

FOR THE WIN: A STORY OF ACADEMIC FRAUD
AND ITS COVER-UP TO KEEP “STUDENT”-
ATHLETES ELIGIBLE IN BIG-TIME COLLEGE
SPORTS. A REVIEW OF JAY M. SMITH AND
MARY WILLINGHAM’S *CHEATED: THE UNC
SCANDAL, THE EDUCATION OF ATHLETES, AND
THE FUTURE OF BIG-TIME COLLEGE SPORTS*

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“Cheaters never prosper”

- English Proverb

“I would prefer even to fail with honor than to win by cheating.”

- Sophocles

A continuing, now decades-long clamor, is that college athletes in big time sports should be paid. Everyone else, the coaches, athletic directors, schools, conference commissioners, sporting goods manufacturers, broadcasters, it is argued, are making money on the backs of the football and men’s basketball players who don’t see a dime of that money and who can barely afford a pizza on Saturday night, much less the jerseys with their numbers for sale in the college bookstore.

The National Collegiate Athletic Association (NCAA) has had only one good response to this: Many of the participants in those sports are student-athletes¹ on scholarships who are receiving an education in return for their play. After all, the fundamental purpose of the NCAA as spelled out in its constitution is to “maintain intercollegiate athletics as an integral part of the

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1. “Student-athlete” is the term coined by Walter Byers, the first executive director of the NCAA, to describe the participants in NCAA intercollegiate sports and is the term used in this review. WALTER BYERS, *UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES* (1997). The authors of *Cheated* disdain using that term as they believe it is a falsehood meant to deceive people into believing players are students equally with being athletes. They use the term “athlete” instead in their book. JAY M. SMITH & MARY WILLINGHAM, *CHEATED: THE UNC SCANDAL, THE EDUCATION OF ATHLETES, AND THE FUTURE OF BIG-TIME SPORTS* (2015).

educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports”²

The NCAA’s Principle of Amateurism states this clearly: “Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student-athletes should be protected from exploitation by professional and commercial enterprises.”³ Note that the above principle says nothing about protection from exploitation by their own school administrators and faculty, the folks who should be watching out for them and ensuring they get the education that is the quid pro quo for their athletics participation.⁴

The stunning series of ever more audacious ways that cheated student-athletes at the University of North Carolina-Chapel Hill (UNC) out of a college education to avoid the possibility of their academic ineligibility is the subject of Jay M. Smith and Mary Willingham’s new book: *Cheated: The UNC Scandal, the Education of Athletes, and the Future of Big-Time College Sports*. It is a story of deception, fraud, and sorry exploitation of many student-athletes for over a decade by those focused only on UNC’s athletic success and short-term gain of playing time for the kids and not on preparing them for the world outside of sports.

Although told in the third person, Smith and Willingham were personally involved in the sordid tale that is told. Smith was and is a UNC faculty member in its history department who tried to get answers from college administrators about what was happening as incident after incident came to the attention of the UNC faculty senate. Willingham was an academic counselor in UNC’s Student Success and Academic Counseling Center who was so troubled by what she saw going on without any corrective steps by those to whom she complained that she finally felt she needed to share her concerns with an investigative reporter from the local newspaper.

The book is permeated with the sense of betrayal they both experienced as they attempted to find out or address what was really happening at UNC, but that does not appear to bias their reporting of the facts. The obfuscation and avoidance practiced from the highest levels of administrators down to those dealing day-to-day with the student-athletes fills the pages of

2. NCAA CONST., Art. 1, Bylaw 1.3.1.

3. NCAA CONST., Art. 1, Bylaw 2.9.

4. It is telling that those who are most involved with the NCAA sports model are moving away from labeling it “amateur” athletics and now refer to the “collegiate model of sports.” See SMITH & WILLINGHAM, *supra* note 1, at xvi (reference to Mark Emmert, NCAA president, using that term). The reviewer notes the first time she heard that term used was by Jim Delaney, Commissioner of the Big 10, in an NCAA committee meeting in 1998.

this book. There are numerous stories of individual educational travesties as counselors steered players away from their preferred courses of studies to simpler ones with classes that existed only on paper or involved little if any actual learning. The authors are careful to back up their statements with data and documentation obtained from court files or from public records requests in addition to their personal knowledge from one-on-one encounters with administrators and faculty members.

This is not an easy, quick read. There is so much information in the book about academic irregularities that it is almost mind-numbing if one sits down and tries to consume all of it in a few sittings. An example is the statistical unlikelihood of the high grades (one full grade higher than the rest of those on their transcripts) student-athletes achieved in selected independent study courses offered to them by sympathetic faculty in numbers that vastly exceeded departmental norms. Other examples are detailed in stories of ill-prepared UNC athletes from impoverished backgrounds desperately in need of remedial courses instead being shunted through make-believe classes or ones with little or no relevancy to their majors (the number that took “The French Theater in Translation” is staggering, as well as the innovative way counselors found to meet UNC’s foreign language requirement through courses in Swahili that never met and never taught a word of Swahili.)

The book outlines the way administrators outfoxed the system that should have highlighted these irregularities by changing course names and numbers as well as getting changes to the ways annual departmental reports were written. They used inside knowledge to bypass the controls in the system that might have alerted others as to what was going on. It is truly staggering to see the manipulations that occurred to prevent others from knowing what was happening as well as disheartening to know that many who knew about it were silent either to protect their own jobs or that of their colleagues.⁵

It is also dismaying, although sadly not unpredictable given the desire to avoid NCAA penalties, that the cover-up that ensued after the facts began to be known tried to downplay the extent of the academic fraud and was dismissive of those who had tried to blow the whistle on it. Certainly campuses that have been faced with scandal often try to “circle the wagons” in fear of reprisals and tough questions from the public, elected officials and alumni as well as the media.

5. It is completely consistent with the reviewer’s experience that a key informant who “blew the whistle” on the UNC fraud was not a UNC employee or faculty member but a fan of its arch-rival, UNC State. Ex-girlfriends are also a typical source for the NCAA of program irregularities. Andy Katz, *Whistleblowing Girlfriends Dish the Dirt*, ESPN.COM (OCT. 7, 2003), <http://sports.espn.go.com/espn/print?id=1632563&type=Story&imagesPrint=off>.

In *Cheated*, the reader is taken step by step through the way UNC leaders responded as details of the fraud became known. The efforts to conceal and distract were clever and worked well—even the NCAA was misled when it conducted a hearing into one of the frauds. It is unclear if the university's top administrators fully understood the scale and severity of the academic misconduct, but it appears their priority was to minimize the problem rather than to expose and correct it. Because the authors were involved in one-on-one discussions with university leadership and the school's inside and outside lawyers their account of what was said and promised but never followed through on is disturbing and powerful.

Because so many of the student-athletes who were academically victimized were black and because the UNC department that facilitated so much of the fraud was African and Afro-American studies (AFRI/AFAM), the authors early acknowledge that race lies at the center of the UNC story. AFRI/AFAM's struggle for respect from its founding in the civil rights era and the administration's desire to avoid additional student demonstrations over various issues regarding it, the authors claim, led to reduced oversight over its course offerings and wide latitude to its chair. Rather than offering remedial courses to athletically talented but academically ill-prepared student-athletes, AFRI/AFAM's sports-loving chair and his assistant worked the system with sympathetic academic counselors to provide classes that existed only on paper and g.p.a. boosting independent studies at an unheard of rate—291 for student-athletes in 2003-04 by the chair himself when the average rate for a professor in UNC's history department was 0.14 per year!

It is the sheer, systematic magnitude of the cheating that makes what happened at UNC so eye-opening. Certainly, academic fraud has been present in college sports from its earliest days of competition. In 1893, according to University of Chicago Football Coach Amos Alonzo Stagg, Michigan had seven football players who were not enrolled in classes. This use of ringers, according to Stagg, was not unusual. The famous Michigan coach, Fielding Yost, played for West Virginia in 1896, transferred to Lafayette mid-season claiming interest in its engineering program, played one game against that school's traditional rival, and then transferred back to West Virginia the following week after winning the game for Lafayette.⁶

While the NCAA was not created to address these issues, it became a concern when the NCAA began hosting competitions itself. The myriad of rules that determine today who is eligible to compete in NCAA athletics is a result of the attempts by the colleges and universities who are members of the Association to have a consistent set of criteria for all competitors in order to assure a level playing field and fair contests.

6. JOSEPH N. CROWLEY, IN THE ARENA: THE NCAA'S FIRST CENTURY 37 (2006).

Part of the effort has been to ensure that student-athletes who are initially academically eligible to compete continue to be academically eligible throughout their college athletic seasons. There have been a series of NCAA reforms aimed at achieving this. In 2003, Division I of the NCAA adopted standards that required student-athletes to complete 40% of their graduation requirements by the start of their third year, 60% by the start of their fourth year, and 80% by their fifth year.

Each Division I team was then assigned an Academic Progress Rate (APR) figure based on a complex academic data collection process. Retaining academic eligibility and remaining at the school are key factors in calculating the APR. The formula establishes a cutoff score that equates statistically with a 50% graduation rate. Teams falling below this rate can be subject to penalties if a player who is academically ineligible leaves the team, including making his or her scholarship, if any, unavailable for another student-athlete. Consistent failure to meet the APR leads to scholarship and recruitment restrictions up to postseason competition bans.⁷

Needless to say, these sanctions are taken very seriously by NCAA Division I schools. Upon the announcement of the APR, pundits immediately predicted that rather than promoting academic reform, it would add further inducements to cheating in order to keep student-athletes eligible in lucrative sports, such as football and men's basketball.

These reforms cannot be faulted for the epidemic academic fraud at UNC, however, which the authors claim began in the late 1980's, continued through the 1990's and peaked in the 2000's with increasingly bold moves by the conspirators to make student-athletes academically eligible. The machinations employed to allow players to meet the extremely minimum academic standard described in the book as a 1.5 g.p.a to participate sophomore year, a 1.75 g.p.a. junior year and a 1.9 g.p.a. senior year are detailed in case history after case history by the authors.

While the majority of the book is devoted to describing the systematic ways developed by a sports-obsessed, "friendly" UNC faculty member and his "sympathetic" assistant to keep players academically eligible—dummy courses, grade changes, exemption from class attendance and term paper writing both for regular classes and numerous independent studies—the authors provide evidence that UNC is not alone in perpetuating academic fraud. They give examples of equally poor behavior by friendly faculty and friendlier administrators at Auburn, Michigan, Washington and Minnesota.

Indeed, a double standard for student-athletes' academically in nothing new. It is common for college students to be aware that student-athletes often arrive on campus with grades and board scores below the ones the rest of the student body had to achieve for admission. Students

7. *Id.* at 229.

quickly learn which courses are easiest by the prevalence of student-athletes in a class or word that the professor's grade history is "A for athletes, B for boys and C for co-eds." Paying for others to take tests for them or extolling its past exam or term paper file as an inducement to join a fraternity have been known on college campuses for decades. It is the sheer magnitude and audacity of the academic fraud at UNC over an extended period of time without anyone recognizing it or addressing it that is so shocking.

So while the existence of a double academic standard for student-athletes is not new, what if anything can be done to prevent future academic fraud in a system that places such value on athletic success and awards those programs and coaches with millions of dollars who achieve it? The authors struggle to find anything new to say in this regard.

They write about the need for faculty to get more involved in knowing what is going on in their athletic departments and to put them more in charge of academic counseling and tutoring. But faculty are operating today in departments with limited funds and paltry pay increases. Faculty are focusing their attentions on locating research dollars or other funding sources for their projects. Most would prefer just to do their own scholarship and avoid the possible censure that comes from becoming critics of their school's athletic program. Still, that is really the only way forward—to have faculty pressure university administrators to adopt realistic admission standards and remedial education for those student-athletes who need it.

The authors also take issue with the way that they see colleges and universities are using FERPA⁸ to keep from the public information about student-athlete academic performance that might reflect badly on the school. They believe the law should allow the exposure of courses taken, majors pursued and the names of the academic advisors who influenced those decisions, as that might reveal patterns of abuse that prevent student-athletes from obtaining a real education.

The other, more drastic solution of the authors, is to end the myth of the amateur student-athlete and just pay football and men's basketball teams. They suggest the players might be given access to the classroom as part of their financial compensation to play for the school, with no real academic expectations or requirements. There are, of course, significant legal obstacles to this, such as Title IX⁹ which would not allow men's teams' compensation without equal compensation for women's teams.

8. The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) (a federal law that protects the privacy of student education records).

9. Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 (1988); 1979 Policy Interpretation on Intercollegiate Athletics, 45 C.F.R. Part 26 (1979).

Looking to the NCAA for a solution, as the authors propose, is not realistic beyond what it has already done to create academic eligibility rules. While the big money in college athletics today increases the already existing temptation to commit academic fraud to keep ill-prepared or ill-performing students on football and men's basketball teams, the members of the NCAA do not have the legal ability to have a rule that addresses this by restricting compensation for coaches or setting revenue limits for the athletic program. That was tried in the 1990's and was ruled a violation of the antitrust laws.¹⁰

Further, the NCAA cannot police academic fraud more than it already does because it does not have subpoena power. That means it cannot force individuals to testify as to academic wrong-doing, especially if they are no longer with a school and so cannot be threatened by institutional sanctions for failing to cooperate with an investigation. The NCAA instead must rely on those who have left the school to come forward voluntarily and share their stories. However, these individuals will have little incentive to do so and will be concerned about their futures in the sports and academic worlds if they do so.

The other possible ways reform might take place is through pressure from the public, the fans, state legislatures, Congress or the courts. To date, such efforts have had limited or fleeting success in changing the pressures on schools to win games and generate funds to support their athletic programs. To expect a massive sea change in collegiate sports is not realistic. Tinkering around the edges is more likely what is possible, but to abandon that effort even if only minimally successful is anathema to those who still admire and yearn for what the NCAA founders meant to achieve, the Greek model of classical education, that the mind and the body should be entwined.¹¹ They still want college athletics to instill the characteristics of fairness, generosity, courage, character, self-restraint and high ethical standards.¹²

And, so, in the end, who is cheated if college athletics fails to honor these ideals? The fans, who expect competition to be between student-athletes who have each had to achieve academically the same set of standards to be eligible to play. The public whose taxes support public colleges

10. *Law v. NCAA*, 134 F.3d 1025 (10th Cir. 1998).

11. CROWLEY, *supra* note 6, at 42. *See also*, *Bloom v. NCAA*, 93 P.3d 621 (Colo. App. 2004) ("College sports provided an important opportunity for teaching people about character, motivation, endurance, loyalty and the attainment of one's personal best—all qualities of great value in its citizens. In this sense, competitive athletics were viewed as an extracurricular activity, justified by the university as part of its ideal objective of educating the whole person.") (quoting JAMES J. DUDERSTADT, *INTERCOLLEGIATE ATHLETICS AND THE AMERICAN UNIVERSITY: A UNIVERSITY PRESIDENT'S PERSPECTIVE* 70 (2003) (written by the former president of the University of Michigan) in regard to the relationship of amateur intercollegiate athletics.).

12. CROWLEY, *supra* note 6.

and universities and who expect it to educate those lucky enough to be attending. The college applicants whose academic achievements are not enough to gain them a place set aside for an underachieving student-athlete. The other potential student-athletes whose possible place on a team is taken by the under-achieving player. But most of all, the student-athletes who are never provided with the education they need to be successful in the non-sports world¹³ are cheated by those who commit academic fraud in a misguided belief that they are helping the students and the school by their manipulation of the system. A sad tale, indeed.

13. Only a tiny percentage of student-athletes who participate in college sports will go on to be professional athletes, about 1% of college men's basketball players and 2% of college football players. *Estimated Probability of Competing in Professional Athletics*, NCAA, <http://www.ncaa.org/about/resources/research/estimated-probability-competing-professional-athletics> (last visited Feb. 9, 2016).