

## ISSUE MEMO 2002-03

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Issue: Pueblo County Jail / Wackenhut Corrections Corporation

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### **I. Summary**

The international private prison company Wackenhut Corrections Corporation has recently revealed its proposal to build a 1,000 bed correctional facility in Pueblo. Wackenhut's plan calls for 500 beds to be used for state prisoners from the Colorado Department of Corrections and 500 beds to be used as a county jail for Pueblo. The Colorado Criminal Justice Reform Coalition (CCJRC) is a statewide network of 85 organizations and faith communities and more than 600 individuals advocating for effective alternatives to incarceration. CCJRC has several concerns about this proposal:

- The Pueblo Board of County Commissioners has repeatedly violated the Colorado Open Meetings Law by holding planning sessions with Wackenhut which were not open to the public.
- Wackenhut's proposal has several components which are concerning. These include the public safety risks which could arise from a poorly operated prison (a pattern which appears frequently in Wackenhut's record) and potential costs which could be borne by local government (e.g., sewer and road upgrades, law enforcement response to riots and escapes, and increased court cases resulting from incidents occurring in the prison).
- Pueblo County incarcerates a greater portion of its population than any other county in the state. We believe that while the current jail may need renovations, the overcrowding problem should be used as an opportunity for Pueblo to reevaluate its incarceration practices and use alternatives to jail. The County has failed to provide persuasive evidence to support their contention that a new 500 bed jail is necessary. Sheriff Dan Corsentino has failed to provide a needs assessment making a clear case for a new jail facility. What little evidence he has provided has been hampered by severe methodological flaws.
- The Board of County Commissioners wants to use a lease agreement with Wackenhut to circumvent the constitutional requirement for a public vote on any long-term debt obligations. This is questionable fiscal policy which would commit Pueblo to a long-term relationship with Wackenhut (a company with a dubious history). Instead of seeking voter approval for a new jail the county has cast aside the principles of democracy and attempted to negotiate a secret deal with Wackenhut—an action which should be undertaken only after extensive opportunity for public input.

## **II. Background**

On May 16, 2001 Gov. Bill Owens signed House Bill 02-1370 which directed the Department of Corrections (DOC) to issue a request for proposals (RFP) from contractors willing to operate a “preparole and revocation center.” The DOC subsequently issued Solicitation CAA-02-RFP# 6187 on November 20, 2001. The RFP requested that the facility be at least 300 beds, preferably located along Colorado’s Front Range. The RFP was modified on July 31, 2002 to state that preference would be given to a facility of at least 500 beds.

Bid proposals were due on September 6, 2002. Four companies submitted proposals:

1. Community Education Centers (proposed location unknown)
2. Correctional Services Corporation (proposed location unknown)
3. GRW Corporation (location presumed to be Brush)
4. Wackenhut Corrections Corporation (company has admitted proposed location is Pueblo)

On August 9, the *Pueblo Chieftain* published an article explaining that the Pueblo Board of County Commissioners (BOCC), Pueblo City Council, and other officials had attended a meeting on the Wackenhut proposal.<sup>1</sup> The meeting, which took place August 8, was not advertised to the public—a violation of the Colorado Open Meetings Law (CRS §24-6-401, *et seq.*). Then, on September 4, the BOCC sent Wackenhut Corrections Corporation a letter supporting their proposed project. After obtaining a copy of the letter, the CCJRC wrote to the BOCC, asking that the commissioners rescind their letter, since it resulted from an illegal meeting which was not advertised to the public.

The BOCC responded on September 23 saying that the letter “was discussed and approved at a meeting that was held on September 4” and since the September 4 meeting *was* properly noticed, they would not rescind the letter. The September 4 meeting, while advertised to the public, was advertised and conducted as an executive session (i.e., no members of the public were allowed to be present). The CCJRC obtained a recording of the September 4 meeting which was attended by the BOCC, two representatives from Wackenhut, Sheriff Dan Corsentino, County Attorney Dan Kogovsek, County Financial Advisor Russell Calwell, and Larry Martinez of the Martinez Group. The recording reveals that the meeting did not meet the criteria for executive session, as enumerated in CRS §24-6-402(4). The Open Meetings Law further states that “no adoption of any proposed policy, position, resolution, rule, regulation, or formal action...shall occur at any executive session that is not open to the public,” CRS §24-6-402(4).

The September 4 meeting was largely focused on Wackenhut’s proposal to build an extra 500 beds to lease to the county as jail space—an issue which is relevant to the public and may not be acted on in executive session. In light of these facts, the CCJRC wrote to the BOCC on October 4, asking again that the letter be rescinded and that all negotiations with Wackenhut be terminated until a public meeting is held. County Attorney Dan Kogovsek responded on October 11 refusing to rescind the letter, stating “[i]n my opinion the September 4, 2002, meeting and letter are in compliance with the Colorado Open Meetings Law and other applicable statutes.”

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<sup>1</sup> Peter Roper, “Private prison on Pueblo Blvd.?” *Pueblo Chieftain* August 9, 2002.

### **III. Open Meetings Violations**

#### *Pueblo County is in Violation of State Law*

Colorado statutes and case law are abundantly clear that the Open Meetings Law is “designed precisely to prevent the abuse of ‘secret’ or ‘star chamber’ sessions of public bodies. As a rule, these kinds of statutes should be interpreted most favorably for the beneficiary, the public” (*Bagby v. School Dist. No. 1*, 528 P.2d 1299). The Colorado General Assembly explains the purpose of the law concisely by stating that access to meetings of public bodies “is declared to be a matter of statewide concern and...*the formation of public policy is public business and may not be conducted in secret*” (CRS §24-6-401, emphasis added).

Although the Open Meetings Law does allow executive sessions for *discussion* of acquisition or lease of property if disclosure of information would adversely impact the public interest, the scope of the September 4 meeting was much broader than the law allows as a justification for executive session. Regardless of whether or not the property acquisition exemption applies, the fact still remains that *decisions* cannot be made in executive session—a prohibition that the BOCC flagrantly ignored by approving the September 4 letter and authorizing further planning and negotiations with Wackenhut.

The Open Meetings Law also forbids public bodies from making decisions in executive session and then “rubber stamping” the decisions and making them official at future public meetings (*Bagby v. School Dist. No. 1*, 528 P.2d 1299 and *Van Alstyne v. Housing Auth. of City of Pueblo*, 985 P.2d 97). This tactic is apparently what the BOCC had in mind during the September 4 closed meeting, since the discussion makes it obvious that the BOCC has decided to proceed with extensive planning and negotiations with Wackenhut, without inviting the public to comment or ask questions.

The CCJRC’s contention concerning Pueblo’s violation of the Open Meetings Law is substantially strengthened by a September 2002 decision by the Colorado Court of Appeals which again made clear that the legislature “intended the [Open Meetings] Act to afford public access to a broad range of meetings at which public business is discussed and to prevent public bodies from carrying out public business in secret” (*Costilla County Conservancy Dist. v. Board of County Commissioners*, Case No. 01CA1174, Colo. App. Sept. 12, 2002).

#### *Wackenhut’s Proposal is a Matter of Concern to the Residents and Taxpayers of Pueblo County*

The people of Pueblo County have a right to know what their government is planning. There are two areas of particular concern: 1) whether or not a new county jail is needed; and, 2) whether Pueblo citizens want a private for-profit prison in their town.

A jail is a significant expenditure on the part of any county. Specific issues surrounding the need (or lack thereof) for a new jail can be found in Section IV, below. The issue of what Wackenhut’s role would be in the proposed facility is a significant concern. First, private prisons in general, and Wackenhut in particular, have horrible records which show a pattern of operating dangerous prisons which jeopardize the safety of inmates, staff, and the general public. A recent example of Wackenhut’s disregard for safety is the case of Ralph Garcia, a guard-in-

training at Wackenhut's Hobbs, NM facility. In September 1999, Garcia was the only officer in a cellblock when he was stabbed to death in an altercation. This happened seven months after inmate Robert Ortega was stabbed to death in his cell and only five months after a major riot resulted in thirteen injured guards.<sup>2</sup> Although Sheriff Corsentino has made it clear that Wackenhut would not operate the jail portion of the facility, they *would* operate the 500 bed portion of the prison which would be under contract with the state.

Wackenhut is a publicly-traded, for-profit subsidiary of Danish security conglomerate Group 4. The danger with Wackenhut, as with all private prison companies, is that every dollar which goes to shareholders is one less dollar spent on public safety and inmate rehabilitation. Private prisons' primary method to turn a profit comes from underpaying staff. This leads to inexperienced and untrained people working as correctional officers. These people frequently quit their jobs to either seek employment in a new field, or to get a better paying job with a state or county correctional facility—resulting in an astounding 53% annual staff turnover rate in private prisons.<sup>3</sup> This scenario seems to be quite likely in Pueblo, as indicated by Wackenhut's negotiations with the BOCC. In the September 4 meeting, Wackenhut Vice President and COO Wayne Calabrese told Sheriff Corsentino that he “expect[s] that your deputies make more hourly and have better benefits—that's typically the case.” He then stated that although it would be OK for Sheriff Corsentino to hire “a few up-and-comers” away from Wackenhut, “we are going to need to work with that [issue] so we are not losing all our staff with a constant turnover.”

Due to inexperienced and under-trained staff—as well as general corner-cutting in security operations—Wackenhut has a steady track record of riots, sexual misconduct scandals, escapes, and violence. A complete accounting of problems at Wackenhut facilities is beyond the scope of this paper—in fact, a summary of incidents in Wackenhut prisons for the years 1997-1999 fills 22 pages.<sup>4</sup> When disturbances occur in Colorado's private prisons (such as the 1999 riot in Correctional Service Corporation's prison in Crowley County), state *and local* law enforcement officers are called on to respond to the incident. Thus, any private prison in Pueblo would entail the possibility of county and city police putting themselves at risk to solve problems created by Wackenhut.

In addition to public safety concerns, there are negative financial impacts from prisons as well. A 1,000 bed facility (such as the one Wackenhut has proposed) will require significant infrastructure improvements, paid for by the taxpayers. Road improvements, water service, and wastewater system upgrades which are necessary to accommodate a prison often carry a hefty price tag. Limon and Sterling (home to 953 and 2,445 bed prisons, respectively) have seen their wastewater treatment facilities overwhelmed by the opening of new prisons. Subsequently, both cities' treatment facilities have been out of compliance with environmental law, requiring taxpayer-funded upgrades in order to accommodate the prisons needs.<sup>5</sup>

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<sup>2</sup> Corrections USA, “Wackenhut Exposed” (2000).

<sup>3</sup> Camille and George Camp, eds, *The 2000 Corrections Yearbook: Private Prisons* (Middletown, CT: Criminal Justice Institute, 2000) 101.

<sup>4</sup> Corrections USA, “A Corrections USA Look at Wackenhut Corrections Corporation” (1998) and “Wackenhut: Exposed” (2000).

<sup>5</sup> Brian T. Atkinson, “Town may pay for pair of waste water violations,” *The Limon Leader* February 2, 2001 and Community Matters, Inc., *Sterling Area Land Use Plan* (October 1995).

Another impact on local government is increased court activity. During the construction of the Sterling Correctional Facility in Logan County, local officials realized the impending need for a new county criminal justice center. The county hired Public Administration Consulting/Training (PACT) to devise a Criminal Justice Master Plan for Logan County. In their report, the researchers found that other demographically similar counties which had relatively new prisons (Lincoln, Bent, and Crowley Counties), had increased rates of incarceration (in the county jail) and court filings. In fact, research showed that

Sheriff's Offices in the comparison [Lincoln, Bent, and Crowley] counties all reported that civil filings and the delivery of civil papers increases after the prisons are in operation...[the sheriffs] also reported increased problems with juveniles and juvenile drug use. The data shows that juvenile filings increased by 60.4% in the prison counties...<sup>6</sup>

Bent County's experience after the 1993 opening of the privately operated Bent County Correctional Facility (BCCF) should serve as a stern warning. In the four years following the opening of BCCF, County Court filings in Bent County increased an astonishing 98.9%. Wackenhut's proposed prison would be accompanied by an increased burden on the local criminal justice system, considering the fact that civil actions which involve prisoners are processed by local officials and "[c]rimes caused by inmates not handled by prison officials as disciplinary actions are filed in the county's district or county courts,"<sup>7</sup> thus suggesting that the number of prison-related filings is directly proportional to the number of prisoners in a given jurisdiction. Pueblo does have a greater population base than Bent County, so the percentage increase of court filings would likely be less than that seen in Bent County, but the fact remains that the workload of the local courts would be increased by the opening of a private prison.

#### **IV. Pueblo County Jail Expansion Plans**

##### *Lack of Evidence Supporting Need for New County Jail*

The primary focus of the September 4 meeting of the BOCC was Wackenhut's proposal to build 500 beds at their proposed facility which would be leased to Pueblo County as a new jail. Sheriff Corsentino is adamant that a new jail is necessary and he fully expects to build *an additional* 250 bed unit at the Wackenhut facility "within five years, if not sooner." All of this despite the fact that the county has not provided solid evidence to support this claim. In addition, the tape of the meeting shows that serious questions regarding Wackenhut's proposal remain unanswered.

The Pueblo County Sheriff's Office has not complied with CCJRC's request for information concerning the jail expansion proposal (a violation of Colorado's Open Records Act, CRS §24-72-201 *et seq.*). Thus, the only information available is a slide presentation posted on the Sheriff's webpage.<sup>8</sup> The slide presentation states that a new jail is imperative for the safety of Pueblo County, but instead of useful data, most of the presentation consists of pictures of the current jail. Some of the only information on jail population is contained in slide number 41, which cites data on the county's incarceration rate (number of inmates per 100,000 county

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<sup>6</sup> "Criminal Justice Master Plan" (Logan County: PACT, 1998) III-7 – III-10.

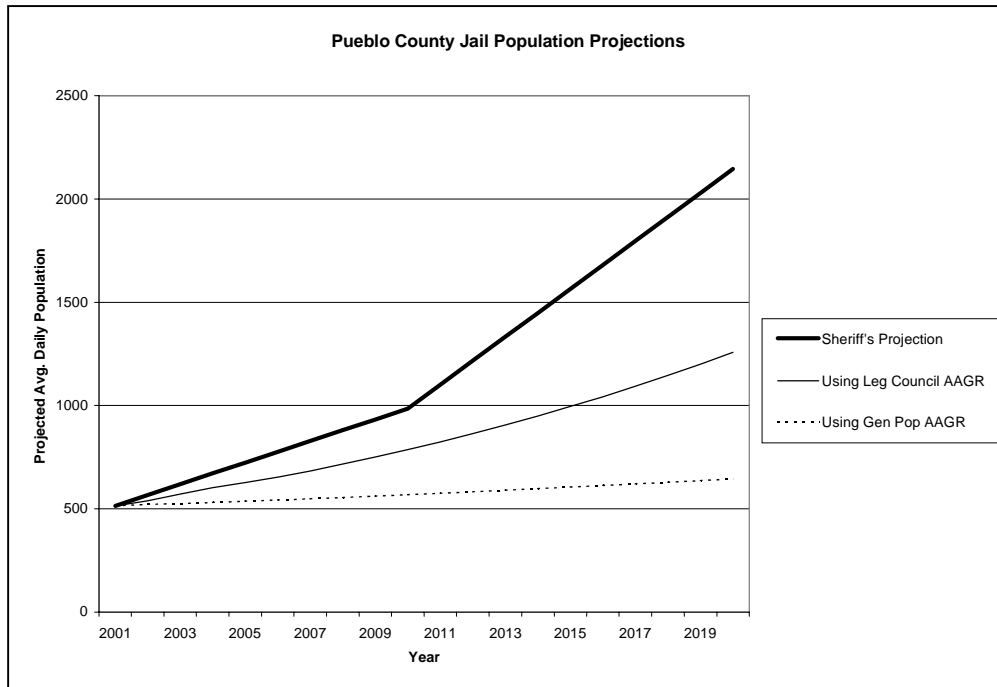
<sup>7</sup> *Ibid.* III-2.

<sup>8</sup> "A new detention facility is a MUST!" available at [www.sheriff.co.pueblo.co.us](http://www.sheriff.co.pueblo.co.us).

residents).<sup>9</sup> The slide predicts a jail population in 2010 of 985 inmates and 2,145 inmates by 2020.

Unfortunately, the methodology used to arrive at these numbers is fatally flawed. Projecting prison or jail populations is a complex matter. When planning prison budgets, the Colorado General Assembly uses projections from the Legislative Council Staff. These projections take into account four areas: overall population growth, judicial and public safety variables (crime rates, police spending, etc.), economic projections (job growth, GDP growth, etc.), and legislative actions (i.e., changes to criminal statutes).<sup>10</sup> The Pueblo County Sheriff’s Office has not taken any of the aforementioned matters into account, but rather based their predictions solely on extrapolating future jail population based on past jail population growth. This method essentially predicts that things will remain the same and no alternatives to incarceration will be significantly used, despite a current national trend of jurisdictions implementing alternative sentencing options. This prediction of continued jail population growth could become a self-

Figure 1



fulfilling prophecy if a new jail is used in lieu of sentencing alternatives in order to justify its expense.

Much more importantly, however, is that even if past jail growth is used as the exclusive predictor of future growth, the math was still done incorrectly. Instead of examining the

average annual growth rate (AAGR) of the jail population for the last 5-10 years and projecting that the jail population will continue to increase at that rate, the Sheriff’s Office predicts that the incarceration *rate* will continue to increase based on the rate at which it increased between 1990-1998. Not only is this a statistically inappropriate method, it would be economically impossible for Pueblo County to sustain. The Sheriff predicts that by 2020, 1,193 people would be incarcerated per 100,000 county residents. An incarceration rate of 1,193 would be nearly three

<sup>9</sup> Sheriff Corsentino’s slide show actually calculates incarceration rate as the number of incarcerated persons per *ten thousand* citizens. Since the standard measure for incarceration rate is number of incarcerated persons per *one hundred thousand* citizens, we have converted Corsentino’s figures to this measurement for the sake of consistency.

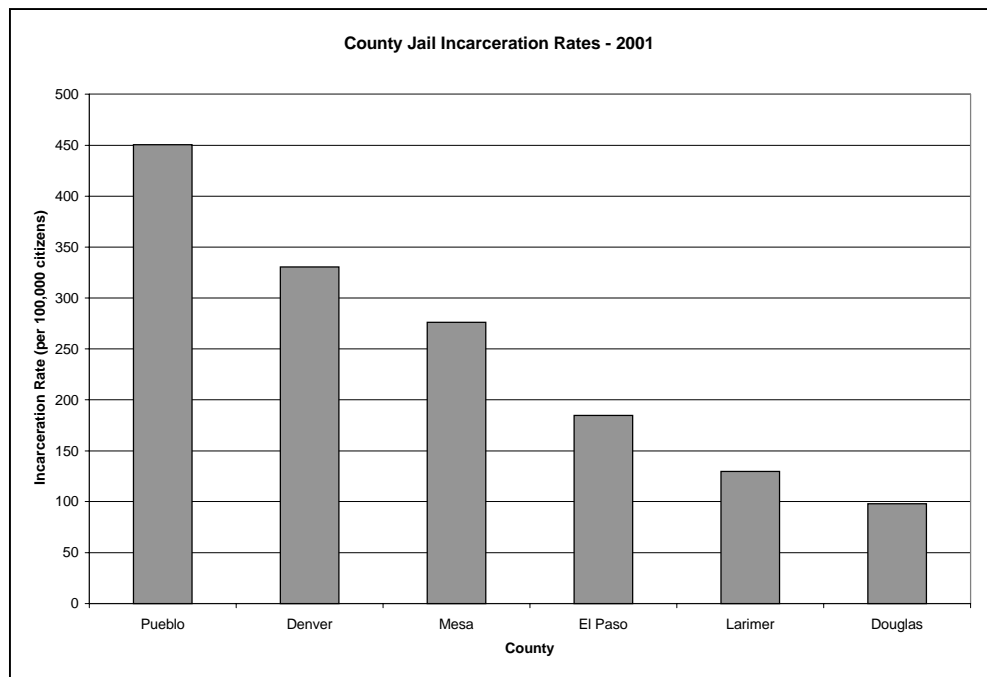
<sup>10</sup> *Colorado Legislative Council Staff Forecasts, 2001-2007* (Denver, CO: 2001) 60-61.

times the incarceration rate of South Africa, and almost twice the incarceration rate of Russia.<sup>11</sup> Since Russia and the U.S. have approximately the same incarceration rate, this would also mean that Pueblo’s projected incarceration rate would be twice that of the country as a whole. Since county jails only hold people awaiting trial or those serving short sentences for misdemeanors, Pueblo’s high incarceration rate leads one to wonder what type of offenders are being kept in the county jail. Figure 1 shows the Sheriff’s projections, as opposed to a jail population growth based solely on projected Pueblo general population AAGR.<sup>12</sup> For comparative purposes, the graph also includes Pueblo County jail projections based on Legislative Council<sup>13</sup> state prison population AAGR.<sup>14</sup>

Figure 2 shows the remarkably high jail incarceration rate in Pueblo county as compared to other counties in Colorado.<sup>15</sup>

While the current jail certainly needs renovations, overcrowding should be addressed by examining why Pueblo has such an abnormally high incarceration rate and what alternatives could be used to reduce the jail population. Jails do not house felons with

Figure 2



lengthy sentences—they are sent to the state prison system. Jails house defendants awaiting trial (who should be released on bail unless they are clearly dangerous or present a credible flight risk) and people who are serving short sentences. Jail should only be used to house people who are a clear danger to society. Defendants accused of non-violent offenses who awaiting trial can

<sup>11</sup> Marc Mauer, *Americans Behind Bars: U.S. and International Use of Incarceration*, 2000 edition, executive summary (available at [www.sentencingproject.org](http://www.sentencingproject.org)).

<sup>12</sup> “Preliminary Population Projections for Colorado Counties, 2000-2020,” Colorado State Demographer’s Office (Denver, CO: Dept. of Local Affairs, n.d.).

<sup>13</sup> *Colorado Legislative Council*, op. cit., 65.

<sup>14</sup> AAGR for Pueblo County and the Colorado prison population is applied to the 2001 average daily population of the Pueblo County jail (as determined from newspaper reports, since the Sheriff’s Office has not complied with our request for information). The Sheriff’s projections for 2010 and 2020 were obtained from the aforementioned slide show and extended over the entire time period by use of linear interpolation.

<sup>15</sup> Average daily jail populations for 2001 were obtained from sheriffs’ websites (Denver, El Paso, and Larimer Counties), phone calls (Douglas and Mesa Counties), and newspaper articles (Pueblo County).

remain under the supervision of the sheriff outside of a jail setting, through the use of electronic monitoring and day reporting. People who have been convicted of non-violent offenses should be sentenced to the least restrictive appropriate setting, particularly if by remaining in the community and working, they can make financial restitution to the victim. To be sure, we will always need jails—what is perplexing in this case is why Pueblo uses jail more than any other county in Colorado.

*Financial Structure of Wackenhut Proposal is Misleading*

During the September 4 meeting of the BOCC, Sheriff Corsentino expressed support for the Wackenhut proposal, saying “one of the great selling points for this is if we can convince the voters that we have developed a concept and project that we can afford without asking them for mill levy increases on property taxes, we’ve got a ‘win.’ I believe that’s the way we have to sell this.” Unfortunately for Sheriff Corsentino, “selling” the Wackenhut proposal as a money-saving deal is misleading.

The plan which the BOCC is pursuing with Wackenhut is essentially an elaborate end-run around Colorado’s constitutional prohibition against long-term debt without voter approval (Colorado Constitution, Article XI, Section 6). Pueblo County would sign a long-term lease (likely 10-20 years) with Wackenhut, for the use of the facility. Although long-term debt is prohibited without a vote of the people, the County can escape this law by putting a clause in the lease that the County can cancel the agreement at any time if it decides not to appropriate funds for lease payments. On the surface it appears that Pueblo County can back out of the lease with no repercussion. *Not true.* While the County would be legally allowed to cancel the lease, this would cause its bond rating to be cut dramatically, thus making all future debt service prohibitively expensive. This exact same scenario has just occurred in Louisiana, where state legislators were told that canceling the state’s contract with the troubled youth prison in Tallulah would make the future cost of borrowing money too expensive to justify.

In addition, the lease of the Wackenhut facility would be a standard lease, meaning that the county would make many years of payments but—unlike a lease-purchase agreement—would not own the facility at the end of the lease term. Thus, instead of making payments in order to obtain a capital asset, the county would simply line the pockets of Wackenhut’s shareholders and end up with nothing more than a pile of rent receipts. Furthermore, Wackenhut Vice President Calabrese explained to the BOCC at the September 4 meeting that due to the complex relationship between Wackenhut and their affiliated real estate investment trust (REIT), they cannot say what the interest rate on the lease will be *until the facility is completed.* Mr. Calabrese justified this situation by saying “its difficult for the real estate investment trust, as it is for anybody sitting in a room in 2002, to say what the terms of their deal will be in 2004.” This does not solve the problem that Pueblo County will be on the hook for interest rates which won’t be known until its already too late to back out of the deal. None of the County Commissioners questioned this setup.

What is shocking in this instance is that not only does the Pueblo BOCC want to evade a public vote, but they also want to do so in secret meetings with no opportunity for the public to voice their opinions.



### **V. Pre-Release and Revocation Facility**

The RFP which Wackenhut is bidding on is for a specialized prison which would prepare inmates for release and hold parolees for short revocations (up to 6 months) in preparation for their re-release into the community. The CCJRC supports the creation of such a facility, however we are opposed to the system of incarceration for profit in which Wackenhut is a leader. As a result, we have not taken a position on the facility. We feel strongly, however, that any community which is picked as a possible location for this prison is entitled to a full and fair disclosure of the facts—including information on the private prison operator, a discussion of the potential community impacts (both positive and negative), and an opportunity to discuss and challenge the proposal in a public setting.

### **VI. Conclusion**

Pueblo County has acted irresponsibly and illegally by excluding the public from meetings at which plans have been made to implement Wackenhut's proposal for a 1,000 bed correctional facility. Several organizations have decided to address this behavior in different ways. CCJRC has filed a lawsuit against the county for its violations of the Open Meetings Law. The community group Better Pueblo has organized a public forum<sup>16</sup> to discuss Wackenhut's proposal. The national organization Citizens Against Private Prisons (CAPP) is planning activities to educate Pueblo citizens about the corporate background of Wackenhut. All of these activities are valuable means of working to ensure that Pueblo County respects the democratic process and allows the community to take control of the public policy process—we commend the work of Better Pueblo and CAPP and hope that the Board of County Commissioners halts their pattern of conducting public business in private.

### **VII. Contact**

For further information on this subject, contact CCJRC Co-Coordinator Stephen Raheer at (719) 475-8059 or [stephen@epimethian.org](mailto:stephen@epimethian.org).

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<sup>16</sup> Better Pueblo's public forum is scheduled for October 30, 7-9 p.m. at Saint Pius X Hall (Fortino and Morris), more information is available at [www.betterpueblo.org](http://www.betterpueblo.org).