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News

Pretending They Didn't Happen

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On Feb. 26, the University of Kentucky men's basketball team **defeated** the University of Florida. Immediately after the contest, on their home court of Rupp Arena, Kentucky officials presented Coach John Calipari with the game ball to commemorate what was purported to be his 500th career victory. Officials from the National Collegiate Athletic Association, however, strongly disapproved of Kentucky's laudatory gesture, saying that the evening's victory actually marked Calipari's 458th career win.

In a **sternly written letter** more than two weeks after the game, Dennis E. Thomas, chair of the NCAA's Division I Committee on Infractions and commissioner of the Mid-Eastern Athletic Conference, explained why Kentucky's assessment of Calipari's win total was off by 42 victories.

Calipari was head coach of the men's basketball team at the University of Memphis during the 2007-8 season, and the squad's 38 victories that season were **recently vacated** by the NCAA because one of the team's star players was found, after the fact, to have been ineligible to play. The player -- who was not identified by the NCAA but has been reported by numerous news outlets to be current Chicago Bulls star Derrick Rose -- had his SAT score invalidated by ETS due to "irregularities" that created the suspicion that someone took the test for him.

Calipari was also head coach of the men's basketball team at the University of Massachusetts at Amherst during the 1995-96 season, when its four postseason victories were vacated because Marcus Camby was found to have received "improper benefits from a sports agent."

But Kentucky officials fired back in a **letter of their own** in April, saying Calipari felt he was being "singled out by the NCAA" and that they believe the NCAA inconsistently enforces penalties regarding vacation of wins.

"The University of Kentucky has never had any intention of failing to comply with the Committee's actions involving Calipari's career record," wrote Sandra D. Bell, senior associate athletics director at Kentucky. "Our only intention was to recognize the fact that, during his career, Coach John Calipari had indeed led his teams to 500 victories on the court. Regardless of how the 42 victories are statistically noted, they did in fact occur.... The recognition was followed immediately by an announcement to the media that the number being recognized included the vacated wins. There was no attempt to misrepresent the number, ignore the vacations or mislead the media."

The war of words continued until early June, when Thomas sent a **five-page response** back to Kentucky, demanding that the university "issue a statement to the media announcing that, after consulting with the NCAA, its honoring of Mr. Calipari for his purported 500th career victory on February 26 was in error and that, henceforth, it will reflect Mr. Calipari's career record in its media guides, internet sites and other publications consistent with the NCAA's official records and statistics."

Thomas further wrote that the Committee on Infractions found it "extremely troubling" that Kentucky "did not take timely steps to ensure that it was in compliance" and "dismissed the vacation of wins as a 'statistical note.' " He also lambasted Bell for agreeing with Calipari "that he is somehow being 'picked on' " by the NCAA. Finally, he wrote that the Committee on Infractions staff "does not have the manpower or time to retroactively review all instances of vacation made during the 60-year history of the NCAA enforcement program."

History of the Penalty

A few weeks ago, Kentucky finally relented and [admitted its error](#) in honoring Calipari. But the back-and-forth between the university and the NCAA still has sports officials and fans talking about the purpose and value of vacating wins.

NCAA officials would not make Thomas or other members of the Committee on Infractions available for comment. Still, they did note why and how the association uses this controversial penalty. It is designed to punish the direct perpetrators of rules violations (often current or former coaches or athletes) instead of their successors and innocent bystanders, as many argue that other penalties -- such as reduced scholarships or postseason bans -- do.

"A vacation of records penalty is a way that we can address the penalties directly to those involved with the violations," Stacey Osburn, an NCAA spokeswoman, wrote in an e-mail to *Inside Higher Ed*. "It is often utilized in conjunction with other penalties. While the Committee on Infractions has discretion to apply the vacation penalty under any circumstances it believes to be appropriate based on specifics of the case, the likelihood of its application significantly increases when particular aggravating factors are present in a case. These include:

- Academic fraud;
- Serious intentional violations;
- Direct involvement of a coach or high-ranking school administrator;
- Large number of violations;
- Competition while academically ineligible;
- Ineligible competition in a case in which there also is a finding of failure to monitor or lack of institutional control;
- When vacation or a similar penalty would be imposed if the underlying violations were secondary."

According to an [NCAA database](#) of "major" infractions cases, the first reported use of the vacation of records penalty was in 1990, when the men's basketball team at the [University of Maryland at College Park](#) had its wins in the 1988 Division I Men's Basketball Tournament scrubbed because "student-athletes sold complimentary tickets for \$200-\$250" and an "athletics representative provided the use of an automobile from his dealership...."

Between 1990 and 2010, there have been 233 major cases in Division I. The vacation of records penalty has been applied in 71 of them -- or 30.4 percent of the time. It is not nearly as commonly used as docking the number of athletics scholarships, which was applied in 155 cases -- or 66.5 percent of the time -- during this time period. However, the vacation of records penalty is much more common than a ban on playing on television, which was used in a mere 17 cases -- or 7.3 percent of the time. The penalty used most comparably to the records vacation is a postseason ban, which has been used in 73 cases -- or 31.3 percent of the time.

The vacation of records penalty went through a period of high usage in the mid-1990s. For example, in 1997, the penalty was used in five of eight "major infractions" cases in Division I. But the penalty then fell out of favor for a decade or so, and was applied only in around a quarter of all of the major infractions cases during that time. Then, in 2007, it [came back into vogue](#), and was used in 55.6 percent of cases. It was used in 41.7 percent of the cases in 2008 and 53.8 percent of the cases in 2009. Then, last year, it dipped to being used in 35.6 percent of the cases.

During this recent period of boom for the vacation of records penalty, the television ban has fallen completely out of favor. It was last applied to a Division I institution in 1996, when the University of Maine's men's hockey team was banned from television for a season. Also, the vacation of records penalty appears to have displaced the postseason ban penalty a bit. From 1990 to 1999, there were 52 postseason bans made in Division I. But from 2000 to 2009, there were only 19 bans imposed.

Debating Its Usage

Josephine R. Potuto, a constitutional law professor at the University of Nebraska at Lincoln and a former chair of the Committee on Infractions, said she believes the vacation of records penalty has increased in popularity in the past several years because of mounting outside criticism of other penalties levied by the NCAA.

"The committee kept on hearing a lot that taking away scholarships was unfair and that taking away competition was unfair because they punish kids who weren't there at the time of the infraction," Potuto said. "By the way, I don't like that argument. Penalties will always hit people who weren't there at the time. Still, we asked if there were penalties that would focus on the conduct of the wrongdoers, and we found vacation was one of those penalties."

Potuto noted that, during her time on the committee, institutions on probation had to report to the NCAA that they were complying with all penalties, including removing any championship banners or trophies that resulted from vacated victories and updating media guides to show the revised win-loss records. Though Potuto argued that "ignorance is no excuse" for an institution that does not properly comply with

a vacation penalty, she said she thinks the NCAA should further publicize its penalties. She said the NCAA should issue an annual report listing institutions with records that have been vacated to ensure that those institutions that do not follow vacation penalty rules are easily recognized and made to comply by public scrutiny.

Potuto strongly supports the vacation of records penalty and the NCAA's enforcement of it, no matter how much time it may take.

"It's absolutely imperative that when a body imposes a penalty, it ensures that those penalties are followed," Potuto said. "Suppose a school was told that it should limit the number of scholarships by five for a season, but it went ahead and filled those five scholarships anyway. That wouldn't be acceptable.... If a school flouts a penalty, it's extremely troubling."

Other former members of the Committee on Infractions have more nuanced impressions of the penalty but still, by and large, defend its usage.

Gene A. Marsh, a lawyer and a former chair of the Committee on Infractions, said he is pleased to see that the NCAA appears to be using the vacation of records penalty more consistently.

"There was a time when the vacating of records was done inconsistently," Marsh said. "You'd vacate the wins of one school and then another that did something similar wouldn't have their wins vacated. In order to solve that, it's really been institutionalized now. People may not like the penalty, but they liked it even less when it was applied unevenly."

Though Marsh maintained his support of the penalty, he acknowledged that it may not have as much effect as some people within the NCAA think.

"The Committee on Infractions always overstates the extent to which penalties hurt people," Marsh said. "In my part of the country, way down here [in Alabama], folks still just care, 'Did we beat you on the field?' Then, if X number of years later there's an asterisk in a media guide, they just don't care: 'We still whupped you.' Some people who are more fastidious, maybe nerdy, might pay more attention to what the paperwork says, but other people operate more by gut and just care if they whupped you on the field."

— **David Moltz**