APPENDIX A

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARIUS D. LITTLE, Plaintiff, V. SHELBY COUNTY, TENNESSEE; A.C. GILLESS, individually and in his official capacity as Sheriff of Shelby County, Tennessee; DENNIS DOWD, individually and in his official capacity as Chief Jailer of Shelby County; and JIM ROUT, individually and in his official capacity as Mayor of Shelby County, Defendants.	)	NO. 96-2520-TUA

FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF ORDER GRANTING INJUNCTIVE RELIEF
TO REMEDY UNCONSTITUTIONAL CONDITIONS IN THE
SHELBY COUNTY JAIL

This cause came to be heard on Wednesday, May 14, 1997, and Tuesday, May 20, 1997, upon which the following facts were proven.

Plaintiff Darius Little was incarcerated in the Shelby County Jail on or about September 27, 1995.

Darius Little was raped by three gang members.

There was no guard present to assist Darius Little while he was being raped.

Guards were rarely present to observe the inmates while Little was incarcerated in the Shelby County Jail.

[illegible] entered on docket sheet in compliance with Rule 58 and/or [illegible] 11/13/97.

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On April 9, 1997, this court entered a "Consent Order Designating Charles Glover Fisher, William R. Nelson, and William Garnos as Court Appointed Experts in Jail Conditions.

Mr. Charles G. Fisher is the Director of Jail Inspections at the Tennessee Corrections Institute. Mr. Fisher is a County Commissioner of Tipton County on the Budget and Finance Committee and a member of the Jail Construction Committee. Mr. Fisher knows of no way for the Sheriff to obtain funds for any additional personnel or other expenses connected with compliance with the court order other than funding through the County government.

The Tennessee Corrections Institute is responsible for setting standards, performing inspections, and providing training to officers at Tennessee jails.

Mr. Fisher has been appointed a federal court special master in several prison litigation lawsuits and has been recognized as an expert in the area of jail management and jail conditions. Mr. Fisher has inspected the Shelby County Jail since 1983.

Mr. William R. Nelson is a consultant on criminal justice who is formerly Chief of Jails Division of the National Institute of Corrections and was appointed by Chief Judge Julia S. Gibbons as a court monitor in 1989 to oversee needed changes in the Shelby County Jail.

Mr. William Garnos is the Vice-President of CSG Consultants, worked in corrections in South Dakota for nine years, ultimately obtaining the position of the number two individual in the South Dakota Department of Corrections, and has served as a jail

consultant in 50 to 60 jails in various parts of the country.

Denis Dowd was at the time of these hearings employed as Director of the Shelby County Jail and has been for over three years. Prior to that, he spent twelve years in various positions as a Superintendent in the Missouri Department of Corrections. Immediately before coming to Shelby County, he served four years as the Director of Prisons for the Oregon Department of Corrections. Since becoming Director of the Shelby County Jail three years ago, Mr. Dowd has become familiar with the Jail and its operations.

The Shelby County Jail was designed for a capacity of 1,170 beds, but currently has 2,700 beds.

The Shelby County Jail has 29 cell blocks. Most of the cell blocks are not supervised by a cell block officer for three hours per day. At the Shelby County Jail, there are 23 cells to a cell block ("pod"). The cells at the Shelby County Jail have two beds and are approximately eight feet long and six and a half feet wide.

The Shelby County Jail over the last six months has averaged taking in 189 prisoners per day. Far more prisoners come on Fridays and Saturdays than on Mondays and Tuesdays.

On a weekend night, the Shelby County Jail may have 125 to 150 inmates waiting in the intake area. These inmates, if they are not placed in holding cells, are mixed with numerous other inmates in holding tanks or spill over into the hallways until the intake process can occur.

Inmates are constantly being admitted and released at the Shelby County Jail.

The Shelby County Jail does not fully classify detainees before deciding which detainees should be housed together. During preclassification, the Shelby County Jail does not consider data on the detainee's prior criminal history from the National Crime Information Center. In the absence of a full classification system, there is the possibility that an arrestee charged with a traffic violation but with no prior criminal record can be locked up with a prisoner who has a violent criminal history.

Inmates are first housed on the lower level of the Shelby County Jail based on a preclassification system. A National Crime Information Center check is necessary for full classification and takes approximately three minutes. However, the full classification process takes longer. The Shelby County Jail has only one National Crime Information Center terminal and it is in constant use. A full classification system requires finding the detainee's prior criminal history. Under a full classification system, a detainee with a violent criminal record would not be assigned to the same cell as a detainee with no criminal history.

Violent offenders are detained on the second, third and fourth floors of the Shelby County Jail.

Shelby County Jail officers are stationed directly outside of cell blocks. Shelby County Jail officers do not have a view of the interior of the individual cells from their station. Shelby County Jail officers must go either to the catwalk, located directly behind the cells, or walk in front of the cells, to see the inside of the cells.

During each shift, a cell block officer will take a total of a one hour break from guarding the cell block.

The Shelby County Jail has a high noise level due to crowded conditions in the cell block. It is difficult for a guard to hear an inmate screaming in the cell block. A guard monitoring two cell blocks must move between different locations to view each cell block, is less likely to hear screams and has twice as many responsibilities as is normally required.

Gang involvement is very prevalent in the Shelby County Jail. Gangs known as the Gangster Disciples and the Vice Lords are present in the Shelby County Jail. Gang members are responsible for many violent acts, stabbings and rapes in the Shelby County Jail.

It can be very difficult for a guard to notice several gang members who enter another inmate's cell.

Inmates at the Shelby County Jail post their own orders and rules in the cell block which are imposed on other inmates.

The Shelby County Jail data does not account for unreported rapes and sexual assaults.

In approximately 1990, the Shelby County Jail was denied certification by the Tennessee Corrections Institute and has not been certified since that time.

The factors which will impact reducing the risk of violence and sexual assault in the Shelby County Jail include:

1. Continual supervision of the inmates;
2. Properly classifying inmates, and separating inmates who

are likely to assault other inmates;

3. Separating inmates who are likely to be victims of assault.

Increased guard supervision reduces the likelihood of physical and sexual assaults on inmates in the cell blocks... Continuous twenty-four hour supervision of the cell block should decrease physical and sexual assaults in the Shelby County Jail. Defendants' original proposed remedy called for continuous twenty-four hour guard supervision of each cell block. Defendants' original proposed plan stated that it met the requirements of the Prison Litigation Reform Act.

The cost of creating enough cells to house these inmates individually would be approximately $15,000,000.

STIPULATED FACTS

This court entered a Consent Order Stipulating Liability for Injunctive Relief Purposes Only; and Establishing Procedure for Remedy on September 12, 1996. On page 2 and page 3 of said order, the parties stipulated that there is a likelihood Darius Little shall return to the Shelby County Jail, warranting prospective injunctive relief.

CONCLUSIONS OF LAW

This court in its Consent Order Stipulating Liability for Injunctive Relief Purposes Only; and Establishing Procedure for Remedy has already concluded that the plaintiff has standing to present this cause for injunctive relief, and further that liability has been established. Specifically, the court found:

> 1. The plaintiff, Darius D. Little, shall continue to have standing to prosecute this action for injunctive relief notwithstanding his removal from the Shelby County Jail. The Court finds the doctrine of "Capable of Repetition Yet Evading Review" applicable in this cause. Further, the Court accepts the parties' stipulation that there is a likelihood Darius Little shall return to the Shelby County Jail, warranting prospective injunctive relief.
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> 2. Upon stipulation by the parties, the Court hereby finds for purposes of this injunctive relief suit only, that Darius Little's Eighth Amendment right is violated due to the risk of physical and sexual assault by other inmates in the Shelby County Jail. Defendants stipulate and consent to liability, under 42 U.S.C. § 1983 for injunctive relief.
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> 3. . . . Any injunctive relief ordered by the Court shall be narrowly drawn and extending no further than necessary to correct the violation of the Federal right as stipulated, and is the least intrusive means necessary to correct the violation of the Federal right.

(Consent Order, pp. 3-4).

On May 8, 1997, the parties filed with the court their Notice of Compromise Plan Prepared by Plaintiff's and Defendants' Expert Witnesses ("Compromise Plan"). Attached as Exhibit 1 to the Compromise Plan was a proposed court order granting injunctive relief to remedy unconstitutional conditions in the Shelby County Jail. In the Compromise Plan, the parties have agreed to several provisions of a remedy to the unconstitutional conditions at the Shelby County Jail which is narrowly drawn, extending no further than necessary to correct the violation of the federal right and which is the least intrusive means necessary to correct the violation of the federal right.

Furthermore, the court finds that where areas of disagreement between the parties was indicated in the Compromise Plan, the

plaintiff's proposed version is the least intrusive remedy that will correct the federal constitutional violation. The court finds that the Order Granting Injunctive Relief to Remedy Unconstitutional Conditions in the Shelby County Jail, entered concurrently herewith, is narrowly drawn, extending no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right.

APPLICATION OF PRISON LITIGATION REFORM ACT

The Prison Litigation Reform Act, Pub. L. No. 104-134 § 800, et seq. (currently codified at 18 U.S.C. § 3626) requires that relief ordered in jail condition cases be narrowly drawn and extend no further than necessary to correct the violation of the federal right, and be the least intrusive means necessary to correct the violation of the federal right. Cases which have interpreted the standard for granting relief in light of the Prison Litigation Reform Act ("PLRA") state that the PLRA is merely a restatement of existing law.

In Smith v. Arkansas Dept. of Correction, 103 F.3d 637 (8th Cir. 1996), the district court granted declaratory and injunctive relief to an inmate based on the unconstitutional conditions at a state prison. The injunction required the state prison to provide the necessary supervision of the open barracks and implement other prison security improvements. The Eighth Circuit affirmed the district court's grant of injunctive and declaratory relief. The Eighth Circuit stated that the PLRA did not change the existing

standard of review for injunctive relief in prison litigation:

> The district court did not have an opportunity to apply this statute in the first instance, but we are satisfied, and the parties agree, that the Act [PLRA] merely codifies existing law, and does not change the standards for determining whether to grant an injunction. See Williams v. Edwards, 87 F.3d 126, 133 (5th Cir. 1996).

Smith, 103 F.3d at 647.

The PLRA also provides the district courts with power to appoint a special master to monitor compliance with the ordered injunctive relief. The court must and does find the ordered injunctive relief is sufficiently complex to justify the cost of the special master.

By virtue of the PLRA, compensation for special masters appointed in this district is limited to $65.00 per hour. Coleman v. Wilson, 933 F. Supp. 954, 955 n.2 (E.D. Cal. 1996):

> The compensation to be allowed to a special master under this section shall be based on an hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriate[d] to the Judiciary.

18 U.S.C. § 3626(f)(4).

JEROME TURNER
UNITED STATES DISTRICT JUDGE

November 12, 1997