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**The Maine State Prison Board of Visitors
Annual Report for 2013**

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The Maine State Prison Board of Visitors

Annual Report for 2013

To: Warden Rodney Bouffard, Acting Deputy Warden Ben Beal
Commissioner Joseph Ponte
Members of the Joint Standing Committee for Criminal Justice and Public Safety

March 24, 2014

Greetings:

The Maine State Prison Board of Visitors met on six occasions during 2013 in our continuing efforts to be aware of, and to assist with, issues and concerns relating to inmates and to staff members at both the Maine State Prison (MSP) and the Bolduc Correctional Facility (BCF). The Board met with groups of inmates, Security and Program staff members from a number of departments, with Warden Rodney Bouffard of MSP, and with Commissioner Joseph Ponte. In addition, Board members met in individual sessions with small groups of inmates to better inform ourselves on specific concerns meriting our attention. The Board generally reports issues and concerns directly to the Warden or to the Commissioner. Typically, the issues and concerns are examined and addressed as directly as possible. As always, our objective is to better understand the issues and intricacies of the two facilities for which we have advisory/oversight responsibility, and to make the efforts of the MSP Board of Visitors as effective as possible.

Please note that this Report includes (7) numbered underlined points throughout, to highlight some of our most important issues of concern for the Joint Standing Committee.

The Board reported to the Joint Standing Committee in 2013 on concerns regarding diminished staff morale, high staff turnover, and other persisting issues that carried potential for even more serious problems. In response to the Board's concerns, Commissioner Ponte met with the Board to address and clarify some of the ways in which the Department has been addressing the myriad issues. He also provided clarifications on (our) budget misunderstandings, and he provided amplifications on the continuing work the Department is doing to resolve the situations, especially at MSP. The Board notes that many things have been improving at MSP, where the Board's work during the past year was focused almost exclusively. This should not imply that the extraordinary work being done at BCF is of less importance, because it is not. On the contrary, it is usually (hopefully) the last step before an inmate's release, and one through which he makes his final preparations for life in the free world. The spirit and skill with which he leaves there can have a lot to do with how successfully he adjusts to life in society. The everyday work of the staff at BCF is critically important to this effort.

That said, the Board endeavored to keep up with changes taking place at MSP, and our monitoring of the ability of the staff – both veteran and new – to adapt and move forward in unison with other members of the MSP team necessitated the greater part of our attention. Obviously, change can be difficult; not only for Security and Program staff, but also for the inmates, who also seek and deserve a predictable and reliable routine. It has not been easy. The Board's view is that many things are improving, and the vision and mission of the Department and MSP are being continually refined and improved with an eye toward truly effective practices for the greatest number of inmates. Although profoundly tragic events occurred at MSP, there is also a great deal to acknowledge and affirm. There are still many difficult challenges ahead, but the Board believes things are moving in the right direction. For example, staff morale is improving, protocols for on-

the-job training of new correctional officers are becoming much more effective, and the commitment to more robust education and programming for inmates is not only increasing, but doing so in a way that is rooted in evidence-based practice, and becoming linked to increased personal accountability among inmates. These are objectives that have been long-sought at MSP, but they have eluded implementation for a variety of reasons. As Commissioner Ponte and Warden Bouffard and his management team have articulated their objectives, the mission and vision have become more clear and consistent, and the former level of confusion, misunderstanding, and disgruntlement among staff has been diminishing.

This year saw the initiation of numerous promising new inmate programs at the same time there was a dramatic reduction in Security staff overtime hours – arising from the fact that approximately 90% of the previous Security staff vacancies are now reported to have been filled. This is a huge improvement over previous years, and something the Board has been very concerned about. And even though the percentage of deeply experienced veteran officers has lowered considerably, the generally improved morale seems to reflect the importance and effectiveness of this change. On the other hand, we note that there are some Security staff who believe that certain staffing ratios at MSP still leave inordinate risk for danger, and in certain cases, we agree. But another important change is also worth noting: On the Program staff-inmate interaction side, the expectations of casework staff have been refined such that there are clearer goals and objectives for them, and more precisely defined measures of staff and inmate accountability. These are critically important improvements.

1. The Board notes, however, that the ratio between case management staff and inmates, which has been a concern in the past, still remains high. Effective and proactive inmate case management requires sufficient staff, or individual workloads will be too great. Thus, while the quality issue is being effectively addressed, the Board wonders if the workloads of case workers will prevent these improvements from being as effective as they should be. There are Program staff – and Security staff, for that matter – who believe that every housing unit pod should have its own caseworker. The idea seems worthy of examination.

There are still many challenges remaining, of course, as must be expected in a facility where criminal thinking and other criminogenic needs may predominate among the population. For example, while many inmates seek to live peaceably and to do their time in as quiet and trouble-free a manner as possible, there remain inmates – often younger ones or others who may be serving shorter sentences – who tend to act out in ways that create problems for entire housing units. There are also occasions when circumstances are such that Security staff must react in ways that can be seen by some inmates as extreme. There is always going to be risk in correctional settings of both escalated acting-out and escalated response. Prison housing units can be very volatile and dangerous places. But when a handful of inmates choose to act out in highly disruptive and aggressive ways that appear to the staff to be threatening, staff have no choice but to meet those situations with sufficient capacity to control them quickly. On occasions that this has occurred at MSP, the Board believes that Security staff acted in accordance with what they perceived to be the threat level of inmate behavior. There was, however, one particular event in which the Security staff response was seen as especially extreme by some inmates, and this event remains a subject of conflicting accounts.

2. In this case, the Board feels – for the first time in our recalled history – that we have not been given appropriate access to the information that would allow us to be assured of the facts in question. See our full description of this concern at the conclusion of this Report.

Without mirroring the Committee in detail, it has been acknowledged by the administration that, on this particular occasion, standard staff-response procedures were not properly followed. This was found to be due to the perceived rapidity with which the danger to staff and other inmates was escalating, and it appears to have been a singularly anomalous event. The situation arose when an extremely oppositional inmate with an apparent intention to act out began exhibiting threatening behavior at the same time that a tactical team training was going on nearby. This situation ended up requiring additional staff – and force – to quell. But “additional force” is relative, here, and we should note why. The pods in almost all of MSP’s housing units are supervised by only one officer – overseeing anywhere from 60 to 70 men. While additional staff may be on call in the event of emergency, we believe this ratio brings unnecessarily increased risk.

3. However the staffing ratios at MSP may relate to “acceptable standards” in Direct Supervision staffing, this remains a persisting concern for the Board. We submit that “acceptable” in some cases may not be sufficiently equivalent to “best practice.”

It takes very little imagination to realize how swiftly things can become extremely unnerving or dangerous for that one lone officer before help can arrive, when someone begins to act out – or encourages others to act out. But we ask you also to imagine how impossible it is for any single pod officer to maintain proper visual awareness of all that is happening in the pod at any given time. It should be clear how easy it could be for one determined inmate to harm – or even to kill – another inmate. We know that the murders that occurred at MSP were terrible and tragic incidents, and that the underlying circumstances that allowed these acts to occur must be carefully and directly addressed. This applies to any assaults of any kind.

4. The Board believes this issue needs and deserves further critical examination and analysis, and that the staffing in certain housing unit pods should be increased. This potential for individual acts of severe violence will continue to be a major risk and challenge as long as these housing unit staffing ratios remain as they are.

On the other hand, the people of Maine should know that, even as the very worst acts of violence have occurred, there has also been a significant reduction in the number of critical incidents, such as assaults, at MSP. This is hard to keep in mind when there have been murders in the facility – murders that should have been able to be prevented. The Board believes our system fails those offenders who become victims. It also seriously fails the original crime victims’ – and society’s – expectations that all offenders will be housed and managed in such a way as to have to complete their full sentences. Nevertheless, while it may be difficult for many to see in the wake of such tragic cases, there remains a continuing commitment to making these facilities safe for all inmates.

Commissioner Ponte and Warden Bouffard have also been examining the myriad issues that have continued to arise over the Department’s Inmate Grievance Policies, and implemented procedural changes that will likely lead to a smoother and more effective process for all. The Board has raised these issues in the past, as they have created unceasing complaints, and the administration has acknowledged that they need examination. Commissioner Ponte this past year brought to the discussion table not only MSP administration and a representative of the Board of Visitors, but also representatives from the ACLU, NAACP, and the Maine Prisoner Advocacy Coalition (MPAC). It is a noteworthy example of the Department’s open approach to studying certain issues.

The Board met with members of such inmate groups as, for example, the “Long Timers,” and a new inmate spiritual leadership council. These groups are often comprised of members who are generally interested in encouraging effective improvements in facility policies and procedures. But

it must also be acknowledged that, while these groups can be helpful and effective, they can also, on occasion, challenge the administration's policies and procedures in such aggressive or persistent ways that they end up working against their own worthy objectives. The Board has found the voices of genuinely concerned inmates to be respectful and measured, noting that they have offered numerous important ideas that deserved conveying to the administration. On the other hand, some inmates or groups have attempted to push the boundaries beyond the limits, and effectively "shut down" some of the very opportunities that should have flourished, for them. This is an ongoing challenge for any facility, as each strives to maintain a critical balance between "custody and control" of the inmate population, and "opportunities for learning, growth, and positive interactions" among them. The push-pull of this is never ending, and maintaining proper balance between these needs will probably always continue to be an elusive objective. On the other hand, these events highlight the need for more effective communication between staff and inmates – and between staff and staff. This is something Commissioner Ponte has been deliberately aiming toward, and staff have now participated in additional training on this.

As of this writing, there are questions that remain regarding medical services for inmates. Notwithstanding complaints that inmates have apparently conveyed to family members and advocates, the Board of Visitors has received no direct letters of complaint on medical issues during the year, and we had to seek out inmates in order to get any sense of potential issues. Our looking into complaints has continually resulted in no suggestions of misconduct or abuse, but rather of differences in definitions of "quality" or "adequacy" of care. Commissioner Ponte has also looked directly into numerous inmate medical complaints by talking with the inmates and then with medical staff, and he has appeared to us to take them all seriously. Nevertheless, the Board is aware that inmate advocacy groups have requested an OPEGA inquiry into medical services throughout the system. If this issue is found to be worthy of inquiry, the Board welcomes it.

5. We should note that, on the MSP infirmary side of medical services, there appears to be a growing problem with a lack of proper patient bed space. Especially as an increasing percentage of the aging inmate population requires additional and longer-term medical services, the Board can see that the infirmary will soon be unable to properly house all the patients who need medical services.

This eventuality was foreseen some years ago, but the rate at which inmate needs are beginning to outgrow the space seems to have increased in the last couple of years, and we hope that the Department and the facility are planning for this inevitable – and inexorable – increase.

On a related note, the Prison Hospice program, in which selected inmates provide invaluable emotional support for those who are dying there, has grown into a robust, inspiring, and fulfilling initiative. Like any inmate program, it is an earned privilege for the inmates participating, and it is continuing to find its way as MSP navigates the balance between the always-essential inmate management concerns and worthy inmate community service opportunities.

As you all know, the new Mental Health Unit at MSP is now staffed and running – and by all accounts admirably – and we hope this implementation of additional services will prove effective.

Looking ahead, the administration reports that there are significant plans in place to develop a Vocational Training program, which will surely enable more successful reentry for more inmates upon release, and there are plans to increase the Substance Abuse program capacity. These are measures that have been needed and wanted for years. At this writing, staffing changes in the

Education Department have presented challenges, but improvements are continuing to be explored, and the Board looks forward to that department settling in again to its critical mission.

The Board lost one valuable member, Rob Pfeiffer, during the past year, and his seat was filled by former MSP Chaplain Walter Foster, who has moved fully into his new role. The current make-up of the Board is varied and qualified by experience. The Governor's Office of Boards and Commissions has been responsive in its work with the Board this year, and we are grateful for that.

The Board continues to believe that MSP and BCF are fortunate to have such committed staffers, and we wish to acknowledge and affirm the hard and committed work of those staffers who have implemented – and/or adapted to – the myriad changes that have taken place. When MSP and BCF are staffed at appropriate levels, all the changes implemented will surely reduce the degree of risk – to both inmates and staff – and increase the chances of better outcomes for inmates.

6. As initially referenced on page 2, the Board now requests the assistance of the Joint Standing Committee in order to clarify our role. Our understanding of the Board's mission, duties, and responsibilities is in serious question. For reference we call your attention to:

Sec. 134-A MRSA § 3002. And specifically to: 2. Duties – A. and B.:

“2. Duties. Boards of visitors have the following duties.

“A. Each board of visitors shall inspect the correctional facility to which it is assigned. Each board of visitors must be provided open access to all physical areas of the correctional facility, including access to areas housing clients. Each board of visitors must be provided the opportunity to speak to clients and to staff. Members of the board shall comply with all departmental policies and procedures and facility security practices regarding access to the correctional facility, shall adhere to all federal and state law regarding confidentiality and shall refer concerns or complaints regarding specific individuals to the chief administrative officer or advocate.

“B. Each board of visitors shall review the management of the correctional facility to which it is assigned to determine whether that management is consistent with the philosophy, mission and policy goals of the department and facility. Each board of visitors shall prepare an annual report including its recommendations and shall provide copies of its report to the chief administrative officer of the facility, the commissioner and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The commissioner shall provide copies with the department's response to the reports to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters within one month of receiving the annual reports.”

The particular situation is the one referred to at the end of paragraph 4 on page 2. To reiterate, there was an event in which one inmate's escalating acting out and stirring up of other inmates ultimately led to what several inmates have claimed to be an inappropriately and unnecessarily extreme response on the part of Security staff. This response described by inmates is at complete variance with the way the administration has described it, and individuals from each of these “sides” are steadfast in their positions. In the wake of this conflict the Board felt it would be helpful to view surveillance/security video footage recorded at the time – because the administration has told the Board that the video shows that what the inmates described did not occur as they described it. The Board believed that viewing this video would enable the members to feel assured – or reassured – of the facts of the matter. With the two “sides” differing so dramatically, the Board continues to feel that our responsibility is to “inspect” this situation in order to determine that “...management is consistent with the philosophy, mission and policy goals of the department and facility,” as the Statute reads. The Board thus requested to view the video. Our

understanding is that Commissioner Ponte conveyed this request to Associate Attorney General Diane Sleek for an opinion, and she replied with the position that such viewing amounts to “investigation,” and is therefore outside the authority and duty of the Board.

The Board agrees completely that it is not our duty to “investigate” matters, in the technical sense. But we respectfully disagree with AAG Sleek’s position that our viewing of the video would constitute “investigation.” On the contrary, we believe that it falls within the realm of “inspection” and “review.” To explain further, we take the practical definition of the Board’s mission as going into the facilities in order to listen and look for issues of concern. Such listening and looking involves talking with individual inmates, groups of inmates, individual Program and Security staff, groups of Program and Security staff, individual administrative staff, and groups of administrative staff. The Board pursues this mission in two ways: First, we look and listen on our own initiatives; second, we look and listen as a result of conversations, letters, calls, or e-mails that request or suggest that we look into specific issues of concern. Generally speaking, these are issues and concerns that have already unsuccessfully sought solution or resolution from the administration.

We believe the statutory role of the Board of Visitors is to listen and look independently – not through any “filter” of the administration. That is why we meet in private settings with the inmates and with the staff that we do. We then bring our concerns to the Warden for discussion. This process has worked well – probably never better than it currently does – until this current situation. The value of this approach to our mission is that the Board, as an independent body, has (a) listened to the issues and concerns raised or reported, (b) assured those raising the issues that we would convey them to the administration, (c) found out if and how they were going to be addressed, and (d) if not, why not. Basically, this has allowed us to provide a way to help inmates and staff who have felt “unheard” believe that someone else is listening, and then to follow up in such manner as the Statute defining our role and responsibility suggests to us – whether with the Warden, the Commissioner, or – as in this case – with the Joint Standing Committee.

If we are simply to leave all the further “listening and looking” to the administration and staff, we question the purpose of the Board of Visitors. After all, these matters are known to have been raised already, and yet they remain unresolved to the satisfaction of the parties raising the issues – sometimes for legitimate reason, and sometimes not. The problem is that these issues are usually still creating resentment, frustration, or unrest. It’s certainly not the case that the Board doesn’t “trust” the administration. On the contrary, we wholly respect its commitment to professionally and effectively managed correctional facilities. Rather, it’s that this is how we view our mission, and how we develop the confidence to report as we do to the Joint Standing Committee.

This video became an issue for the Board because it could help us make sense of the difference between two versions of what had happened. Prior to that point, the Board had done the first part of its job – of listening, looking, and conveying our concerns to the Warden. Recently, however, representatives of two advocacy groups, NAACP and MPAC, approached the Chairman of the Board during another meeting at MSP. They noted that the version of events articulated by inmates they were in touch with left them sufficiently skeptical of the administration’s account, and they believed someone else should know more about what, exactly, had occurred. Thus, the Board felt even more responsibility to understand what had happened, in order to be satisfied that we had done our job, and in order to confidently report on this to the Joint Standing Committee.

The Board then attempted to make this case directly with AAG Sleek, but her position remained firm. Our challenge is that, by this interpretation of the Statute, the Board is expected to “stop” at having raised the concern with the Warden. But how is the Board to report reliably to the Joint

Standing Committee when all we can report in such a case is no more than a blind assertion that “the question raised has been fully addressed – because the administration says it was?” This seems to the Board to imply a largely ineffectual mission. We may be mistaken, but the Board believes that this is not what the people of Maine intended with this Statute.

7. Thus, we respectfully request clarification of our role. We find ourselves in a place we believe only the Joint Standing Committee can help us with, and we ask the Committee to consider the potential for ambiguity in the Statute’s interpretation. The Board’s mission blends responsibility and authority in a way that usually works sufficiently well. This situation, however, illuminates both a need and an opportunity for greater clarification of the role of this and other correctional facility Boards of Visitors.

Notwithstanding this, the Board wishes to affirm that we have great confidence in the leadership at MSP. On the other hand, unless we are allowed to “inspect” and “review” thoroughly, we can’t possibly know and reliably report to the Committee that hidden issues are being properly addressed, which we view as our mission. Anything less suggests to us a virtual rubber stamp or nearly blind eye. If this is what is expected of the Board – which only wishes to help these facilities operate in the most rigorously professional and respectful manner – we are uncertain as to why the Boards of Visitors exist. These Boards are comprised of members who are often very passionate about effective corrections practices, and as such, they represent a diversity of the public safety, criminal justice, and offender accountability interests of the people of Maine. We believe they need and deserve the fullest opportunity to achieve their mission, and we believe this was the initial intent of the Statute when it was written. We appreciate your consideration, and look forward to the response of the Committee.

Respectfully submitted,

Jon Wilson, Chairman – The Maine State Prison Board of Visitors
Denise Altvater
Walter Foster
Perry Gates
Ted Pierson
(With thanks to former member Rob Pfeiffer)