IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

S.L., P.W., B.S., M.A. and H.B., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Civil Action No. 91-C-576

GERALD WHITBURN, in his official capacity as Secretary of the Department of Health and Social Services of the State of Wisconsin; J. JEAN ROGERS, in her official capacity as Administrator of the Division of Economic Support of the Department of Health and Social Services of the State of Wisconsin; THOMAS BROPHY, individually and in his official capacity as Director of the Wisconsin Department of Social Services-Milwaukee County,

Defendants.

DECISION AND ORDER

Plaintiffs in this class action are Milwaukee County residents who have received benefits under the Food Stamp Act, 7 U.S.C. § 2011 et seq., and under the Aid to Families with Dependent Children ("AFDC") section of the Social Security Act, 42 U.S.C. § 601 et seq., and whose eligibility for such benefits was "verified" through procedures that are said to violate certain constitutional, statutory, and regulatory provisions. Each side has filed a motion

for summary judgment. For reasons stated below, the motions are granted in part and denied in part.

Jurisdiction over this action, brought pursuant to 42 U.S.C. § 1983, is based upon 28 U.S.C. §§ 1331, 1343, 1367.

I. Facts

A. Introduction

Oversight of the Food Stamp and AFDC programs in Wisconsin is the responsibility of the Wisconsin Department of Health and Social Services ("DHSS"), but the task of administering the programs in Milwaukee County has been delegated to the Wisconsin Department of Social Services -- Milwaukee Branch ("Milwaukee County"), a county agency directed by defendant Thomas Brophy ("Brophy"). Both DHSS and Milwaukee County, not to mention the federal government, have established regulations concerning the manner in which applications for Food Stamp and AFDC benefits are to be verified. In Wisconsin, a single application process covers both programs.[1]

After an applicant submits the combined Food Stamp and AFDC application form, which requests detailed information concerning household circumstances, a caseworker reviews the completed form and interviews the applicant. The application is then subject to verification. Plaintiffs challenge several aspects of the Milwaukee County verification program, including the criteria upon which applications are selected for verification, the scope of information verified,

[1]Throughout this opinion, the court uses the term "application" to refer both to the initial application for benefits and to the periodic "recertification" of eligibility to receive benefits. See 7 C.F.R. §§ 273.2(f)(8), 273.14.

and the methods by which information is verified. Each of these aspects of the program is discussed below.

B. Criteria for Verification

Prior to January 1, 1992, Milwaukee County administered its own verification program, rather than participating in the state verification program, though the county program was annually approved by DHSS. According to plaintiffs, the county program did not require Milwaukee County caseworkers to follow fixed, written criteria in determining which cases should be referred to investigators for verification. Indeed, the program document itself does not refer to any such criteria. (Oct. 29, 1992 State Defs.' Br., Ex. 7.) But Brophy, the responsible county official, contends that the necessary criteria were established in a 1987 "program and policy directive," which, after describing the new verification investigation program, states:

> Effective immediately [case]workers may begin to make referrals to the Food Stamp Verification Investigation Program on all . . . cases where information presented is questionable. (See attached list of possible reasons for referral.)

(Oct. 30, 1992 Myer Aff., Ex. N at 1 (emphasis in original); Dec. 3, 1992 Brophy Resp. to Pls.' Findings of Fact at ¶ 11.) The attachment lists about a dozen "Reasons for Referral to the Food Stamp Verification Investigators." (Oct. 30, 1992 Myer Aff., Ex. N at 2.)

Whether Milwaukee County caseworkers actually knew of or relied upon the criteria mentioned in this "directive" is a disputed point. One caseworker said she used the document whenever she referred a case for verification. (Id., Ex. M at 8-9.) According to another caseworker and a Milwaukee County supervisor, however, caseworkers did not follow any particular written criteria in determining whether verification was appropriate. (Id., Exs. O

& L at 8.) The absence of such criteria is further suggested by the fact that in documenting their verification referrals, caseworkers generally did not set forth a specific reason for the referral, and often simply noted that the referral was based on "worker concern." (Oct. 30, 1992 Cabraal Aff., Exs. A-E, J-N.)

On January 1, 1992, Milwaukee County began participating in the state verification program. Under it, participating counties are required to "establish written criteria . . . for the [caseworker] to use . . . to determine if a case is appropriate for" verification. (Oct. 29, 1992 State Defs.' Br., Ex. 6 at 34.) A manual for the state program lists a variety of circumstances in which information might be deemed questionable, but DHSS intended the list to be only illustrative, and it anticipated that the criteria actually adopted at the county level would vary with each county's demographic characteristics. (Id., Ex. 6 at 35-37, Ex. 9 at ¶ 1, Ex. 10 at ¶ 1.) Milwaukee County, however, adopted the DHSS list wholesale. (Id., Ex. 8, Attach. II at 8-11; Dec. 3, 1992 Brophy Findings of Fact at ¶ 12; Dec. 23, 1992 Pls.' Findings of Fact at ¶ 12.)

Milwaukee County caseworkers are now required to identify the criteria upon which verification is based. (Oct. 29, 1992 State Defs.' Br., Ex. 8 at 11.)

C. Scope of Verification

The caseworkers typically verify routine information, such as birth date and social security number, themselves. When more in-depth verification is required, however, the case is referred to a private investigative service. Prior to 1992, the investigative service's contract with the County required that each investigation include verification of a variety of information, apparently without regard to whether the information had been deemed questionable or had not

been verified already. (Nov. 3, 1992 Pls.' Findings of Fact at ¶ 15[2]; Oct. 30, 1992 Myer Aff., Exs. B-D, F at 1, K at 13.) According to plaintiffs' affidavits, the investigators who visited their homes requested verifying documents, such as utility bills and rent receipts, that had already been provided to Milwaukee County caseworkers. (S.L. Aff. at ¶ 13; M.A. Aff. at ¶ 20; H.B. Aff. at ¶¶ 3, 7.)

Since January 1, 1992, however, Milwaukee County has required that the investigation be limited to verification of the information deemed questionable. (Nov. 3, 1992 Pls.' Findings of Fact at ¶ 17.[3])

D. Methods of Verification

1. Home Visits

Prior to 1992, Milwaukee County required the investigative service to visit the applicant's home. (Nov. 3, 1992 Pls.' Findings of Fact at ¶ 15.[4]) At the time of application, plaintiffs and other applicants were told that a home visit "may be conducted" sometime within the next thirty days, but no other notice was provided prior to the visit. (Dec. 3, 1992 Brophy Findings of Fact at ¶ 23; Dec. 23, 1992 Pls.' Findings of Fact at ¶ 23; Oct. 30, 1992 Myer Aff, Ex. J.) Upon arriving at an applicant's home, the investigator would display county identification but would not possess a search warrant. (P.W. Aff. at ¶ 5; H.B. Aff. at ¶ 5; Nov. 3, 1992 Pls.' Findings of Fact at ¶ 27.[5])

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[2]Because defendants have not responded to this factual statement, it is deemed to be undisputed. Local Rule 6.05(d) (E.D. Wis.)

[3]See note 2.

[4]See note 2.

[5]See note 2.

Applicants generally would admit the investigators because they believed that if they did not, their benefits would be denied, and the investigators did not inform applicants that this was not the case. (S.L. Aff. at ¶¶ 22, 25; P.W. Aff. at ¶ 5; B.S. Aff. at ¶¶ 6, 7, 14; M.A. Aff. at ¶ 21; H.B. Aff. at ¶¶ 8, 12.) The investigators would ask applicants about their income and expenses and about their children, would ask to see receipts and bills, would search closets, cabinets, bedrooms and bathrooms, and, as noted above, would not limit their investigations to the matter upon which referral was based. (S.L. Aff. at ¶¶ 8, 11, 23; P.W. Aff. at ¶¶ 6, 7; B.S. Aff. at ¶¶ 8, 9, 16; M.A. Aff. at ¶¶ 10, 12, 13, 20; H.B. Aff. at ¶¶ 6-8.) During their visits, the investigators did not attempt to provide "social services" of any kind to the applicants, who viewed the visits as an invasion of privacy. (S.L. Aff. at ¶¶ 27, 28; P.W. Aff. at ¶¶ 10, 11; B.S. Aff. at ¶¶ 20, 21; M.A. Aff. at ¶¶ 22, 23; H.B. Aff. at ¶ 11.)

As of January 1, 1992, the investigative service is permitted, but no longer required, to conduct a home visit; whether to do so is left to the investigator's discretion. (Oct. 30, 1992 Myer Aff., Ex. Q at 4.) In addition, the service must now send applicants a notice indicating that an investigator may visit within the next ten working days, and, as noted above, investigations must be directed only to the eligibility criteria deemed questionable by the caseworker. (Id.; Oct. 29, 1992 State Defs.' Br., Ex. 17 at 9.) As before, investigators must identify themselves but need not obtain a search warrant. (Id.) With respect to obtaining the applicant's consent, the new policy instructs investigators as follows:

> Ask permission to enter the residence. Do not attempt to enter if the client refuses to give consent. You may inform the client that refusal may delay issuance of benefits but may not tell the client that there will be automatic denial of the case.

> Inform the person who gave consent for you to enter the residence that s/he may withdraw that consent at any time.
>
> Anything in plain view that is pertinent to determining proper benefits may be included in the written [verification] report.
>
> You may ask to see areas of the residence. Do not demand access, or inspect closets, cabinets, attics, basements, garages, etc. without the resident's consent.

(Id., Ex. 17 at 9-10.)

2. Collateral Contacts

Prior to 1992, Milwaukee County required that the investigators' verification procedure include interviews of people familiar with the applicant, such as landlords, employers, school officials, and local merchants. These "collateral contacts" were interviewed without the applicants' knowledge or permission, and applicants were not given the opportunity to recommend collateral contacts. (Nov. 3, 1992 Pls.' Findings of Fact at ¶¶ 30, 31.[6])

One person who was interviewed as a collateral contact says the investigator informed her that the subject of the interview "was a welfare recipient and that he was talking to her neighbors in order to find out information about her." (Linda Harris Aff. at ¶ 5; P.W. Aff. at ¶ 8.) Further, a form used to document verification interviews asks the investigator to indicate whether "persons interviewed [were] shown Investigator's DSS I.D. and advised of the purpose of the visit." (Dec. 3, 1992 Brophy Statement of Facts, Ex. 1 at 2; Oct. 3, 1992 Cabraal Aff., Ex. J at 2, Ex. K at 2, Ex. L at 1 (emphasis added).) A Milwaukee County official insists, however, that investigators were carefully instructed not to inform collateral contacts of the purpose of the interview. (Oct. 30, 1992 Myer Aff., Ex. K at 61.) The

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[6]See note 2.

question on the form, according to the official, was only to be answered in the affirmative if the person interviewed was the applicant. (Id.)

Since January 1, 1992, interviews of collateral contacts are permitted rather than required. The new policy instructs investigators as follows:

> Collateral contacts are contacts you make with persons or documents you can reasonably expect to furnish reliable and relevant information.
>
> Identify yourself as being from the county if asked. You may explain that you are verifying information provided by the subject. You may also state that the contact is not a criminal investigation and the subject of the [verification] has not been involved in any wrongdoing.

(Dec. 2, 1992 State Defs.' Br., Ex. 17 at 10.) The new policy, like the old, permits investigators to select collateral contacts without the applicant's knowledge.

II. Analysis

Plaintiffs claim that the verification policies described above violate the Food Stamp Act, regulations under the Food Stamp Act, AFDC regulations, and the Fourth Amendment. The court's analysis of these claims is divided into six sections. Section II.A. discusses the viability (but not the substance) of plaintiffs' challenges to the pre-1992 verification policies. Sections II.B. through D. discuss the substance of plaintiffs' challenges to both the past and current policies, grouping the claims into the same three categories used above: Criteria for Verification (Section II.B.); Scope of Verification (Section II.C.); and Methods of Verification (Section II.D.). The organization and identification of the claims is based upon the arguments set forth in the plaintiffs' summary judgment briefs, rather than upon the complaint, because the "Claims for Relief" set forth in the complaint are too broad to

provide a basis for distinguishing among the various legal provisions upon which the claims are based. (Compl. at ¶¶ 87-93.)

The fifth analysis section, Section II.E., discusses the effect of Food Stamp Act regulations on combined applications for Food Stamp and AFDC benefits. Finally, Section II.F. discusses defendant Brophy's claim of qualified immunity.

A. Viability of Challenges to Pre-1992 Verification Policies

Defendants contend that plaintiffs' challenges to the verification procedures in place before 1992 are moot, since those procedures were replaced by new ones as of January 1, 1992, when the County began participating in the state verification program. Plaintiffs disagree, contending that such "voluntary cessation" of challenged conduct does not render the challenge moot. While it is "ordinarily" true that voluntary cessation does not moot a controversy, however, it is equally true that voluntary cessation of challenged conduct "does render a controversy moot where there is no reasonable expectation that the putatively illegal conduct will be repeated, and there are no remaining effects of the alleged violation." Jones v. Sullivan, 938 F.2d 801, 807 (7th Cir. 1991). The question, then, is whether we may reasonably expect that defendants in this case will not resurrect their pre-1992 policies.

Defendants have not offered a "pledge" to that effect, which might have made a stronger case for a finding of mootness. Dial v. Coler, 791 F.2d 78, 81 (7th Cir. 1986); Watkins v. Blinzinger, 789 F.2d 474, 483 (7th Cir. 1986). Even absent such a pledge, however, courts generally hold that when a governmental entity formally amends or repeals a law or policy, challenges to the former law or policy are moot insofar as prospective relief is concerned. See, e.g.: Penny Saver Publications v. Village of Hazel Crest, 905 F.2d 150, 153

(7th Cir. 1990); Dial, 791 F.2d at 81. Thus, in the case, the court concludes, the comprehensive and substantial revision of the County's verification policies provides "reasonable assurance" that the former policies will stay that way, rendering moot plaintiffs' claim for an injunction against those policies. Plaintiffs' claims for injunctive relief based upon the pre-1992 verification policies will therefore be dismissed. (See ¶¶ III.C.8., infra.)

In addition to injunctive relief, however, plaintiffs seek declaratory relief against all defendants, as well as damages against Brophy, the responsible County official. Because these forms of relief are retrospective in nature, they are not rendered moot by the change in the County's policies. Penny Saver Publications, 905 F.2d at 150. With respect to the state defendants, however, declaratory relief is unavailable for a different reason. A declaration that defendants' previous policies were unlawful would be useful only to the extent it establishes res judicata on the issue of liability, entitling the plaintiffs to damages, so that under such circumstances a declaratory judgment is functionally the same as an award of damages. Green v. Mansour, 474 U.S. 64, 73 (1985). In Green, therefore, the Supreme Court held that just as the Eleventh Amendment precludes federal courts from awarding retrospective damages against state officials, so too it precludes them from entering declaratory judgment as to the unlawfulness of state officials' past conduct. Id. Thus, plaintiffs' claims for declaratory relief against the state defendants based upon the pre-1992 verification policies must be dismissed. (See ¶ III.B., infra.)

The same is not true, however, as to the County defendant, because the Eleventh Amendment does not apply to municipalities. Yeksigian v. Nappi, 900 F.2d 101, 103 (7th Cir. 1990); Penny Saver Publications, 905 F.2d at 153. As against Brophy, therefore, plaintiffs'

claims for declaratory and monetary relief based on the pre-1992 policies remain viable. The other remaining claims are those against Brophy and the other defendants based upon the policies in effect after January 1, 1992.

B. Verification Criteria

1. Pre-1992 Policies

Under United States Department of Agriculture regulations regarding food stamp applications, certain information supplied by the applicant, such as income, alien status, and utility and medical expenses, must always be verified. 7 C.F.R. § 273.2(f)(1). Other information relevant to eligibility is verified only if the caseworker deems the information "questionable." 7 C.F.R. § 273.2(f)(2). The regulations provide that "the State agency shall establish guidelines to be followed in determining what shall be considered questionable information." Id.

Plaintiffs contend that prior to 1992 the County had not established such guidelines. Brophy disputes that assertion, pointing to a 1987 document that purports to list circumstances in which an applicant's eligibility information might be deemed questionable. (Supra at 3.) Although plaintiffs do not challenge the authenticity of that document, they contend it cannot have been "widely available," given the evidence that caseworkers did not rely upon it and did not cite specific reasons for referral in their referral forms. (Supra at 3-4.)

The court agrees with plaintiffs that the mere existence of the 1987 document, even when combined with the statement of one caseworker that she used the criteria set forth in that document, is not enough to show that the criteria constituted "establish[ed] guidelines," as required by the regulation. Rather, because plaintiffs adduced specific facts -- the deposition

testimony of a caseworker and a Milwaukee County supervisor — tending to show that caseworkers were not aware of and did not follow any particular written criteria in making their referral decisions, defendants were obligated to respond with specific evidence tending to show that caseworkers generally did in fact know of and follow such criteria. Fed. R. Civ. P. 56(e). The statement of a single caseworker that she herself knew of and followed a set of written criteria does not raise a genuine issue of fact as to whether the criteria were "established" for Milwaukee County as a whole.

Because the County's pre-1992 verification policy lacked established guidelines for determining whether information supplied by an applicant was questionable, the policy violated 7 C.F.R. § 273.2(f)(2)(i).[7] Summary judgment on this claim against Brophy in his official capacity will therefore be granted in favor of plaintiffs. (See ¶ III.C.1., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

2. Current Policy

It is undisputed that the current verification policy, in effect since January 1992, includes "guidelines to be followed in determining what shall be considered questionable information," as required by 7 C.F.R. § 273.2(f)(2)(i). Plaintiffs contend, however, that because Milwaukee County simply adopted these guidelines wholesale from the state verification policy, without tailoring them to the County's unique demographic characteristics (supra at 4),

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[7]Note that the court's conclusions regarding defendants' compliance with the verification provisions of the Food Stamp Act regulations apply equally to the initial application for benefits and to the "recertification" of eligibility to receive benefits. 7 C.F.R. § 273.2(f)(8)(i)(C).

the guidelines lack a rational basis and therefore violate the Due Process Clause of the Fourteenth Amendment.

The court disagrees. The fact that the guidelines set forth in the state policy were not specifically designed with Milwaukee County in mind does not mean they cannot be rationally applied there. Rather, as plaintiffs acknowledge, whether the guidelines can be rationally applied in Milwaukee County depends on whether the empirical assumptions underlying the guidelines have validity in Milwaukee County. Although in their brief plaintiffs assert that "a number of [the guidelines] seem highly unlikely to bear a reasonable relationship to fraud or error in Milwaukee" (Oct. 30, 1992 Pls.' Br. at 24), they have presented absolutely no evidence in support of this assertion. Because it was plaintiffs' burden to do so, summary judgment on this claim must be granted in favor of defendants. (See ¶ III.D.1., infra.)

C. Scope of Verification

Plaintiffs contend that the County's pre-1992 verification policy required the investigative service to verify information beyond that which the caseworker had deemed questionable or had already verified. (Supra at 4-5.) Such "over-verification" and "re-verification" is said to have violated the Food Stamp Act, which provides that the state food stamp plan must provide that the responsible state agency shall:

> not require any household to submit additional proof of a matter on which the State agency already has current verification as determined under regulations issued by the Secretary, unless the State agency has reason to believe that the information possessed by the agency is inaccurate, incomplete, or inconsistent.

7 U.S.C. § 2020(e)(3)(C).

Defendants have failed to present any factual or legal argument in response to this claim, and the court therefore takes it as undisputed that the County's pre-1992 verification policy permitted investigators to verify information that had already been verified by the caseworker, without regard to whether the information was believed to be "inaccurate, incomplete, or inconsistent," in violation of Section 2020(e)(3)(C) of the Food Stamp Act. Summary judgment on this claim against Brophy in his official capacity will thus be granted in favor of plaintiffs. (See ¶ III.C.2., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below. (Plaintiffs do not raise such a claim with respect to the current policy.)

D. Method of Verification

1. Home Visits

Home visits, though a permissible means of verification under federal regulations, are subject to the following conditions:

> Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

36 C.F.R. § 273.2(f)(4)(iii). Plaintiffs claim that defendants' verification policies, both past and present, violate this provision because, first, they permit home visits regardless of whether documentary evidence is sufficient; second, they fail to advise applicants of the right to avoid home visits by providing documentary evidence; and, third, they do not require that the visits be "scheduled" with the applicant. Plaintiffs further claim that home visits constitute unreasonable searches in violation of the Fourth Amendment (as applied to the states via the Fourteenth). These claims are discussed in turn below.

a. Failure to Use Documentary Evidence as the Primary Source of Verification

The state officials point out that although "[n]o department policy prohibits the use of a home visit as the primary source of verification," neither "does the department promote the home visit as the primary source of verification." (Oct. 29, 1992 Defs.' Br. at 18.) The food stamp regulations, however, do not permit such neutrality with respect to the use of the home visit. They plainly require that the state agency resort to a home visit "only when documentary evidence is insufficient." Because the current verification policy does not make this a prerequisite to the home visit, it violates 36 C.F.R. § 273.2(f)(4)(iii). The same is true of the pre-1992 policy, under which the investigative service was always required to conduct a home visit, regardless of the availability of documentary evidence. (Supra at 5.)

Summary judgment on the claim that the verification policies failed to ensure that documentary evidence is used as the primary source of verification will therefore be granted, with respect to the current policy, against the state defendants and against Brophy in his official capacity (see ¶ III.D.3., infra), and, with respect to the pre-1992 policy, against Brophy in his official capacity. (See ¶ III.C.3., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

b. Failure to Advise Applicants of Right to Avoid Home Visit by Providing Documentary Evidence

If Milwaukee County may not conduct a home visit unless documentary evidence proves insufficient, it follows that the agency, before conducting a home visit, must first give the applicant an opportunity to provide sufficient documentary evidence. This follows as well from the requirement of the Food Stamp Act and associated regulations that applicants be

provided, at the time of application, with a notice explaining "what acts the household must perform to cooperate in obtaining verification and otherwise completing the application process." 7 U.S.C. § 2020(e)(3)(A); 7 C.F.R. § 273.2(c)(5). Because neither current nor past verification policies require that applicants be advised that a home visit will not be conducted if the applicant provides sufficient documentary evidence, the policies are in violation of these notice provisions and of the conditions on home visits set forth in 36 C.F.R. § 273.2(f)(4)(iii).

To say that Milwaukee County must provide notice of the need for documentary evidence does not, however, resolve the question of how and when such notice must be provided, a question neither side has addressed. Plaintiffs' brief suggests but does not actually state that they believe the notice must be provided both at the time of application and in the notice informing the applicant that a home visit is imminent, thus affording the applicant at least two opportunities to supply sufficient documentary evidence. (Oct. 30, 1992 Pls.' Br. at 31.) The court concludes, however, that the documentary-evidence notice must be provided only at the time of application. To require an additional notice would be inconsistent with the pertinent provisions of the Food Stamp Act and associated regulations, which require that the applicant be notified of verification requirements "at the time of application." 7 U.S.C. § 2020(e)(3)(A); 7 C.F.R. § 273.2(c)(5).

Finally, the court notes that the content of the documentary-evidence notice should convey the substance of the regulation at 36 C.F.R. § 273.2(f)(4)(iii).

Summary judgment on the claim that the verification policies fail to inform applicants that home visits will not be conducted unless documentary evidence provided by the applicant is insufficient to make a firm determination of eligibility or benefit will therefore be

granted, with respect to the current policy, against the state defendants and against Brophy in his official capacity (see ¶ III.D.3., infra), and, with respect to the pre-1992 policy, against Brophy in his official capacity.[8] (See ¶ III.C.3., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

c. Failure to Schedule Home Visits

Prior to 1992, Milwaukee County told applicants at the time of application only that a home visit may be conducted sometime within the next thirty days. (Supra at 5.) Under current policy, applicants are informed that a home visit may be conducted sometime in the next 10 days. (Supra at 6.) Plaintiffs contend that neither warning comports with the requirement that home visits be "scheduled in advance with the household." The court agrees. Under the common meaning of the word, one does not "schedule" a visit merely by promising to show up sometime in the next ten days. To schedule a visit is to assign it a specific date or time. Webster's II New Riverside University Dictionary at 1043-44 (1988).

While the court therefore concludes that home visits must be planned for a specific date, it does not conclude that the exact time of the visit must be scheduled as well. In addition to allowing home visits as a means of verification, Food Stamp Act regulations provide that a home visit may be used for the initial "face-to-face" interview required of every applicant if the applicant is unable to come to the food stamp office for an interview. 7 C.F.R. § 273.2(e)(2)(i). This form of home visit may be used, the regulation provides, "only if the

[8]Because this conclusion is based upon the applicable Food Stamp Act regulations, the court need not address plaintiffs' claim that the failure to provide such notice also violates the Due Process clause of the Fourteenth Amendment.

time of the visit is scheduled in advance with the household." Id. (emphasis added). Because this regulation expressly requires that the time of visit be scheduled, the absence of such an express requirement in the otherwise identical language of 7 C.F.R. § 273.2(f)(4)(iii) implies that a home visit scheduled under that regulation need not be scheduled for a specific time.

Plaintiffs also contend that if the home visit is to be scheduled "with the household," as the regulation requires, it may not be scheduled unilaterally by Milwaukee County. The court concludes, however, that this phrase is better interpreted to mean only that the household must be informed of the date for which the home visit is scheduled. To require Milwaukee County to obtain each applicant's approval before scheduling the date of the home visit is to ignore the judicially noticeable fact that such flexibility is logistically quite impossible, or nearly so, given the number of applicants involved and the limits of the agency's investigative resources.

The court's conclusion does not impose an unreasonable burden on applicants. If an applicant does not allow a home visit on the date appointed by Milwaukee County because his or her own schedule truly prevents it, this would not constitute a "refus[al] to cooperate" (because the applicant would not be "able to cooperate") and therefore would not justify the denial of benefits. 7 C.F.R. § 273.2(d)(1). And any uncertainty as to whether the applicant was truly unable to allow the home visit on the scheduled date would have to be resolved in favor of the applicant. Id. Milwaukee County therefore has little incentive to be entirely unaccommodating in its scheduling of home visits.

In sum, the court concludes that under 7 C.F.R. § 273.2(f)(4)(iii), Milwaukee County may not conduct a home visit unless it notifies the applicant of the exact date of the visit

"in advance" of that date.[9] Because Milwaukee County verification policies have not imposed such a restriction on home visits, summary judgment on this claim will be granted, with respect to the current policy, against the state defendants and against Brophy in his official capacity (see ¶ III.D.4., infra), and, with respect to the pre-1992 policy, against Brophy in his official capacity. (See ¶ III.C.4., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

d. The Fourth Amendment

Plaintiffs' final claim concerning the home visits is that, under both past and current policies, they constitute "unreasonable searches" in violation of the Fourth Amendment. In Wyman v. James, 400 U.S. 309 (1971), the Supreme Court held that home visits conducted under New York's AFDC program did not violate the Fourth Amendment because, first, they were not searches, and, second, even if they were searches, they were not unreasonable. The visits were not searches, the court concluded, because they were "rehabilitative," as well as "investigative," because "the visitation in itself is not forced or compelled," and because "the beneficiary's denial of permission [to visit] is not a criminal act." Id. at 317. This conclusion, however, is viewed as problematic, see, e.g., Blackwelder v. Safnauer, 689 F. Supp. 106, 137-38 (N.D.N.Y.), aff'd, 886 F.2d 548 (2d Cir. 1989), because it departs without explanation from the traditional understanding that every governmental entrance into the home is subject to the Fourth Amendment's reasonableness requirement. See Payton v. New York, 445 U.S. 573,

[9]The court does not address the issue of how far "in advance" this notification must come, because plaintiffs have not raised it.

589-90 (1980). At any rate, the conclusion does not govern the instant dispute, because Milwaukee County's home visits include no "rehabilitative" component; they are purely investigative, and so they are searches for purposes of the Fourth Amendment. (Supra at 6.)

The question therefore becomes whether Milwaukee County's home visits are "reasonable." It is not dispositive of this question that each of the named plaintiffs allowed the visits to occur, for, as Wyman recognized, "the average beneficiary might feel she is in no position to refuse consent to the visit," 400 U.S. at 318, and this was certainly true of the instant plaintiffs. (Supra at 6.) Their "consent" to the visits thus begs the question whether the government may require such consent as a condition of providing benefits, as Milwaukee County has done under both its past and current verification policies. See Schaill v. Tippecanoe County School Corp., 864 F.2d 1309, 1312-1313 (7th Cir. 1988).

Wyman upheld New York's home-visit requirement because the court found, on the basis of some eleven factors, that even if the visits were searches they were "not unreasonable." 400 U.S. at 318-24. Several of these factors would appear to be applicable to any home visit program under the AFDC statute: the statute's focus on the dependent child and on "cooperation" between the state agency and the home; the state's interest in "seeing and assuring that intended and proper objects of . . . tax-produced assistance are the ones who benefit from the aid it dispenses"; the state's interest in knowing how its "charitable funds are utilized and put to work"; the fact that the home visit is "the heart of welfare administration" throughout the country; the likelihood that the home visit is the only way to "assure verification" of certain types of information relevant to eligibility; the fact that the home visit is not itself a "criminal investigation," even if it may lead to the discovery of criminal fraud; and,

finally, the inappropriateness in the "welfare context" of the "warrant procedure," which would permit the state much greater access to the home. Id.

If these factors are of general application, however, other factors mentioned in Wyman concern the manner in which a particular home visit program is administered. Under the program at issue in Wyman, the burden on the applicant was found to be "minimize[d]" because the applicant "received written notice several days in advance of the intended home visit"; "The date [of the visit] was specified"; and the visit was not conducted at "an awkward or retirement hour" and did not involve "impolite or reprehensible conduct of any kind." Id. at 320-21. Under the New York home visit program, furthermore:

> The visit is not one by police or uniformed authority. It is made by a caseworker of some training whose primary objective is, or should be, the welfare, not the prosecution, of the aid recipient for whom the worker has profound responsibility. . . . The caseworker is not a sleuth but rather, we trust, is a friend to one in need.

Id. at 322-23 (footnote omitted). The Wyman court also noted that "[p]rivacy is emphasized" in the New York program:

> The applicant-recipient is made the primary source of information as to eligibility. Outside informational sources, other than public records, are to be consulted only with the beneficiary's consent.

Id. at 321.

Most of these program-specific factors do not apply to Milwaukee County's home visit program. As discussed above, Milwaukee County applicants are not given advance notice of the visit, the date of the visit is not specified, and the visit is made not by the applicant's caseworker but by a professional "sleuth," as Wyman puts it. (Supra at 5-6.) See Reyes v. Edmunds, 472 F. Supp. 1218, 1324 (D. Minn. 1979) (distinguishing Wyman on similar

grounds). Further, as discussed in greater detail below, Milwaukee County does not obtain the applicant's consent before consulting "outside informational sources," and therefore does not place the same emphasis on privacy as did the program described in Wyman. (Infra at 24; supra at 7-8.) This court concludes, therefore, that the home visits conducted pursuant to Milwaukee County's verification policies do not satisfy the requirements necessary to justify a warrantless search under Wyman.

It is important to add, however, that this conclusion, like that of Wyman, turns on no single factor, but on the combination of the factors mentioned. In particular, this court does not find it determinative that Milwaukee County applicants are visited by investigators rather than caseworkers, or that the purpose of the visit is investigative rather than rehabilitative, for neither distinction seems particularly relevant to the governmental or privacy interests at stake. Notwithstanding Wyman's assumption that the presence of the caseworker ("a friend to one in need") is palliative, it seems unlikely that an unwanted governmental visitor who both investigates and counsels will be considered less intrusive than one who just investigates. Thus, a home-visit policy that truly takes applicants' privacy interests into account -- by scheduling visits in advance, limiting investigation to matters that cannot be verified otherwise, avoiding the involvement of third parties, etc. -- should not be deemed violative of the Fourth Amendment merely because the visits are not made by trained social workers.

Because the court finds that Milwaukee County's past and current home-visit policies violate the Fourth Amendment, summary judgment on this claim will be granted, with respect to the current policy, against the state defendants and against Brophy in his official capacity (see ¶ III.D.6., infra), and, with respect to the pre-1992 policy against Brophy in his

official capacity. (See ¶ III.C.5., infra.) Resolution of the Fourth Amendment claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, addressed in Section II.F. below.

2. Collateral Contacts

a. Designation of Collateral Contacts

On the use of collateral contacts for verification, Food Stamp Act regulations provide:

> A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification.
>
> * * *
>
> Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

7 C.F.R. § 273.2(f)(4)(ii) (emphasis added), (5)(ii) (emphasis added).

Plaintiffs contend that past and current Milwaukee County verification policies violate these provisions by not affording applicants the opportunity to designate collateral contacts. Defendants have not responded to this claim except to point out that under state law, DHSS is permitted to "request from any person any information it determines appropriate and necessary for the administration of . . . programs carrying out the purposes of" the federal Food Stamp Act. Wis. Stat. § 46.25(2m). This statute, according to defendants, gives caseworkers the "right to make collateral contacts without client prior approval." (Dec. 2, 1992 State Defs.' Br. at 10.) But if that is the case, then the state law is in direct conflict with the federal regulatory requirement that applicants be given an opportunity to designate their own collateral contacts, and the Supremacy Clause, U.S. Const. art. VI cl. 2, would thus require that the state law give way.

Far better, therefore, to interpret the state law consistently with the federal regulations. This is easily done, since the scope of the state law is expressly limited to the gathering of information deemed "appropriate and necessary" to the "purposes" of the Food Stamp Act provisions. The state law thus should not be construed to permit that which regulations under the Food Stamp Act forbids.

Because it is undisputed that past and current verification policies do not afford applicants the opportunity to designate collateral contacts, the court concludes that the policies violate 7 C.F.R. § 273.2(f)(4)(ii) and (5)(ii). Summary judgment on this claim will therefore be granted, with respect to the current policy, against the state defendants and against Brophy in his official capacity (see ¶ III.D.5., infra), and, with respect to the pre-1992 policy, against Brophy in his official capacity. (See ¶¶ III.C.6., infra.) Resolution of the claim against

Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

b. Disclosure of Information to Collateral Contacts

Federal regulations restrict the disclosure of information about applicants for AFDC and food stamp benefits. AFDC regulations provide that the state agency must restrict disclosure of such information "to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs." 45 C.F.R. § 205.50(a)(2)(ii). Food Stamp Act regulations provide, similarly, that disclosure of information obtained from the applicant "shall be restricted to . . . [p]ersons directly connected with the administration or enforcement of" a food stamp program or of various other "means-tested" public assistance programs. 7 C.F.R. § 272.1(c)(1)(i). Plaintiffs contend that the past and current Milwaukee County verification policies violate these provisions by permitting investigators to inform collateral contacts that the purpose of the interview is to determine eligibility for AFDC or food stamp benefits.

In support of this claim, plaintiffs have submitted the affidavit of a person who was interviewed as a collateral contact and who says she was told that the subject of the interview was a "welfare recipient." (Supra at 7.) Plaintiffs also note that a form used for documenting verification interviews asks the investigator to indicate whether the interviewee was "advised of the purpose of the visit." (Supra at 7.) On the other hand there is the deposition testimony (submitted by plaintiffs) of a Milwaukee County official who asserts that investigators were trained not to advise collateral contacts of the purpose of the interview and that the question on the form applied only to interviews of applicants. (Supra at 7-8.) Defendants, however, have

made no reference in their briefs to this official's testimony and have adduced no other evidence on the question of what steps were taken prior to 1992 to prevent disclosure of confidential information to collateral contacts. The court thus deems it is undisputed that the pre-1992 policy did not prevent the disclosure of confidential information. As the policy therefore violated 45 C.F.R. § 205.50(a)(2)(ii) and 7 C.F.R. § 272.1(c)(1)(i), summary judgment on this claim must be granted against Brophy in his official capacity. (See ¶ III.C.7., infra.) Resolution of the claim against Brophy in his individual capacity requires consideration of his claim of qualified immunity, discussed in Section II.F. below.

Under the current verification policy, investigators are instructed to advise collateral contacts only that the purpose of the interview is to verify information provided by the subject of the interview, that the interview is not part of a criminal investigation, and that the subject of the interview is not suspected of being involved in wrongdoing. (Supra at 8.) Plaintiffs have not argued that disclosure of such information is prohibited and have not adduced evidence that broader disclosures are being made under the current verification policy. With respect to that policy, therefore, summary judgment on plaintiffs' claims under the nondisclosure regulations must be granted in favor of all defendants. (See ¶ III.D.2., infra.)

E. Effect of Food Stamp Act Regulations on Combined Food Stamp and AFDC Applications

Defendants assert that whatever the court's conclusions regarding their compliance with Food Stamp Act regulations, those conclusions should only govern applications for food stamp benefits, and should not govern combined applications for food stamp and AFDC benefits. The reason for this, defendants say, is that while Food Stamp Act regulations contain specific requirements concerning verification procedures, AFDC regulations do not. Those

regulations provide that a state's plan for administering its AFDC program "must contain a description of the verification measures to detect fraudulent applications for AFDC." 45 C.F.R. § 235.111(a). "Verification measures" are defined as follows:

> actions taken by a State agency . . .
>
> (1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and
>
> (2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.
>
> Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of [verification] measures include but are not limited to: Automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visits or collateral contacts; credit bureau inquiries; training on investigative interviewing techniques.

45 C.F.R. § 235.111(b).

As plaintiffs point out, defendants have offered no authority for the proposition that the AFDC regulations, rather than the Food Stamp Act regulations, should govern combined applications, and indeed the proposition seems less than logical, since AFDC regulations discuss verification in the most general terms, whereas the Food Stamp Act regulations are quite specific on the subject. Nonetheless, the Food Stamp Act regulations themselves address the issue of what verification rules govern combined applications, and their resolution of the issue tends to agree with defendants' position. The regulations provide:

> For households applying for both public assistance and food stamps, the verification procedures described in paragraphs (f)(1) through (f)(8) of this section shall be followed for those factors of eligibility which are needed solely for purposes of determining the

> household's eligibility for food stamps. For those factors of eligibility which are needed to determine both [public assistance] eligibility and food stamp eligibility, the State agency may use the [public assistance] verification rules. . . .

7 C.F.R. § 273.2(j)(1)(iii). "Public assistance" is defined to include the AFDC program. 7 C.F.R. § 271.2. Thus, in verifying information provided on combined AFDC and food stamp applications, Milwaukee County must follow the verification guidelines set forth at 7 C.F.R. § 273.2(f)(1) through (f)(8) only for eligibility criteria unique to the food stamp program.

The consequences of this rule in the instant case are somewhat limited, however. As noted above in the discussion of Wyman, in order to satisfy Fourth Amendment requirements, a home-visit policy must include the following measures or comparable ones designed to protect the applicant's privacy interest: notice of the visit must be provided at least several days in advance, with the date of the visit specified, and the applicant must be used as "the primary source of information as to eligibility," so that "outside informational sources, other than public records, are . . . consulted only with the beneficiary's consent." Wyman, 400 U.S. at 320-21. These requirements essentially duplicate the Food Stamp Act regulations concerning the scheduling of home visits, 7 C.F.R. § 273.2(f)(4)(iii) ("the home visit [must be] scheduled in advance with the household"); supra at 14, and the designation of collateral contacts. 7 C.F.R. § 273.2(f)(4)(ii), (5)(ii) (both providing that applicants be given an initial opportunity to designate an "acceptable" collateral contact); supra at 23. Further, as noted above, current Milwaukee County verification policy satisfies the Food Stamp Act regulation concerning verification criteria, 7 C.F.R. § 273.2(f)(2)(i) (requiring the state agency to "establish guidelines to be followed in determining what shall be considered questionable

information"); supra at 13, as well as the statutory requirement concerning re-verification. 7 U.S.C. § 2020(e)(3)(C); supra at 14.

Thus, the only Food Stamp Act regulations at issue in this case that defendants conceivably might not have to follow when verifying a combined application are those requiring that documentary evidence be used as the "primary source of verification" and that home visits not be conducted unless such evidence proves "insufficient." 7 C.F.R. § 273.2(f)(4)(i) & (iii).

F. Brophy's Liability

Brophy, the County official, contends he cannot be held liable in his official capacity for the shortcomings of the Milwaukee County verification policies because those policies "have been and are, to a great extent, not the policies of Milwaukee County at all but rather those of the State of Wisconsin." (Dec. 3, 1992 Brophy Br. at 9.) That is incorrect. Milwaukee County verification policies are proposed by the County and approved by the State and therefore represent the official policy of both. Brophy is thus liable in his official capacity for claims arising out of both past and current policies.

Brophy also claims that he is entitled to qualified immunity against liability for damages in his individual capacity. Such immunity applies if the official's "conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Brophy contends that because his agency's verification policies were annually approved by the state, he cannot be expected to have known that the policies violated the rights established by the statutory and regulatory provisions discussed above. Indeed, none of these provisions appears to have been previously interpreted by a court, and none is so plain or so fundamental to administration of the Food

Stamp or AFDC programs as to suggest that Brophy's reliance on state approval of the Milwaukee County policies was unreasonable. With respect to plaintiffs' statutory and regulatory claims arising out of past and current verification policies, therefore, Brophy is protected by immunity.

As to the Fourth Amendment claim, Brophy argues that in view of Wyman, it cannot have been clearly established that home visits related to welfare administration would be held to constitute unreasonable searches. In response, plaintiffs point out that at least one federal decision, Reyes, supra, 472 F. Supp. at 1324, distinguished Wyman and held, on facts somewhat similar to those of the instant case, that home visits could violate the Fourth Amendment. This court concludes, however, that after Wyman's fairly unequivocal endorsement of the home visit as a central element of welfare administration, neither the past nor current home-visit policies approved by Brophy can be said to have violated any clearly established rights of which a reasonable administrator would have known.

The court therefore concludes that all of the claims arising out of both past and current verification policies against Brophy in his individual capacity are barred by qualified immunity. Summary judgment on these claims will thus be entered in his favor. (See ¶ III.A., infra.)

III. Orders

A. **IT IS THEREFORE ORDERED** that summary judgment on all of plaintiffs' claims against BROPHY IN HIS INDIVIDUAL CAPACITY is GRANTED in his favor and such claims are DISMISSED. (See page 30, supra.)

B. IT IS FURTHER ORDERED that summary judgment on all claims against the STATE DEFENDANTS based upon the PRE-1992 POLICY is GRANTED in favor of these defendants and such claims are DISMISSED. (See page 10, supra.)

C. IT IS FURTHER ORDERED that, with respect to the PRE-1992 POLICY, plaintiffs' claims against BROPHY IN HIS OFFICIAL CAPACITY are resolved as follows:

1. On the claim based upon 7 C.F.R. § 273.2(f)(2)(i), summary judgment is GRANTED in favor of PLAINTIFFS. (See page 12, supra.)

2. On the claim based upon 7 U.S.C. § 2020(e)(3)(C), summary judgment is GRANTED in favor of PLAINTIFFS. (See page 14, supra.)

3. On the claim based upon 36 C.F.R. § 273.2(f)(4)(iii), 7 U.S.C. § 2020(e)(3)(A), and 7 C.F.R. § 273.2(c)(5), requiring that the home visit not be used unless documentary evidence is found insufficient and that applicants be advised of same at time of application, summary judgment is GRANTED in favor of PLAINTIFFS. (See pages 14, 17, supra.)

4. On the claim based upon 7 C.F.R. § 273.2(f)(4)(iii), requiring that applicants be given advance notice of the date of any home visit, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 19, supra.)

5. On the claim based upon U.S. Const. amends. IV, XIV, prohibiting unreasonable searches, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 23, supra.)

6. On the claim based upon 7 C.F.R. § 273.2(f)(4)(ii) and (5)(ii), requiring that applicants be given the opportunity to designate collateral contacts, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 24, supra.)

7. On the claim based upon 45 C.F.R. § 205.50(a)(2)(ii) and 7 C.F.R. § 272.1(c)(1)(i), concerning the disclosure of information about applicants, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 26, supra.)

8. On the claim for injunctive relief based upon the claims set forth in Paragraphs III.C.1. through C.7., summary judgment is GRANTED in favor of BROPHY IN HIS OFFICIAL CAPACITY and the claim for such relief is DISMISSED. (See page 10, supra.)

D. IT IS FURTHER ORDERED that, with respect to the CURRENT POLICY, plaintiffs' claims against the STATE DEFENDANTS and against BROPHY IN HIS OFFICIAL CAPACITY are resolved as follows:

1. On the claim based upon 7 C.F.R. § 273.2(f)(2)(i), summary judgment is GRANTED in favor of these defendants and the claims is DISMISSED. (See page 13, supra.)

2. On the claim based upon 45 C.F.R. § 205.50(a)(2)(ii) and 7 C.F.R. § 272.1(c)(1)(i), concerning the disclosure of information about applicants, summary judgment is GRANTED in favor of these defendants and the claim is DISMISSED. (See pages 26, supra.)

3. On the claim based upon 36 C.F.R. § 273.2(f)(4)(iii), 7 U.S.C. § 2020(e)(3)(A), and 7 C.F.R. § 273.2(c)(5), requiring that the home visit not be used unless documentary evidence is found insufficient and that applicants be advised of same at time of application, summary judgment is GRANTED in favor of PLAINTIFFS. (See pages 15, 17, supra.)

4. On the claim based upon 7 C.F.R. § 273.2(f)(4)(iii), requiring that applicants be given advance notice of the date of any home visit, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 19, supra.)

5. On the claim based upon 7 C.F.R. § 273.2(f)(4)(ii) and (5)(ii), requiring that applicants be given the opportunity to designate collateral contacts, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 24, supra.)

6. On the claim based upon U.S. Const. amends. IV, XIV, prohibiting unreasonable searches, summary judgment is GRANTED in favor of PLAINTIFFS. (See page 22-23, supra.)

E. **IT IS FURTHER ORDERED** that on or before 14 days from the date of this order, PLAINTIFFS shall submit a proposed order for injunctive and declaratory relief based upon Paragraphs III.D.3. through D.6. above; ALL DEFENDANTS may submit a response to the proposed order on or before 7 days after they are served with it; and PLAINTIFFS may submit a reply on or before 7 days after they are served with the response.

F. **IT IS FURTHER ORDERED** that the Deputy Clerk shall arrange a scheduling conference with the parties' attorneys to discuss what further proceedings are necessary to resolve plaintiffs' claims for monetary relief based upon the claims referred to in Paragraphs III.C.1. through C.7. and III.D.3. through D.6. above.

G. IT IS FURTHER ORDERED that Paragraphs III.A. through III.D. above resolve the liability aspect of all claims set forth in the Complaint.

Dated at Milwaukee, Wisconsin, this 28 day of July, 1994.

UNITED STATES DISTRICT COURT

By John W. Reynolds
John W. Reynolds
Judge