

THE OFFICE OF GOVERNMENT INTEGRITY

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A REPORT TO THE ATTORNEY GENERAL

CAMDEN COUNTY YOUTH CENTER
OCTOBER 15, 2004 - EDUCATIONAL FUNDING

September 12, 2006

A. Introduction

In the fall of 2004, the Attorney General requested that the Office of Government Integrity investigate public allegations that employees of the Camden County Youth Center (“Center”) had illegally detained numerous juveniles in October 2004. Specifically, we investigated whether the Center’s management and staff had breached any laws in detaining participants in the county’s electronic monitoring program for the ultimate purpose of obtaining increased State funding for its educational programs.

During the course of our investigation, we interviewed numerous current and former employees of the Center, two Superior Court judges who had placed the youth in the monitoring program, as well as the presiding judge of the Family Part and the Camden County Assignment Judge. We also questioned other employees of Camden County, individuals from State agencies who worked with the Center on juvenile justice issues, and the parents of some of the juveniles involved. Additionally, we reviewed the Center’s internal memorandum, relevant court transcripts, and reports from other agencies and organizations regarding the Center’s operations.

Following a lengthy investigation, we have concluded that the State cannot prove the elements of the pertinent criminal statutes beyond a reasonable doubt. We considered the adequacy of the State’s proofs to satisfy the elements of two offenses: official misconduct, N.J.S.A. 2C:30-2, and official deprivation of civil rights, N.J.S.A. 2C:30-6. First, as to official misconduct, the State will not be able to prove that the Center’s management knew that their acts were unlawful, the requisite mental state under the statute. In large part, that is because our investigation revealed that neither the courts nor the State nor the county has promulgated any rules, regulations, or standard operating procedures governing the electronic monitoring program. Furthermore, the judges who placed juveniles into the electronic monitoring program

established inconsistent policies on the requirement for judicial notification of any violations and communicated different approaches to the Center's employees regarding temporary detentions of the juveniles participating in the program. The policies of one judge led many of the Center's employees to believe that they had wide discretion to detain a juvenile participant in the monitoring program. The investigation also found that neither the State, county, nor the Center provided any training of the Center's employees in the basic responsibilities and the requirements for returning to the Center juveniles who had breached the conditions of participation in the electronic monitoring program. Second, as to the crime of official deprivation of civil rights, it is our determination the State would not be able to prove beyond a reasonable doubt that Center's employees had detained the juveniles because of the juveniles' "race, color, religion, gender, handicap, sexual orientation or ethnicity," N.J.S.A. 2C:30-6.

B. Factual Background

The Camden County Youth Center is the county's detention facility to house juveniles accused of delinquent behavior or adjudicated delinquent. It has a maximum capacity of 37 detainees. By 2003, the facility was grossly overcrowded with an average daily population of 95 juveniles, an average more than two-and-a-half times the approved capacity.

In 2004, in an attempt to alleviate the chronic and severe overcrowding, the management of the Camden County Youth Center, in conjunction with the Juvenile Justice Commission (JJC) and several other organizations, took several positive steps to reduce the number of juveniles detained at the facility. First, in August 2004, it arranged with other county and private facilities to house the Center's female detainees at those other facilities. The relocation of the girls to other facilities made available an entire wing of the Center to house the boys and substantially

reduced overcrowding at the Center. Second, the Center was able to release many juveniles from the facility by placing them in an electronic monitoring program. It is this program that we reference in the introduction. The steps proved effective, reducing the Center's population from 89 on June 23, 2004 to 64 on October 13, 2004.

In early October 2004, the Center's management, including Mary Previte, then-Custodian of the Center,¹ Eva Johnson, Court Coordinator for the Center, and Judy Hulmes-Cochran, Site Education Supervisor, began to prepare for October 15, a significant date for the Center because the census on that date determined the funding available to the facility for its education programs. Per State law, the Department of Education determined the amount of state funding for the educational programs for county detention facilities, such as the Center, based solely on the Center's census on "the last school day prior to October 16." N.J.S.A. 18A:7F-24. For that reason, October 15 is referred to as "Count Day." Based on the number reported, the State determines the educational aid for the facility, applying the formula of \$9000 per detainee.²

Hulmes-Cochran and Previte spoke about the approaching Count Day and the implications of the reduction in the Center's population for its educational funding. By Hulmes-Cochran's calculations, the reduced population would yield a reduction in the Center's educational funding such that the Center would lose two teacher positions. Hulmes-Cochran agreed that the girls should be returned to the Center for Count Day, and discussed this option with Previte.

¹ Previte retired from her position on April 1, 2005, after 31 years running the facility.

² JJC collects the census data and, based on the juvenile's address and whether the juvenile had been detained by the county or the State, determines the respective amount of the State's and county's share. Regardless of whether the State alone or with the assistance of the county is responsible for the funding, county detention facilities receive total educational funding of \$9000 per detainee.

On October 12, 2004, Previte issued a memorandum to her staff informing them that:

Camden County will temporarily bring Camden County girls back to the Youth Center on Thursday, October 14, to be counted with the Youth Center's annual count. This means that "A" wing will house girls for about two days. This will start on Thursday afternoon, October 14 and continue into October 16. On Saturday, October 16, we expect "A" wing to house boys again.

As evident in Previte's memorandum, the Center's management did not attempt to conceal or disguise their plan to temporarily increase the Center's population on Count Day.

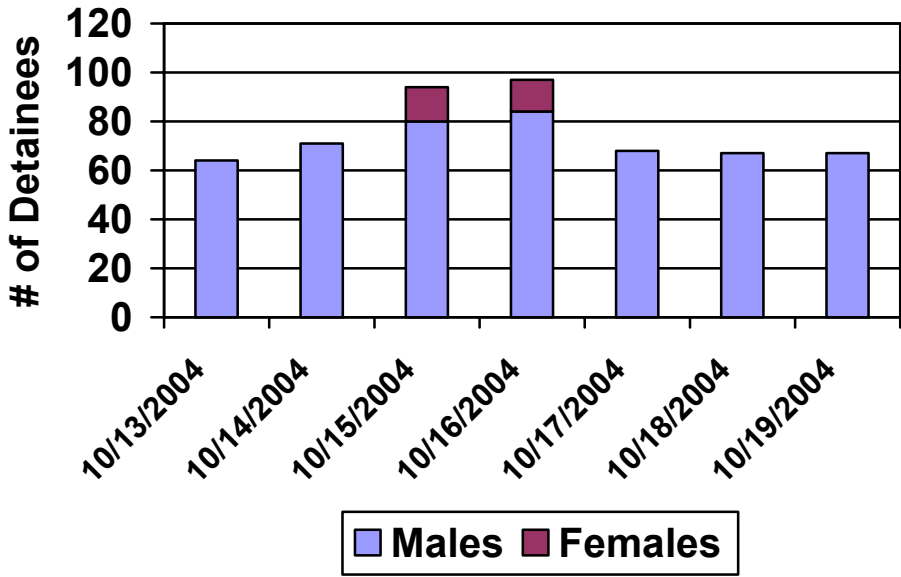
In addition to transferring the female detainees back to the Center, management took other steps to increase the Center's population. Previte contacted Camden County Prosecutor Vincent Sarubbi to request that the Prosecutor do a sweep of outstanding bench warrants for juveniles on or around Count Day. Prosecutor Sarubbi declined to act on Previte's request, in part, he said, because the Office already had implemented an initiative to execute outstanding bench warrants. Previte also asked an investigator of the Prosecutors Office whether the Office was going to conduct a bench warrant sweep. On October 14, 2004, investigators from the Prosecutors Office arrested eight juveniles with outstanding bench warrants. These arrests did not yield any significant increase in the Center's population as they only resulted in the detention of three or four juveniles.

Previte also spoke with Eva Johnson about temporarily increasing the Center's population on Count Day by detaining juveniles who had been admitted by the Court into the electronic monitoring program. Johnson then asked the juvenile detention officers who supervised the electronic monitoring program about whether they could bring any participants in the program into the Center for Count Day. Pursuant to her request, the officers then identified in the program participants who, with one exception, had violated some provision of the rules and conditions of the electronic monitoring program; the infractions included testing positive for

drug use, skipping school or sports practice, unauthorized leave, and being suspended from school. In each instance where an officer detained a juvenile participating in the electronic monitoring program for the purposes of increasing the Count Day population, the officers sought and obtained parental consent for the detention. Two parents refused to consent to their child's detention, and those juveniles were not detained. Ultimately, for the purposes of Count Day, and consistent with their instructions, the officers detained fifteen juveniles who were participating in the electronic monitoring program. Karen Simons, the Center's Director of Professional Services, commended their efforts, noting in a memorandum dated October 18, 2004, that the detention officers "clearly showed [their] dedication to the Youth Center and the Electronic Monitoring Program" by their contributions to the "movement of EM youth for October 15th."

These efforts to increase the Center's population were successful. As shown in Table 1, the Center's population increased markedly in the days leading up to October 15.

Figure 1. Juveniles Detained at CCYC, by gender



Consistent with management's efforts to secure educational funding, the Center reported to JJC both the female detainees as well as those detainees who were participating in the county's electronic monitoring program. Our investigation confirmed that every juvenile reported as a detainee on October 15, 2004 was, in fact, detained at the facility on that date. The relocation of the female detainees to the Center not only exacerbated the Center's overcrowding and inaccurately represented its population; it deprived the facility where those juveniles were actually detained of the appropriate educational funding. The Gloucester County Youth Center, where Camden had transferred many of its female detainees, did not report the female detainees that it had relocated temporarily to Camden but was, nonetheless, responsible for educating.

The sudden increase in the number of female and male detainees in the Center, and the equally sudden decrease after October 15, soon came under scrutiny. In a letter dated October 21, 2004, Howard Beyer, Executive Director of the Juvenile Justice Commission, wrote to Ross Angilella, County Administrator of Camden County, that, in light of Camden's progress in reducing the Center's overpopulation, "it was upsetting to learn on October 15, 2004 that the population of the youth center increased from 64 residents on October 13 to 94 residents. This included 14 females." He noted that "deliberate inflation of an already overcrowded facility for whatever reason is inexcusable." In a sworn statement given May 12, 2005, Beyer indicated that he also spoke with Previte and expressed his disapproval of her actions, given their substantial efforts to move the female detainees out of the facility.

The judiciary also noticed the increase of the Center's population, and demanded an explanation. On October 18, 2004, the Hon. Charles M. Rand, Presiding Judge of the Family Part, informed the Hon. Louis F. Hornstine, also a judge in the Family Part, of the changes in the Center's population and the apparent lack of judicial review of either the detention or subsequent

release of the juveniles over the Count Day weekend. On that same day, Judge Hornstine presided over a disposition hearing concerning a juvenile participating in the electronic monitoring program that had been detained in the Center over the Count Day weekend, and subsequently released, without judicial review. Seeking to determine why a particular juvenile had been in custody, Judge Hornstine questioned Eva Johnson under oath and on the record. She testified that “he was placed in detention for the National Count Day under our supervision as part of the EM under the Youth Center.” She further indicated that she was responsible for placing him in the Center, and that she did so upon suggestion of “our [the Center’s] administration.” She confirmed that the Center notifies the appropriate judge when a participant in the electronic monitoring program is detained for violating the program’s rules and regulations. She testified that the Center had not notified the court of the juvenile’s detention and requested a warrant because, although he had been in custody, he was not in custody due to a violation of the EM rules. Her explanation of his detention was the following:

JOHNSON: We didn’t ask for a warrant because we were not bringing him in for a violation.

COURT: Okay. You did not bring him in for a violation?

JOHNSON: That’s correct.

COURT: But he was placed in detention?

JOHNSON: He was placed in detention for the national count day under our supervision as part of the EM under the Youth Center.

COURT: Okay, when you say the National Count Day, can you explain that to me?

JOHNSON: National count day is that the government gives funding for all education programs depending upon the number of residents you have in either your school or program.

COURT: Alright. Who authorized [T.K.] to be brought into detention?

JOHNSON: I did off our EM list.

COURT: Okay. Did somebody suggest to you to bring him in?

JOHNSON: Yes, our administration.

COURT: Who was?

JOHNSON: Mary Previte.

COURT: Did -- was the Court notified of the fact that [the juvenile] was brought in to detention from electronic monitoring?

JOHNSON: No, the Court was not notified.

COURT: Isn't that the protocol that's supposed to be kept?

JOHNSON: For violations, but because we were bringing him in just purposely for the count for two days and releasing him without a violation we did not notify the Court.

COURT: Okay. Now when you say "for the count," I happen to know a little bit about it, although certainly not as much as you, Miss Johnson. Is it fair to say that the count you're making reference to is the October 15, '04 count of the population in detention?

JOHNSON: That's correct.

COURT: Okay. And is it fair to say that [T.K.] was released on the 16th or 17th over the weekend?

JOHNSON: He was released on the 16th.

COURT: Okay. So he was picked up either on 10/13 or 10/14. He was kept in detention without the Court knowing about it until the 16th.

JOHNSON: That's correct.

COURT: Okay, you indicated earlier, Miss Johnson, kids, plural, the kids were placed in detention. I assume that [T.K.] was not the only one.

JOHNSON: No, he was not.

COURT: Okay. Do you have a list of those that were on EM that shortly before 10/15 were placed in detention and were released subsequent to 10/15?

JOHNSON: Yes I do.

Johnson proceeded to provide to the court the names of the detainees, the date of their detention, and the reason for the detention. Regarding another juvenile detainee, the court asked, “why was she detained?”:

JOHNSON: For the same purpose.

COURT: Just for the count?

JOHNSON: Just for the count.

After Johnson provided the names of seven juveniles whom Judge Hornstine had placed on electronic monitoring and who were detained over Count Day without warrant, he inquired:

COURT: It was not as though they violated any terms, any of these [juveniles]. Is it fair to say that the only reason they were detained for two or three days is (a) they were on electronic monitoring and (b) the count that you made reference to as of October 15th.

JOHNSON: That’s correct.

Judge Hornstine next turned to the process used by the Center to select those juveniles that it would detain over Count Day from the larger population of juveniles participating in the electronic monitoring program.

JOHNSON: Well, what we did, the EM officers and myself went over the kids that we had on electronic monitoring.

COURT: Okay.

JOHNSON: And they contacted some parents and asked the cooperation of some parents, letting them know what we were doing, that we were gonna bring their son or daughter in for the count, that we needed them in the building, their bodies in

the building to prepare for our education program monies for the next school year. Many of those parents agreed. Those were the ones that we worked with with the cooperation of the parents.

COURT: How many of the parents did you call?

JOHNSON: EM officers called just about every parent that I'm aware of.

Prior to excusing Ms. Johnson, Judge Hornstine made certain that he understood the Center's reason for detaining the juvenile participants in the electronic monitoring program:

COURT: And other than the National Count issue there is no fathomable reason why any of the juveniles were kept in detention for two or three days?

JOHNSON: No.

In sum, the record of the proceeding before Judge Hornstine confirmed that the Center's management had implemented a program designed to specifically increase the number of juveniles in the facilities on Count Day for the purpose of maintaining the Center's educational program funding. The record also made clear that management had been open about its plan and intention, and forthcoming when questioned about it.

C. Legal Analysis

The investigation of this matter centered on potential violations of several New Jersey criminal offenses. Having established the facts that led to this investigation, and the facts being of record before this investigation, we next considered whether the State could prove that anyone involved with the Count Day events had committed the criminal offenses of official misconduct or official deprivation of civil rights.

1. Official misconduct, N.J.S.A. 2C:30-2

To prove official misconduct, N.J.S.A. 2C:30-2,³ the State must prove beyond a reasonable doubt that a public servant knowingly committed an act relating to his office that he knew was unauthorized for the purpose of benefiting himself or another or to injure or deprive another of a benefit. There is no question that the employees at the Center who participated in the Count Day program were public servants, as the term is used in the statute, at all relevant times and, furthermore, that their actions relating to the detention of juveniles for Count Day 2004 related to their office.

As noted, the State would have to prove beyond a reasonable doubt that each acted with “purpose to obtain a benefit for himself or another.” Ibid. Given the benefit in terms of State educational funding to the Center that directly resulted from the public servants’ actions, and our courts’ broad interpretation of what suffices to constitute a benefit to the actor or another, see generally, State v. Schenkolewski, 301 N.J. Super. 115, 144 (App. Div.), certif. denied, 151 N.J. 77 (1997), the fact that the principals involved received no personal pecuniary gain is not good reason why the State should not pursue the prosecution of this matter.

On the other hand, the investigation has not produced sufficient evidence to prove the requisite criminal intent beyond a reasonable doubt, in other words, that the Center’s employees knew their actions were in violation of law. Interviews with the Center’s employees revealed widespread confusion among the Center’s employees regarding the legality of and proper

³ N.J.S.A. 2C:30-2 provides, in pertinent part, that: “A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit . . . he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner.” Official misconduct is a second-degree offense, unless the “benefit obtained or sought to be obtained . . . is of a value of \$200.00 or less,” in which case it is a third-degree offense.

procedures for taking into custody participants in the electronic monitoring program.⁴ The State would not be able to prove that the employees knew that their acts were unauthorized or that they were committing their acts in an unauthorized manner. N.J.S.A. 2C:30-2. As the Appellate Division has explained:

A public servant is guilty of official misconduct under N.J.S.A. 2C:30-2a only if he knows the act, relating to his office, is unauthorized or committed in an unauthorized manner. Unlike most crimes, as to which ignorance of the law is not material, see N.J.S.A. 2C:2-4, an essential element of this kind of official misconduct is defendant's knowledge that the act he commits is unlawful.

In order fairly to expose a public officer to prosecution for committing an unauthorized act, there must be an available body of knowledge by which the officer had the chance to regulate his conduct. The law must give a person of ordinary intelligence fair warning what conduct is proscribed, so that he may act accordingly.

[State v. Grimes, 235 N.J. Super. 75, 89-90 (App. Div. 1989).
(Internal citations omitted.)]

We will examine in more depth three critical areas where inconsistent guidelines and policies or simply lack of policies left the Center's staff with inadequate warning that their actions constituted potentially criminal acts.

First, the Family Part judges who placed juveniles into the electronic monitoring program had established inconsistent policies on the requirement for judicial notification of any violations and communicated different approaches to the Center's employees regarding temporary detentions of the juveniles participating in the program. Judge Hornstine set forth rules and procedures regarding the operation of the electronic monitoring program in a memorandum,

⁴ Several of the principals involved in these events, including Mary Previte and Eva Johnson, refused to consent to an interview unless given immunity. The State declined to grant immunity to these individuals. Accordingly, OGI reached these conclusions without their cooperation.

dated June 23, 2004, addressed to Johnson, Simons, and Judges Orlando, Rand, and DiCamillo.

That memo provided as follows:

I understand that the new Electronic Monitoring staff will be unable to meet with me until mid-July. Rather than chance any assumptions, I will respectfully suggest what I hope the new program will provide to balance public safety concerns against the placement of these youths in the overburdened facility.

There will be a definite need for early intervention with all of my placements. To that end, I would hope that there will be daily contact to assure compliance. There should also be a daily log indicating the contact(s) if there exists any disputes. Additionally, there will be need to monitor any restrictions that are imposed upon the juvenile including, but not limited to, no drugs or alcohol, counseling, school attendance, and restrictions on associations. Initially, all juveniles should receive no privileges. Any relaxed requirements should be earned after consultation with me.

Whatever the individual plan may require must be monitored. I would also suggest periodic home and school visits, as well as drug screens, if necessary.

I would hope that I could receive status reports on a daily basis to assure compliance. Additionally, any **violation** of the conditions of release of your program must be reported **immediately**.

I am sure that with our mutual cooperation that the program will satisfy all of our concerns.

[Emphasis in original.]

For his part, Judge DiCamillo provided no written guidance to the officers regarding judicial notification and, in contrast to Judge Hornstine's approach, gave the clear impression to the Center's staff that the court did not have to be notified of short-term detentions of juveniles under his supervision. In our interviews of the Center's juvenile detention officers involved in the electronic monitoring program, many officers stated that, in a September 2004 meeting, Judge DiCamillo had endorsed detention of a few days as an appropriate sanction for violations of the conditions for participation in the electronic monitoring program. Furthermore, several

officers indicated that, as far as Judge DiCamillo was concerned, such actions required no judicial approval or review, could be done at the discretion of the detention officer, and were an effective tool to scare a juvenile who was “messing up.” In contrast, several officers indicated that Judge Hornstine clearly prohibited such detentions.⁵ Thus, the juvenile detention officers were operating under different and inconsistent rules established by the judges regarding the placement into the Center of juveniles participating in the electronic monitoring program.

Second, the Center’s employees lacked consistent guidance on matters as central to their mission as the custodial status of the juveniles in the electronic monitoring program. Again, Judges Hornstein and DiCamillo expressed conflicting views. Judge Hornstein viewed electronic monitoring as an alternative to detention, whereas Judge DiCamillo expressed a different view on the matter during his interview with investigators from OGI. While at one point, Judge DiCamillo agreed that electronic monitoring was an alternative to detention, he added that a “juvenile is under official detention when they’re on electronic monitoring. If the juvenile cuts the bracelet off, he or she could be charged with escape.” In response to a question asking under what authority could a detention facility authorize the release of juveniles, the judge responded that “if these kids on electronic monitoring are in the official detention as if they are in another wing of the detention center, then the detention center could in their own capacity bring them in and bring them out.”

Third, the juvenile detention officers lacked any clear rules or regulations delineating the scope of their employment or authority. No agency at the State or county level provided the detention officers a set of standard operating procedures governing the electronic monitoring program. Different officers had conflicting and inconsistent views on scope of their powers on

⁵ In his April 11, 2005 sworn statement to the Office of Government Integrity, Judge Hornstine stated his view that it was unlawful and a violation of civil rights to place a juvenile in the detention center as a scare tactic or to straighten out the juvenile.

even the most fundamental issues, such as whether they possess the power of arrest. Inadequate training, conflicting policies by the judges, and a lack of any consistent rules to guide their behavior left the detention officers, and their supervisors, with no warning that their conduct was illegal, when the law requires “fair warning what conduct is proscribed.” Grimes, supra, 235 N.J. Super. at 90.

2. Official Deprivation of Civil Rights, N.J.S.A. 2C:30-6

To prove a second-degree violation of N.J.S.A. 2C:30-6, the State must prove, in pertinent part, that a public servant acting or purporting to act in their official capacity knowingly and with the purpose of intimidating or discriminating against an individual or group because of “race, color, religion, gender, handicap, sexual orientation or ethnicity . . . subjects another to unlawful arrest or detention including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights.”

The State would not be able to prove beyond a reasonable doubt at least two elements of the offense of official deprivation of civil rights. First, and similar to the insufficient proofs to establish the requisite mental state to prove official misconduct, the State would not be able to prove that the actors knew that their conduct was unlawful. Second, the investigation produced no evidence that the actors acted with the purpose to intimidate or discriminate against the juveniles on one of the enumerated bases.

For these reasons, we advise the Attorney General that the evidence is insufficient to prevail at trial on the charges of either official misconduct or official deprivation of civil rights. Our conclusion does not diminish the fact that the actors engaged in wrongful if not criminal conduct because they unnecessarily detained many juveniles over the Count Day weekend.

Additionally, they exacerbated the conditions of overcrowding in the facility that they had worked so hard to alleviate. Even in the short term, overcrowding is a dangerous condition.

D. Recommendations

We offer the following recommendations with the goal of avoiding any similar occurrences in the State's juvenile detention centers in the future:

- 1. JJC should develop and implement statewide standard operating procedures to govern the electronic monitoring programs.** JJC, in conjunction with the Judiciary and the counties, should develop standard operating procedures that provide the detention facilities, the detention officers, and the programs' participants with clear guidance as to authorities and responsibilities. Standardized procedures will increase consistency and uniformity across the State, and avoid the inconsistencies between policies and practices of the Family Part judges. At minimum, JJC should encourage and facilitate communication and coordination between the judiciary and the county authorities.
- 2. Camden County should provide adequate training to the staff of its juvenile detention facility.** The juvenile detention officers and management should understand the scope of their basic responsibilities and authorities. Those officers that supervise juveniles participating in the electronic monitoring program should receive additional training in the program's procedures and policies developed pursuant to the first recommendation.
- 3. JJC should develop and implement policies to prevent artificial population fluctuations on and around Count Day.** The determination of state aid based on one day's population encourages the facilities to increase their populations on and around that date. JJC should develop reporting requirements and approval processes that would constrain the facilities' ability to deliberately increase their populations for Count Day.