

*Coker v. Charleston County School District*, D. SC. (1991) (Houck, J.); aff'd, 2 F.3d 1149 (table), 1993 WL 309580 4th Cir. (1993)

Coker complained that the school district selected school principals to match the race of the students in the school, associating black students with black principals, etc. The gist of the “battle of the experts” is summarized by Judge Hamilton in the unpublished opinion of the Fourth Circuit court:

Coker presented the deposition of his expert, Dr. David Peterson, who opined that blacks were routinely appointed as principals of schools that have predominately black enrollments, while whites are routinely appointed as principals of schools which have predominately white enrollments. This opinion was not based on the racial composition of the group of individuals applying for a specific position, or the relative qualifications of those individuals, but rather simply on the assumption that the racial composition of the applicant pool remained constant.

It is a continuing mantra of LRA experts first that discrimination is an event (or, for analysis, many events) within a process. One can tell nothing about these events—whether they were based on race—from the outcome alone. That is because the outcome does not allow one to isolate actors or actions. A complaint about discrimination should specify where in the system, in what decisions, there was discrimination.

Let's look at an extreme issue—not this case. It may seem that only jury selection systems, for example, “act,” and so the jury directly reflects what jury selectors have done. That is the assumption underlying most jury selection studies, including the famous *Castaneda v. Partida*, 430 U.S. 482 (1977) . And that is why most jury selection studies are wrong. Yes, including *Castaneda*. One thing prospective jurors might be is ineligible (say, non-citizens). One thing they might do is move out of the district. If they are or do so differentially by some characteristic (say, Hispanic or not), the composition of juries from an unbiased selection process may look unlike the population.

In Charleston, principals were appointed in a post-and-bid system. To be a candidate, one had to apply for a particular opening. If black candidates applied mostly to schools with black students, and white candidates applied mostly to schools with white students, then it was actions of the candidates that determined the association between race of students and race of principal.

That is what happened. Peterson substituted an assumption for the very analysis that was called for. Did he not know the structure, that candidates applied singly to individual openings? Or was he so determined to support his client that he made the assumption that would do so, regardless of the facts?

This is a striking example of selection from multiple pools. Candidates competed only against others who had applied for the same position. The overall “percent black among candidates” had no meaning. Many black candidates did not get appointed, almost all of them having been defeated by other black candidates.

But were all candidates qualified? Dr. Michelson's multiple pools analysis defined pools not of all applicants to an opening, but all applicants to that opening who ever, before or after, won a position, including this one. In that way, every applicant was

qualified to be a principal, by Charleston's own judgment. Coker made no claim that too few black principals were hired. The case was about an "assignment" that Coker, and his expert Peterson, both wrongly assumed the school board could make among candidates who had not applied for it.

On a political level, one could argue for some other method of recruiting principals. But one could not ask a court to impose some other method, if this one was fair to all applicants. Dr. Michelson showed that it was. There was no effect of race either of candidates or students on the race of principal being selected. Black candidates did win positions at white schools, but they hardly ever applied for them. "Race matching" did largely describe the outcome, but as a process it was entirely due to actions by the candidates, not the school board.