

Selected Post-Garcetti Cases:

Posey v. Lake Pend Oreille School Dist. No. 84, 546 F.3d 1121 (9th Cir. 2008) (“Agreeing with the Third, Seventh, and Eighth Circuits, we hold that after *Garcetti* the inquiry into the protected status of speech presents a mixed question of fact and law, and specifically that the question of the scope and content of a plaintiff’s job responsibilities is a question of fact.”)

Houskins v. Sheahan, 549 F.3d 480 (7th Cir. 2008) (County corrections department’s social worker’s internal complaint to department’s internal affairs division, alleging that she had been assaulted by corrections officer in parking lot, was speech made pursuant to social worker’s official duties, not made as a citizen as required to support social worker’s § 1983 First Amendment retaliation claim against sheriff; report fulfilled social worker’s responsibility as department employee to report incidents of misconduct immediately to her supervisor. Police report filed by county corrections department’s social worker, alleging that she had been assaulted by corrections officer in parking lot, was not speech addressing matters of public concern, as required to support social worker’s § 1983 First Amendment retaliation claim against sheriff; police report amounted to personal grievance against officer, and statements in report were tied to personal dispute and were not intended to bring to light any wrongdoing by sheriff.)

Reilly v. City of Atlantic City, 532 F.3d 216, 230, 231 (3rd Cir. 2008) (“Despite the overwhelming weight of authority concluding that an employee’s truthful testimony in court is protected by the First Amendment, we are aware of no precedential appellate decision after *Garcetti* answering the question whether truthful trial testimony arising out of the employee’s official responsibilities constitutes protected speech. . . Only one federal appellate court has issued a precedential opinion even touching upon this issue. Specifically, the Court of Appeals for the Seventh Circuit concluded that a police officer’s subpoenaed civil deposition testimony ‘was unquestionably not . . . part of what he was employed to do,’ and thus it was protected even though the officer testified about speech that was made pursuant to his official duties. *Morales v. Jones*, 494 F.3d 590, 598 (7th Cir.2007); see also *Fairley v. Fermaint*, 482 F.3d 897, 902 (7th Cir.2007) (noting that *Garcetti* did not apply to testimony given by county jail guards in inmate lawsuits because assisting prisoners in their litigation did not fall within the guards’ official duties). Here, however, Reilly, as an Atlantic City police officer, assisted a state investigation of a fellow officer and testified for the prosecution at the subsequent trial. Thus, the speech at issue on this appeal, Reilly’s trial testimony, appears to have stemmed from his official duties in the investigation. The *Garcetti* opinion focused solely on the speech contained in Ceballos’ internal memo, leaving to the court of appeals on remand the opportunity to consider whether Ceballos’ conduct at the meeting and his testimony in court were entitled to First Amendment protection. . . . [T]he act of offering truthful testimony is the responsibility of every citizen, and the First Amendment protection associated with fulfilling that duty of citizenship is not vitiated by one’s status as a public employee. That an employee’s official responsibilities provided the initial impetus to appear in court is immaterial to his/her independent obligation as a citizen to testify truthfully. When a government employee testifies truthfully, s/he is not ‘simply performing his or her job duties,’ *Garcetti*, 547 U.S. at 423; rather, the employee is acting as a citizen and is bound by the dictates of the court and the rules of evidence. Ensuring that

truthful testimony is protected by the First Amendment promotes ‘the individual and societal interests’ served when citizens play their vital role in the judicial process. . . Thus, the principles discussed in *Garcetti* support the need to protect truthful testimony in court.”).

Callahan v. Fermon, 526 F.3d 1040, 1045 (7th Cir. 2008) (complaints made by lieutenant in Illinois State Police to Department of Internal Investigation about misconduct of police captain and commander, not protected under First Amendment)

Vose v. Kliment, 506 F.3d 565 (7th Cir. 2007) (Police officer was speaking pursuant to his official duties as supervisor of police department's narcotics unit, rather than as a citizen, when he spoke with chief of police and deputy chief of police about apparent misconduct committed by detectives in department's major case unit, and thus, his speech was not protected by First Amendment; although detectives were in separate unit and not under officer's supervision, and although officer may have gone beyond his daily job duties in reporting the misconduct, officer learned of the alleged misconduct when he was working in narcotics unit, and he admitted that he investigated further because he was concerned about possibility of the misconduct compromising ongoing investigations being conducted by narcotics unit)

Morales v. Jones, 494 F.3d 590 (7th Cir. 2007) (police officer's speech informing another officer and an ADA about allegations made by purported witness that the police chief and deputy chief had previously harbored an individual the officers had just arrested, while that individual was wanted on felony warrants, was made pursuant to the officer's official duties, and thus, was not protected speech under the First Amendment)

Sigsworth v. City of Aurora, Ill., 487 F.3d 506 (7th Cir. 2007) (Police detective's report to his supervisors, that he believed that members of his drug investigation task force broke the law by tipping off suspects regarding arrest warrants was speech made pursuant to his official duties as a detective and was not protected.)

Fairley v. Fermaint, 482 F.3d 897 (7th Cir. 2007) (County jail guards brought § 1983 claims against sheriffs and individual guard personnel, claiming they were harassed for exercising their First Amendment right to speak out against abuse of inmates; “Assistance to prisoners and their lawyers in litigation is not part of a guard's official duties.”)

Spiegla v. Hull, 481 F.3d 961 (7th Cir. 2007) (guard reported possible breach of prison security as part of her official responsibilities to keep prison secure, and thus did not engage in “citizen” speech that was protected from First Amendment retaliation)

Bradley v. James, 479 F.3d 536 (8th Cir. 2007) (Allegations of state university police force officer, that police chief was intoxicated and disrupted the investigation of an incident in a student dormitory, were made pursuant to officer's official and professional duties and was not entitled to First Amendment protection)

Haynes v. City of Circleville, Ohio, 474 F.3d 357 (6th Cir. 2007) (officer's speech complaining about training cutbacks in canine unit was not protected)

Mills v. City of Evansville, Indiana, 452 F.3d 646 (7th Cir. 2006) (police sergeant, who criticized a plan to reduce the number of officers under her command at a meeting with her superiors, spoke as an employee and not as a citizen, and thus, speech was not protected).

Freitag v. California Dept. of Corrections, 289 Fed. Appx. 146 (9th Cir. 2008) (letter written by correctional officer to Director of CDCR on personal stationary, outside of working hours, complaining of supervisors' failure to take any action against sexual misconduct of prisoners that created a hostile working environment, was protected speech)

Khan v. Fernandez-Rundle, 287 Fed. Appx. 50 (11th Cir. 2007) (attorney's in-court statements were not entitled to First Amendment protection)

Kline v. Valentic, 283 Fed. Appx. 913 (3rd Cir. 2008) (complaints of police officer up the chain of command about false statements made during an investigation into his own conduct as a police officer did not constitute protected speech)

Shingara v. Skiles, 274 Fed. Appx. 164 (3rd Cir. 2008) (testimony of civilian employee of Pennsylvania State Police in criminal proceeding regarding deficiencies in radar equipment was protected, but not letter complaining to superiors about supervisor's conduct)

Green v. Barrett, 226 Fed. Appx. 883 (11th Cir. 2007) (Prison guard who reported possible breach of prison security to assistant superintendent as part of her official responsibilities as guard to keep prison secure did not engage in protected "citizen" speech; Chief jailer's testimony at hearing to determine whether county jail was safe place for convicted murder to be housed, that jail was unsafe in that many of cell locks were not functioning and that many inmates had regularly let themselves out of cells at night, was not protected speech under First Amendment).