



## Calling the police for welfare checks: Privileged communication or harassment?

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**F**or victims of crimes and domestic abuse, calling the police can be a life-saver. A quick police response can protect adults and children alike, and no questions are raised. But what about the reverse – when the call to the police is placed as a pretext by an abuser? This is the issue addressed in the recent case *Jan F. v. Natalie F.*, 96 Cal.App.5th 583, 594-95 (2023).

### The legal battle

Jan F. involved the parents of two minor children who had a custody and visitation order that provided for video calls between the father and the children twice a week at 8:00 p.m.

When the mother sought an order allowing her to take the children to New York for the holidays, it was denied, but the father's weekly visits were suspended pending co-parenting therapy. The order for the two video calls per week remained in place.

At the same time, the mother began residing at an undisclosed location provided by a domestic violence support

organization. The father did not know where the mother was and whether she had taken the children to New York, despite the court ruling against her doing so. The two weekly video calls were the father's only contact with the children. During December, when video calls did not take place, the father called the local police to request welfare checks on the minor children. The calls were made Dec. 23, Dec. 25, Dec. 28 and Dec. 30, during the holiday period when the mother had sought to be in New York.

### Legal questions: harassment or First Amendment protection?

In January, the mother sought a restraining order against the father based, in large part, on the telephone calls to the police. The mother alleged that the father was making false police reports to the police, claiming that she had taken the children out of the state in violation of court orders, and that his conduct was harassing and abusive.

The trial court denied the restraining order, stating that the

evidence was insufficient to establish that the calls were harassing. At the same time, the trial court voiced concern over whether calls to the police were constitutionally protected. *Id* at 590.

The mother appealed the restraining order denial, arguing that the trial court had erroneously denied the restraining order based on First Amendment concerns. The appellate court found that the trial court's denial had not been on First Amendment grounds, even though it had voiced concerns over the issue, and that calls to the police for the purpose of harassment were not constitutionally protected. "[W]e observe 'the First Amendment does not guarantee the right to harassment of another.' ... Nor does restricting speech that is abusive under the DVPA 'amount to a prohibited restraint of protected speech.' ... " "[t]he "protection of innocent individuals from fear, abuse or annoyance at the hands of persons who employ the telephone, not to communicate, but for other unjustifiable motives," is ... a compelling interest" " for

which the First Amendment must " 'give way.' " Thus, to the extent Father called the police to conduct welfare checks without a legitimate basis for the purpose of harassing Mother, he had no First Amendment right to do so." *Id* at 594-95 (citations omitted).

The appellate court reversed and remanded for an evidentiary hearing to determine whether the father's calls to the police for welfare checks did or did not have a legitimate basis.



**Hon. Christine Byrd (Ret.)** is a retired judge from the Los Angeles County Superior Court and is an arbitrator, mediator and discovery referee with JAMS in Los Angeles.

## Conflicting precedents

The Jan F. holding that calls to the police must have a legitimate basis, otherwise they can be deemed harassment, is contrary to the California Supreme Court case *Hagberg v. California Fed. Bank*, 32 Cal.4th 350 (2004). Hagberg held that communications to the police are privileged, “without respect to the good faith or malice of the person who made the statement.” *Id* at 361.

In Hagberg, a bank employee called the police to report that a customer was trying to cash an invalid check. The police arrived and detained and handcuffed the customer. The check turned out to be valid, and the customer was released after about 20 minutes. The customer sued the bank over the incident. In holding that the bank could not be sued, the Hagberg decision relied not on the familiar “freedom of speech” language in the First Amendment, but instead on the right “to petition the government for redress of grievances,” which includes communicating with the police. The decision emphasizes the First Amendment right and its support in Civil Code § 47(b), “the absolute privilege established by section 47(b) serves the important public policy of assuring free access to the courts and other official proceedings. ... [T]he effective administration of justice and the citizen's right of access to the government for redress of grievances would be threatened by permitting tort lia-

bility for communications connected with judicial or other official proceedings. Hence, without respect to the good faith or malice of the person who made the statement, or whether the statement ostensibly was made in the interest of justice, ‘courts have applied the privilege to eliminate the threat of liability for communications made during all kinds of truth-seeking proceedings: judicial, quasi-judicial, legislative and other official proceedings.’” *Id* at 371-72. Hagberg recognized one exception to the privilege; namely, that statements to the police “can be the basis for tort liability only if the plaintiff can establish the elements of the tort of malicious prosecution.” *Id* at 355.

Hagberg did not address the constitutionality of a prior restraint against calls to the police, but at least one court of appeal case reversed an injunction (not a domestic violence restraining order) that prohibited an ex-spouse from contacting the sheriff's department, where her ex-husband was a deputy, except to call “911 to report criminal conduct,” on the grounds that the injunction was overbroad and placed a “substantial burden on [the ex-spouse's] constitutional petitioning rights.” *Evans v. Evans* 162 Cal.App.4th 1157, 1171 (2008). “Private citizens have the fundamental right to present concerns to government agencies, particularly an agency that has law enforcement jurisdiction over the area in which the citizen resides.

(Citations omitted.) Whether the agency finds these concerns to be valid or substantiated is, of course, a different question.” *Id* at 1172 (citations omitted).

## The role of swatting and the abuse of emergency services

Recent amendments to Civil Code § 47(b) pose questions about the holdings in both Hagberg and Jan F. When Hagberg was issued, false calls to the police of an emergency, conduct commonly called swatting, was a criminal act under Penal Code § 148.3 and could result in prosecution, but it was privileged for civil litigation purposes. In swatting, the caller reports a nonexistent emergency such as a bomb threat, shooting or hostage situation. The name “swatting” comes from the fact that the call often results in a heavily armed response from a SWAT (special weapons and tactics) team. Whether the false report is a misdemeanor or a felony depends on whether anyone sustains serious bodily injury or death as a result of the police response.

Swatting is often seen as a prank, but it has become a widely used harassment technique. In August 2024, the U.S. attorney for the District of Columbia charged two people with a swatting scheme that targeted 61 public officials and 40 private individuals – including members of the U.S. House of Representatives and Senate, Cabinet-level executive branch officials, senior officials

of federal law enforcement agencies and state officials – over a four-year period. In December 2024, the U.S. Capitol Police chief testified that over 50 members of Congress had been victims of swatting attacks just over the past month.

## The future of welfare check requests in family law

In 2020, the language of Section 47 was amended to allow civil claims based on swatting. Stats. 2020, c. 327 (A.B. 1775) (“Existing law on false police reporting does not address the growing number of cases in which peace officers are summoned to violate the rights of individuals for engaging in everyday activities ... [T]his act will allow those who have been subject to unfair and prejudicial 911 emergency system calls to regain their agency by seeking justice and restitution through the criminal and civil court system.”)

With false calls to the police no longer protected by privilege, the treatment of requests for welfare checks is unclear. Whether Jan F. and its “no legitimate basis” standard will be seen as an outlier or the beginning of a family law exception to the constitutional issues surrounding calls to the police remains to be seen.

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