

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

99 FEB 19 AM 10:55

CLERK OF DISTRICT COURT  
S.D. OF FLORIDA - MIAMI

LILIANA CUESTA,  
Plaintiff,

vs.

THE SCHOOL BOARD OF MIAMI  
DADE COUNTY; MICHAEL ALEXANDER,  
individually, and MIAMI DADE COUNTY,  
Defendants.

CASE NO. **99-517**  
**CIV-UNGARO-BENAGES**  
MAGISTRATE JUDGE  
BANDSTRA

COMPLAINT FOR DECLARATORY RELIEF AND FOR DAMAGES

Plaintiff sues Defendants and avers as follows:

1. This is a civil rights lawsuit by a person who was associated with the Killian 9's satirical, political, and creative publication "The First Amendment," for which association she was unconstitutionally arrested and strip searched.

2. The arrest was made pursuant to official policy of the Miami Dade County School Board and violated the rights of plaintiff under the First, Fourth and Fourteenth amendments to the U.S. Constitution. The strip search was made pursuant to official policy of Miami Dade County's Department of Corrections and violated the Fourth Amendment.

Cause of Action and Jurisdiction

3. This action arises under the First, Fourth, and Fourteenth Amendments to the United States Constitution and Title 42 U.S.C. §§ 1983 and 1988. Jurisdiction is conferred on this court by Title 28 U.S.C. §§ 1331 and 1343 (3) and (4).

*[Handwritten signature]*

**Parties**

4. Plaintiff Liliana Cuesta was a student at Killian Senior High School and a contributor to the "First Amendment" at the time she was unlawfully arrested by Defendant Alexander.

5. At the time of the actions that give rise to filing of this complaint, Defendant Michael Alexander was an officer of the Miami Dade County Schools Police Department. In that capacity, he arrested plaintiff and charged her with violating Fla. Stat. 836.11, a facially unconstitutional statute. At all material times, he was acting under color of state law and pursuant to the policies and practices of the Dade County School Board.

6. Defendant School Board of Miami Dade County, Florida is responsible for the management, control, operation, administration, and supervision of all public schools in Dade County, Florida including Killian High. Its official policy mandates or encourages referring a student for arrest whenever a crime is thought to have been committed on school property. Defendant Alexander arrested Plaintiff pursuant to such policy.

7. Defendant Miami Dade County is the municipal entity under Florida law that owns and/or operates the Dade County Department of Corrections [DOC] and its pretrial detention facilities, including Turner Guilford Knight [TGK]. Pursuant to official policy of the DOC, plaintiff Cuesta was strip searched upon booking into TGK Detention Center because she had been arrested for an alleged felony. There was no particularized suspicion that a search of her nude person and bodily cavities was required for purposes of jail

security.

Statement of Facts

8. In February of 1998, the Killian 9 wrote poems, sketches essays and cartoons, including satirical writings and lampoons of authority figures for inclusion in "The First Amendment." The pamphlet was published anonymously, without attribution of any item or entry to any individual.

9. On Friday, February 20, 1998, some of the Killian 9 distributed copies of that year's edition of "The First Amendment" to other students at Killian Senior High School.

10. Principal Timothy Dawson also received a copy of the pamphlet and in the words of the police incident report "conducted an investigation." He set out to ascertain the identities of all student contributors to that year's pamphlet.

11. Mr. Dawson, pursuant to Dade County School Board Rule 6Gx13-5D-1.08 at pp. 9-12, "refer[red] criminal acts to the Dade County Public Schools Police and the local police agency for appropriate legal action." He summoned both Dade County Schools Police and Miami Dade County police officers to his office.

12. He instructed Dade County Schools Police to remove the students, one by one, from their classrooms, and to bring them to his office. He confronted each with the pamphlet, demanded to know the extent of that student's involvement in its publication, and threatened each with arrest by school police in the event the student failed to confess.

13. During interrogation, each of the Killian 9 wrote a

statement detailing his/her involvement in the pamphlet. Defendant Alexander, acting pursuant to the direction or encouragement of Mr. Dawson, arrested the students, read them Miranda rights, took further statements, and arranged for their transport to jail. The minor children were taken to Miami Dade County Juvenile Detention Center. The 18 year-olds were incarcerated at TGK jail.

14. Plaintiff and the other students were charged with a misdemeanor violation of Fla. Stat. 836.11, which prohibits anonymous publication if it "tends to expose any individual or religious group to hatred, contempt, ridicule or obloquy." To elevate that alleged offense to a felony charge permitting warrantless arrest, Defendant Alexander enhanced each charge under Fla. Stat. 775.085, Florida's "hate crime" statute, which prohibits committing an offense in a manner evidencing racial or other prejudice. The Offense Incident Reports and Complaint/Arrest Affidavits filed by Defendant Alexander identify Timothy Dawson as the victim of the alleged offenses.

15. All criminal charges against Plaintiff and other members of the Killian 9 were dismissed by the Dade State Attorney's Office. In dismissing, the State Attorney's Office issued a public statement acknowledging that the statute under which the students were arrested is unconstitutional and unenforceable.

#### **CLAIMS FOR RELIEF**

##### ***Count I: First Amendment Violations***

**[Defendants: Alexander and the Dade County School Board]**

16. Defendant Alexander violated Plaintiff's First Amendment rights of Free Speech and Free Press in arresting her under a facially invalid statute, Fla. Stat. 836.11, that purports to prohibit contemptuous anonymous pamphleteering against individuals and religious organizations. Anonymous pamphleteering has a long and honorable tradition in America predating the founding of the Republic and is protected by the First Amendment.

17. Writing that "tends to expose any individual or religious group to hatred, contempt, ridicule or obloquy" is essential to political satire and other forms of criticism and lies at the core of what is protected by the First Amendment. A statute purporting to criminalize such writing is facially invalid for overbreadth.

18. That Fla. Stat. 836.11 violated the First Amendment was clearly established law of which a reasonable law enforcement officer would have known. Anonymous pamphlets were declared to be protected by the First Amendment in McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995) and prior cases. Laws criminalizing abusive or contemptuous speech were stricken in Lewis v. City of New Orleans, 408 U.S. 913 (1972) and 415 U.S. 130 (1974) [Lewis II] and Houston v. Hill, 482 U.S. 451 (1987). Further, Fla. Stat. 836.11 was enacted in 1945; but not a single conviction appears in the Southern Reporter. Alexander's arrest of Plaintiff was objectively unreasonable.

19. In violating Plaintiff's rights under the First Amendment to the United States Constitution, Defendants directly and proximately caused Plaintiff to suffer unlawful arrest, detention,

search of her person, anguish, embarrassment and humiliation.

**Count II: Fourth Amendment Violations--Unlawful Arrest**

**[Defendants Alexander and Dade County School Board]**

20. Plaintiff repeats the averments of ¶¶ 1-15 above.

21. Defendants violated the Fourth Amendment right of Plaintiff to be free of unlawful seizure of the person in arresting her without probable cause to believe that a valid complaint of crime had been lodged by Mr. Dawson. But for application of the facially invalid Fla. Stat. 836.11, Defendant could not have arrested Plaintiff.

22. That there can be no probable cause to arrest for a non-existent crime was clearly established law of which a reasonable law enforcement officer would have known. That the reported crime was non-existent follows from the fact that Fla. Stat. 836.11 is unconstitutional for the reasons stated above in ¶¶16-18, which are here incorporated by reference. Alexander's arrest of Plaintiff was objectively unreasonable.

23. Irrespective of whether a reasonable law enforcement officer could have concluded that Fla. Stat. 836.11 was valid, Defendant Alexander still could not have arrested Plaintiff for a misdemeanor not committed in his presence without a warrant of arrest. He "produced" putative grounds for warrantless arrest by charging the hate crimes felony enhancement of Fla. Stat. 775.085. The resulting arrest for felony-level hate speech was also and independently objectively unreasonable, hate speech laws having been declared facially invalid in R.A.V. v. City of St. Paul, 505

U.S. 377 (1992).

24. In violating Plaintiff's rights under the Fourth Amendment to the United States Constitution, Defendants Alexander and Dade County School Board directly and proximately caused Plaintiff to suffer unlawful arrest, detention, anguish, embarrassment and humiliation.

**Count III: Fourth Amendment Violation--Illegal Search of the Person**

**[Defendant: Miami Dade County]**

25. Plaintiff repeats the averments of ¶¶ 1-15 above.

26. Upon being booked into the TKG detention facility, Plaintiff Cuesta was ordered to remove her clothing in order to permit jail personnel to examine her bodily orifices. This intrusive search was not justified by the nature of the alleged crime for which she was arrested and was not justified by probable cause or particularized suspicion that she was concealing contraband, weapons or anything threatening jail security.

27. The strip search of Plaintiff Cuesta was carried out pursuant to the established policy and practice of Miami Dade County in booking persons arrested for felonies, as stated in Memorandum #11-022, March 15, 1988, issued by Kevin S. Hickey, Deputy Director, Dade County Corrections and Rehabilitation Department, p.3: "Newly arrested felons ... will be completely strip searched by a certified Correctional Officer as part of the intake procedures ... ." [emphasis in the original] The written policy was supported by customary practice at TKG.

28. In violating Plaintiff's rights under the Fourth Amendment

to the United States Constitution, Defendant directly and proximately caused Plaintiff to suffer an unlawful search of the body, anguish, embarrassment and humiliation.

**PRAYER FOR RELIEF**

WHEREFORE, pursuant to the foregoing averments, Plaintiff requests the following relief:

a. Under Count I, a declaratory judgment under 28 USC §2201 that Fla. Stat. §836.11 is unconstitutional on its face and a judgment for damages against Defendant Alexander and the Miami Dade County School Board;

b. Under Count II, a judgment for compensatory damages against Defendants Alexander and the Miami Dade County School Board for unreasonable seizure of the person of Plaintiff;

c. Under Count III, a judgment against Defendant Miami Dade County awarding her compensatory damages for the unreasonable search of her body at TGK;

d. Under all counts, an award of costs including reasonable attorneys' fees pursuant to 42 USC §1988 against each Defendant jointly and severally, or apportioned in the discretion of the court; and

e. such other relief as the Court deems proper and just.

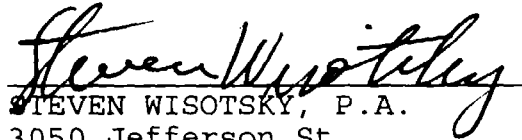
Dated: 2/17/99

PLAINTIFF LILIANA CUESTA:

x *Liliana Cuesta*

Respectfully submitted,





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COOPERATING ATTORNEYS FOR  
THE AMERICAN CIVIL LIBERTIES  
UNION OF FLORIDA, INC.  
GREATER MIAMI CHAPTER

# CIVIL COVER SHEET 99-517

CV-UNGARO-BENAGES

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p style="text-align: center;">LILIANA CUESTA</p> <p><b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> <span style="float: right;">Miami-Dade</span>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p style="font-size: 1.5em; font-weight: bold; text-align: center;">ADADE 99W 517 / UUB / TEB</p> <p><b>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</b>                  STEVEN WISOTSKY                  3050 JEFFERSON ST.                  MIAMI, FL 33133</p>	<p><b>DEFENDANTS</b></p> <p style="text-align: center;">THE SCHOOL BOARD OF MIAMI-DADE COUNTY                  MICHAEL ALEXANDER, individually, and                  MIAMI-DADE COUNTY</p> <p style="text-align: right; font-weight: bold;">MAGISTRATE JUDGE                  BANDSTRA</p> <p><b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> <span style="float: right;">Miami-Dade</span>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p>
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<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN "X" IN ONE BOX ONLY)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans - Excl. Veterans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 382 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	B SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing, Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 445 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.P. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupation Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1995ff) <input type="checkbox"/> 862 Black Lung (1923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Filed pursuant to 42 U.S.C. Sect. 1983; claims alleging violations of First, Fourth and Fourteenth Amendments of U.S. Constitution

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Unspecified

CHECK YES only if demanded in complaint. JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 2/19/99 SIGNATURE OF ATTORNEY OF RECORD Steven Wisotky

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

\$ 150.00 705364

02/19/99 TOTAL P. 01