

Dissecting the Evidence Package

As a policeman, I always tried to collect my evidence in a chronological fashion by taking detailed statements from both witnesses and accused alike. Sometimes crucial details came right down to minutes and even seconds that resulted in the making or losing of a serious criminal case. Liars in an investigation sooner or later come off the rails and trip themselves up and more often than not it takes place within the first half hour of taking the statement. An accused and sometimes even a witness (if things don't seem quite right) would be given a police warning and any person that had something to hide went silent. Upon being released from the hospital, I arranged to have lunch with Les Holmes, a retired RCMP Superintendent, who at one time was the only policeman in Canada trained to operate a polygraph or lie-detector machine. Les co-authored a book 'Where Shadows Linger' about mass murderer Robert Clifford Olson. Les told me to attempt to find out who had the most to gain by bringing me down as a bird photographer. The answer was simple. Dr. Christine A. Bishop and Canadian Wildlife officer Marko Goluzza had the most to gain. I had fallen into a turf war with Bishop. Goluzza, the law enforcement officer in charge of the investigation, stood to gain career advancement if he brought Damon and me down as "poster boys" for the new Species at Risk Act. As well, Damon and I, with our naiveté, had a lot to do with bringing ourselves down! When Les looked at Damon's letter, he suggested that I might be a 'sleeper'. When I got home I looked the definition of a 'sleeper' up on the Internet and quickly became even more paranoid. According to the Internet "A sleeper agent is a spy who is placed in a target country or organization, not to undertake an immediate mission, but rather to act as a potential asset if activated. Sleeper agents are popular plot devices in fiction, in particular espionage fiction. In espionage, a sleeper agent is one who has infiltrated into the country and 'gone to sleep', sometimes for many years. That is, he or she does nothing to communicate with his or her sponsor nor any existing agents, nor to obtain information beyond that in public sources. They can also be referred to as 'deep cover' agents.... It is pos-

A statue of Sir Matthew Begbie Baillie stands tall in Downtown New Westminster' Begbie Square. It was built adjacent to the New Westminster Courthouse on historic Market Square. Nicknamed 'the Hanging Judge' Begbie dispelled law and order in the earliest days of the Crown Colony of British Columbia. He told miners in the gold mining town of Rossland, "Boys, if there is any shooting at Kootenay, there will be hanging at Kootenay." I wonder how BC's first judge would have reacted to the chat investigation.



sible that a sleeper agent might be successful enough to become what is called an 'agent of influence' such as a politician. If by the remotest chance I was a sleeper who did I work for? There was only one possible answer. It would have been the RCMP. Sleepers don't have to be one of the brighter stars in the universe. They only need to be easily hypnotized. When I was 15 years of age, I was at the Renfrew Fair and the hypnotist Reveen called 5 or 6 of my friends, along with me, up onto the stage. He spread a box of puffed wheat on the stage floor and told us that it was money. I was the only one to leave the stage with pockets filled with cereal. A good sleeper needs a cover position such as international lawyer, photographer or author in order to travel the world without ever being suspect.

The investigation began for Goluzza when he received an email from Gary Dick, the Director of the Wildlife Enforcement Division in the Pacific and Yukon Region. In this email Dick stated that he had received a referral that there was a photographer in the Okanagan between Osoyoos and Oliver where Road #22 and Black Sage Road met just off Highway 97 who had significantly disturbed or harassed the occupied nest of a Yellow-breasted Chat. The email told him that the area fell within a passive provincial park. The email then stated that the chats are timid and as of 2004 there were fewer than 38 breeding pairs in the entire province. Dick mentioned that the chat was protected under both the Migratory Birds Convention Act and the Species at Risk Act. He quoted Sections MBCA 6(a) and SARA 32(1). They read in part:

MBCA Section 6(a) Subject to subsection 5(9), no person shall disturb, destroy or take a nest, duck, nest shelter, eider duck shelter or duck box of a migratory bird.

SARA Section 32(1) No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species.

It looked like Goluzza had received the go ahead for an investigation from Robert Elner, Head, Migratory Bird Conservation, CWS, based on the information that Dr. Christine A. Bishop had passed onto him. I wonder if Dr. Bishop had visited the site prior to contacting Elner.

The first three biologists that first encountered me were René McKibbin, Ingrid Pollet and Mario Hall. I've had five years to read and re-read McKibbin's 52-paragraph statement package for the crown. Here's her paragraph 6: "that when she got to the blind and nest she observed 3 tripods with flashes surrounding the nest, a blind set up 1-2 meters [3-feet to 6-feet], and a big camera lens within 1 meter [3-feet] from the nest." I don't recall McKibbin walking up to me at the blind but I was so upset it perhaps took place. Her first photograph was from 15-feet away and showed only the top of the blind because the bottom 3/4 was blocked by rosebush. I believe that I dismantled the equipment and blind before McKibbin went to the nest. If so, there was no way that she could tell the distance of the three strobes from the nest from that photograph. The blind would have been 4 to 6-feet from the nest and the 100-400 zoom lens would have been on the tripod with me inside the blind. Only the very end of the lens would have been outside the blind. It certainly wasn't 3-feet from the nest as the minimum focusing distance of the 100-400 Canon zoom lens is 5.9-feet.

Paragraph 16 read: "that she took one photo from a distance of the blind in the rose patch but did not go closer to take photos of the setup at the nest because she was afraid that the gentleman would get upset and an argument would arise and that he would then not cooperate in removing his equipment." Did she recover my backlight and assume since it was set at 1.5-feet from the nest that the main and fill lights were also set at the same distance? If so, did she maybe recover the backlight tripod and strobe at the nest when Ingrid and her returned to weigh and band the chicks? To reiterate, she was incorrect about the distance of the blind from the nest. She had been wrong about the distance of my strobes to the nest. I set the backlight at 1.5-feet, main light at 2-feet and the fill light at 2.5-feet.

McKibbin must have taken her first photograph shortly after she encountered me 11:25 a.m. 13 June. According to her evidence package her first photograph was called Photo #1, date & time 2007-06-13 1650 (4:50 p.m.) and captioned "Blind at nest". The clock on her camera

had to have been set incorrectly as according to her own statement she was at the nest between 11:25 a.m. and 12:20 p.m.

Paragraph 20 of her statement read: “that Waite asked how many nests fledged after she banded them. That she explained that she has been working on the project since 2002 and about 99.9 % of nests fledge after banding day and that she could only recall two nests that didn’t fledge after banding day.” When I challengedd McKibbin’s remark she became angry and an argument ensued. She initially tried to tell me that 99.9 % of the nestlings fledged and I told her that I found her comments too hard to believe. She became upset. She didn’t mention to me about the two failed nests. I told her that predation could be as high as 80 %.

Paragraph 37 in her statement read: “that at 1204 [13 June 2007] she removed the three chicks from the nest and immediately noticed that the chicks were smaller than normal. That she quickly weighed the chicks, colour banded them and took measurements of the right tarsus and right wing.

Paragraph 38 in her statement read: “that when they weighed the chicks, she noticed they were at least 2-3 grams lighter than usual. That when she removed the chicks, they begged for food like she had never seen chicks beg before. That they were obviously starved.” Was it possible that the chicks were underweight because only the one parent was participating in the feeding? Upset with me, could she have squeezed the crap out of them before weighing? Any time I’ve watched parent birds visit a nest, babies beg for food like they have never been fed before.

Paragraph 39 in her statement indicated that at 1210 the chicks were back in the nest. They took 6 minutes to collect their data.

Paragraph 40 of her statement read: “that she and Ingrid Pollet looked with shock at the destroyed habitat. That she took some pictures of the totally exposed nest, the path leading to the nest, the trampled rose and the cut open patches where the blind was. That the rose was cut down close to the surface and that there was a totally bare patch of about 2.5 x 2.5 m (8-foot square).” When she first contacted Dr. Christine Bishop at 1:15 p.m., she said the cut area was 5-foot-square. Now it’s twice as large.

Paragraph 43 read: “that as they left the area they noticed a tripod and flash that was left behind. That Mario Hall also found a glove and a box with a few breakfast bars. That on their way out, Waite met them and said he had just spoken to his business partner who also wasn’t aware of the chats being endangered and permits being required to work with the species. That Waite said that he dropped a few things and that they gave him the glove and bars but not the tripod [and the strobe].” What did they do with my equipment? It is not mentioned in her very lengthy evidence package. Did they chuck them in rose bush to sabotage any further photography?

In paragraph 44 McKibbin did say something positive: “that back at the vehicle Waite showed her his book and said he wanted to do childrens’ books. That she quickly paged through the book and said the photos were good. That Waite wanted to talk more and asked whether she could give him permission to carry on with his photographs. That Waite said that he was hoping to get photos at the grosbeak nest of catbirds feeding grosbeak chicks. That she told Waite that she couldn’t give him any permission and that she had lots of work to do and had to go.” Something was certainly lost in translation here; I’d never suggest to her that adult catbirds would attempt to feed grosbeaks chicks.

Photo #2 through #10 were all taken on the 14 June at around 2:50 p.m., date & time 2007-06-14 1450 (2:50 p.m.) and Cut rose 02, 03, 04, 05, 06, and 07. Photo #9, 2007-06-14 was captioned “Cut rose and female chat”. Photo #10, 2007-06-14 1451 “Dead rose and habitat destruction.”

Photo #10, date & time 2007-06-13 1451 was captioned “Exposed nest”. I had covered the nest with dead vegetation but McKibbin must have removed the cover and pushed any live rosebush out of the way to take the photograph. Photo #6, taken 2007-06-14 1450 (2:50 p.m.) showed three rose stalks that had been cut part way through and then stomped on with a foot and broken off about 6-inches above ground level. The cut would have likely been made with someone with weak hands with hand-held shears. Damon insists that he cut all the vegetation around the nest with long-handled

List of the 17 prosecution witnesses that appeared in the Justice Departments package against Calderwood & Waite for the 18 indictable charges under the Federal Migratory Bird Convention Act of 1994 and the Species at Risk Act of 2004 that carried a potential for maximum fines of \$4,500,000. In June 2012 the penalties were changed. The maximum fines would now be \$18,000,000.

Bishop, Christine

Habitat Stewardship Biologist, CWS

René McKibbin

Technician, CWS

Ingrid Pollet

Contract Technician, CWS

Mario Hall

Contact Technician, CWS

Marko Goluza

Federal Wildlife Officer, CWS

Bryan Huska

Federal Wildlife Officer, CWS

Patrick Porter

Federal Wildlife Officer, CWS

Jason Muise

Summerland RCMP

Robert Elner

Head, Migratory Bird Conservation, CWS

Gary Dick

Regional Director, Wildlife Enforcement

Wendy Easton

Landbird Assessment Biologist, CWS (Expert Witness)

Nancy Mahoney

Evaluation Biologist, CWS (Expert Witness)

Geoffrey Wallang

Photographer, Artonia Group Inc.

Jolene Reiniger

Photographer, Artona Group Inc.

John Wong

Federal Wildlife Officer, CWS

Caldwell, Randy

Officer, Oregon State Police

Colin Cree

Forensic Data Recovery Inc.

shears. If so, who cut the vegetation with the hand-held shears? I didn't cut any vegetation at the chat nest. I've always wondered how many birders and biologists visited the chat nest after my leaving and the arrival of the three investigators from Vancouver on 16 June. Why would Damon use hand-held shears when he had the long-handled shears? It would be akin to taking a knife to a gunfight.

McKibbin's paragraph 47 read: "That at about 1:15 (1:1 p.m.) I phoned my supervisor, Dr. Christine Bishop, and explained the situation to her."

McKibbin must have dictated and Dr. Bishop typed at her laptop to get the email "Problem photographer in the Okanagan please be aware" out at 2:14 p.m. It couldn't have been any other way. Dr. Bishop jumped the gun to reach the masses and sent out her email about my activity in her chat territory only one hour later. It's little wonder that it was full of mistakes.

McKibbin's paragraph 48 comments: "that at 15:45 (3:45 p.m.) she and Ingrid Pollet drove back to the territory to ensure that Waite did not return." Did they return to recover my strobe and tripod? Was anyone else with them? She was back out at the nest on the 14 June taking more photographs that show two women in two different photographs in undisturbed vegetation.

There was only one comment coming from Ingrid Pollet that was worth mentioning. I found it interesting that she did not make any mention of the missing tripod and strobe.

Mario Hall, the Osoyoos First Nations male, talked to me at the roadway and told me to get in touch with his brother Ron and obtain permission to photograph birds on Indian land. That is not mentioned in his evidence package.

On the 14 June, Goluza responded to an email forwarded to him the previous day from Dr. Bishop. The original message from 7:32 p.m. 13 June was from McKibbin to Dr. Bishop. It read: "Here are 2 pictures. I'll ask Oswain [McKibbin] to send more. I'm on dial up and it takes forever to send something." Was Oswain an investigator? Was he McKibbin's husband? If so, it would indicate unprofessional behaviour or even a breach of confidentiality. Goluza, the lead investigator, didn't tell about all his actions

on the 14 June. On the 12 May 2009, I received a package from Robert J. Danay, the Justice Department lawyer who was representing Dr. Bishop in my civil action against her. At 2:14 p.m. Goluza sent an email to Dr. Bishop: "Can you also ask if there is evidence of what he used to clear the area? Does it look like the branches were cut and dragged away or did he stomp them into the ground?"

Ask for pictures of what they dragged away (large shots so you can see what was cleared).

Also maybe even handheld video walking towards the nest...Starting well before the thicket that was cut (i.e. 10-foot back)."

Golouza's suggestion to have a biologist, or worse still a birder or civilian, visit the crime scene could be compared to a farmer sending a fox out to the chicken coop to collect the eggs. A competent investigator doesn't allow anyone, especially if they are part of an ongoing investigation, to alter or to contaminate a crime scene.

I suspect a judge would use this as valid reason to dismiss the case. I'd like to know how many biologists and birders visited the chat nest and trampled down vegetation between my leaving it on the 13 June and the investigators arrival on the afternoon of the 16. I'd be willing to bet that it was ten or more people. Did any of them alter the crime scene to make it appear worse than when I left it on the 13 June? The answer would have to be that they all did by merely trampling the vegetation.

Golouza included numerous things in his prosecution package about my past photography that had nothing to do with the chat incident. He printed a page from my web site of a person holding an Ancient Murrelet upside down to show its brood patches. The photo was taken in 1985 on Reef Island at Haida Gwaii. Ironically, a Canadian Wildlife Service employee was holding the murrelet. I can only imagine the stress that we did to that poor bird since it's pupils would have been super dilated in the pitch darkness.



A page taken from Golouza's prosecution package showing a breeding Ancient Murrelet being held upside down for photography of its brood patch. The photo was taken in pitch darkness on Reef Island, Haida Gwaii, in 1985. I had accompanied scientists with the Canadian Wildlife Service to the island. The bird is being held upside down by an employee of the CWS.

I was surprised that Goluzza had also gone to the trouble of asking Randy Caldwell, the officer with the Oregon State Police, for the misdemeanor “ticket” regarding the Mountain Bluebird. I suppose he wanted to show that I was a repeat offender. Would he have been able to get his witness to come up from Oregon to give evidence given that he was an American? The maximum fine for the bluebird ticket was \$299. I appeared before the judge and paid the minimum fine permitted to not have any loose ends on leaving Oregon.

I think it’s important to look at investigator Goluzza’s evidence package to show at least some of his actions on the 16 June. He, along with assistants Patrick Porter and Bryan Huska went about their first day of investigation in the Okanagan in a backwards manner. He visited me before checking out the crime scene and therefore wasn’t in a position to ask me any intelligent questions. He gave me no less than five cautions and I agreed to a videotaped interview, no holds barred, with me advising him that he could ask me any questions and that I’d answer them to the best of my ability. If he’d have tried to get me to confess that the cut area of vegetation at the nest site was 8-foot square and the cut and trampled area combined was 9-foot by 11-foot I’d very quickly told him that he was crazy.

Goluzza’s statement package said he’d obtained warrants to search my brother-in-law’s residence, Damon’s car and my SUV. It didn’t say anything about being able to search my brother-in-law’s guesthouse. At 9:40 a.m. 16 June, Goluzza arrived at the Summerland RCMP station and briefed Constable Jason Muise on the three warrants. Muise ran the registered owners of the two vehicles and discovered that the license plate on my Mazda Tribute was written wrong. Goluzza decided not to execute that Search Warrant and told Porter, Huska and Muise of his decision. Some time later Huska approached Goluzza and told him that he could see strobes and tripods in the back of my SUV. Goluzza then “confirmed that the vehicle was parked in an area on the residence that Waite had access to or could use to store items.” Goluzza seemed to think that the three warrants gave his team permission to search all 10-acres of the farm. I recall one of the officers asking me

to open the car for him. Huska then went about seizing some items from within the SUV. Maybe, because I’d given them permission it would have been allowed but then again I was having a meltdown. I’ve often wondered if our lawyer Howard Smith could have asked for permission for a dismissal for an illegal search. Ironically, I plead guilty to “damaging the residence of a Species at Risk”. Here’s the SARA definition of Residence—“means a dwelling-place, such as a den, nest or other similar area or place, that is occupied or habitually occupied by one or more individuals during all or part of their life cycles, including breeding, rearing, staging, wintering, feeding or hibernating.” Wouldn’t the nest be the chat family’s residence? Surely, it wouldn’t apply to the cut vegetation some 4 or 5-feet from the nest. These are all legal issues with the Species at Risk Act. We were also charged under the MBCA with “unlawfully disturbing a nest or nest shelter of a migratory bird”. The third charge under SARA was for “unlawfully harassing individuals of a wildlife species”. The MBCA gave the following definition of a nest: “means the nest of a migratory bird and includes parts of the nest”. It didn’t have a clear definition of harass. The word harassment covers a wide range of behaviours of an offensive nature. It is commonly understood as behaviour intended to disturb or upset, and is characteristically repetitive. In the legal sense, it is intentional behaviour that is found threatening or disturbing.” I don’t think that the chats found us threatening or disturbing after the first few minutes. If the female had found us threatening there would have been alarm calls—or she may have abandoned her babies. There was neither. She came and tended to her babies as if we weren’t even there.

During my chat ordeal I corresponded with Allan Bovee, a nature photographer from Commerce, Michigan, who had photographed a chat at the nest. He wrote to me: “I think birds view us as cows or deer. When we get close to their nests, they are threatened but not like a real predator would be a threat to them. Once we get in the blind, it is like an animal going into a hole, they immediately return to actively feeding and caring for their young. I witnessed the reactions that birds have when a real predator appears and it is totally different than when

they see me. At a robin's nest one time the birds scolded me briefly while I set up but then settled down to feeding their young once I was in my blind. Then later, a great deal of commotion arouse as the robins were screeching and flying about outside the blind. Soon, a Cooper's Hawk landed on the nest rim. I hadn't seen the bird before this as I was concealed in my blind. I took one shot and the flashes scared him off with no harm done to the little robins. My point was the robins acted totally different when observing me than when observing a real predator like a hawk."

I don't want birders or biologists to get me wrong; Damon and I definitely crossed the line but I strongly feel that if the penalties against us hadn't been so severe I could have defended myself and been given a dismissal on several grounds. Government lawyers spend huge amounts of money to dot I's and cross T's yet they can't even come up with the difference between habitat and residence. It's important for the Canadian taxpayer to know that the Justice Department and the Canadian Wildlife Service very likely spent \$500,000 to \$1,000,000 and possibly more on this investigation on a family of birds that didn't die.

While talking with Goluzza during the search between 10:10 a.m. and 2:21 p.m. on 16 June 2007, I happened to notice a pencil-like gismo in his shirt pocket and asked him if it was a recording device. He told me that it was but that it wasn't turned on. He then read a police warning to Damon and I advised us that we were not obliged to say anything but that anything we did say could be used as evidence. We both acknowledged that we understood the warning. He asked us if we wanted legal aid and we both said yes. Goluzza then called legal aid as the number appeared in his notebook and handed me his cellular phone. I received a 24-hour hotline informing me that the service was not available on the weekend. After the search ended, I did reach a legal aid lawyer but was told that the nature of our troubles over some birds didn't warrant his help.

At 12:12 p.m. Goluzza took a statement from me in front of the guesthouse while Huska searched my SUV. I must have seemed like the proverbial slam-dunk because I was clearly

beginning to show signs of a mental collapse. Goluzza claimed on a few occasions that he gave me the police warning no less than five times. It was during the videotaping session that Constable Muise, Damon and Tina all asked me to stop talking to Goluzza. I initially ignored their advice and eventually Damon convinced me that perhaps we should answer Goluzza by way of an email.

On the 16 June I left a telephone message with Bishop, part of which reads: "and secondly, it's very very suspected your birder friends have put my brother-in-law's residence under surveillance for the past two or three days and they are trying to play cops and robbers and spy on my movements. And doing these sort of things with people like me could be very very dangerous. You don't do things like that. Thank you." Would I have threatened Dr. Bishop if I'd been sane? I was clearly showing signs of collapsing into a state of psychosis. When did Goluzza, Porter and Huska clue in that I wasn't right mentally?

On the 20 June Goluzza drove up to Summerland to return my laptop. It was the very day the weather broke and I was away doing an aerial assignment for my son. In one of his paragraphs he wrote: "that Tina stated that Waite was very upset by the entire situation and by Bishop's letter and that Tina was shaking, had watery eyes and was also sitting down when talking to himself and Huska."

Goluzza goes on with another paragraph: "that outside the front door, to the left, he noticed a pair of large shears designed to be used while standing, with the blades close to the ground, beside another blind." Why did Goluzza not seize the long-handled shears? The shears should have been part of his evidence package. Was he simply ignoring any of the positive evidence?

He also said that he and McKibbin returned to the scene to shoot a video as the babies had fledged the day before. The video showed an area that was 9-feet by 11-feet cut close to the ground. Is it possible that someone returned to the scene and cut away the stalks of wildrose that had been previously cut with hand-held shears 6-inches above ground level? René originally claims that the size of the cut area was only 5-feet square and now it's 9-feet by 11-feet.

Videotaped Interview of Don Waite by Marko Goluzza with Patrick Porter on the video camera. The videotape was slowed and large chunks were edited out. Was this done to conceal that I was having a mental breakdown?

16 June 2007

Marko Goluzza Saturday June 16th at 1 P.M. and obviously I'm Officer Goluzza and do you want to give your name sir?

Don Waite Donald Waite

Marko Goluzza And today we are executing two search warrants at this residence and Donald has just explained to me and of course I do believe his livelihood depends on this camera and this lens and in order to accommodate his request other than seizing the camera and the lens Mr. Waite is going to go through in detail and explain the type of camera it is and as well as read the serial numbers and just basically show how it works and Mr. Waite would you mind.

Don Waite I will try. The camera is a Canon EOS-1 Ds Mark II Digital it's 16.7 megapixels which is a high end professional camera and it's capable of getting photographs of upwards at least 20 by 30 inches which is photographic quality and with Photoshop and other techniques that you can do in the lab. I've blown pictures up 4 by 5 inches, 4 by 5 feet with this camera and they're high end quality photographs. What I've done that for was my old business Waite Air Photos, I sold that business to my son two and a half years ago.

Marko Goluzza Stick to the camera.

Don Waite The lens it zooms from 100 to 400 so I use that for both the air photo business and when I'm lucky I use it for my bird photography and its usually extended somewhere between 350 and 400 when I'm doing bird photography and the camera it's as I said its a Canon I got it two years ago I believe [MISSING] up from that but I don't even think the file size is as big with the new one [MISSING] down.

Marko Goluzza Oh sure take your time.

Don Waite I used this in the past I used this camera with a custom made high speed strobe designed and built for me back [MISSING] say this you ask me to tell you stuff you need the background you know get it all eh

Marko Goluzza Proceed please

Don Waite It was made for me I believe I purchased it in about 1981. It was called a high speed Olsen strobe unit made by an individual in St. Paul, Minnesota. His name was Ken Olsen. He was an electronics expert and the strobes were actually the strobes that my bird photography they were the strobes that are used in airplanes that you can see that throw a tremendous burst of light. They were as big as dinner plates. They were this big and you had to use cord [MISSING] three of them back to your camera and that's where I was talking to you where you plug all these things in

Marko Goluzza That's right, connection, yep

Don Waite and there was a huge power pack that went with it. Anyhow Mr. Olsen has since passed away I've given [MISSING] all electronics they did more damage to it. Then what happened was two years ago I no, last year when I was on a trip across Canada I dropped it off at an electronics expert had him fix my old unit and build me some new ones and that took [MISSING] probably strobe equipment and he's gone like I can't find him he wouldn't return calls he wouldn't respond to emails I've searched I've done a lot of looking because I wanted to use them. Leading to what I'm doing now so that you get an appreciation so I was in a pinch last year when I went down to [MISSING] birds and because this person didn't come through fixing this [MISSING] supposed to bring me a new set [MISSING] which he thought were [MISSING] we did tests with it at about 1/4,000th of a second but the one I had from Olsen fired at there were two and one was at 1/10,000th one was at [MISSING] extremely powerful you can have your lights at a great distance and light them with beautiful soft light [MISSING] photography that Damon [MISSING] fantasy, those pictures were taken with the old strobe [MISSING] two years back when he was up in the Yukon and Vancouver Island. Anyhow we bought strobe units that were basicly

[MISSING] but assured us that they would work perfectly [MISSING] but we never got any pictures of birds in flight and that was one of the things that we were very interested in being able to do and we came back. The photographs that we got we discovered things about birds that had never been documented. [MISSING] And we did [MISSING]

film cut?

Marko Goluz What's these new strobes you were saying, and your camera.

Don Waite It's disappointing in that although we got [MISSING]

interrupted

Don Waite It's okay. The strobes didn't work [MISSING] We got photographs of [MISSING] in their nest cavity.

Marko Goluz This was in Oregon?

Don Waite This was in Oregon. And it had never been (talking about a bluebird) documented nesting in a Robin's nest. Nobody knew anything about that and we've got the photographic documentation. Adults carrying chicks in their beaks up until then their beaks and feet are on their backs. So we covered that. We got pictures of them carrying them in their beaks like a kitten. We've got the strobes that you seized from us, right? They should be the be-all-end-all supplied by Canon. I bought three of them, they're wireless [MISSING] and in the bush like they were a big step forward for us [MISSING] in the past because these are very small [MISSING] and Canon assured me as recently as yesterday that they'd fire at 1/8,000th of a second at full [MISSING] been able to figure out how it's been done because I've been very poor [MISSING] success but I haven't had kind of success that I'd hoped for [MISSING] You'll be seizing [MISSING] with relations to them, with Canon eh so [MISSING]

Marko Goluz Um, maybe just tell me the serial numbers. [MISSING]

WAITE demonstrates the use of camera

Don Waite I don't have to do anything. [with relation to camera operation]

Patrick Porter So you need, what setting do you use for [MISSING]

Don Waite I — talk [MISSING] This camera—

Marko Goluz Should actually like put the settings you do on the back that he could [MISSING]

Don Waite I'm still new to all this. Ok here I've got it set on [MISSING] *cut*

You've got shutter speed that goes all the way up to 1/8,000th of a second and I'm able to get photographs at 1/8000th of a second—

Marko Goluz So is that basically as fast as you can push it or do you hold—?

Patrick Porter [Inaudible]

Don Waite I'll give you a nice slow one here, here's one at [MISSING] it's saying no you're gonna to let in too much light and you're gonna blow the picture.

Patrick Porter And that's because you're in aperture priority or something?

Don Waite Oh, no I'm in manual.

Patrick Porter I don't think it will make a difference.

Marko Goluz You have the same camera?

Patrick Porter No, I have a Nikon.

Don Waite What I've done [MISSING] So what I've done, you gotta get the iris of your eye [MISSING] and here is that I've taken the size of pupil down in bright sunlight because light has to come through for a — of a second [MISSING] so that's how it works. Anyway, do you understand that?

Marko Goluz Now turn it all the way up and start uh *gestures taking pictures*

Patrick Porter Canon's tricky its not as [MISSING]

Don Waite These things are so damn [MISSING]

Patrick Porter There you go.

Don Waite So it automatically focuses the camera [MISSING] expose. The other thing that's very important is a thing called depth of field, you've heard, focusing on a bird's eyeball for example. If you're shooting your camera and the pupil of the iris is big your depth of field is low [MISSING] though the bird's eye will be razor sharp everything immediately behind it would be out of focus. So when a bird takes off at the nest I want to be able to take the photograph so that the eyes are razor sharp and I want the wingtips to be razor sharp. And that's what—

Patrick Porter And these are some of the things you talk about in the book I don't know [MISSING] looking at technique and things are explained. *cut*

Don Waite But this is all immaterial until the lights are set up. Like shooting at an 8,000th of a second with strobes [MISSING] the trick is to have that opening as tiny as possible. *cut*

To light up your bird and it's more tricky than that. *cut*

Sometimes you've got backdrop that's 30, 40 feet behind you. *cut*

There's gonna be background, eh? So that you want ambient light from the sun to burn in.
cut

To match the ambient light to the strobes and there's where the challenge comes in. There's in the [MISSING] You try and make the pictures look natural. The truth is, photographing birds if you want to get a picture of a bird where you see the bird, you gotta do something. *cut*

Patrick Porter [Inaudible]

Don Waite That's something that now that we've gone this far.. *cut*

And made something the Wildlife Service and these other people in photography but some that don't eh.. *cut*

I was in the United States last year and I contacted the state biologist, he liked what I was doing he spent [MISSING] excited with the results of the photographs that he got, I wasn't too excited because—
cut

The other thing, when you use strobes you have to [MISSING]—

You learn but what we do is not easy if it was easy more people would be doing— *cut*

Giving talks to [MISSING] that we've just started. We're scheduled to be doing [MISSING] when the season is over and—*cut*

what has happened. [MISSING] involved but people understand [MISSING] beautiful photographs but we've never even considered it because it's too challenging, too expensive, and too time [consuming]
cut

These are some of the thing we've been challenged with—*cut*

The ranger, not the ranger, the biologist in—*cut*

state of Oregon I said well I'm leaving in a—*cut*

[series of cuts with fragments of sentences]

The way it works is you're a photographer and you become interested in birds. You become interested in photography and at some point the two are going to marry together and you get somebody that in twenty years they know something about what they're doing and that's the simple truth.

Marko Goluz Okay, sorry. *cut*

So now you've demonstrated how it works this—

Don Waite The serial number this, the body of the camera [MISSING] 2 1 9 and it's made by Canon. This is a one to four hundred. *searching for serial number*

Marko Goluz U S 1 1 [MISSING]

Don Waite 2 7 5 3 9 1 is that what you got? I think this is it.

Marko Goluz It's a Canon?

Don Waite I think its got the highest quality lens something a superior lens and a built in stabilizer for my aerials, autofocus. *cut*

Oh, the other thing while I've got you is that you- this displays all my photographs so there's those shots that I took so I've taken 60 photographs on this card and there's some of the shots.. *cut*

Now it's trying to tell me hey I don't want this picture and I've taken some photographs of a catbird that's in flight but not razor sharp actually some of the shots I was— *cut*

I've never seen so many banded birds in my life as this area.. *cut*

—banded. It must be the most [INAUDIBLE] place. [INAUDIBLE] Anyhow one of these two birds was banded and I was trying to zoom in and get a picture of the band.. *cut*

In flight, that's what I'm trying to get eh but I looked at it and that's not sharp.. *cut*

These are the, I think there's some shots where I think I took one of one's head, I noticed that the bird had a black cap [INAUDIBLE] black flies [MISSING] and lice and things like that.

Anyhow.

Marko Goluz Okay, thank you very much.

Don Waite [INAUDIBLE] burn the images onto a DVD for you.

Marko Goluz No, we're going to take your memory cards.

Why were the alarm bells not going off with the three CWS investigators?

Thirteen months after my encounter with Goluz, I received the 463-page prosecution package with the 17 crown witnesses.

The videotaped interview was part of the evidence package and should have shown clearly that I was showing signs of mental illness but it had been seriously edited and any evidence of mental illness was gone. I've wondered for five years if Jane Luke, the Justice Department lawyer, ever knew that I'd had mental issues at the time of Goluz's raid on the guesthouse. I know that Robert J. Danay, Dr. Bishop's lawyer, didn't know because on the very day that I signed off on suing Dr. Bishop I called him to congratulate him on his clever strategy. He wouldn't talk to me but did talk to Tina and told her that he had been unaware of my mental issues.

I read Dr. Bishop's evidence package. According to her, there was estimated to be only 72 pairs of Yellow-breasted Chats in the Okanagan and estimated to be no more than 200 pairs in all of BC.

Some of her evidence package is fair and accurate but some is nothing short of misinformation. It seems these days that the word of anyone with a doctorate is to be taken as gospel and that's wrong. She writes: "All of these pictures in this folder are of yellow-breasted chats. In some cases, an adult female (as distinguished by the light coloured mandible and gray interior of the mouth cavity) is seen. The female is not banded. Our data shows that the male at this nest was colour banded (coloured bands on leg to identify individuals) but was not photographed at the nest. Usually both male and female chats feed the young so either the male refused to feed the chicks while the nest was surrounded by the tent and flashes were going off at the nest or the photographers chose not to photograph the male carrying bands. In all the pictures you can see 2 flash spots in the pupil of the female chat's eye. In virtually all pictures the female is distracted from her chicks that are her primary focus and looking nervously and on high alert at the flash and photograph set up. The chicks in the photograph are 3 to 5 days old."

Truth is within ourselves. There is an inmost centre in us all, where Truth abides in fullness. Every wrong-doer knows within himself that he is doing wrong for untruth cannot be mistaken for Truth. The law of Truth is merely understood to mean that we must speak the Truth. But we understand the word in much wider sense. There should be Truth in thought, Truth in speech, and Truth in action.

Some of Dr. Bishop's remarks are 100 % accurate and true. She writes about this male not feeding. McKibbin claims to have heard both adults when she first discovered the nest with eggs in late May. Is it possible that some chat males sometimes go off and breed with other females to increase their gene pool? I don't know. Does Dr. Bishop have the answer? She wrote "Usually both male.....) Dick Cannings didn't know the answer. Is it possible that the male didn't come in to feed because he was predated? If so, that might explain why the baby chicks were underweight for their age. She goes on to write that in virtually all of the pictures that the female is distracted from her chicks. This simply isn't true. Damon kept 178 photographs but he deleted the same number of junk images from his camera's memory card to free up space. He had photographs of the female feeding, doing sanitary duties and brooding. She may have looked like she was standing on the edge of the nest on high alert for some of the photographs—and that's a good thing—but to suggest she was "looking nervously and on high alert at the flash and photograph set up" virtually all the time is pure and simple bunk. If the tent, camera and strobes had bothered the female, she'd have flown off after the taking of each photograph. Many times she came in and Damon would take several photographs during a single visit. Something else, Damon may have only taken 4-6 photographs of the female's lengthier visits but he had ample opportunity to have taken many more. Birds move so quickly that capturing a bird with a good pose is merely the luck of the draw and the difference between a good pose and the back of a bird's head is less than 1/100th of a second.

Dr. Bishop makes another comment referencing two photographs that were taken by my wife Tina but which ended up in one of Da-

mon's folders. She wrote: "pictures 177 and 179. jpg show the female chat with her eyes tightly squeezed shut which is unnatural brooding posture and indicative of shock or pain of the flash going off in her eyes." Here's what my wife wrote: 6:40 - 7:10 (Damon 1/2 hour break) I took over to take pictures of chat. First time for me. 6:40 fed and sat on them. 6:50 fed bugs and mother on babies for at least five minutes. 7:10 no feeding - brooding, settle in for the night (coming in every 10 minutes took 18 pictures)." On the following day Tina also took some photographs: "Suggested to Don to stop and let the female chat roost for the night as last night 7:10 she came in with no food, just lay over the 3 babies and was in sleep mode, eyes almost closed, so tired from taking care of her babies all day." None of the settings on the strobes had been changed and Dr. Bishop is trying to suggest that the photograph was "indicative of shock or pain of the flash going off in her eyes. The bird was going to bed for the night. Dr. Bishop is clearly making herself look foolish to any non-birder or non-biologist with these outlandish remarks. Knowledgeable birders or photographers would get a good chuckle out of her remarks. Have any of the "chat" biologists in the Okanagan ever watched the parents at the nest with a spotting scope to monitor their activities? I'll bet not. Did anyone reference the Metadata? If they did, there is no mention of it in the prosecution package.

This was Tina's third time photographing a bird. Her first two times were the magpies and the catbirds—and she knew that the adult chat wanted go to bed and wasn't in any pain from the strobes. If Dr. Bishop can sell her "shock or pain" theory to non-birders, she can sell ice to the Inuit.

I sent the "shock or pain" photograph to three biologists and a lecturer for their unbiased



James Bond the cat photographed under low light in our living room and on a bright sunny day. The cat's pupils are open (on the left because of the very little available light—and (on the right are closed down into slits because of the bright light) —like on a bright sunny day in June in the Okanagan Valley! I wonder how much Sir James's eyes are dilated on the left to allow in the same amount of light of the photo on the right. On the left he's in low light, like in the "white room" while on the right he's in bright light, like being in the outdoors in the Okanagan.

opinions. Charles F. Thompson, Research Professor, Behaviour, Ecology, Evolution, and Systematics Section - School of Biological Sciences, Illinois State University wrote: "Really nice photo. I have done a number of dawn-dusk nest watches of incubating chats, and what this looks like to me is that she is shading her eggs or nestlings. I've seen females doing what looks like sleeping, but they didn't spread their wings like this. Also, the elevation of the back feathers suggests to me she is trying to off-load some heat from direct sunlight." Three B.C. biologists responded and all of them stated that the bird appeared to be relaxed or having a nap. Because they all knew Dr. Bishop and her husband John E. Elliott (also a CWS scientist), none wanted their names to appear in my memoirs. None mentioned anything about the bird being in "shock or pain".

McKibbin and Bishop exchanged email and at 5:13 p.m. 15 June Bishop wrote: "I suspect he is suspicious now. He called Orv [Orville Dyer] for a permit (left a message). You saw the letter he wrote [Damon wrote] rebutting my commentary. However the letter is admittance in writing of what he did...more fodder for the investigation. I believe I sent this to you. Also he sent two pictures he [Damon] took as evidence of what he did i.e. Pics of chats.

Marko was in heaven!

My comments about this guy got out to a million list servers and the Internet is full of out-

raged birders, these guys are not going to get cooperation from anyone in the future. I was surprised it turned up on the list servers but I should have been aware that this could happen.

Although all the investigation takes us away from the field work it is important to make an example of this occurrence so others are aware of the implications of this type of thing..."

I read the evidence package of Wendy Easton, the Land Assessment Biologist with the CWS—and an expert witness! There's the old saying that 'birds of a feather flock together' and nothing could have been truer with respect to Dr. Bishop and Ms. Easton. Easton certainly wasn't prepared to give me the benefit of the doubt on anything. She had the old 'march the guilty bastard in' mentality. Due to my mental instability and financial situation, my wife, family and friends all told me to take Justice Department lawyer Jane Luke's deal and to forget about my lawsuit against Dr. Bishop. Easton would have made a superb defense witness in our case, as she didn't seem to have a clue with respect to photography with flash. She states: "I witnessed and experienced the setup at Artona Studio on 27 June 2007. The noise of the flash [camera?] is very atypical within the natural environment. It is louder than a broken stick and repeated..."

Ms. Easton goes on: "Still, the flash was momentarily "blinding". After 10-15 flashes, I turned away because I was quite uncomfortable

and my eyes felt painful while writing my notes (especially my right eye closest to the flash)...” Ms. Easton says that the flash ([should likely be flashes] were momentarily “blinding”.

According to the evidence of Goluzza, the setup at Artona with both Damon’s Nikon system and my Canon system were the same. The three strobes were positioned at 18-inches from the “nest” and for some reason both cameras were at 34.5” from the nest. I usually set up my lights in the field at 1.5’ for the hair light, 2’ for the main light and 2.5’ for the fill light. Damon’s setup is 3-feet, 4-feet and 5-feet at 1/8 power on his strobes. I don’t know where the investigators came up with the 34.5” of the lenses distance to the “nest”. My 100-400 Canon zoom lens only focuses down to 5.9-feet while Damon’s 100-400 Nikon focuses down to 4-feet. Damon told me that his camera lens was just over 4-feet from the chat nest during his photography. If Goluzza set Damon’s lens and my lens both at 34.5-inches away from the “nest” then neither could have been in focus.

All digital files have Metadata tags that give the exact time that a photograph was taken right down to a fraction of a second and Damon’s numerous photographs often showed that he took several images in less than a minute. If the noise of the camera or the bursts of light from the strobes had bothered the single female adult parent she’d have flown the nest. The bird stayed put and tended to her babies. The experiments that were conducted in the Artona Studio took place in the “white room”. I would suggest that the amount of available light in the “white room” would be many, many times less than outside in daylight. Ms. Easton’s pupils would have been dilated to let in the small amount of light in the studio environment. It seemed that the strobes were fired at all different settings from full power all the way down to 1/64 or 1/128 power. It’s little wonder that her

eyes’ hurt when the strobes were at full power so close to her face in a room with so little light. It reminded me of being a kid and exiting a theater after watching an afternoon matinee. My eyes always hurt until they adjusted to the outside bright light. Ms. Easton might have been a government paid biologist but she shouldn’t have pretended to represent herself as a knowledgeable ophthalmologist. The investigators can’t deny that they didn’t know anything about Metadata tags because they seized the emails that I was exchanging with Canon support.

And finally: “Also of note, is the photograph of the property sign stating that it is unlawful to enter because of Species at Risk and an access permit is required.” I took that photograph for my own evidence package after my confrontation with Ms. McKibbin. The sign was posted on Indian land 9 kilometers away from the nest site and had a photograph of a Black Bear and rattlesnake. There was no mention anywhere that there was a study on Yellow-breasted Chats taking place.

From my days of being a family portrait and wedding photographer, I knew John Rak, the President of Artona Studio. He was even interested in purchasing my air photo business at one point. I visited Artona Studio and talked to Geoffrey Walling, one of the photographers that assisted the CWS officials with the setup in the “white room” in the studio. He was initially disturbed that the CWS had given me his name in their prosecution package. He confided to me that he didn’t know if the strobes had been set on full, 1/2, 1/4, 1/8, 1/16, 1/32 or 1/64 power when they hurt Easton’s eyes. Besides, the experiment was being conducted in a studio where there would be much less light than in the outdoors. Outside, the pupil of a person’s (bird’s) eye would be pinpointed to let in only a small amount of light. The setup was like comparing apples with oranges. How close was

The two charts on the left and right show the visiting times on the right and the number of photographs taken during each visit. For example, at 10:42 Damon took 6 photographs during the adult’s trip to the nest. The Metadata show the time that each photo was taken right down to a fraction of a second? Why was none of this information introduced as evidence? The adult certainly wasn’t afraid of the camera noise or the flash. If she had been afraid of the camera of flashes, she’d have flown off after the first photograph was taken with each trip to the nest. In many instances Damon took more photos that are indicated in the chart because he deleted many of the poor images from his camera’s memory card.

1-3	6:05 AM
4-8	6:19 AM
9	6:20 AM
10-12	6:28 AM
13-17	6:29 AM
18	6:30 AM
19-21	7:50 AM
23	7:51 AM
24-29	7:57 AM
30-33	7:58 AM
34-38	8:07 AM
39-41	8:21 AM
43-45	8:22 AM
47	8:40 AM
48-49	8:41 AM
50-53	10:31 AM
54	10:41 AM
55-60	10:42 AM
61-63	10:59 AM
64	11:05 AM
65-66	11:06 AM
67-68	11:12 AM
69-71	11:13 AM
72-74	11:20 AM
76-77	11:21 AM
78-80	11:37 AM
81	11:43 AM