

Virginia DOC refers alleged officer choking of inmate to prosecutor for review after RTD obtains video

The Virginia Department of Corrections in 2018 closed an investigation into an incident in which an investigator believed a prison supervisor choked a restrained inmate, taking no disciplinary action.

But after the Richmond Times-Dispatch recently obtained a video of the incident, the director said he would refer the case to a local prosecutor for review.

Virginia Department of Corrections Director Harold Clarke said through a spokesman that he had concerns about video footage showing what a former prison investigator concluded was a supervisor choking an inmate who was tied down by his arms, legs and chest. But Clarke wouldn't acknowledge that the video shows the supervisor's hand on the inmate's neck.

The Times-Dispatch sent the video footage to the DOC after obtaining it from Brian Mitchell, a former investigator at Keen Mountain Correctional Center in Buchanan County who lives in Tazewell County. Mitchell, who left his job in March, investigated the incident.

He said a prison supervisor choked an inmate who was in five-point restraints, violating DOC policy. Mitchell said an investigator with the Special Investigations Unit — the department's internal police force — closed the investigation without any punishment for any of the officers.

Mitchell said he was providing the DOC video footage and records to The Times-Dispatch because the incident was an example of excessive force by a supervisor that the department kept quiet. The cover-up appeared to begin

almost instantaneously: An officer assigned to record the entire interaction with the inmate points the camera toward a wall as soon as the supervisor appears to grab the inmate's neck.

The incident happened on Aug. 21, 2018, after the inmate was removed from his cell in an extraction because he wouldn't comply with orders to come out. The inmate's arms, legs and chest were restrained in a medical cell when the unit manager, Dwayne A. Turner, grabbed the inmate's neck and choked him, Mitchell said.

The inmate — The Times-Dispatch is not publishing his name because the newspaper was unable to reach him — also alleged during the recording that Turner had punched him during the cell extraction.

The DOC video shows the man who wouldn't come out of his cell being put in restraints. He said he wasn't getting answers from DOC about where he would be housed. "I just want to know where I'm going and what's happening," he said.

Officers cut off his white shirt to remove it. He complained that Turner punched him and lectured Turner, cursing at him and calling him a scumbag. He made a quick movement of his head and Turner responded by placing his right hand on the man's head and his left hand on his neck while pushing his head down.

"I didn't try to bite nobody," the restrained man said.

Turner, who is now the chief of housing and programs at Red Onion State Prison, declined through a DOC spokesman to be interviewed.

Mitchell became an investigator at the prison in 2016 and reported to the warden after starting a DOC career in 1999.

He said the video footage clearly shows Turner's hand move to the inmate's neck and choke him. But the DOC officer operating a camera to record the incident immediately pans the camera to the right and films a wall, so the full incident cannot be seen. The camera operator then refocused on the inmate after about 10 seconds.

A special agent in the department's Special Investigations Unit watched the footage and then interviewed Turner with Mitchell present.

Mitchell said he was stunned to hear the special agent ask a leading question: "It looks on film like he spit on you."

Turner responded that the inmate had spit on him, Mitchell said.

"I was just shocked," Mitchell said. None of the officers can be heard accusing the inmate of spitting, and the video doesn't appear to show him spitting.

The special agent, Jesse Wagner, declined to be interviewed for this story.

Had the inmate spit, the appropriate response would not be choking but rather a spit mask, Mitchell said.

Benjamin Jarvela, a spokesman for the DOC, said earlier this month that agency leadership had some concerns after watching the video, and they turned information over to the Buchanan commonwealth's attorney for review.

"If the Commonwealth's Attorney decides that further investigation or legal action is necessary, we will proceed based on that recommendation," he wrote in an email.

He said the officer turning the camera away at the point of contact “is a problem” that created uncertainty about what happened and violated department procedure. But he said Clarke, the director, could not conclude that the inmate was choked.

“This footage does not make it clear if the staff member’s hands were on his neck or chin and the inmate’s large beard and extensive head and neck tattoos only compound the difficulty in making a determination,” Jarvela wrote. The video, however, does not show extensive neck tattoos.

Jarvela said the inmate also made “repeated aggressive head movements” and never complained about being choked and Turner believed the inmate was trying to bite him.

Mitchell, who in 2018 provided still images of the incident to the warden, disagreed. He said Turner’s hand is clearly on the inmate’s neck and, because Turner was wearing a blue glove, his hand is visible. The inmate’s tattoos don’t obstruct the view in any way, Mitchell said. The video reviewed by The Times-Dispatch matches Mitchell’s description.

In their written documentation of the incident, the officers in the cell made no mention of the inmate trying to spit on or bite Turner and made no mention of any choking.

Mitchell said he heard through his networks that some people who worked at the prison weren’t happy with him, badmouthed him and his investigations, and he feels like he was retaliated against.

“There were people there that never treated me like they did before,” he said.

His team members were given different duties at times besides investigations and, in 2020 and 2021, fell behind on

federal Prison Rape Elimination Act investigations because of the added workload, he said. But Mitchell said he didn't want to be part of what he called a "code of silence" in the state correctional system. He left his job for medical reasons.

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Department of Corrections threatened to fire secretary after she asked to be paid for added duties

The 2014 email to Donna Pace Foster telling her she'd have more duties at the Department of Corrections without more pay was blunt.

A supervisor passed down the verdict from a deputy director: "You don't have a choice whether to do them or not."

Foster was 57 years old and earning about \$38,000 as a full-time executive secretary at the agency that runs Virginia's prisons. Someone had moved to another agency, so Foster's new duties would be to provide administrative support to a board of people appointed by the governor that oversees jails in Virginia, and the board's committees.

No extra money was available because of "budget slashes," the supervisor wrote to Foster, saying she would try to get her extra pay in the future. She wasn't yet aware that she was earning at least \$10,000 a year less than the last two people who held the job.

"I hope you understand my hands are tied and I have to do what my boss instructs me to do if I want to keep my job," the supervisor wrote.

Foster was beside herself, even visiting a doctor because she was so anxious. She hadn't applied for the job, had no

training for it, and was stressed because she feared she was being set up to fail.

But over the next six years, she did everything she needed to do. Every year, she asked for extra pay for the extra work she was doing and, every year, the Department of Corrections told her no. In 2020, she filed an internal grievance over her salary.

For more than 25 years, she'd had a spotless disciplinary record at DOC without so much as a verbal warning. But while her salary grievance was pending, she was written up for two petty infractions. Combined, she was told, they could lead to her termination. And she said a high-level DOC official berated her in a phone call, accusing her of failing to monitor an email account she said she never knew was her responsibility.

The Richmond Times-Dispatch reviewed records provided by Foster and records obtained independently about her situation. At nearly every level, the records show, powerful DOC officials sided with each other in denying Foster's requests for a comparison of her salary to similar positions outside of DOC. They defended the official who she said berated her. And they denied that the write-ups — which ended up all but dismissed — came in retaliation for her salary grievance.

Foster retired on Jan. 1, saying she wanted to protect her retirement benefits and salvage her reputation. In an interview, she said the workload at DOC became so tremendous that she was overloaded with deadlines and at times struggled to complete all the work. She said she wants the public, and elected officials, to know that DOC leadership is tolerating abuses in the agency.

“I did not take the time to go to medical appointments,” she said. “I tried my best to do as perfect as I possibly could, and I’m not the kind of person who does anything to be spiteful.”

Citing a state policy that does not allow release of personal information about government employees without their permission, top DOC officials, including Director Harold Clarke, declined through a spokesman to be interviewed for this story.

The governor’s board that Foster began supporting in 2014 was called the Board of Corrections and has since been renamed the Board of Local and Regional Jails.

By 2020, she had advised board members on policy, parliamentary procedure, codes, standards and legislation; became the key contact for FOIA requests to the board; worked with an attorney general counsel and a death investigator to respond to FOIA requests; became the only point of contact for updating the board’s website; and updated the Virginia Town Hall website with documents.

Someone in the Secretary of the Commonwealth’s office told Foster she was, by far, the lowest paid classified position of all support staff for state boards and commissions.

She spoke to DOC human resources about her pay in 2020, and her direct supervisor supported her request for the state’s umbrella human resources agency — the Department of Human Resource Management — to do a comparison of her salary and duties to officials at other agencies doing similar work, not just others within the DOC.

Her supervisor asked a top DOC official named Dean Ricks, the director of administrative compliance, for the review, but

Ricks didn't address it, Foster wrote in grievance documents. And DOC human resources told her she was at the correct pay band.

On Sept. 18, 2020, Foster filed a grievance over her salary. The DOC closed it, arguing that it was similar to one she filed in 2014 and wasn't timely. But the state personnel agency ruled that the grievance should go forward.

Her direct supervisor addressed the grievance the next month and supported her request.

But DOC human resources in December 2020 overturned his finding.

On Dec. 17, 2020, an information officer in the department notified Ricks that a Board of Local and Regional Jails email account had more than 100 unread messages in it and some appeared to be FOIA requests. He told Ricks that Foster had primary access to the account.

Ricks called her a few days later. She described his call as berating her, later writing in grievance documents that he accused her of being derelict at her job. She said she tried to explain several times that she had no idea she was supposed to be monitoring the account, but he talked over her.

Also that month, someone with an outfit in Kentucky called Appalshop — a social justice collective that runs a radio station and filmmaking institute — called the board, and Foster answered the phone. The person asked questions about the Department of Corrections and the board. Foster chatted with the person, offering some opinions that she felt were widely available, but declined to be interviewed, saying questions would need to come in writing for the board.

Foster declined an interview with that person on a second phone call, and reported the calls to her supervisor and the attorney general counsel assigned to the board.

Seven days after her phone call with Ricks over the email account, Foster sat down with her husband and DOC human resources for the second phase of her salary grievance. The man hearing the case was Ricks.

He wrote in a report that no adjustment in her salary was warranted.

And then in January, just two weeks later, Foster received a notice from the DOC. She was being written up for two violations — that she spoke with a reporter against department policy, and that she failed to monitor the email account.

Her failure to monitor the account could have caused “legal liability” for the board, the write-up said.

“As a result of the unauthorized comments you made to the reporter, which could still be published, the Department had to report the incident to the DOC Communications Director, the Agency Head, and Chairman Francis to minimize potential damage to the relationship with the Virginia Board of Local and Regional Jails, members of the General Assembly, and the operations of the Department.”

The reference to Francis is former Southampton County Sheriff Vernie Francis Jr., the chairman of the jail board.

The DOC wrote to Foster that the two infractions combined could result in her termination.

With her salary grievance still pending, Foster filed a second grievance against the department, this one alleging

retaliation for what she saw as bogus charges, and alleging a hostile work environment because of her call with Ricks.

Six days later, a more senior DOC official, Joe Walters, closed the third step of her salary grievance by concurring that more pay wasn't warranted.

Her direct supervisor now needed to handle her grievance alleging retaliation and a hostile work environment. To do that, he needed to investigate — and potentially find fault — in his own supervisor — Ricks.

Ricks told him he was "courteous and respectful" at all times during the phone call with Foster.

The supervisor wrote to Foster that he found no evidence of a hostile work environment or retaliation.

Foster responded in writing: "Not only was he not courteous or respectful, I told him at minimum three times that I was never told to check the emails and he was so preoccupied with berating me that he never once acknowledged my words. Mr. Ricks was furiously reprimanding me, blaming me for dereliction of duty and falsely claiming that I caused the department problems."

And she wrote that it wouldn't make sense for her to intentionally ignore an account she knew was her duty to monitor.

"I am a person who does what I am told out of fear of being reprimanded and humiliated. I take pride in doing my job well, even when forced. I reiterate, I was NOT told to check the emails."

The two charges, she wrote, as a 25-year employee with no disciplinary record, were intended to strike fear in her and terminate her.

Foster said she then received a call from Ricks to set up an interview for the next step of her grievance against him. She was appalled that the department would allow him to hear her grievance that alleged retaliation by him, and convinced the department that the DOC human resources office should handle that next step instead.

In March 2021, the DOC's human resources officer sided with Ricks: "While your description of the phone call with Mr. Ricks, if accurate, might have been perceived as curt, there is no evidence to suggest he berated or harassed you during the phone call. It appears he was carrying out his duties as a manager to investigate what he perceived as a serious issue."

And later that month, Walters, the more senior DOC official, concurred, finding no evidence of retaliation or a hostile work environment. (Walters, who earns \$179,025, declined to be interviewed for this story.)

Foster wrote to Clarke, the DOC director, the next month, saying Ricks' actions "reek of retaliation."

She noted that no one seemed to notice or care that an email account was not monitored for 2 ½ years — until she had a pending salary grievance and it was blamed on her.

Clarke ruled that month that her allegations did not merit a hearing.

On the day she retired, Foster wrote to the executive director of the Board of Local and Regional Jails that she did so to salvage her reputation and retirement benefits.

The disciplinary write-up alleging she neglected her job duties had been reduced to a written violation, and the allegation that she spoke to the media had been dropped.

And Foster provided some new details in her letter. Through a Freedom of Information Act request, she found the salaries of the two people who supported the jail board before she did. One was earning \$10,000 a year more than her, and the other was earning \$12,000 a year more. And she wrote that she had more duties than the previous two.

She mailed a copy of her letter to the Gov. Glenn Youngkin and Attorney General Jason Miyares, writing that she hoped they would “investigate the abuse and corruption that has been warmly embraced” by Department of Corrections leadership.

After Foster got in trouble over the email account, she was able to clean up the account and respond to any emails within two days.

The Department of Corrections did not get into any legal trouble.

But Ricks, the official who pinned the responsibility on Foster, was found by a judge earlier in 2020 [to have violated the letter and spirit of](#) the Virginia Freedom of Information Act by withholding public records related to DOC strip-searching visitors to people in prisons.

[The Times-Dispatch reported last year](#) on how Ricks, who earns \$132,488, and other officials made a power grab at the Board of Local and Regional Jails that resulted in obstruction of a jail death investigator.

The newspaper emailed Ricks on Feb. 10 asking if he would like to be interviewed for this story.

He didn't, but six days later, the DOC issued a "press release" on its website lashing out at The Times-Dispatch over a [news story](#) published two weeks earlier about the lack of independent oversight of the DOC.

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Virginia board shields jail action plans from public

The state officials who review jails found a Northern Virginia sheriff in violation of state regulations after the death of a 46-year-old man who was left unattended by medical staff.

The Arlington County Jail submitted a corrective action plan to the state on how officials there plan to comply with minimum state standards following the October 2020 death of Darryl Becton. The state officials at the [Virginia Board of Local and Regional Jails](#) last month were satisfied and voted in favor of closing their investigation.

But what's in the action plan for the Arlington jail and others that violated state standards? It's unclear because the board won't release those plans publicly.

The board, through its executive director, cited a discretionary exemption in the Virginia Freedom of Information Act in withholding the action plans in four cases that a board committee voted in June to resolve. The other jails recently found in violation of state regulations after jail deaths in 2020 are the [Henry County Jail](#), the [Virginia Peninsula Regional Jail](#) and the Rappahannock-Shenandoah-Warren Regional Jail.

The FOIA exemption allows government officials to withhold public records if the records are prepared exclusively for use in a closed meeting.

Mark Krudys, a lawyer in Richmond who regularly files litigation over deaths of people in jails, said it's not just the public and families that should see such records. The system benefits from more information; sheriffs and regional jail superintendents need to see records on what other jails are doing so they can fix or avoid their own problems, he said.

"This board is basically saying just trust us. We'll go behind the door, not allow you to see these proceedings, and we'll come back and you should just be satisfied with that," Krudys said. "Well, that's not how, for instance, courts work."

Krudys represented the family of a man whose death led to new powers for the Board of Local and Regional Jails to review all jail deaths. Jamycheal Mitchell, 24, died in the Hampton Roads Regional Jail in 2015 after a series of systemic failures prevented him from getting proper medical care. He had mental health problems and was being held in jail on shoplifting charges.

In response, then-Gov. Terry McAuliffe in 2017 [signed legislation to expand the powers of the board](#) and change its makeup to better oversee local jails. But since then, the board at times has been plagued by a [lack of transparency](#), a case backlog and [interference by powerful officials at the Virginia Department of Corrections](#). The department oversees state prisons, but staff of the jail board are housed in the department.

It's difficult to gauge results of the work done by the board, whose members are unpaid appointees of the governor. And it's not easy to even know which cases the board is talking

about at its meetings, because board members opt to do most of their work in closed session.

On June 15, for example, the board's Jail Review Committee met in closed session, returning to open session to cast several votes. The committee found that in four death cases, a jail was out of compliance with state standards.

"However, the Jail Review Committee finds that the corrective actions taken by the jail appropriately addresses the substance of the violation such that no further measures are necessary," read the motion the committee voted on. The committee [voted to recommend](#) that the full jail board close the four death cases.

But only the internal case numbers were mentioned publicly, numbers that without further context are meaningless to the public. The date, jail and name of the person who died weren't discussed in open session or listed in the meeting minutes.

The Richmond Times-Dispatch asked on June 15 for a copy of the notices sent to the four facilities and a copy of the corrective action plans they sent to the state.

Three weeks later, Ryan McCord, the board's executive director, provided the redacted records, withholding the corrective action plans and details of the cases that the board didn't want released. The board cited discretionary FOIA exemptions for inmate records, health records and personnel records. Nothing stops the board from releasing the records, but the law doesn't require it.

McCord said the board wants to protect the "privacy" of people who die in jails, and their families. Board Chairman Vernie Francis Jr. didn't respond to an email.

In the Arlington case, Becton was suffering from withdrawal over use of opioids as well as alarmingly high blood pressure.

He was left for hours without monitoring, observation or treatment, his family [alleges in a pending lawsuit](#) in Arlington County Circuit Court against Corizon Health Inc. and other defendants. Corizon was the jail's medical provider at the time; a Corizon nurse was charged criminally with falsifying records related to Becton in a case that remains pending.

Arlington County [ended a contract](#) with Corizon Health in the fall. Krudys, the attorney who represented Mitchell's family, also represents the family of Becton in their lawsuit.

Krudys said it's problematic that minimal detail is publicly available from the Board of Local and Regional Jails death investigations. Broad publicity of jail board findings and how jails respond would lead to improvements, he said.

"There's no acceptable reason as far as I'm concerned as to why this information hasn't been made public," he said.

If the board wants to protect the privacy of families, Krudys said, the board should contact the families to get their views on whether records should be public, or the board should make only modest redactions to protect privacy.

The Becton family, he said, calls for full public disclosure of all board records in their loved one's case, as well as release of Arlington County's corrective action plan.

"Cloaking board findings and alleged corrective actions does not serve the public's interests; it only shields jailers from scrutiny," he said. "It is time to halt that practice."

