McCaw each blamed a lack of clear University guidelines for not reporting the incident to Judicial Affairs.

Pepper Hamilton concluded that a number of factors had contributed to the code of silence within football. Those factors included the absence of a full-time Title IX Coordinator prior to November 2014, unclear reporting procedures, and inadequate Title IX training for Athletics Department personnel. However, Pepper Hamilton also concluded that Coach Briles and McCaw knew that Judicial Affairs had jurisdiction for investigating sexual assaults. Indeed, on April 23, 2013 – the very same day Coach Briles learned about the student-athlete’s account of being gang raped – he was forwarded a letter stating that Judicial Affairs had investigated and cleared another one of his players of sexual assault allegations.

Unfortunately, this was not the only allegation of gang rape. During a 2015 Title IX investigation into the 2013 physical assault allegation against Shawn Oakman, Patty Crawford – then Baylor’s newly-hired Title IX Coordinator – discovered other reports of gang rape by football players. According to Crawford’s records, Oakman’s alleged beating victim stated that she, too, had been gang raped by football team members in her freshman year, and that she believed a video existed of the incident. (This victim is the same one that had gone to Shillinglaw and provided a copy of a police report of physical violence.)

In a follow-up meeting, Crawford drew out additional details from the victim. She said gang rapes had occurred during parties at an off-campus house where people crowded on the first floor while the victims, who had been plied with painkillers and alcohol, were led to an upstairs bedroom with glowing stars on the ceiling. The victim said that she had been brought to one of the parties by another Baylor football player who did not participate in the alleged gang rape but reportedly received a video of the incident. She also told Crawford that, at one of the parties, she met another female student who warned her about football players taking advantage of women. The alleged beating victim then volunteered that her former classmate had been gang raped by football players, too. She added that both had been so traumatized by the attacks that their academic performance suffered significantly during the spring semester.

On February 4, 2015, Crawford informed certain Baylor administrators of the gang rape allegations in a meeting that included Ian McCaw. During the discussion, Crawford asked McCaw if he knew anything about gang rapes by football players. McCaw said no, failing to disclose the allegations that had been brought to his attention in 2013. McCaw then inquired if a football player who had information about sexual assaults could receive immunity under Title IX. Both Crawford and then-Associate General Counsel Chris Holmes said no.

Crawford and her investigators subsequently followed up leads on two other alleged gang rapes. On February 27, 2015, they reached out to the woman who had been at one of the parties and warned Oakman's alleged victim about gang rapes and football players. She happened to be the same student-athlete who had informed her coach in April 2013 of the gang rape by five football players. The student-athlete then provided Title IX investigators with the name of yet another friend who had complained of the same type of assault. That alleged victim was not a Baylor student.

In March 2015, the Title IX office spoke with the Baylor classmate of Oakman's alleged beating victim. The classmate confirmed that she had been sexually assaulted by members of the football team in the Spring of 2012. She stated that several players were involved, but that she could not identify all of them. She declined to proceed with a Title IX complaint and her case was closed.

In all, at least six football players had been identified as allegedly participating in gang rapes. Despite the multiple accounts, however, Crawford and her staff believed they faced an insurmountable hurdle: by the time the Title IX office pieced together the information in late March 2015, all six of those players were no longer at Baylor.

**D. The Board's decision.**

In May, after hearing 10 hours of alarming evidence from Pepper Hamilton about Baylor's failures, the Board of Regents knew it had to make major changes. Still, Board members needed time to process the findings and carefully consider their options. Thus, they began an unprecedented two-week "rolling" meeting that was comprised of several sessions.

The Board next held a teleconference during which it continued to review the facts and debate who should be held accountable. That was followed by a full day meeting in Houston, at which most of the Regents were present; those that were not participated by telephone.



The Board considered the status of both Ian McCaw and Coach Briles. After much deliberation and debate, the Board voted 24-6 to recommend suspending Coach Briles with the intent to terminate for cause. It also voted 26-4 to recommend seeking McCaw's resignation. If McCaw declined, the Board recommended he be fired. A small number of Regents resisted the personnel actions for a variety of reasons. The scope and detail of the Pepper Hamilton findings, however, made it clear to the overwhelming majority that McCaw and Coach Briles could not continue in their roles at Baylor.

The Board also agreed to publicly release a summary document about the Pepper Hamilton investigation called "Findings of Fact," as well as the 105 recommendations that the law firm had made to bring Baylor into Title IX compliance.

Anticipating a backlash from fiercely loyal Coach Briles supporters and the Waco community, several Regents discussed disclosing a number of underlying details in the Findings of Fact. They reasoned that the Baylor community would understand the unpopular personnel decisions if it knew more about the damning evidence. But there were competing concerns that disclosing details would run the risk of violating the privacy of the victims and the accused under FERPA, Title IX, and the Violence Against Women Act. As a result, with Pepper Hamilton's assistance, the Board drafted a summary Findings of Fact that was unstinting in institutional self-criticism yet disclosed no names or details. Even then, the Findings of Fact represented the most comprehensive document that a University has ever issued about its Title IX deficiencies. This was done willingly and openly by Baylor, in spite of the increased exposure it would engender to both pending and future litigation. The Board also decided to adopt all 105 of Pepper Hamilton's recommendations immediately, which the Board was informed would set a new standard in terms of Title IX reforms.

The Board offered both McCaw and Coach Briles an opportunity to address the Board in person before its recommendations were announced. The Board had not talked to them directly on this matter, and felt obligated to give both men an opportunity to defend themselves.

On May 24, the Board reconvened in a conference room on campus. Ten Regents attended in person while the rest of the Board listened via speakerphone. McCaw and Coach Briles were each given an hour to answer the same question: We look to you, as University leaders, to set the proper tone and create the right kind of culture at Baylor. We have heard about alleged gang rapes, special treatment for football players and reviewed your own words about keeping misbehavior away from Judicial Affairs and Title IX. If you were in our shoes, what would you do?

McCaw went first. He responded with great remorse, tearfully acknowledging his mistakes. He then proposed reforming the culture within football and Athletics with a five-point plan to improve sexual violence prevention and response. McCaw's thoughtfulness and resolve impressed many Regents.

Coach Briles came in next. He was overcome with emotion and made the following statements:

- He delegated down and he should not have.
- He ran an in-house discipline system when he should have been an open house.
- He structured things so that other people handled discipline issues and didn't necessarily report to him.
- He was the last to know.
- He made mistakes.

The Board asked Coach Briles what he would do to change things. "Tell me what you want me to do and I'll do it," he said. The Board considered his response particularly telling. Although he admitted his failings like McCaw had done, Coach Briles provided no solutions or

vision on how to lead Baylor football out of this crisis. The Board was concerned that given all that had occurred, Coach Briles could not identify with the role of disciplinarian.

After further deliberation and debate, the Board voted to recommend placing McCaw on probation with sanctions. The Board then took up a motion to reconsider the recommendation to suspend Coach Briles with intent to terminate. The motion to reconsider failed by an overwhelming margin.

The Board also recommended that Baylor's administration look further at Shillinglaw's continued employment. This was based on evidence showing that Shillinglaw did not fully cooperate with the Pepper Hamilton investigation. Shillinglaw told the law firm that he did not remember meeting Oakman's alleged victim and had no recollection of receiving a copy of the police report from her. However, he had her contact information in his phone, and there were emails from Shillinglaw indicating he had received the report and had asked an assistant coach to speak to Oakman's relatives about the incident. At this time, Shillinglaw has been suspended with intent to terminate.

On May 26, 2016, the Board publicly released the 13-page Findings of Fact, which included the sweeping condemnation of Baylor's repeated failures to live up to its Title IX obligations, most notably to respond to and care for the victims of sexual violence. The document carefully avoided naming names or mentioning the words "gang rape." But the statement did reveal, albeit in guarded language, the gang rapes and the unwillingness of certain people within the football program to alert the rest of the University. Four days later, on May 30, McCaw submitted his resignation because he felt he could not serve the University with the controversy hanging over his head.

**E. The aftermath of the Board's decision.**

In many quarters, the Board received praise for its bold actions. But one influential constituency had a very different reaction. Several of Baylor's biggest donors, upset by the leadership changes, demanded a meeting with the full Board – a request that was rejected in favor of a smaller session.

In early June, four major donors met with new Board Chair Ron Murff and Regents David Harper, Mark McCollum, Joel Allison and Dan Hord. During that meeting, the donors specifically asked the Regents to detail the evidence from the Pepper Hamilton report that led to the Board's recommendation regarding Coach Briles. The Regents in attendance declined to disclose the details, stating they could not violate confidentiality laws. The donors demanded that Coach Briles be rehired or, at the very least, have his punishment reduced to a one-year suspension. The Board members again declined.

The donors continued to press for specific details, but the Regents said they could not divulge such information. They reiterated that the Board's recommendations pertaining to Coach Briles, McCaw, and President Starr recognized the need for new leadership in light of the revelations from the investigation. Retaining the same people responsible for the Title IX failures in their leadership positions would not uphold the "mission of the University." One of the donors stated very clearly, "If you mention Baylor's mission one more time, I'm going to throw up.... I was promised a national championship."

In mid-June, Baylor and Coach Briles reached a settlement severing the coach from the University. They issued a joint statement:

Both parties acknowledge that there were serious shortcomings in the response to reports of sexual violence by some student-athletes, including deficiencies in University processes and the delegation of disciplinary responsibilities with the football program. Baylor is addressing these shortcomings and making ongoing improvements.

Baylor wishes Coach Briles well in his future endeavors. Coach Briles expresses his thanks to the City of Waco and wishes the Baylor Bears success in the future.

After releasing that statement, the Board remained largely silent until October 2016. Unfortunately, that approach would leave the Board vulnerable in the coming months. With the departure of the University's first Title IX Coordinator, increasingly aggressive media coverage, and an angry group of prominent donors, the storm only got worse.

Many in the national media recognized the Board's decisions in May were part of a larger cultural shift that had finally reached Baylor after roiling other campuses for years. For example, the NBC Sports "Pro Football Talk" issued a blog post on May 26, 2016 that said: "Coach Briles was a highly successful coach and well-respected offensive innovator, but that will not be his legacy at Baylor. His legacy will be the damning statement Baylor released today that made it clear that Coach Briles cared more about winning than about the safety of Baylor students who were victimized by his players."

Also, before the Board reengaged with the media, Coach Briles appeared on the Cleveland Browns practice field as a guest consultant to Head Coach Hue Jackson. The franchise immediately came under fire. Under the headline "The Browns should want nothing to do with former Baylor coach Art Coach Briles," Cleveland.com, the *Cleveland Plain Dealer's* website partner, said the team should "shudder at the sight of one of the men fired in the fallout from the allegations outlined in the report standing on their field wearing their gear." NBC Sports chimed in: "Given the ugly allegations involving the Baylor football program on the watch of Art Briles, it would seem that he'd be radioactive for any other major college or NFL teams, at least for a while."

Yet the Board came under increasing pressure from a growing chorus of critics closer to home and within the Baylor community demanding that it justify the Pepper Hamilton findings, the dismissal of Coach Briles, and ultimately, the Board's legitimacy to oversee the University. Many ardent Baylor fans still could not make sense of the Board's decision. Regents were under increasing pressure to rehire the popular coach. Known as the "Bring Back Art Crowd," these supporters vouched for the fallen coach's character and claimed he had become collateral damage.

Early on, Coach Briles and his attorney actively encouraged this view. In June, before his client's settlement with Baylor, attorney Ernest Cannon filed a motion in federal court accusing the Board of making the coach its scapegoat: "The conclusion is inescapable that the motive of Baylor University and the Board of Regents was to use its Head Football Coach and Baylor Athletics Department as a camouflage to disguise and distract from its own institutional failure to comply with Title IX and other federal civil rights laws." After the settlement, Coach Briles visited the Dallas Cowboys training camp in August and told the media that he was "dumbfounded" by his termination and that he had "always lived my life in a righteous manner."

Some of those giving Coach Briles their unqualified support were not dissuaded by the change in tone of his own remarks. During a September 7, 2016 interview with ESPN, Coach Briles made a number of admissions:

- "There were some bad things that happened under my watch. And for that, I'm sorry .... I was wrong. I'm sorry. I'm going to learn. I'm going to get better."
- "I'd tell them [the victims] I'm extremely sorry. It just appalls me that somebody could victimize another human being. And there's no place in society for it. And I've never condoned it and never will and never put up with it. These players are part of our program and representatives of our program. And when they do wrong, then it reflects on me and the university. So I do feel responsibility."
- "The way the chain usually works is the head coach is last to know. Head coaches are sometimes protected, in certain instances, from minor issues. Now, major issues I was always made aware of."

- “I would start with being more proactive in everything that goes on with any inkling of a problem that we have with any student-athlete. I would want to be the first to know. And I would be personally involved with everything that went on from the discipline issue ... and then make sure that we have policies and procedures and protocols in place to protect our students.”
- The report of a 2011 [sic] gang rape by football players was a “sketchy incident” involving “different versions of what transpired .... It was investigated within our staff.”
- “I was the captain of the ship. The captain of the ship goes down with it. I was the figurehead for the football program. By terminating me, I think it felt like that Baylor as a university was making a bold step to correcting whatever issues were there.”
- “I lost some of my soul, quite honestly.”

While Coach Briles supporters attacked the Regents, others criticized the Board for its silence. The Regents faced demands to release a full Pepper Hamilton “report,” although, as *The New York Times* explained, no such document existed.

The Baylor Line Foundation, an organization that had been locked in a prolonged legal dispute with the Board of Regents, demanded a full airing of the facts. And the *Dallas Morning News* unleashed a series of stinging editorials and columns excoriating Baylor for “the sound of stonewalling.” In Waco, local CBS affiliate KWTX-TV aired frequent reports based on anonymous sources questioning the Board’s credibility and the Pepper Hamilton investigation. One KWTX-TV story declared without any attribution that the law firm had found “no smoking gun,” “fumbled” its investigation and “came to Waco with an agenda to purge members of the football program.”

Throughout it all, the Board declined to disclose further details about what Pepper Hamilton had uncovered or the basis for Coach Briles’ termination. The Board’s collective silence only seemed to infuriate its critics. Then the Patty Crawford controversy broke.

Crawford was hired as Baylor's first full-time Title IX Coordinator in November 2014. She stood out during candidate interviews for her personal warmth and talent for connecting with students. Those pluses masked organizational and managerial deficiencies that would later become serious problems.

In late September 2016, Crawford filed a discrimination and retaliation claim against Baylor and a complaint with the U.S. Department of Education's Office of Civil Rights. She accused Reagan Ramsower, Baylor's VP for Finance & Administration, of seeking retribution against her for being too aggressive in pursuing sexual abuse cases. Crawford's attorney offered to settle the case in exchange for \$1 million, plus the book and movie rights to her story. While settlement discussions ensued, she agreed to go on administrative leave September 29, 2016. She resigned on October 3, after those discussions ended without the University agreeing to her terms.

Crawford immediately began talking to the media, making an exclusive deal with CBS News and "60 Minutes Sports." Crawford claimed that Ramsower and other Baylor officials were so worried about protecting the school's "brand" that they had blocked her attempts to investigate sexual assaults. Though her claims were totally at odds with contemporaneous emails she sent to various Baylor officials – including the Chair of the Board's Audit and Compliance Committee – Crawford's allegations sowed further seeds of doubt about the Board's governance and decision-making.

**F. The Board concluded it must provide additional details of the investigation to ensure that reforms are not undermined by a false narrative or lack of confidence in the integrity of the investigation.**

The Regents appointed Dr. David Garland to be Baylor's interim President. He had previously served as interim President prior to President Starr's hiring. Within days, President Garland detailed his philosophy for University oversight:



This is not an institution of football. It is an institution of higher education, and we happen to play football. Our major mission is to educate students. That's what we want the focus to be on. And also to protect the safety of our students... This is going to be the safest place on the planet, because we're so concerned about these kinds of issues.

Specifically, President Garland vowed the administration would be more transparent and would fully implement the 105 recommendations made by Pepper Hamilton to bring Baylor into compliance with both the letter and spirit of Title IX. That would be an intense process and would require a major commitment of resources to execute.

Baylor published the 105 recommendations on its website and quickly started to implement them, creating 11 task forces comprised of nearly 90 students, staff, and faculty members to study and adopt the recommendations.

But the Board of Regents remained caught between continuing fan fury over Coach Briles' termination and heightened criticism from national media regarding Crawford's allegations. Regents were particularly astonished by Crawford's claims and the ensuing media attacks. Her aggressive media outreach reignited the sexual assault controversy and threatened to fill the information vacuum created by the Board's silence with misinformation.

This led the Board to reconsider its decision to withhold many details of the Pepper Hamilton investigation. It concluded that without offering supporting evidence, the public might never understand why the Board had taken such drastic actions. Because of this, the Board knew it could no longer sit silent. It had an obligation to speak out and defend the institution. The Board felt it had to counter the mistaken narrative that somehow Baylor had trumped up its case against a popular football coach so the Board could blame him for the University's Title IX sins.

In early October 2016, Baylor hired a public relations firm, G.F.BUNTING+CO, to execute a new communications strategy. G.F.BUNTING+CO is a media relations firm whose practitioners

collectively have 150 years of experience as reporters and editors at high-level publications and news outlets such as the *Los Angeles Times*, *Miami Herald* and NBC News. Bunting assists individuals, companies, nonprofit organizations and academic institutions in telling their stories. The Board hired Bunting because of the firm's integrity, professionalism, and business acumen, and because it insists on conveying only factual and accurate information to the media. Moreover, Bunting has a special expertise in the specific challenges of Title IX-related communications.

G.F.BUNTING+CO worked with Baylor and the Board of Regents to set the record straight. It recognized the importance of providing additional information and advised the Board to stop refusing comment and turning down all media requests. Instead, Bunting assisted with prioritizing the outstanding media requests, and worked to prepare appropriate and truthful fact-based answers that would reveal more information from the Pepper Hamilton investigation but continue to respect the privacy rights of the victims. Neither Bunting nor the Board manipulated publication dates. Rather, *The Wall Street Journal* and other news outlets were already working on stories that were going to be published whether the Regents commented or not. The media determined their own publication dates.

While the Regents involved in the interviews faced tough questions, with the assistance of Bunting, they were able to provide factually specific and accurate answers that many had sought for so long. Regents and administrators provided interviews that included:

- *The Wall Street Journal*, which published a story on October 28 based on interviews with three Regents, including two of those named in the lawsuit;
- "60 Minutes Sports," which ran a November 1 segment about the Patty Crawford allegations and responses by four Regents, including one of those named in this lawsuit;
- The *Dallas Morning News* editorial board, which ran a story and editorial on November 3 and 4 based on the conversation with four Regents, three

of whom are named in this lawsuit;

- Interviews by President David Garland and other administrators with *USA Today* and *the New York Times* for stories on the impact of sexual assault at Baylor;
- An editorial board meeting with the *Waco Tribune-Herald*.

On November 1, the University launched a webpage as yet another attempt to be more responsive and transparent. It featured official statements, a FAQ section, and real-time responses to questions about the sexual-assault crisis. In response to *Dallas Morning News* questions, the website also included more details about how McCaw and Coach Briles had been informed in April 2013 about an allegation that five football players had gang raped a student athlete, but they did not report this to the University.

The *Dallas Morning News* story and editorials on November 3 and 4 were published right before the November 5 game against TCU. On the evening of November 4, Baylor's assistant coaches each posted the same message via Twitter disputing what the Regents had disclosed, and defending the former head coach. During the game itself, scores of fans showed up at McLane Stadium wearing black T-shirts with the handle "#CAB," for "Coach Art Briles." A donor even hung a black banner emblazoned with the hash tag from one of the luxury suites. The protests in the stands prompted yet another round of media stories.

Prominent donors seized on the continuing discontent and the vacuum of information to launch their own attack on the Board. They formed a group called Bears for Leadership Reform (BLR) and called for a sweeping change of Board policies, procedures and members, accusing the Board of being more remote and unaccountable than ever. Two of the most outspoken BLR leaders were donors who had demanded Briles' return during the private June meeting with a number of Regents. The BLR leaders also took aim at Pepper Hamilton. They demanded an outside

investigation of the law firm's investigation, claiming that the months-long review had been flawed.

In response to various criticisms and in a desire to be absolutely fair and thorough, the Board inquired of Judicial Affairs whether the 2013 alleged gang rape had ever been reported. They could find no evidence that it had. The Board also convened a special meeting December 11 to hear once again from Pepper Hamilton about how it had conducted its investigation. After listening to Pepper Hamilton, the Board voted unanimously not to conduct an investigation into the law firm's work. This decision was announced the next day.

In the end, it would have been irresponsible for the Board to allow Coach Briles' supporters to continue polluting the record. As the leaders of the University, the Regents had a right and a duty to set the record straight. That meant responding to misleading, misguided, and mistaken reports about the integrity of the Pepper Hamilton investigation and the underlying facts that forced the Board's hand into taking actions leading to the departure of three top institutional leaders, including Coach Briles.

The Board, including the named defendants, had a duty to respond in a measured, appropriate way and had a right to tell the truth, no matter how heart wrenching it may have been. And it owed that candor most of all to the victims of sexual assaults at Baylor who had been forced to suffer in silence for too long.

Ultimately, Coach Briles and Shillinglaw – among others – did not like the transparency that they had demanded. Coach Briles and Shillinglaw each independently filed actions claiming that the additional information constituted libel and slander. Coach Briles has dismissed his claims.

## **G. Conclusion**

Pepper Hamilton's findings were not limited to the football program, but football played a sizable role in the University's Title IX failures. As a result, the Board aptly concluded that new leadership was needed to fulfill the task of making changes in the culture at Baylor. While Coach Briles has now dismissed his case, others, such as Shillinglaw in this lawsuit, are making false and speculative allegations of what occurred within the football program. This undermines the need for cultural change. As such, the Board is compelled to tell the truth of what occurred.

When a college football coach goes 6-7, 5-7, and 5-7 for three consecutive years, no one blinks an eye when the coach is fired. But when at least 17 women report sexual and physical assaults involving at least 19 football players, including allegations of four gang rapes, why is anyone shocked by his dismissal? Contrary to some people's belief, Briles was not a "scapegoat" for the University's larger problems – he was part of the larger problem. So was Shillinglaw. Coach Briles admitted that he was operating an internal disciplinary system outside Baylor's policies that left their team unaccountable under University procedures. Shillinglaw aided Briles in doing this. Baylor had no choice but to change leadership – including parting ways with its prized football coach. There is no question that the Regents, after a long self-imposed silence, had to respond with truthful statements to correct the record in an attempt to end the widespread misinformation.

### **GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, the Baylor Regents generally deny the allegations and claims set forth in Plaintiff's Original Petition and demand strict proof thereof by a preponderance of the evidence and clear and convincing evidence, as required by the Constitution and laws of the State of Texas.

### **AFFIRMATIVE AND OTHER DEFENSES**

Shillinglaw is a limited purpose public figure. As such, he must show that the Baylor Regents' statements were false *and* made with malice. More importantly, he must show that somehow those allegedly defamatory statements harmed him in ways he had not already harmed himself.

Shillinglaw's claims are barred because each and every statement the Baylor Regents have made are true or substantially true, and were made without knowledge of falsity or a reckless disregard for the truth.

The alleged defamatory statements were not defamatory *per se*.

Shillinglaw's civil conspiracy claim fails to state a claim upon which relief can be granted under Texas law because it is based on the same facts as his defamation claim. *Chu v. Hong*, 249 S.W.3d 441, 444 (Tex. 2008) (holding that "[c]onspiracy is a derivative tort").

### **REQUEST FOR DISCLOSURE**

The Baylor Regents request that Shillinglaw timely disclose the information and materials required by Texas Rule of Civil Procedure 194.2.

### **JURY DEMAND**

The Baylor Regents request a jury trial.

### **RIGHT TO AMEND**

The Baylor Regents reserve the right to amend this Answer in accordance with the Texas Rules of Civil Procedure and any scheduling order of the Court.

### **PRAYER**

Defendants Cary Gray, Ron Murff, and David Harper pray that upon final trial and hearing in this case, Plaintiff take nothing by reason of this suit, that all relief requested by Plaintiff

be denied, that the Baylor Regents recover their costs of court and expenses, and for all other relief to which they are entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served upon the following counsel of record on February 2, 2017, pursuant to Rule 21a:

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*/s/ Lara Hudgins Hollingsworth*

Lara Hudgins Hollingsworth



# **EXHIBIT A**



## **BAYLOR UNIVERSITY BOARD OF REGENTS**

### **FINDINGS OF FACT**

#### **Summary**

In August 2015, Baylor University engaged Pepper Hamilton to conduct an independent and external review of Baylor University's institutional response to Title IX and related compliance issues through the lens of specific cases. Following an intensive investigation, Pepper provided the Board of Regents with a detailed and comprehensive presentation of its findings and recommendations. Pepper's findings of fact, as set forth in greater detail in this statement, reflect a fundamental failure by Baylor to implement Title IX of the Education Amendments of 1972 (Title IX) and the Violence Against Women Reauthorization Act of 2013 (VAWA). Pepper found that Baylor's efforts to implement Title IX were slow, ad hoc, and hindered by a lack of institutional support and engagement by senior leadership. Based on a high-level audit of all reports of sexual harassment or violence for three academic years from 2012-2013 through 2014-2015, Pepper found that the University's student conduct processes were wholly inadequate to consistently provide a prompt and equitable response under Title IX, that Baylor failed to consistently support complainants through the provision of interim measures, and that in some cases, the University failed to take action to identify and eliminate a potential hostile environment, prevent its recurrence, or address its effects for individual complainants or the broader campus community. Pepper also found examples of actions by

University administrators that directly discouraged complainants from reporting or participating in student conduct processes, or that contributed to or accommodated a hostile environment. In one instance, those actions constituted retaliation against a complainant for reporting sexual assault. In addition to broader University failings, Pepper found specific failings within both the football program and Athletics Department leadership, including a failure to identify and respond to a pattern of sexual violence by a football player, to take action in response to reports of a sexual assault by multiple football players, and to take action in response to a report of dating violence. Pepper's findings also reflect significant concerns about the tone and culture within Baylor's football program as it relates to accountability for all forms of athlete misconduct.

### **Overview of Engagement**

In August 2015, Baylor University engaged Pepper Hamilton LLP (Pepper) to conduct an independent and external review of Baylor University's institutional response to Title IX and related compliance issues through the lens of specific cases. A Special Committee of the Board of Regents, on behalf of the University, accepted the President and Chancellor's recommendation to engage Pepper in order to ensure objectivity, and Pepper was provided with unfettered access to personnel and data. Pepper's review was detailed, thorough and rigorous. While keeping within the scope of the engagement, Pepper engaged in an open exploration of the issues with no limitation by the University. Pepper conducted document-based interviews to ensure accuracy, integrity and efficiency, and Pepper's findings and recommendations are based on the law, related authority, facts and reasonable inferences from the facts.

Pepper reviewed emails, mobile device data, and documents from current and former Baylor employees. Pepper's review of documents included current and prior policies and

procedures, Judicial Affairs and Title IX files related to specific reports and investigations, relevant trial transcripts, personnel files, student records, training and educational materials, prior internal and external audits, Title IX Task Force materials, and other relevant and available information. In addition to an exhaustive review of data, Pepper interviewed more than 65 individuals, including current employees, former employees, current students, and former students. The current and former students included individuals who identified as victims/survivors of sexual assault or dating violence. Pepper interviewed witnesses across multiple departments, including the President's Office, Executive Council, Student Life, Judicial Affairs (now called Student Conduct Administration), the Office of General Counsel, the Athletics Department, the football program, Athletics Compliance, Risk Management, Human Resources, the Counseling Center, Health Services, Baylor University Police Department, the Title IX Office, Faculty Athletic Representatives, the Admissions Office and outside counsel. Many individuals were interviewed more than once to allow for a full and fair opportunity to reconcile and synthesize information in the context of documents and available information from other interviews.

Over the course of the engagement, Pepper provided the Special Committee with detailed and specific information and regular updates. Earlier this month, Pepper provided the full Board of Regents with a detailed and comprehensive presentation outlining Pepper's findings of fact and recommendations. This statement contains the salient findings, which are being shared publicly to reflect transparency and accountability. The findings discussed below occurred in one or more of the cases reviewed. This statement also contains Pepper's recommendations, which have been adopted by the Board.

## **Failure to Prioritize, Recognize, Implement and Resource Title IX**

Baylor failed to effectively implement Title IX in the wake of the U.S. Department of Education's Office for Civil Rights (OCR) April 4, 2011 "Dear Colleague Letter," the passage of the Violence Against Women Reauthorization Act of 2013 (VAWA), and related authority and guidance. While individual administrators identified emerging and evolving Title IX and VAWA requirements, the University as a whole failed to prioritize Title IX implementation. Implementation efforts were slow, ad hoc, diffuse, and uncoordinated. Senior leadership failed to recognize the significance of the national context, including evolving guidance from OCR and high profile examples of institutional failures at peer institutions. As a result, Baylor lacked the sufficient infrastructure and an informed policy. The administration instead relied upon existing personnel until November 2014, and existing processes (the Student Code of Conduct and Civil Rights Policy) until August 2015, when Baylor's Sex Discrimination, Sexual Violence, and Sexual Harassment Policy was adopted. The administrators tasked with implementing Title IX prior to November of 2014 had a limited understanding of the dynamics of sexual violence and existing barriers to reporting on Baylor's campus, including the impact of other campus policies regarding the prohibition of alcohol and extra-marital sexual intercourse. The insufficient dedication of resources and support to the University's Title IX function led to limited visibility of Title IX on campus.

Baylor's institutional response failed to integrate Title IX and VAWA requirements. Prior to the 2014-2015 academic year, Baylor failed to provide training and education to students; failed to identify and train responsible employees under Title IX; failed to provide clear information about reporting options and resources on campus; failed to have a centralized process for ensuring that all reports reached the Title IX Coordinator; failed to

impose appropriate interim measures in many cases; failed to appropriately evaluate and balance institutional safety and Title IX obligations against a complainant's request for anonymity or that no action/investigation be pursued against; failed to conduct prompt, equitable, adequate, and reliable investigations; failed to give complainants access to full range of procedural options under the policy; and failed to take sufficient action to identify, eliminate, prevent and address a potential hostile environment in individual cases. Institutional failures at every level of Baylor's administration directly impacted the response to individual cases and the Baylor community as a whole.

### **Many Factors Impeded Effective Implementation of Title IX**

Baylor's senior leadership lacked consistent or meaningful engagement in the University's Title IX functions. The composition and functioning of the Executive Council did not provide effective leadership for integration of Title IX compliance responsibilities across all University functions. The University lacked a proactive compliance function that would have identified the nature of the risks attendant to sexual and gender-based harassment and violence and interpersonal violence, the likelihood of occurrence, and the adequacy of existing controls to ensure an informed and effective institutional response. In addition to their many other responsibilities, administrators assumed elements of the Title IX function on an ad hoc basis, which impeded timely implementation of rapidly evolving Title IX and VAWA mandates. The University did not maintain systems or protocols to coordinate information or keep centralized records necessary to fulfill compliance mandates, and the University did not carefully review roles and responsibilities of Title IX implementers to assure that there was no actual or perceived conflict within the assigned multiple roles held by many Title IX administrators.

The University did not provide sufficient institutional support for Title IX functions. Prior to November 2014, the Title IX Coordinator position was assigned to senior administrators, each of whom already had a full profile of professional responsibilities. The administrators in those roles lacked the necessary training, experience and frame of reference to meaningfully implement Title IX responsibilities. They also lacked the necessary time, resources or infrastructure to meaningfully implement Title IX responsibilities. Moreover, when the University hired a full-time Title IX Coordinator in November 2014, the University underestimated the level of infrastructure and resources that would be necessary for successful implementation. The Title IX Coordinator did not have sufficient institutional support from senior leadership, or experienced and trained supervision, necessary to promote timely and effective implementation. Despite the hiring of two full-time investigators, Baylor's Title IX Coordinator did not have sufficient or qualified support within the Title IX Office. Because of the overwhelming need for education and training, the Title IX Coordinator and staff did not have sufficient time or resources to focus on building the infrastructure of the office, drafting internal operating procedures and template communications, or managing the influx of new reports. In addition, as of the spring of 2015, there were no clear protocols for documentation or consistency in practice across implementers.

### **Inadequate Institutional Response to Sexual Violence under Title IX/VAWA**

A high-level audit was conducted of all known reports of sexual harassment and sexual assault reported through Baylor's student conduct processes for three academic years: 2012-2013, 2013-2014, and 2014-2015. The overwhelming majority of cases did not move forward to an adjudicative hearing, with only an extremely limited number of cases resulting in a finding of responsibility or significant sanction. Many complainants did not move forward with

the University's Title IX process, and the University failed to appropriately weigh a request not to move forward against the University's Title IX obligation to investigate or otherwise determine what occurred. The University failed to conduct sufficient inquiry into individual barriers to participation, which in some instances were directly related to barriers created by conversations with University personnel that discouraged, rather than encouraged, participation in the University's Title IX processes. Even in those cases where a complainant did choose to move forward, Baylor did not pursue hearings in the majority of reports, sometimes because of an erroneous determination that Baylor did not have jurisdiction in off campus matters or because the investigator in Judicial Affairs improperly determined that there was not a preponderance of the evidence based on an inadequate or uninformed investigation. As a consequence, in some cases, the University failed to take action to identify and, as needed, eliminate a potential hostile environment, prevent its recurrence, or address any effects on the individual complainant or broader campus community.

With respect to sexual assault investigations conducted by Judicial Affairs, staff members in Judicial Affairs applied a very "by the book" student conduct approach that treated all respondents equally, regardless of their status as a student-athlete. However, this rigid approach was not trauma-informed and was overly reliant on the perceived consistency or inconsistency of complainant's statements to the exclusion of other relevant considerations. The investigations reviewed were wholly inadequate to fairly and reliably evaluate whether sexual violence had occurred. While individual administrators sought professional training opportunities, they were not adequately trained in the dynamics of sexual and gender-based harassment and violence, dating violence, domestic violence, stalking, the neurobiological impacts of trauma, the evaluation of credibility, consent and the role of alcohol as it relates to



consent and alcohol-facilitated sexual assault. In addition, the investigations were conducted in the context of a broader culture and belief by many administrators that sexual violence “doesn’t happen here.” Administrators engaged in conduct that could be perceived as victim-blaming, focusing on the complainant’s choices and actions, rather than robustly investigating the allegations, including the actions of the respondent. In many instances, student conduct investigators conducted cursory investigations and failed to identify and interview readily apparent witnesses or gather relevant evidence. Student conduct investigators also applied the preponderance of the evidence standard of proof in an inconsistent manner, and in many instances, required a far greater level of proof than preponderance.

Prior to the 2014-2015 academic year, Baylor failed to conduct adequate training and education for its students and employees, and Baylor had not created an atmosphere that fostered reporting and participation in the Title IX process. Baylor’s students lacked awareness of the range of conduct prohibited under Title IX and of University policies, resources or reporting options. A lack of clearly identified reporting mechanisms, combined with insufficient training and attention to sexual and gender-based harassment and violence and other forms of interpersonal violence, may have led to significant underreporting by students and missed opportunities by administrators to respond appropriately to reports. The University’s approach to issues related to alcohol or other drug use by students created barriers to reporting. In addition, prior to August 2015, the University did not have a written amnesty policy for alcohol or other drug violations when reporting misconduct. Perceived judgmental responses by administrators based on a complainant’s alcohol or other drug use or prior consensual sexual activity also discouraged reporting or continued participation in the process.

Prior to the creation of the Title IX office in November 2014, once reports were received, Baylor failed to consistently identify or impose appropriate interim protective measures. In many instances, Baylor's responses to the needs of individual complainants were uncoordinated and ad hoc, and complainants received inconsistent and inadequate support. In some instances, the burden was placed on complainants to identify and obtain appropriate interim measures. Administrators failed to exercise appropriate oversight of interim measures, think holistically about the needs of complainants, follow through and follow up with complainants, provide complainants with continued access to educational opportunities, and take sufficient steps to retain complainants as University students.

Baylor did not have a system or protocol for either the consistent coordination of information between and among implementers, or for consistent, centralized sharing of information and documentation that would have allowed the University to track, identify, investigate or address a pattern of sexual violence at the earliest opportunity. Once aware of a potential pattern of sexual violence, the University failed to take prompt and effective action to protect campus safety and protect future victims from harm. Further, Baylor failed to consider patterns, trends or climate-related concerns that would enable the University to take prompt and responsive action to individual and community concerns. Baylor failed to identify, eliminate, prevent or address a potential hostile environment in individual cases, and took insufficient steps with respect to both individual complainants and broader community remedies.

In some instances, administrative responses and campus processes caused significant harm to complainants. Actions by an University administrator within BUPD and an administrator within an academic program contributed to, and in some instances, accommodated or created a hostile environment, rather than taking action to eliminate a hostile environment.

## **Barriers to Implementation of Title IX within Baylor's Football Program**

Baylor failed to maintain effective oversight and supervision of the Athletics Department as it related to the effective implementation of Title IX. Leadership challenges and communications issues hindered enforcement of rules and policies, and created a cultural perception that football was above the rules. In addition to the issues related to student misconduct, the University and Athletics Department failed to take effective action in response to allegations involving misconduct by football staff. Further, despite the fact that other departments repeatedly raised concerns that the Athletics Department's response to student or employee misconduct was inadequate, Baylor administrators took insufficient steps to address the concerns.

Baylor failed to take appropriate action to respond to reports of sexual assault and dating violence reportedly committed by football players. The choices made by football staff and athletics leadership, in some instances, posed a risk to campus safety and the integrity of the University. In certain instances, including reports of a sexual assault by multiple football players, athletics and football personnel affirmatively chose not to report sexual violence and dating violence to an appropriate administrator outside of athletics. In those instances, football coaches or staff met directly with a complainant and/or a parent of a complainant and did not report the misconduct. As a result, no action was taken to support complainants, fairly and impartially evaluate the conduct under Title IX, address identified cultural concerns within the football program, or protect campus safety once aware of a potential pattern of sexual violence by multiple football players.

In addition, some football coaches and staff took improper steps in response to disclosures of sexual assault or dating violence that precluded the University from fulfilling its legal obligations. Football staff conducted their own untrained internal inquiries, outside of policy, which improperly discredited complainants and denied them the right to a fair, impartial and informed investigation, interim measures or processes promised under University policy. In some cases, internal steps gave the illusion of responsiveness to complainants but failed to provide a meaningful institutional response under Title IX. Further, because reports were not shared outside of athletics, the University missed critical opportunities to impose appropriate disciplinary action that would have removed offenders from campus and possibly precluded future acts of sexual violence against Baylor students. In some instances, the football program dismissed players for unspecified team violations and assisted them in transferring to other schools. As a result, some football coaches and staff abdicated responsibilities under Title IX and Clery; to student welfare; to the health and safety of complainants; and to Baylor's institutional values.

In addition to the failures related to sexual assault and dating violence, individuals within the football program actively sought to maintain internal control over discipline for other forms of misconduct. Athletics personnel failed to recognize the conflict of interest in roles and risk to campus safety by insulating athletes from student conduct processes. Football coaches and staff took affirmative steps to maintain internal control over discipline of players and to actively divert cases from the student conduct or criminal processes. In some cases, football coaches and staff had inappropriate involvement in disciplinary and criminal matters or engaged in improper conduct that reinforced an overall perception that football was above the rules, and that there was no culture of accountability for misconduct.

The football program also operates an internal system of discipline, separate from University processes, which is fundamentally inconsistent with the mindset required for effective Title IX implementation, and has resulted in a lack of parity vis-à-vis the broader student population. This informal system of discipline involves multiple coaches and administrators, relies heavily upon individual judgment in lieu of clear standards for discipline, and has resulted in conduct being ignored or players being dismissed from the team based on an informal and subjective process. The ad hoc internal system of discipline lacks protocols for consistency with University policy and is wholly undocumented. The football program's separate system of internal discipline reinforces the perception that rules applicable to other students are not applicable to football players, improperly insulates football players from appropriate disciplinary consequences, and puts students, the program, and the institution at risk of future misconduct. It is also inconsistent with institutional reporting obligations.

The football program failed to identify and maintain controls over known risks, and unreasonably accepted known risks. Leadership in football and the athletics department did not set the tone, establish a policy or practice for reporting and documenting significant misconduct. The lack of reporting expectations resulted in a lack of accountability for player misconduct and employee misconduct. Further, no attempt was made to understand the root causes of behavior or steps necessary to prevent its recurrence. In addition, in one instance, in response to concerns about misconduct by football players that could contribute to a hostile environment, an academic program that required interaction with the football program improperly restricted educational opportunities for students, rather than take steps to eliminate a potential hostile environment.

### **Failure to Implement or Follow Consistent Transfer Protocols**

Baylor did not consistently conduct due diligence with respect to potential transfers. In at least one identified instance, the process reflected a failure to conduct appropriate due diligence and assessment of risk regarding past criminal or student conduct and an affirmative decision not to seek additional information about an athlete's prior criminal or student conduct records. Baylor did not adhere to a consistent protocol regarding transfers and importantly, Baylor did not consistently follow previously implemented processes regarding criminal background checks, request for records of any prior college disciplinary actions, and character reference screening forms.

### **Conclusion**

The University has taken and will take additional steps to address the deficiencies noted in the findings of fact. The Board has already adopted Pepper's recommendations, which are set forth in a separate document.