

## Freedom Of Speech: Nurse's Task-Force Testimony Is Protected.

A staff nurse employed by the Washington State Department of Corrections was terminated after his letters to public officials about prison health conditions resulted in him being called to testify before a Department risk-management task force. The nurse sued the Department for retaliation and violation of his Constitutional right to Freedom of Speech.

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***There is no question the nurse's testimony to the Department of Corrections risk management task force and the letters he wrote to various public officials are free speech protected by the First Amendment.***

UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT  
June 18, 2009

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The US Court of Appeals for the Ninth Circuit ruled the nurse is entitled to his day in court to try to prove his case. He has to prove that the upper-level decision-makers who fired him knew that he wrote letters to public officials and testified to the task force. If they knew that the nurse is entitled to an inference in his favor that retaliation was their motivation.

The former health care manager of the prison where he worked apparently had no knowledge of his letters or his testimony before she was told to fire the nurse. Her dismissal from the case will stand.

### **Subject of Public Concern**

Freedom of Speech only applies to subjects of public concern. Communicating with co-workers on mundane day-to-day issues by oral, written or electronic means is a regular part of a nurse's job, is not a subject of public concern and cannot qualify as a basis for a retaliation lawsuit. Dalton v. Wash. Dept. of Corrections, 2009 WL 1974260 (9th Cir., June 18, 2009).