In the Supreme Court of the State of California

In re MARTIN M., a Person Coming Under the Juvenile Court Law.	Case No. S177704
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **MARTIN M., a Minor,** Defendant and Appellant.	

Fourth Appellate District, Division Two, Case No. E045714
San Bernardino County Superior Court, Case No. J220179
The Honorable Michael A. Knish, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
SCOTT C. TAYLOR
Deputy Attorney General
MARISSA BEJARANO
Deputy Attorney General
State Bar No. 234544
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2529
Fax: (619) 645-2271
E-mail: Marissa.Bejarano@doj.ca.gov
Attorneys for Plaintiff and Respondent

TABLE OF CONTENTS

Page

Question Presented 1

Statement of Facts and Case 1

Argument 2

I. A school security officer employed pursuant to the Education Code is a public officer within the meaning of Penal Code section 148 because he is delegated a duty under law, the performance of which is an exercise of a government function 2

A. Introduction 2

B. The California Constitution's safe schools provision; the school/law enforcement partnership; and the interagency school safety demonstration act 4

C. The development of school security departments under the Education Code, school security officer training, and contract security 5

D. Penal Code section 148 7

E. Principles of statutory construction 7

F. Legislative history of Penal Code section 148 8

G. Those identified as public officers under the Penal Code 11

H. The legislative history and the Penal Code support a broad application of the term "public officer" 11

I. A public officer is one who has a duty delegated and intrusted to him under law, the performance of which is an exercise of a part of governmental functions 13

TABLE OF CONTENTS
(continued)

Page

J. A school security officer employed by a public school district under the Education Code is a public officer for purposes of Penal Code section 148 because he is delegated and intrusted a duty under law, the performance of which is an exercise of a part of governmental functions 16

K. Classifying a school security officer as a public officer accords with sound public policy 16

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

Clausing v. San Francisco Unified School Dist.
(1990) 221 Cal.App.3d 1224 4

Coulter v. Pool
(1921) 187 Cal. 181 ..... 14, 16

Curle v. Superior Court
(2001) 24 Cal.4th 1057 8

Dibb v. County of San Diego
(1994) 8 Cal.4th 1200. 15

In re Bacon
(1966) 240 Cal.App.2d 34 9

In re Eddie D.
(1991) 235 Cal.App.3d 417 ..... 12, 13

People v. Baker
(1968) 69 Cal.2d 44 8

People v. Canty
(2004) 32 Cal.4th 1266 8

People v. Jefferson
(1999) 21 Cal.4th 86 8

People v. Murphy
(2001) 25 Cal.4th 136 8

People v. Olsen
(1986) 186 Cal.App.3d 257 ..... 10, 13, 14

People v. Rosales
(2005) 129 Cal.App.4th 81 ..... 14, 15

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Education Code
- § 32260 4
- § 32261, subd. (a) 4
- § 32261, subd. (b) 5
- § 32280 5
- § 38000 ..... 6, 16
- § 38000, subd. (a) 6, 16
- § 38001.5 6
- § 38001.5, subd. (a) 6, 18
- § 38001.5, subd. (b) 7
- § 38001.5, subd. (c) 16
- § 38005 7

Penal Code
- § 4 8
- § 148 ..... passim
- § 148, subd. (a) 1, 2
- § 148, subd. (a)(1) 2, 7, 11
- § 425 15
- § 594, subd. (b)(2)(A) 1
- § 628, et seq. 5
- § 628.1 5
- § 628.2 5
- § 830, et. seq. 11
- § 830.14, subd. (a) 11, 13
- § 830.14, subd. (f) 11, 13
- § 831.4, subd. (a) 11
- § 831.6, subd. (a) 11

Welfare and Institutions Code
- § 602 1
- § 602, subd. (a) 1

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

California Constitution
art. I, § 28, subd. (f)(1) 4

OTHER AUTHORITIES

Assem. Com. on Crim. Law and Pub. Saf., Rep. on Assem. Bill No. 158 (1983) 9

Assem. Com. on Pub. Saf., Rep. on Assem. Bill No. 462, 3d reading (1987). 11

CALJIC
No. 16.100 9

Historical and Statutory Notes, West's Ann. Pen. Code, Rules (2010 ed.) foll. § 148 8

Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill No. 1626 (1997-1998 Reg. Sess.) as amended Jun. 18, 1998. 6

U.S. Dept. of Educ. & U.S. DOJ, Indicators of School Crime and Safety 2009 (Dec. 2009) 17

Lockyer & Eastin, Safe Schools Task Force Final Report (June 2000) 4

Legis. Counsel's Dig., Assem. Bill No. 1785 (1999-2000 Reg. Sess.) 5

Nieto, Security and Crime Prevention Strategies in California Public Schools (Oct. 1999) 5

Assem. Floor Analyses, 3d reading analysis of Sen. Bill No. 1626 (1997-1998 Reg. Sess.) as amended Jun. 18, 1998 6

O'Connell, California Department of Education, Letter Regarding the Governor's Budget for 2010-2011 (Mar. 4, 2011) 17

QUESTION PRESENTED

"Is a campus security officer employed by a public school district a 'public officer' for purposes of a charge of willfully resisting, delaying, or obstructing a 'public officer' in violation of Penal Code section 148?"

STATEMENT OF FACTS AND CASE

On January 30, 2008, the security department at Arroyo Valley High School in San Bernardino received a call regarding vandalism on campus. (RT 20.) School Security Officer[1] Bryan Butts responded to the scene, and San Bernardino Unified School District Police Officer Alfredo Yanez drove his patrol car around the perimeter of the school. (RT 10, 36-37.) When Officer Butts arrived at the scene, a group of students scattered. (RT 10.) The officer followed one group of students which included the minor. (RT 10-11, 21.) Officer Butts, who knew the minor, yelled at the minor by name, to stop several times. (RT 25, 27, 34.) The minor continued to run. (RT 27.) Eventually, the minor exited the campus and encountered Officer Yanez. The minor immediately submitted to Officer Yanez and was arrested. (RT 37.)

On April 25, 2008, the San Bernardino's District Attorney's Office filed a petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that the minor had resisted or delayed a public officer, a misdemeanor, in violation of Penal Code section 148, subdivision (a), and had committed misdemeanor vandalism, in violation of Penal Code section 594, subdivision (b)(2)(A). (CT 14-16.)

---

[1] The prosecution and Officer Butts, referred to Officer Butts as a "campus security officer" in the petition filed under Welfare and Institutions Code section 602 and at the jurisdictional hearing. However, as set forth in the Education Code Officer Butt's actual title is "school security officer." As such, Officer Butts will be referred to as a school security officer.

During the jurisdictional hearing, Officer Butts explained that he was employed as a school security officer and that his duties included protecting people and school property. (RT 19-20.) In contrast, Officer Yanez testified he was a police officer employed by the San Bernardino City Unified School District. (RT 36.)

On April 30, 2008, after a jurisdictional hearing, the juvenile court found that a school security officer was a public officer and found the allegation true, but found the vandalism allegation not true. The juvenile court declared the minor a ward of the court and placed him on probation in the custody of his mother. (CT 18-19.)

The minor appealed, arguing that a school security officer was not a public officer, within the meaning of Penal Code section 148, subdivision (a). The Court of Appeal agreed. The Court of Appeal reasoned that a school security officer was not a public officer for purposes of Penal Code section 148, subdivision (a)(1), because a school security officer (1) does not exercise a delegated sovereign function of government and (2) does not hold a tenured position. (Slip Opn. at p. 6.)

On January 21, 2010, this Court granted Respondent's petition for review.

ARGUMENT

I. A SCHOOL SECURITY OFFICER EMPLOYED PURSUANT TO THE EDUCATION CODE IS A PUBLIC OFFICER WITHIN THE MEANING OF PENAL CODE SECTION 148 BECAUSE HE IS DELEGATED A DUTY UNDER LAW, THE PERFORMANCE OF WHICH IS AN EXERCISE OF A GOVERNMENT FUNCTION

A. Introduction

There is no debate that public schools continue to face significant challenges related to school safety. Gangs, drugs, and weapons all play a role in threatening the safety of school children, teachers, and staff. At the

same time, property crimes such as burglaries, thefts, and vandalism on public schools continue to cost taxpayers millions of dollars. In fact, every year school districts are faced with how to address these problems and others with an ever decreasing budget, in order to provide a safe learning environment for students and teachers, uninhibited by crime. While some large school districts are fortunate to have police departments, many school districts must resort to more economical means of ensuring safety on school campuses with the limited resources available to them. The Legislature provided school districts with a crucial mechanism to increase the safety of school children and teachers, while at the same time protecting school property, when they authorized the employment of school security officers.

The Court of Appeal's decision in the instant matter, holding that school security officers employed by school districts under the Education Code are not entitled to the authority and protection granted a public officer under Penal Code section 148, must be reversed. The decision undermines the ability of these legislatively authorized school security officers to ensure safety and protect property. Further, the court's decision inhibits the already difficult task of school districts to ensure the safety of students and teachers, while at the same time protecting its property, using the most economical means available to them.

This Court should hold that a school security officer employed under the Education Code is a "public officer" for purposes of Penal Code section 148 (willful resist, delay, or obstruction of a public officer). Although neither Penal Code section 148 nor the Penal Code generally defines "public officer," the legislative history and the use of the term "public officer" in the Penal Code establish that the term was meant to be broadly defined. Broadly defined, a "public officer" is one who has a duty delegated and intrusted to him under law, the performance of which is an exercise of a part of governmental functions. Under this definition, because

a school security officer is authorized under the Education Code to insure the safety of students and staff and to protect the property on school grounds, a government function, a school security officer is a "public officer" for purposes of Penal Code section 148.

B. The California Constitution's Safe Schools Provision; the School/Law Enforcement Partnership; and the Interagency School Safety Demonstration Act

In 1982, the people enacted the Victims' Bill of Rights. Included within the initiative was a safe schools provision which states:

> Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful.

(Cal. Const., art. I, § 28, subd. (f)(1).) Although, the right is inalienable and mandatory, the provision did not set forth how the right was to be achieved. Instead, that was "left to the Legislature." (See *Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1237.)

The following year, the State Superintendent of Public Instruction and the Attorney General formed a School/Law Enforcement partnership. (See Lockyer & Eastin, Safe Schools Task Force Final Report (June 2000) at p. 3 <ag.ca.gov/publications/safeschool.pdf> (Lockyer).) The concept behind the partnership was to combine the efforts of education and law enforcement specialists to ensure safe, orderly school campuses and communities. (Lockyer, at p. 3.)

In 1985, the Legislature codified the partnership with the passage of the Interagency School Safety Demonstration Act (the Act). (Ed. Code, § 32260 et al.) In passing the Act, the Legislature first recognized "the inalienable right to attend classes on school campuses that are safe, secure, and peaceful" and at the same time, recognized "that school crime, vandalism, truancy, and excessive absenteeism are significant problems on

far too many campuses in the state." (Ed. Code, § 32261, subd. (a).) As a result, the Legislature established an interagency coordination system to assist in resolving those problems. (Ed. Code, § 32261, subd. (b).) In addition, the Act required all schools to develop a comprehensive school safety plan. (Ed. Code, § 32280.) Since the inception of the partnership, it has "provided information, training and technical assistance to schools throughout the state on school safety issues" and provided public schools with funding to emphasize "safe school planning, conflict resolution, school community policing partnerships and gang violence reduction." (Lockyer, at pp. 3-4.)

Thereafter, in 1995, in an effort to have sufficient data and information on the type and frequency of crime, in order to develop and implement school safety strategies and programs, the Legislature enacted Penal Code section 628, et seq. (See Pen. Code, § 628 et seq., repealed by Stats. 2005, ch. 677, § 49; Legis. Counsel's Dig., Assem. Bill No. 1785 (1999-2000 Reg. Sess.), as introduced.) Under Penal Code section 628.1, the Department of Education developed a standard school reporting system and under Penal Code section 628.2, all public schools were required to report crimes that occurred on school campuses. (Pen. Code, §§ 628.1 & 628.2.)

C. The Development of School Security Departments Under the Education Code, School Security Officer Training, and Contract Security

During the 1990s, despite the development of the school/law enforcement partnership and development of school safety plans, it was evident that public schools continued to be victimized by crimes against persons and property. (See Nieto, Security and Crime Prevention Strategies in California Public Schools (Oct. 1999), <www.eric.ed.gov/ERICWebPortal/recordDetail?accno=ED438704>.)

In 1996, the Legislature enacted Education Code section 38000, which gave the governing board of any school district the authority to establish a security department. (Ed. Code, § 38000, subd. (a).) The Legislative intent behind the statute was to supplement the law enforcement agencies by employing personnel "to ensure the safety of school district personal and pupils and the security of the real and personal property of the school district." (Ed. Code, § 38000, subd. (a).)

Under Education Code section 38001.5, school security officers are defined as:

> [A]ny person primarily employed or assigned . . . to provide security services as a watchperson, security guard, or patrolperson on or about premises owned or operated by a school district to protect persons or property or to prevent the theft or unlawful taking of district property of any kind or to report any unlawful activity to the district and local law enforcement agencies.

(Ed. Code, § 38001.5.)

After the passage of Education Code section 38000, the Legislature recognized that "great variations" existed with regard to the professional standards of those employed as school security officers. (See Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill No. 1626 (1997-1998 Reg. Sess.) as amended Jun. 18, 1998.) It also noted that there were "no state minimum training standards for school security officers" and that "[t]he competency of those responsible for maintaining school safety is unquestionably a significant factor in safety." (*Ibid.*; see also Assem. Floor Analyses, 3d reading analysis of Sen. Bill No. 1626 (1997-1998 Reg. Sess.) as amended Jun. 18, 1998.) As such, in order to ensure the safety of persons on or near California public schools, the Legislature implemented mandatory training to assist school security officers in dealing with "the increasingly diverse and dangerous situations" they faced. (Ed. Code, § 38001.5, subd. (a).) As a consequence, after July 1, 2000, all school

security officers employed by a school district and who worked more than 20 hours a week were required to complete a training course conducted by the Bureau of Security and Investigative Services of the Department of Consumer Affairs. (Ed. Code, § 38001.5, subd. (b).)

School security officers employed under the Education Code are not privately contracted security officers. And, in fact, privately contracted security officers may not be contracted by a school district to provide supplemental security unless an emergency exists which prevents the personnel who normally do such work from being available. (Ed. Code, § 38005.) The types of emergencies described in section 38005 include a war, epidemic, fire, flood, or work stoppage. (Ed. Code, § 38005.)

D. Penal Code Section 148

The issue before this Court is whether a school security officer employed within a security department of a school district pursuant to the Education Code, is a "public officer" for purposes of Penal Code section 148. Penal Code section 148, subdivision (a)(1) provides:

> Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(Pen. Code, § 148, subd. (a)(1).)

"Public officer" is not defined in Penal Code section 148, nor is it defined elsewhere in the Penal Code.

E. Principles of Statutory Construction

The principles governing statutory interpretation are well established. As this Court has observed, its "'role on in construing a statute is to

ascertain the Legislature's intent so as to effectuate the purpose of the law.'" (*People v. Canty* (2004) 32 Cal.4th 1266, 1276, quoting *Curle v. Superior Court* (2001) 24 Cal.4th 1057.) In approaching this task, the court will "first go to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs." (*Curle v. Superior Court*, *supra*, 24 Cal.4th at p. 1063.) To the extent ambiguity exists, a reviewing court examines the context of the language, keeping in mind the nature and obvious purpose of the statute, adopting the construction that best harmonizes the statute internally and with related statutes. (See *People v. Murphy* (2001) 25 Cal.4th 136, 142; *People v. Jefferson* (1999) 21 Cal.4th 86, 94.)

Further, the Penal Code expressly states that "[t]he rule of the common law, that penal code statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and promote justice." (Pen. Code, § 4.) At the same time, it is well settled that courts may not create an offense by enlarging a statue, or by adding or deleting words, or giving false meaning to words. (*People v. Baker* (1968) 69 Cal.2d 44, 50.)

F. Legislative History of Penal Code Section 148

Penal Code section 148 derived from section 92 of California's Crimes and Punishment Act. (See Historical and Statutory Notes, West's Ann. Pen. Code, Rules (2010 ed.) foll. § 148.) As initially enacted in 1850, section 92 made it a crime for any person to:

> [K]nowingly and willfully obstruct, resist, or oppose any Sheriff, Deputy Sheriff, Coroner, Constable, Marshall, Policeman, or other officer of this State, or other person duly authorized, in serving, or attempting to serve, any lawful process or order of

> any Court, Judge, or Justice of the Peace, or any other legal process whatsoever . . .

(Stats. 1850, ch. 99, § 92, p. 240.)

Thereafter, in 1872, when the first edition of the Penal Code was published, section 92 was renumbered to section 148. As enacted, section 148 deleted the list of the specific individuals protected by the statute and more broadly criminalized "[e]very person who willfully resists, delays, or obstructs any *public officer*, in the discharge or attempt to discharge of any duty of his office . . . ." (See Pen. Code, § 148, as enacted, emphasis added.)

Over a century later, in 1983, a California attorney, Winston Parkman, proposed amending section 148 to add "peace officer" to the statute to make it a crime to resist either a public officer or a peace officer. (Assem. Com. on Crim. Law and Pub. Saf., Rep. on Assem. Bill No. 158 (1983).) The attorney argued that the amendment was necessary because courts were mistakenly concluding that police officers were public officers. As an example, he cited *In re Bacon* (1966) 240 Cal.App.2d 34, where the Court of Appeal concluded University of California police officers were public officers. (*Id.* at p. 54.) The attorney argued that a police officer was not a public officer because, as set forth in a Connecticut Supreme Court case, public officers were defined as having 1) authority conferred by law, 2) fixed tenure of office, and 3) power to exercise some portion of sovereign functions of government. He concluded a police officer did not fit that definition.

In response, an assemblymember proposed the amendment to "codify judicial decisions" interpreting the term public officers to include peace officers. (See Assem. Com. on Crim. Law and Pub. Saf., Rep. on Assem. Bill No. 158 (1983).) Interestingly, in the staff notes section of the report, the author indicated that the use note to CALJIC No. 16.100 indicated that

the term public officer *included* those designated as peace officers in the Penal Code and as a result, the amendment had no substantive effect on the law. At the same time, the report indicated that all peace officers were not necessarily public officers. In the end, section 148 was amended to make the willful resistance, delay, or obstruction against any public officer or *peace officer* a crime. (See Pen. Code, § 148, as amended by Stats. 1983, ch. 73, § 1, emphasis added.)

Three years later, in 1986, the Second District Court of Appeal, in *People v. Olsen* (1986) 186 Cal.App.3d 257, resolved the issue of whether a paramedic employed by a private company was a "public officer" for purposes of Penal Code section 148. (*Id.* at p. 265.) In that case, the court concluded that the paramedic was not a "public officer." In reaching its decision the court recognized that the Penal Code did not define "public officer." The court then cited language from California Jurisprudence Third, suggesting that the reason "public officer" had not been defined was because the phrase was used so broadly it was incapable of being defined. (*Ibid.*) The court then relied on the definition of a "public officer" as one who occupied an office created by law, was clothed with some portion of the sovereign functions, and who had some duty to perform. (*Id.* at p. 266) In so defining a "public officer," the court distinguished a private officer as one who holds his position by contract and whose duties are performed at the instant and for the benefit of the individual or corporation employing him. (*Id.* at p. 266, fn. 5.) The court concluded that because the paramedic had been hired by a private company the record did not support a finding that he was a "public officer." (*Id.* at p. 266.)

The following year, the Tuolumne County Sheriff's Department proposed amending the statute to encompass "emergency medical technicians" because emergency medical technicians and mobile intensive care paramedics were not included within those who should not be

interfered with in the performance of their duties. (See Assem. Com. on Pub. Saf., Rep. on Assem. Bill No. 462, 3d reading (1987).) As a result, the Legislature enacted an amendment to Penal Code section 148 to include among those protected under the statute "emergency medical technician, as defined in Division 2.5 (commencing with section 1797) of the Health and Safety Code." (See Pen. Code, § 148, as amended by Stats. 1987, ch. 257, § 1.)

Thus, currently the statue provides protection for any "public officer, peace officer, or an emergency medical technician." (Pen. Code, § 148, subd. (a)(1).)

G. Those Identified as Public Officers Under the Penal Code

As set forth above, the Penal Code does not define "public officer." Notwithstanding, it expressly defines who are peace officers and sets forth other individuals who are public officers, primarily for the purpose of establishing who has authority to arrest. (See Pen. Code, § 830, et. seq.) Included in the group of those designated as "public officers" and not "peace officers" are persons hired as conductors to perform fare inspection duties by a railroad corporation that operates public commuter transit services, pursuant to Penal Code section 830.14, subdivision (a). (Pen. Code, § 830.14, subd. (f).) In addition, transportation officers "appointed on a contract basis by a peace officer to transport a prisoner or prisoners," are "public officers." (Pen. Code, § 831.6, subd. (a).) Finally, Penal Code section 831.4, subdivision (a) provides that:

> A sheriff's or police security officer is a public officer, employed by the Sheriff of a county or police chief of a city, whose primary duty is the security of locations or facilities as directed by the sheriff or police chief.

(Pen. Code, § 831.4, subd. (a).)

H. The Legislative History and the Penal Code Support a Broad Application of the Term "Public Officer"

The legislative history and those who have been classified in the Penal Code as "public officers" evidences that the term "public officer" was meant to have broad application.

The crime of resisting, as first enacted in section 92 of the Crimes and Punishment

Act, protected all persons who were cloaked with some authority to carry out any lawful or legal process. Although the Legislature specifically identified some of those individuals, namely, the Sheriff, Deputy Sheriff, Coroner, Constable, Marshall, and Policeman, it also set forth a catchall provision to protect any officer of the state or any other person duly authorized to serve any lawful or legal process. Thus, the language used by the Legislature demonstrates its intent that all persons who were authorized to serve any legal process or arrest others be protected.

Thereafter, when the Penal Code was enacted in 1872, the Legislature deleted the specific references to those protected under the statute, and more broadly made it a crime to resist, delay, or obstruct *any public officer*, "in the discharge or attempt to discharge any duty of his office." This Court should find that the Legislature's deletion of specific persons and the use of the term "public officer" signaled the Legislature's continued intent to give the statute it broadest application.

In addition, this Court should find that the later amendments to the statute to expressly protect "peace officers" and "emergency medical technicians" were meant to clarify the scope of the statute. And, the fact that the amendments were passed does not mean that peace officers and emergency medical technicians were not public officers. In fact, at least one court has noted that "all peace officers are public officers." (See *In re*

Eddie D. (1991) 235 Cal.App.3d 417, 422.) While also recognizing, that "all public officers are not peace officers." (*Ibid.*)

Further, the Legislature's intent that the term "public officer" be given its broadest application is supported by a review of those who have been classified in the Penal Code as public officers. As indicated in subsection D, *ante*, the Penal Code has classified fare collectors for public transit systems, prisoner transportation officers, and sheriff and police security guards, all to be public officers. (See Pen. Code, §§ 830.14, subds. (a) & (f); 831.6, subd. (a); & 831.4, subd. (a).) Thus, the Penal Code generally supports the argument that the term "public officer" was meant to have broad application.

I. A Public Officer is One Who Has a Duty Delegated and Intrusted to Him Under Law, the Performance of Which is an Exercise of a Part of Governmental Functions

Although the legislative history of section 148 and the Penal Code itself, support a broad application of the term "public officer," the issue remains whether a school security officer is a "public officer" for purposes of Penal Code section 148. As will be set forth below, a school security officer should be classified as a "public officer" because he has a duty delegated to him under law, the performance of which is an exercise of a part of governmental functions.

The issue of how to define a public officer under the Penal Code has been presented to at least one appellate court. In *People v. Olsen*, the Second District Court of Appeal relied on the definition of a public officer set forth in California Jurisprudence Third. That definition provides:

> One of the primary requisites [of a public office] is that [it] be created by the constitution or authorized by some statute. And it is essential that the incumbent be clothed with some portion of the sovereign functions of government, either legislative, executive, or judicial to be exercised in the

> interest of the public. There must also be a duty or service to be performed, and it is the nature of this duty, not its extent, that brings into existence a public office and a public officer.

(*People v. Olsen*, *supra*, 186 Cal.App.3d at pp. 265-266.)

The above definition was derived from this Court's decision in *Coulter v. Pool* (1921) 187 Cal. 181. In *Coulter*, this Court found:

> The words "public office" are used in so many senses that it is hardly possible to undertake a precise definition of the meaning and purpose of the phrase which will adequately and effectively cover every situation. It is far less difficult to conceive and comprehend the requirements which characterize a public office than it is to formulate a definition thereof which will have universal application and be entirely free from fault. Its definition and application depend, not upon what the particular office in question may be called, nor upon what a statute may call it, but upon the power granted and wielded, the duties and functions performed, and other circumstances which manifest the true character of the position and make and mark it a public office, irrespective of its formal designation.

(*Id.* at p. 186.) This Court then recognized that a public office was "ordinarily and generally defined to be the right, authority, and duty created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is vested with power to perform a public function." (*Id.* at pp. 186-187.) Notwithstanding, this Court acknowledged that the most general characteristic of a public officer "is that a duty is delegated and intrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting." (*Id.* at p. 187.) This Court also noted that there were other incidents of public office such as a fixed tenure of position, an oath of office, and a public bond. (*Ibid.*)

Decades later, in 2005, the Second District Court of Appeal addressed the issue of how to define a "public officer" in *People v. Rosales* (2005)

129 Cal.App.4th 81. In that case, the defendant was the superintendent of a county park, who was convicted of negligent handling of public moneys by an "officer." (*People v. Rosales, supra,* 129 Cal.App.4th 81.) The issue presented on appeal was whether the defendant was an "officer" for purposes of Penal Code section 425[2]. The Attorney General argued that "a government employee such as defendant is a public officer." (*Id.* at p. 85.) The Court of Appeal disagreed. In reaching its opinion, the court resorted to a definition of the term set forth in a civil case, *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200. (*People v. Rosales, supra,* 129 Cal.App.4th at p. 86.)

In *Dibb*, the issue before the court was whether members of a citizens review board were public officers. (*Dibb v. County of San Diego, supra,* 8 Cal.4th at p. 1211. In holding citizen review board members are public officers the court held:

> "[T]wo elements now seem to be almost universally regarded as essential" to a determination of whether one is a "public officer": "First, a tenure of office which is not transient, occasional or incidental," but is of such a nature that the office itself is an entity in which incumbents succeed one another. . . and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial."

(*Id.* at p. 1212)

This Court should find that the term "public officer" as construed in *People v. Rosales*, is too narrow as applied to Penal Code section 148. A comprehensive review of the legislative history of Penal Code section 148, coupled with a review of the use of the term "public officer" in the Penal

---

[2] Every officer charged with the receipt, safe keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of a felony. (Pen. Code, § 425.)

Code, reveals the Legislature intended the use of the term "public officer" to apply broadly. As such, this Court should find that for purposes of Penal Code section 148 a "public officer" is any person delegated a duty under law, the performance of which is an exercise of a part of governmental functions as set forth by this Court in *Coulter v. Pool*. At the same time, this Court should find for purposes of Penal Code section 148, a person may serve as a "public officer" without tenure, oath, or a bond.

J. A School Security Officer Employed by a Public School District Under the Education Code is a Public Officer for Purposes of Penal Code Section 148 Because He is Delegated and Intrusted a Duty Under Law, the Performance of Which is an Exercise of a Part of Governmental Functions

Because a school security officer employed by a public school district under the law is delegated sovereign duties, this Court must find he is a public officer for purposes of Penal Code section 148.

The position of a school security officer is authorized by Education Code section 38000, which authorizes school districts to establish security departments. (Ed. Code, § 38000, subd. (a).) Second, those filling the positions of school security officers are cloaked with the duties of protecting persons and property and reporting unlawful activity to the school district and law enforcement agencies. (Ed. Code, § 38001.5, subd. (c).) As a result, school security officers occupy positions authorized by law and the nature of their duties require them to perform a sovereign function of government, thus, they are "public officers."

K. Classifying a School Security Officer as a Public Officer Accords with Sound Public Policy

In criminalizing resistance against "public officers," it is evident the Legislature recognized not only the importance of protecting those tasked with serving legal processes and arresting others but also in keeping the

peace, protecting the public and public property. As such, when Penal Code section 148 was amended and incorporated in the Penal Code, rather than specifically designating specific individuals protected under the statute, the Legislature protected all "public officers." This Court should find that the Legislature's use of the term "public officers" was meant to be all encompassing and to apply to those who are authorized by law and cloaked with performing any government function under law. Such an interpretation is sound and furthers the purpose of the statute which is generally to promote the public safety.

This public policy is particularly compelling in our public schools which continue to face budget cuts and, at the same time, continue to see a rise in criminal offenses on school campuses. (See O'Connell, California Department of Education, Letter Regarding the Governor's Budget for 2010-2011 (Mar. 4, 2011) <http://www.cde.ca.gov/nr/el/le/yr10ltr0304b.asp>; San Bernardino City Unified School District, Crime Statistics <http://www.sbcusd.com/index.aspx?nid=551.>) In fact, during the 2007-2008 school year, the San Bernardino City Unified School District experienced an increase in robberies (86), batteries on school property (24), and fights (795). (San Bernardino City Unified School District, Crime Statistics <http://www.sbcusd.com/index.aspx?nid=551.>) And, nationally, during the 2007–2008 school year, among students ages 12–18, there were about 1.5 million victims of nonfatal crimes at school, including 826,800 thefts and 684,100 violent crimes (simple assault and serious violent crime). (See U.S. Dept. of Educ. & U.S. DOJ, Indicators of School Crime and Safety 2009 (Dec. 2009), available at http://www.campussafetymagazine.com/News/?NewsID=3628.)

The instant case is a perfect example of the type of situations which arise every day on public schools. Here, both the school security officer

and the school police officer responded to a report of vandalism. The school security officer responded on bicycle and the school police officer in his patrol car. The school security officer arrived on the scene first, a group of students scattered, he recognized the minor, and ordered him to stop. The minor ignored the school security officer and was later apprehended by the school police officer as he exited the campus. The school security officer and school police officer worked together. Based on the lack of resources available to public schools, there will be an ever growing need to supplement school and local police departments with school security officers to ensure the safety of persons and property on public schools.

With that purpose in mind, legally enforceable obedience to the directions of school security guards and protection of those officers from resistance is required for the officers to perform their duties, just as it would be for any public officer. It serves as both a sword to affect their entrusted authority to protect students and school staff and school property and as a shield to deter resistance to their just exercise of their authority. In this regard, there is no meaningful distinction between security officers and peace officers. Consequently, students and any other person on a school campus should be required to give greater deference or obedience to a school security officer than others, such as a janitor. If not, school security officers will be inhibited in performing their duties of protecting both persons and property from the "increasingly diverse and dangerous situations." (Ed. Code, § 38001.5, subd. (a).)

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court reverse the judgment of the Court of Appeal and find that a school security officer employed by a public school district under the Education Code to protect the property and persons of the school is a "public officer" for purposes of Penal Code section 148.

Dated: March 19, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
SCOTT C. TAYLOR
Deputy Attorney General

MARISSA BEJARANO
Deputy Attorney General
Attorneys for Plaintiff and Respondent

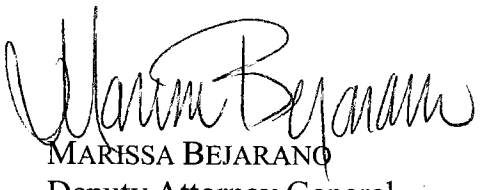
SD2008801282
70262893.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 5,579 words.

Dated: March 19, 2010

EDMUND G. BROWN JR.
Attorney General of California



MARISSA BEJARANO
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **The People of the State of California v. Martin M., a Minor**
Case No.: **S177704**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 19, 2010, I served the attached by placing a true copy there **RESPONDENT'S OPENING BRIEF ON THE MERITS** of enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Lauren E. Eskenazi
Attorney at Law
11693 San Vicente Boulevard
Suite # 510
Los Angeles, CA 90049
Counsel for Appellant, 2 copies

Tressa S. Kentner, Court Executive Officer
San Bernardino County Superior Court
Appeals & Appellate District
Deliver to the Hon. Michael A. Knish, Judge
401 North Arrowhead Avenue
San Bernardino, CA 92415-0063

Court of Appeal of the State of California
Fourth Appellate District
Division Two
3389 Twelfth Street
Riverside, CA 92501

The Honorable Michael A. Ramos
District Attorney
San Bernardino County District Attorney's Office
316 North Mountain View Avenue
San Bernardino, CA 92415-0004

and I furthermore declare, I electronically served a copy of the above document from Office of the Attorney General's electronic notification address ADIEService@doj.ca.gov on March 19, 2010 to Appellate Defenders, Inc.'s electronic notification address eservice-criminal@adi-sandiego.com.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 19, 2010, at San Diego, California.

C. Pasquali
Declarant

C. Pasquali
Signature

SD2008801282
70253337.doc