

erees, but then rule 53 doesn't stop with giving them powers but spells out that in proceedings that they are to conduct they are required to give notice to parties; that the parties are entitled to counsel, to consultation, to cross-examination, confrontation and then following these protective measures, subdivision (e) says that the findings of a master with these protective features shall be binding on the Federal judge except when shown to be "clearly erroneous."

In this proposal, the findings of the referee, the voting referee, are dignified with that evidentiary weight to the effect that the judge is bound by them without requiring confrontation and so on.

Now isn't it true that under all matters referred to a subsidiary officer, whether it be a referee or an examiner under this Civil Procedures Act, before the report of an examiner or of a referee is dignified with that presumption, it is supposed that it has that weight because of these due process standards, and can this Congress dignify the report or the actions of a referee without any constitutional standards to giving the parties interested an opportunity to appear, a notice to appear, the right to cross-examination, the right to counsel.

Now can that stand, that provision?

Mr. BLOCH. I don't think so.

Mr. WILLIS. Can it stand constitutionally?

Mr. BLOCH. In my opinion, no.

Mr. WILLIS. I wish you would express yourself on that a little further.

Mr. BLOCH. I think there, too, that you have a presumption of correctness.

There is a presumption of correctness attributed to the referee's finding; presumption of correctness that just can't stand up in the law when the persons against whom that presumption of correctness is to be used have had no opportunity to offer evidence, to swear witnesses, to cross-examine witnesses or even have notice of the hearings.

Going back of that, Mr. Willis, going back before the district judge is authorized under this bill even to appoint those referees or masters or whatever they are going to call them, he must find a pattern that there exists a pattern or practice of discrimination.

Now analyze that phrase—"pattern or practice of discrimination."

A pattern or practice of discrimination on the part of whom—the State of Georgia, the State of Louisiana, or certain individuals?

Where is your "State action," unless there is a pattern or practice of discrimination on the part of the State involved—aside from that and as a matter of procedure, how is that question of whether or not there is a pattern or practice of discrimination to be put into issue?

The first time that that phrase "pattern or practice" appears in the bill is in line 3, on page 2—

in the event one of those proceedings under 1971-C, that the court finds that such deprivation was or is pursuant to a pattern or practice.

Now what is going to be the basis for the district judge's deciding that there is a pattern or practice? Is the court simply to reach up into the air and say there is such a pattern or practice, or is the Attorney General, representing the United States, going to be required to allege and prove that there is such a pattern or practice with the right on the part of the defendants in that main case to introduce evidence to the contrary?