**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**BEAUMONT DIVISION**

| | | |
|---|---|---|
| JOSEPH CHRISTOPHER ROBERTS, Plaintiff | § | |
| v. | § | Civil Action No. 1:08-cv-406 |
| RODNEY G. COLE, II, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, JOHNNY LYNN VICKERY JR., INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AND JEFFERSON COUNTY, Defendants. | § | JURY TRIAL |

**PLAINTIFF'S RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE CRONE:

COMES NOW the Plaintiff, Joseph Roberts and files this Response to Defendant Jefferson County's Motion for Summary Judgment and would respectfully show as follows:

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## I. Nature and Stage of Proceedings

1. Every citizen of the United States has the right to be free of cruel and unusual punishment and excessive force perpetrated by the very people we as citizens have chosen to protect us. The only law by which municipalities can be held responsible, criminally, civilly or otherwise, is 42 U.S.C. § 1983. The standard for Plaintiffs is high, but where there is a clear custom and practice of using excessive force against inmates and the custom is so pervasive that the officers and their supervisors do not even know they have done anything wrong, corrective action is critical.

2. Plaintiff brought suit against Jefferson County ("The County"), and two former Jefferson County correctional officers, Rodney Cole ("Cole") and Johnny Vickrey ("Vickrey") under 42 U.S.C. §1983 and the Texas Tort Claims Act §101.021 for two separate assaults that occurred on April 5th and 6th, 2007. Both Cole and Vickrey independently and separately assaulted Plaintiff without provocation. Both officers were eventually removed from duty after Plaintiff's father complained of the incidents and both were convicted of official oppression. The County has denied any liability for the incident, despite both officers testifying that their actions were consistent with a wide-spread and pervasive practice at the Jefferson County Jail ("the Jail")of using excessive force against inmates. The incidents were also captured on closed-circuit video from two different angles for each of the two assaults. (See video, Exhibit 1). The video also shows that none of the officers at the jail were at all surprised by the assaults. The video shows a supervisor at the jail "high-fiving" another officer immediately after witnessing the second assault on Plaintiff; Plaintiff was handcuffed during the second assault. There is no

question that the assaults on Plaintiff were pursuant to an unwritten, pervasive practice – the video, and specifically the reactions of the correctional officers who witnessed two unprovoked assaults, shows that this was "business as usual" at the jail, which is confirmed by Cole and Vickrey. Both Cole and Vickrey were surprised they were reprimanded at all, given that they had seen their supervisors mistreat inmates in exactly the same way several times in the past with no repercussions.

3. Cole and Vickrey were grossly undertrained for their jobs and inadequately supervised – in fact, one of their supervisors witnessed and participated in the assaults, but was not reprimanded. They had received the minimum training under TCLEOSE and no on-the-job training at the jail. Cole and Vickrey were simply handed a packet of policies and procedures and turned loose in the jail.

4. The County filed a Motion for Summary Judgment on several of Plaintiff's claims, which this Response will address in turn. This case is set for trial on September 3, 2010. Defendant's Motion must fail because a reasonable juror could conclude, simply from watching the video, that these assaults were committed pursuant to a wide-spread and pervasive practice at the Jail, which demonstrates a conscious indifference to Plaintiff's right to be free of cruel and unusual punishment and excessive force. In addition to this evidence, both officers testified as to this practice and Plaintiff's expert has opined that the assaults were committed pursuant to a custom and practice of Jefferson County. The overwhelming evidence shows that Jefferson County's is liable to Plaintiff under 42 U.S.C. § 1983, when only a scintilla of evidence is required to show a fact issue exists for Plaintiff to prevail in this Response.

## II. Issues Presented

a. Were the assaults on Plaintiff by Cole and Vickrey perpetrated pursuant to a custom or practice of Jefferson County?

b. Did Jefferson County's failure to adequately train and supervise its officers demonstrate a conscious indifference to Plaintiff's constitutional rights?

c. Did the County fail to render medical aid to Plaintiff following the assaults?

d. Is the County liable under the Texas Tort Claims Act for Plaintiff's injuries?

**III. Statement of the Case**

5. On April 5th, 2007, Joseph Roberts ("Joseph" or "Plaintiff") was taken to the Jail because he had outstanding traffic warrants.[1] A short time after arriving at the Jail, Joseph was "booked-in" by Cole, a corrections officer at the Jail. Joseph was searched by Cole.[2] Then Cole pushed Joseph.[3] Cole then punched Joseph repeatedly in the face, splitting his lip, and bounced his head off the booking counter.[4] This assault was witnessed by no-less-than six corrections officers.[5] None of the officers look at all surprised by the incident; in fact, the incident was so routine that hardly a head turned, no one came to Joseph's aid, and the incident was unremarkable enough that officers did not even stop the phone conversations they were having.[6] The only response by Jefferson County was by the supervisor, Sgt. Doyle, who had another officer fetch him a taser to point at the Joseph.[7]

6. Joseph, now bleeding profusely from the lip, was placed in a holding cell and seen by a nurse. The County decided to release Joseph on a personal-recognizance bond and treat him at the local hospital. As Joseph was being booked out, he spit blood that had filled his mouth

[1] Exhibit 2, Woods' Deposition at 69/15 – 69/19
[2] Ex. 1 at camera 4-1, 2:57 – 6:26; Exhibit 3, Deposition of Cole p. 35 line 11 – p. 37 line 12; Exhibit 4, Deposition of Vickrey p. 55/3 – 56/5
[3] Ex. 1 at camera 4-1, 6:26 – 7:10; Ex. 3 at p. 37 line 23 – p. 39 line 3
[4] Ex. 1 at camera 4-1, 7:10 – 8:33; Ex. 3 p. 39, line 12 – 25
[5] Ex. 1 at camera 4-1, 7:10 – 8:33; Ex. 4 at 66/21 – 68/14
[6] Ex. 1 at camera 4-1, 6:10 – end; Ex. 3 at p. 40 line 1 – 16; Ex. 4 at 67/10 – 67/17, 71/7 – 71/24.
[7] Ex. 1 at camera 4-1, 7:10 – end; Ex. 2 at p. 40 line 17 – 22; Ex. 4 at 71/1 -71/12

onto the discharge papers.[8] Joseph was handcuffed at the time.[9] Vickrey grabbed Joseph and threw him into a wall.[10] Vickrey then took the bloody discharge papers and smeared them on Joseph's head.[11] Sgt. Doyle, the supervisor on duty, then "high-fived" another officer, apparently pleased with the way things were going.[12] No less than seven officers were within a couple of feet of this altercation and again none took action or looked the least bit surprised.[13] Both Cole and Vickrey finished their shifts without reprimand.[14] Cole worked four full shifts following the incident without reprimand.[15]

7. Joseph was taken to the local hospital. Despite the fact the County and its employees caused the injury to Joseph, no one made sure he was treated. In fact, he was dropped off at the hospital and left to fend for himself and pay for his own treatment.[16] After several hours of waiting for treatment, Joseph's mom picked him up and took him to another hospital. Jefferson County still has not paid for Joseph's medical bills, in violation of its own policy.

## IV. Argument and Authority

### A. Summary Judgment Standard

8. To be entitled to summary judgment, a party must show not only that there are no questions of material fact, but also that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The movant, here Defendant Jefferson County, "has the burden of showing the absence of a genuine issue as to any material fact." *Adickes v.*

[8] Ex. 1 at camera 3-2, 4:36 – 6:30; Ex. 4 at 78/18 – 80/17
[9] Ex. 1 at camera 3-2, 4:36 – 6:30; Ex. 3 at 43/10 – 43/13
[10] Ex. 1, Video camera 3-2, 4:36 – 6:30; Ex. 3, Cole 44/17 – 44/25; Ex. 4, Vickrey 78/18 – 80/17)
[11] Ex. 1, Video camera 3-2, 1:17 – end; Ex. 3, Cole 45/1 – 45/21
[12] Ex. 1, Video camera 3-2, 1:17 – end; Ex. 3, Cole 45/16 – 45/21
[13] Ex. 1, Video camera 3-2, 1:17 – end; Ex. 3, Cole 46/8 – 46/20
[14] Exhibit 3, Cole deposition 41/15 – 42/5; 46/24 – 47/20
[15] Ex. 3 at 52/18 – 52/24
[16] Exhibit 5, deposition of Capt. Maurice Cook at 52/8 -52/21; Ex. 2 at 36/3-37/2

*S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The Court must view the evidence in the light most favorable to the nonmoving party, here the Plaintiff. *Id.* The Court may not resolve conflicts in the evidence on summary judgment motions. *TFWS, Inc. v. Schaefer*, 325 F.3d 234, 241 (4th Cir. 2003). Where the Plaintiff presents evidence upon which a reasonable jury could find in favor of the Plaintiff, summary judgment in favor of the Defendant is impermissible. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

9. The County has presented very little evidence and no competent evidence to refute Plaintiff's claim that the assaults on the Plaintiff were not pursuant to an unwritten custom and practice at the Jail that was so pervasive that it is fairly considered municipal policy. The only competent summary judgment evidence cited in its motion is the affidavits of Mitch Woods and Darren Cassidy, and then only to the extent that each makes non-conclusory statements based on their personal, first-hand knowledge. Because neither Woods nor Cassidy was designated as an expert, they can only testify as to issues on which each has personal knowledge.[17] *See* Fed. R. Evid. P. 701. Mitch Woods testified that he has no personal knowledge regarding the incident or the unwritten customs and practices at the Jail.[18] So, while Woods can testify as to the written policies of Jefferson County, he cannot offer any testimony as to the customs and practices at the Jail. The remainder of the evidence the County presents is not in a form that the Court can consider. *See* Fed. R. Civ. P. 56(e).[19] Jefferson County presents the Court with absolutely **no competent evidence** to refute Plaintiff's claim that the assaults were

[17] The County did not designate any experts; all of the County's witnesses are limited to testifying about topics on which they have personal knowledge.

[18] Ex. 2 at p. 91/14-91/19, 58/8-58/14, 69/4 – 69/7, 17/10 – 17/24

[19] Under FRCP 56(e) affidavits must be based on affiant's personal knowledge. The County submitted business records affidavits, but the actual author of the reports is not the affiant and the custodian has no personal knowledge of the events. None of the reports submitted as "business records" are competent summary judgment evidence.

committed pursuant to an unwritten custom and practice of the Jail. The only evidence before the Court from the County is that the written rules for the Jail say officers should not beat up inmates, and Plaintiff does not dispute that. There are, however, unwritten rules that permit and require officers to use excessive force that several witnesses, including two of the defendants, say were so pervasive as to fairly be considered municipal policy.

**B. The Assaults were committed pursuant to an unwritten custom and practice at the Jail that was so pervasive as to have the force of law**

10. The City is liable under 42 U.S.C §1983 if Plaintiff presents more than a scintilla of evidence that the County had a custom or practice that demonstrates conscious indifference to a constitutionally protected rights and that policy was a driving force behind the constitutional deprivation. *Monell v. New York Dept. of Social Servs.*, 436 U.S. 658, 694 (1978). The Plaintiff is required to bring forth some evidence that a persistent, widespread practice of the County or its employees is common and accepted such that it fairly represents a policy of the County. *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992). Municipal liability may be premised on a municipal custom or practice "even though such a 'custom' has not received formal approval through the body's official decision-making channels." *Monell*, 436 U.S. at 694. In fact, a persistent custom or practice may constitute the municipality's policy even though it is contradictory to a charter, ordinance, regulation, or other formally promulgated policy. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 130-31 (1988). A persistent practice may constitute municipal policy whether it is carried out by the policy makers themselves, by other high-ranking officials, or by subordinate employees. *Sorlucco v. New York City Police Dept.*, 971 F.2d 864 (2nd Cir. 1992).

11. This case is not about Jefferson County's written policies; there is no dispute that if the County's written policies were enforced and/or controlling, this incident would not have

occurred. There is ample evidence that the Jail has an unwritten custom and practice to use excessive force against inmates and no evidence to the contrary. To begin with, the video itself and the reactions of the other witnessing officers is sufficient evidence to overcome summary judgment on the County's liability. A reasonable juror could conclude, simply from watching the video and the reactions of the officers and supervisors that witnessed the assaults, that assaults like the ones perpetrated on Joseph were routine at the Jail.[20]

12. Cole is a former Jefferson County corrections officer and has personal knowledge of the customs and practices at the Jail at the time of the incidents that form the basis of this suit. He is also a Defendant in this case. Cole testified in deposition that supervisors routinely hit inmates at the Jail.[21] Cole testified that abuse of inmates was a widespread practice.[22] Cole testified that one female corrections officer duct-taped a gag in a prisoner's mouth and received no discipline.[23] Cole testified that incidents like the duct-taping and his and Vickrey's assault of Plaintiff were pursuant to the "unwritten rules" for the County.[24] He testified that he was following the unwritten rules of the County during the assault, just the way he had seen his supervisors do in the past.[25] Cole testified that the assault on Plaintiff was "business as usual" at the Jail and that his supervisor, who witnessed the incident, was not upset with him at all.[26] The assault was "nothing out of the ordinary."[27]

13. Vickrey, another Defendant in this case, testified that the sergeants at the Jail

[20] Ex. 1
[21] Ex. 3 at 16/21 – 17/15
[22] Ex. 3 at 18/7 – 18/20
[23] Ex. 3 at 20/15 – 21/9
[24] Ex. 3 at 21/25 – 22/22
[25] Ex. 3 at 47/21 – 48/4
[26] Ex. 3 at 51/16 – 52/6
[27] Ex. 3 at 56/13 – 56/19

made the rules.[28] He also testified that the assaults were "business as usual" at the County Jail.[29] Vickrey testified that his supervisor, Doyle, was not upset with either Officer Cole or Vickrey.[30] The incident was so routine, and the practice of abusing inmates so accepted and widespread, that the supervisor and another county officer "high-fived" after the incident.[31] Vickrey believed he was following Jail policy throughout the assault on Joseph.[32] Vickrey was doing as he was shown.[33] In fact, he was genuinely surprised by the County's reaction to the incident because the custom was so widespread and his supervisor watched the entire incident.[34]

14. Anyone can watch the video of the incidents and conclude that these assaults were and are routine at the Jail. Captain Cook, an expert entitled to rely on the video as the basis of his opinion, testified that based on the reactions of the witnessing officers these assaults were commonplace at the Jail.[35]

15. Mitch Woods, the sheriff of Jefferson County, is a policy maker. He testified that "use of force" reports are only required when something "out of the ordinary" occurs.[36] No use of force reports were authored by any of the dozen or so Jefferson County officers that witnessed the two assaults.[37] He also testified that there are unwritten rules at the Jail; Plaintiff has already established that Woods is not qualified to testify concerning the substance of the unwritten rules.[38]

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[28] Exhibit 4, Deposition of Vickrey at 23/21 – 24/9
[29] Ex. 4 at 67/10 – 67/7;71/7- 71/24; 118/12 – 119/22
[30] Ex. 4 at 81/17 – 82/15
[31] Ex. 1 at camera 3-2 and 4-2; Ex. 4 at 82/22 – 83/4
[32] Ex. 4 at 106/3 – 106/6
[33] Ex. 4 at 108/5 – 109/4
[34] Ex. 4 at 115/21 – 116/11
[35] Ex. 5 at 37/18 – 38/7
[36] Ex. 2 at 50/4 – 51/14
[37] Ex. 2 at 76/22 – 77/6; 81/6 – 83/11
[38] Ex. 2 at 66/16 – 66/25

16. The only two people with personal knowledge of the unwritten customs and practices of the Jail that have given evidence in this case have testified that excessive force was widespread and pervasive at the Jail. The only expert designated in this case has testified that excessive force was a custom and practice at the Jail. The sheriff testified that he has no idea what the unwritten rules are, but the lack of "use of force" reports indicate that everyone at the jail considered these assaults to be routine. The video alone is sufficient evidence to overcome the County's summary judgment; a reasonable juror could conclude from the video alone that these assaults were customary at the Jail. Considering that the County has proffered no competent evidence regarding the customs and practices at the Jail, the County's motion for summary judgment cannot be granted.

**C. The County's failure to adequately train and supervise its officers demonstrated a conscious indifference to Plaintiff's known constitutional rights**

17. The County can be held liable if a policy of training (or the inadequacy thereof) causes an unconstitutional injury. *Limon v. City of Balcones Heights*, 485 F.Supp.2d 751, 753 (W.D. Tex. 2007). A policy, such as failing to provide any training beyond TCLEOSE certification, can be facially constitutional, yet still be applied in an unconstitutional manner if the application of the policy demonstrates a conscious indifference in the officers' training. *City of Canton v. Harris*, 489 U.S. 378 (1989). The Supreme Court further explained that municipal inaction, like Jefferson County's failure to give its officers any training or guidance on the Jail's written policies and procedures, subjects the County to liability where the need for additional training is "so obvious that failure to do so could properly be characterized as deliberate indifference to constitutional rights." *Id.* at 390 n. 9. Moreover, as held in *Oviatt v. Pearce*, the County is liable to Plaintiff for its failure to institute procedures to detect inmate abuse by officers. *Oviatt v. Pearce*, 954 F.2d 1470 (9th Cir. 1992).

***1. Inadequate Training***

18. In order to become a Jailer, one needs a GED, ninety-four hours of training and to pass a one-hundred question test. Jailers receive no instruction as to the policies and procedures for the institution he or she will work for; it is incumbent on the correctional facility to train its officers on its policies and procedures. To accomplish this, most facilities require newly hired jailers to complete a certified Field Officer Training ("FTO") program. Although required by the written rules for Jefferson County, the Sheriff and author of the rules does not know if there is an FTO program at the Jail or what it consists of.[39] Woods does acknowledge that the new hires are never tested over the policies and procedures or code of conduct.[40]

19. Cole went through the "training" at the Jail, which consisted mostly of watching how his superior officers handle various inmate situations. What he learned is that it is fine with Jefferson County if inmates are hit and slapped; he watched his superiors do this.[41] Cole testified that he never read the policies and procedures or the code of conduct.[42] In fact, he was never ordered to read the policies and procedures or code of conduct, nor was he ever tested over them.[43] Cole also received no training through an FTO program.[44] Despite an obvious ignorance of the written rules and constitutional standards for the use of force, Cole excelled at the Jail.[45] Based on the training Cole received, Cole believed he was well within the policies and procedures, or at least the pervasive custom, of the Jail when he punched Joseph three times in

[39] Ex. 2 at 63/25 – 65/16
[40] Ex. 2 at 66/3 – 66/6.
[41] Ex. 3 at 16/21 – 17/15
[42] Ex. 3 at 63/6 – 64/15
[43] Ex. 3 at 72/4 – 73/7
[44] Ex. 3 at 64/16 – 65/13; 22/3 – 23/21
[45] Ex. 3 at 75/7 – 76/6

the face and then slammed his head into the booking counter.[46]

20. Vickrey likewise testified that training at the Jail was almost non-existent.[47] Vickrey also received no training on the policies and procedures at the Jail.[48] He received no positive guidance from his supervisors and had to rely on instinct.[49] It comes as no surprise, but Vickrey's training was so inadequate that he did not know the constitutional standard for the use of force.[50] Based on the "training" Vickrey received at the Jail, he was genuinely surprised that he was reprimanded at all for the incident.[51]

21. Captain Cook, one of the most respected law-enforcement officials in the State, testified unequivocally that the training program (or lack thereof), constitutes a conscious indifference to inmate rights by the County.[52] Captain Cook's affidavit and exhibits thereto are hereby incorporated by reference as if set forth in full herein.

***2. Inadequate Supervision***

22. There is ample evidence that the supervision of corrections officers at the Jail at the time of the incident was so inadequate that it constituted a conscious indifference to inmate rights, and Joseph Roberts' rights in particular.

23. In this case, Sheriff Woods testified that the County may never have known about the two assaults on Joseph if Joseph's dad had not called and complained.[53] If the policies of the Jail do not allow for even the discovery of inmate abuse unless complained of by a third party, the supervision at the Jail at the highest level indicates a conscious indifference to inmates'

[46] Ex. 3 at 41/15 – 42/5; 46/24 – 47/20
[47] Ex. 4 at 28/3 – 29/9
[48] Ex. 4 at 29/19 – 31/16
[49] Ex. 4 at 38/12 – 39/16
[50] Ex. 4 at 61/7 – 61/14
[51] Ex. 4 at 115/21 – 116/11
[52] Exhibit 6, Affidavit of Capt. Maurice Cook at ¶ 3-4
[53] Ex. 2 at 78/24 – 79/24

constitutional rights. *Oviatt*, 954 F.2d at 1473-73. Moreover, Woods testified that the sergeant, in this case Officer Doyle, was in charge at the Jail and his orders must be obeyed by his subordinate officers, including Cole and Vickrey.[54] Doyle not only approved of the assaults committed against Plaintiff, he participated.[55] This supervisor was later fired for torturing another inmate at the Jail.[56] Even the written policies and procedures regarding supervision at the Jail demonstrate a conscious indifference to inmate rights; Woods testified that with the current policies and procedures for supervision, inmates can be beaten in their cells for no reason and the County would have no way of knowing.[57] This admission as to the inadequacy of the policies and procedures for supervision at the Jail is more than enough to overcome the County's Motion.

24. Captain Cook, former Chief of the Texas Rangers with fifty years of law enforcement experience, stated that the inadequacy of the County's policies with regard to supervision of its officers amounts to a conscious indifference to inmates' constitutional rights.[58] Captain Cook recognizes that the supervisor in charge the night of the incident not only witnessed the assaults, but actually celebrated after Vickrey smeared the bloody discharge papers into Joseph's hair.[59] Any reasonable juror could conclude from the video and the competent testimony of the Sheriff and Captain Cook that the policies and procedures related to supervision of officers at the Jail demonstrates a conscious indifference to the constitutional rights of inmates at the Jail. It is no wonder that neither Cole nor Vickrey believed they had done anything wrong

[54] Ex. 2 at 29/6 – 29/21
[55] Ex. 1 (Doyle is the officer with the taser and the officer who "high-fives" another officer after Vickery assaulted Plaintiff).
[56] Ex. 2 at 84/1 – 84/22
[57] Ex. 2 at 87/25 – 88/6
[58] Ex. 6 at ¶ 4-5
[59] Ex. 6 at ¶ 5

when they independently assaulted the Plaintiff; their supervisor was thrilled with what they had done. Captain Cook's affidavit and exhibits thereto are hereby incorporated by reference as if set forth in full herein.

**D. The County violated its own Policies and failed to render proper medical care to Plaintiff**

25. With regard to Plaintiff's claim that the County failed to render medical aid with conscious indifference to his constitutional rights, the County does have an adequate written policy, but again, it just is not followed. After injuring Plaintiff to the point he needed emergency care, the County simply dropped him off at the hospital where he received no treatment. The County never paid for Plaintiff's treatment.

26. Plaintiff is guaranteed by the Constitution that he will receive proper medical care, which is especially important when a corrections officer causes the injury. *See Hughes v. Noble*, 295 F.2d 495 (C.A. Ala. 1961). Here the County caused Plaintiff's injury, identified that he needed to be seen by a doctor, and then did nothing. Plaintiff had to go to a doctor after three hours of waiting for treatment at the facility where the County dropped him off. The County also left Plaintiff to pay the bill. The County provided no medical aid to Plaintiff, despite knowing that he needed it and that the County's employees caused the need.

27. Captain Cook has opined that this "failure to see it through" constitutes conscious indifference to Joseph's constitutional rights and that the failure was pursuant to a custom and practice of Jefferson County.[60]

**E. The Texas Tort Claims Act and the Officers in their Official Capacities**

28. The County is correct that, since the County answered, the suit against Cole and Vickrey in their official capacities is duplicative. Likewise, the facts developed in this case

[60] Ex. 6 at ¶ 5

clearly show that both assaults on April 5th and 6th, 2007 were intentional, as opposed to negligent. The law is clear that intentional acts are not covered by the Texas Tort Claims Act. Once the Court has ruled on the other issues raised in the County's Motion for Summary Judgment, Plaintiff will seek leave to amend his complaint to remove Cole and Vickrey in their official capacities and Plaintiff's claims against the County for violations of the Tort Claims Act.

**V. Conclusion**

29. Plaintiff, Joseph Roberts, was beaten up twice, by two different Jefferson County corrections officers on April 5th and 6th, 2007. All of the evidence before the Court indicates that Joseph was assaulted pursuant to an unwritten custom and practice of the Jail that was so pervasive as constitute official policy. The entirety of the two events was captured on closed-circuit video in the Jail and demonstrates a total lack of surprise by the officers who witnessed the events and whole-hearted approval by the supervisor on duty. Neither officer had received any training at the Jail or been through an FTO program. The only measures the County took to ensure that the new officers were familiar with the written policies and procedures was to have them sign an acknowledgment that they had read them the moment they were first handed the documents; neither officer ever read the policies and procedures. The supervision at the Jail was so grossly inadequate that the Sheriff admitted that assaults of the type Joseph received could occur without the County knowing about it. He also admitted that the County may have never learned of this incident, which was captured on video, had the Plaintiff's dad not called and complained. The County, after injuring Plaintiff, left him to fend for himself and did not pay for his treatment.

30. The County's unwritten custom of beating inmates, failing to train its officers and failing to properly supervise its officers was pervasive and accepted. These customs were the

driving force behind the assaults on Plaintiff. The County offers no credible evidence to refute these facts and the County's motion must fail. The jurors of Jefferson County have a right to know of, and judge, the actions and inaction of the County.

31. The Plaintiff respectfully prays that the County's motion for summary judgment be denied, except as specifically set forth in this Response.

Respectfully Submitted,

/s/ *Derek Merman*_____
Derek Merman, Attorney in Charge
SBN 24040110,
Robert R. Luke
SBN 00789463
Simon & Luke, LLP
2929 Allen Parkway, 42nd Floor
Houston, Texas 77019
713.335.4900 Voice 713.335.4949 Fax
ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing instrument was filed electronically with the Court on June 22nd, 2010 and all parties of record were notified thereby.

/s/ *Derek Merman*_____

**SUMMARY JUDGMENT EXHIBITS**

The following exhibits are attached as summary judgment evidence and hereby incorporated into Plaintiff's Response to Defendants' Motion for Summary Judgment.

| | |
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| Exhibit "1" | Video – Sent Federal Express to the Court on 6/21/10 |
| Exhibit "2" | Deposition of Mitch Woods, Sheriff of Jefferson County |
| Exhibit "3" | Deposition of Rodney George Cole |
| Exhibit "4" | Photograph of Lynn Vickrey |
| Exhibit "5" | Deposition of Maurice Cook |
| Exhibit "6" | Affidavit of Maurice Cook |