

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1725

THEODORE A. GARBER,

Plaintiff-Appellant,

versus

MAURICE LOWERY, ET AL.,

Defendants,

ELLIS COUNTY, TEXAS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas
(3:91-CV-0614-X)

(April 9, 1993)

Before JOLLY and DAVIS, Circuit Judges, and BRAMLETTE*, District
Judge.

PER CURIAM:**

In the light of the Supreme Court's recent decision in
Leatherman, et al. v. Tarrant Co. Narcotics Intelligence and
Coordination Unit, et al., 61 U.S.L.W. 4205 (1993), the judgment of
the district court is vacated. The plaintiff's complaint in this
case at the very least states a claim in satisfaction of Fed. R.

*District Judge of the Southern District of Mississippi,
sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions
that have no precedential value and merely decide particular
cases on the basis of well-settled principles of law imposes
needless expense on the public and burdens on the legal
profession." Pursuant to that Rule, the court has determined
that this opinion should not be published.

Civ. P. 8(a)(2) with respect to the issue concerning ratification by one or more Ellis County policymakers and with respect to conduct constituting a custom or usage under § 1983. Thus, Ellis County is not subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6). We VACATE the judgment of the district court and REMAND this case to the district court for further proceedings.

VACATED and REMANDED.