

The Local Government LIABILITY BEAT



PRESENTED BY LOCAL GOVERNMENT RISK MANAGEMENT SERVICES INC - A SERVICE ORGANIZATION OF
THE ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA AND THE GEORGIA MUNICIPAL ASSOCIATION RISK MANAGEMENT PROGRAMS

U.S. SUPREME COURT: WHEN DOES AN ANONYMOUS REPORT AMOUNT TO REASONABLE SUSPICION?

In *Navarette v. California*, the United States Supreme Court examined the validity of a vehicle stop based upon an anonymous 911 caller's report that the vehicle in question had just run the caller off the road. The issue before the Court was whether or not the anonymous call in this case amounted to reasonable suspicion which would justify a stop.

It is noted that this case is a midway point between *Alabama v. White*, where an anonymous informant gave detailed information concerning Ms. White's future activities with respect to the sale of drugs which law enforcement was able to corroborate before making the stop, and *Florida v. J.L.*, where the anonymous caller merely provided the description of J.L. and his location and the fact that he was in possession of a firearm. The Court concluded that the stop of White was justified because the informant provided detailed information regarding future conduct which law enforcement corroborated before the stop, while the stop of J.L. was not good because anyone could make a phony call providing description and location.

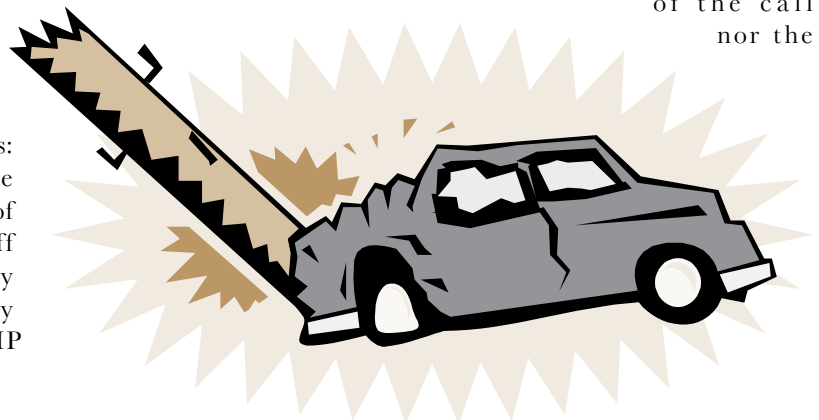
The Court outlined the facts as follows:

On August 23, 2008, a Mendocino County 911 dispatch team for the California Highway Patrol (CHP) received a call from another CHP dispatcher in neighboring Humboldt County. The Humboldt County dispatcher relayed a tip from a 911 caller, which the Mendocino County team recorded as follows: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five [minutes] ago." The Mendocino County team then broadcast that information to CHP officers at 3:47 p.m.

A CHP officer heading northbound toward the reported vehicle responded to the broadcast. At 4:00 p.m., the officer passed the truck near mile marker 69. At about 4:05 p.m., after making a U-turn, he pulled the truck over. A second officer, who had separately responded to the broadcast, also arrived on the scene. As the two officers approached the truck, they smelled marijuana. A search of the truck bed revealed 30 pounds of marijuana. The officers arrested the driver, petitioner Lorenzo Prado Navarette, and the passenger, petitioner José Prado Navarette.

Petitioners moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity.

It is noted that the question at issue is when does an anonymous tip amount to reasonable suspicion and what factors can an officer look to in determining when reasonable suspicion exists. The Court noted that prosecutor did not introduce the recording of the call nor the



dispatcher or caller at the suppression hearing notwithstanding the fact that the caller in this case had identified herself, thus the information was treated as anonymous tip throughout this case. It can be concluded that if the caller, the dispatcher, or the recording, had been introduced by the prosecutor, it is unlikely that this case would have ever been heard by the Court.

In its analysis the Court wrote:

The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” The “reasonable suspicion” necessary to justify such a stop “is dependent upon both the content of information possessed by police and its degree of reliability.” The standard takes into account “the totality of the circumstances—the whole picture. Although a mere “hunch” does not create reasonable suspicion, the level of suspicion the standard requires is “considerably less than proof of wrongdoing by a preponderance of the evidence,” and “obviously less” than is necessary for probable cause.

These principles apply with full force to investigative stops based on information from anonymous tips. We have firmly rejected the argument “that reasonable cause for a[n] investigative stop] can only be based on the officer’s personal observation, rather than on information supplied by another person.” Of course, “an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.” That is because “ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations,” and an anonymous tipster’s veracity is “‘by hypothesis largely unknown, and unknowable.’” *Ibid.* But under appropriate circumstances, an anonymous tip can demonstrate “sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.”

Applying the rules governing anonymous tips to the facts of this case the Court noted:

The initial question in this case is whether the 911 call was sufficiently reliable to credit the allegation that petitioners’ truck “ran the [caller] off the roadway.” Even assuming for present purposes that the 911 call was anonymous, see n. 1, *supra*, we conclude that the call bore adequate indicia of reliability for the officer to credit the caller’s account. The

officer was therefore justified in proceeding from the premise that the truck had, in fact, caused the caller’s car to be dangerously diverted from the highway.

By reporting that she had been run off the road by a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925—the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip’s reliability. An informant’s] explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case. A driver’s claim that another vehicle ran her off the road, however, necessarily implies that the informant knows the other car was driven dangerously.

There is also reason to think that the 911 caller in this case was telling the truth. Police confirmed the truck’s location near mile marker 69 (roughly 19 highway miles south of the location reported in the 911 call) at 4:00 p.m. (roughly 18 minutes after the 911 call). That timeline of events suggests that the caller reported the incident soon after she was run off the road. That sort of contemporaneous report has long been treated as especially reliable. In evidence law, we generally credit the proposition that statements about an event and made soon after perceiving that event are especially trustworthy because “substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation.” Another indicator of veracity is the caller’s use of the 911 emergency system. A 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity.

It is noted that all of the Court’s assertions above related to the reliability of the tip, the Court then pointed out that a reliable tip does not justify a stop unless the reliable tip amounts to reasonable suspicion to believe that criminal activity is afoot. Thus, the Court then turned to analyze whether the tip that a truck had just ran another motorist off the road was a sufficient basis to establish reasonable suspicion to believe criminal activity, such as impaired driving was occurring. The Court noted that certain driving behaviors would lead a reasonable officer to believe that impaired driving was occurring. The Court went on to assert that a reliable tip of dangerous driving behavior would support reasonable suspicion of impaired driving.

The Court wrote:

Running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues. See Visual Detection of DWI Motorists 4-5. And the experience of many officers suggests that a driver who almost strikes a vehicle or another object—the exact scenario that ordinarily causes “running [another vehicle] off the roadway”—is likely intoxicated. As a result, we cannot say that the officer acted unreasonably under these circumstances in stopping a driver whose alleged conduct was a significant indicator of drunk driving.

The Court noted that: reasonable suspicion “need not rule out the possibility of innocent conduct.

Finally, the officer’s failure to observe additional suspicious conduct during the short period that he followed the truck did not dispel the reasonable suspicion of drunk driving, and the

officer was not required to surveil the truck for a longer period.

The majority (5-4 decision) noted that this case was a close call. In writing for the dissent, Justice Scalia outlined his concern that officers would take the majority decision to stand for the proposition that officers will believe that reasonable suspicion with respect to a vehicle stop exists anytime they have an anonymous report of careless driving behavior.

Bottom Line

Anonymous reports may support reasonable suspicion to make a vehicle stop however two essential components must be met:

- The anonymous report must have some indicia of reliability going beyond simply describing location and description.
- The reliable anonymous information must add up to reasonable suspicion to believe that criminal activity is afoot.

SAFETY COMMITTEES

Meeting Objectives

To highlight the value and function of safety committees in reducing accidents, improving workplace safety, and minimizing workplace liability. The result should be greater involvement in and support for safety committee efforts.

Introduction/Overview

Safety committees are an effective way to make workplaces safer. While safety committees have a variety of structures and roles, they have one thing in common: employees and management come together to find ways to prevent accidents, injuries, and minimize liability issues. The benefits for all concerned are obvious: employees have a safe workplace, employers save money on lost work time workers' comp costs, and property and liability losses.

A good safety committee has the support and wholehearted participation of management and employees. Some safety committees develop and implement safety programs. Others provide recommendations to management, which has the resources and authority to implement the changes on the job.

Safety committees are effective because they combine the knowledge, enthusiasm, and effort of people with a variety of knowledge, expertise, and perspectives. Those with experience in a job or work area know what the hazards or potential hazards are and often have ideas about how to control them. Those who are less familiar with a job or area play a vital role, too—taking a fresh look at what people on the scene may take for granted.

We’re going to look at the structure and operations of safety committees, what they need to be effective, and how you can help—whether you’re a committee member or not.

The Georgia Municipal Association (GMA) and the Association County Commissioners Georgia (ACCG) thru Local Government Risk Management Services (LGRMS) encourage members to adopt safety committees as part of your overall safety and loss control efforts.

Protection Against Hazards

A safety committee alone cannot keep a workplace safe. It must function as part of a total safety program designed



to protect all employees from accidents and work-related injuries and illnesses. Committee members, who represent workers and management, work as a team. Every member must take an active role and show strong support for safety practices and goals.

The number of committee members and how they're selected varies from one local government to another. Safety committees usually have a goal or goals, such as reducing the number of accidents, identifying existing or potential hazards or assuring compliance with safety rules. They meet on a regular schedule and follow an agenda. Generally, the committee elects a chair as well as a person to write and distribute minutes of the meetings.

While safety committees may handle a wide variety of functions and projects, some of their more common general roles include:

- Sharing and promoting a commitment to safety.
- Exchanging information and expertise.
- Helping to set and/or meet safety goals.
- Brainstorming on health and safety issues.
- Identifying and/or implementing ways to make the workplace safer.
- Keeping up-to-date on new hazards, protective measures, safety laws, and safety issues.
- Communicating employee safety concerns to management.
- Communicating employer safety policies and goals to employees.
- Setting a good safety example for others.

The committee translates those general roles into more specific functions. The committee may, for example, review accident statistics and try to identify accident trends, causes, and preventive measures. The committee might also examine ways to improve safety training.



Among other tasks often performed by safety committees are:

- Investigating accidents or near-misses.
- Inspecting the workplace, or some parts of it, to identify hazards and safety concerns.
- Developing recommendations or plans for controlling or eliminating hazards.
- Responding to or reviewing employee safety complaints.
- Identifying training needs and/or participating in safety training programs.
- Creating or updating a safety handbook.
- Encouraging all employees to follow safety rules.

For example, a committee might be responsible for inspecting the workplace for hazards. In that case, they would develop or obtain an audit checklist and use it for a series of wall-to-wall safety inspections of specific areas of the workplace.

Each inspection would look for every potential hazard in the particular area, from tripping hazards left on the floor, to burned-out lights, broken ladders, or unlabeled chemical containers. The inspection would look at unsafe acts as well as unsafe conditions.

After an inspection, the committee reviews what was discovered, reports on the hazards identified, and suggests ways to reduce or eliminate those hazards. That might mean improving maintenance, rearranging the work area, replacing equipment, providing refresher training, etc. Later, committee members might follow up to see if the area is safer.

These are just examples of a safety committee's possible tasks. But the most important role for most safety committees is probably to serve as the organization's safety champions. Each committee member should believe safety is important, translate that belief into concrete actions, and act as a safety role model and conscience for others in the organization.

Safety Procedures

Becoming a safety committee member is both a big responsibility and a way to make a real difference in your workplace and in people's lives.

Safety committee membership takes some effort. If you are considering taking part, you might want to ask yourself some questions:

- Do I have a real interest in safety issues?
- Do I believe that safe work habits are important?
- Do I routinely follow safety procedures and rules?
- Do I have time to attend committee meetings and follow through on assignments?
- Am I willing to report unsafe conditions and speak to other employees about their unsafe acts?

- Am I responsible and dependable enough to complete my committee assignments properly and on time?
- Am I willing to listen to other employees' safety concerns, questions, and ideas?
- Can I work effectively on a team?
- Am I willing to take an active role in safety training?

As these questions demonstrate, joining a safety committee is a serious decision. It's also a worthwhile one. Not only do you help keep the workplace safe, you're likely to build your knowledge and understanding of our business and industry and expand your contacts within the organization.

You don't have to be a member to help contribute to a safety committee's success. In fact, the committee really needs everyone's cooperation and input to do its job thoroughly.

Cooperate with the committee when members are performing their assignments. If, for instance, they're investigating an accident or hazard report, tell them what you know about incidents or concerns. Direct them to other people or information sources that might be helpful.

If the committee is implementing changes designed to control or eliminate hazards they also need your cooperation. Remember, their actions are the result of investigation, analysis, and broad input. Their purpose is to comply with safety laws and keep us all safe.

You can also help safety committees perform their jobs by:

- Looking out for and reporting potential hazards.
- Following safety rules, policies, and procedures.
- Recognizing and treating safety as your concern, too—not just the responsibility of committee members.

Safety committee assignments take time and effort. On occasion, this may take members away from their regular jobs. If you can, try to pitch in to help them balance their two important responsibilities. Of course, if the committee work regularly puts an excessive burden on the member's co-workers, something will have to give. If you feel this is a problem, talk to the person and/or your supervisor about finding a better balance.

Suggested Discussion Questions

1. Why are safety committees valuable?
2. What kinds of roles could safety committees perform here?
3. What qualities should a safety committee member have?
4. How can safety committees help us improve our safety training efforts?
5. Have you ever served on a safety committee? If so, what were the pros and cons of the experience?
6. What concerns might you report to a safety committee?

7. What benefits have you seen as a result of safety committee efforts?
8. How might safety committees reach out more effectively to all employees?
9. Are you familiar with current safety committee efforts?
10. Are there any other questions?

Wrap-Up

Safety committees can have a major impact on the workplace. They provide a format for focusing every segment of the organization on safety. They help us identify and control hazards in the most timely and effective way. In addition, they give us the benefit of a wide range of experiences, knowledge, and perspectives so we can give safety the attention and resources needed to prevent accidents and protect us all from injury and illness on the job.

Sample Handout

An effective safety committee member:

- has a genuine interest in safety issues.
- is familiar with safety laws and procedures.
- consistently demonstrates safe work habits.
- has safety-related knowledge and experience that could be helpful to the organization.
- is willing to report unsafe conditions.
- is willing to point out unsafe work habits to co-workers.
- will willingly listen to other employees' safety concerns.
- can devote time to safety committee activities without neglecting job responsibilities.
- is a good team player.
- will complete committee assignments properly and on time.
- is willing to play an active role in safety training.





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A Service Organization of the Association County Commissioners of Georgia and the Georgia Municipal Association

This Month:

**ANONYMOUS TIPS AND REASONABLE SUSPICION
SAFETY COMMITTEES**

