

# ZERO CHOICE

## A STILL OCTOBER NIGHT

in the forest. The green patrol vehicle, a four-by-four pickup, was all but invisible in the darkness. Alert behind the wheel, Warden Josh Brennan, California Department of Fish and Game, peered down into the dark void that was the Feather River Canyon. Deer season was open, and Brennan knew that it was a good night for frustrated hunters to illegally spotlight a buck. So he was there to remind them of the law.

He had chosen a high point, a log landing off Big Bend Road, a place that overlooked the canyon and the Feather River below. To the east he could see roughly two miles of Bardees Bar Road, with its many switchbacks, as it descended into the canyon. The log landing was a good perch from which to watch for outlaws, but he knew his chances for encountering spotlighters in the vast forests of the Sierra Nevada were never good. But Brennan would put in the time, for he was a pro, one of the relatively few wardens who routinely worked alone at night, one of the few with the courage to face armed violators in remote places with no hope for timely backup.

But luck was with him on this night, for a slow-moving vehicle appeared on Bardees Bar Road an hour before midnight. Brennan studied it through his binoculars. It was a quad-runner ATV carrying two suspects, the passenger actively shining a powerful hand-held spotlight first one way then the other, obviously searching for deer. Brennan watched as the suspects traveled to the bottom of the canyon and were out of sight for a while. Then he saw them again, apparently returning. They had not gone far when they stopped, their spotlight trained on something he could not see. Then two loud shots rang out, echoing off the canyon walls. Seconds later the quad-runner was moving



again, traveling fast with just headlight and taillights. This in no way surprised Brennan, who correctly concluded that the suspects were in a hurry to get clear of the area and to stash any guns they had. He believed they had shot a deer and would return for it later. So, he remained where he was as they drove out of the canyon and away.

It was during the two hours that followed that something unexpected happened. Vehicle lights appeared on the same road between Brennan and the river. He watched as it continued all the way to the canyon floor and then out onto a gravel bar near the river. The headlights then went out. He reached for his binoculars and focused on the spot, but he could see nothing.

Several minutes passed then suddenly he was startled by a brilliant flash of light there, light that illuminated the whole gravel bar and much of the lower canyon. Throwing his binoculars to his eyes, Brennan saw a large pile of trash ablaze near a pickup truck. He recog-

nized the truck immediately, a large newer model Ford F-250 diesel painted entirely in camo. Standing beside the vehicle, and also clearly visible, was the pickup's owner, one Clinton Bates, a local dope grower. Brennan had encountered him on the road a few times, once just a week earlier. Due to recent changes in California law, the wardens now turned a blind eye to small-scale marijuana growing as long as the growers did not harm wildlife. Brennan had reminded Bates of this unwritten understanding, and Bates assured Brennan that he was well aware of it.

Brennan, despite his anger at seeing a pickup load of trash dumped by the river, drenched in gasoline and ignited, resisted the urge to immediately pounce on Bates. But he knew where Bates was camped in an old motorhome

near his grow, so there was no urgency. He could deal with Bates the following day. It proved to be a good decision, for an hour later, the spotlighting suspects again appeared on the quad-runner, driving down into the canyon. Brennan watched as they traveled along, and soon the spotlight came on again. When they reached the area where the shots had been fired, they stopped and turned off their lights. Twenty minutes later, their lights came on again and Brennan watched them driving his way again. A few minutes later, the suspects rounded a tight turn and were suddenly nose to nose with Brennan's patrol rig and drenched in bright emergency lights. They skidded to a stop and sat as though petrified.

"State game warden," announced Brennan, advancing with a bright flashlight held high in his left hand, his right hand near his holstered Glock sidearm. "Turn off your engine and keep your hands where I can see them." As he approached, Brennan noticed a small buck deer lashed to the rear cargo carrier of the ATV.

The suspects were cooperative, and Brennan was quick to note that the driver appeared to be intoxicated, finding it difficult to stand. But he would not be driving again that night, for Brennan, upon running their names through dispatch, learned of a warrant out for the driver's arrest. He also discovered a semiautomatic pistol stuffed in the driver's waistband. All of this added up to a free ride for the driver, securely handcuffed, to county jail. Brennan cited and released the second suspect and sent him on his way. He then hefted the evidence deer into the back of his patrol rig and departed.

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It was well after 3:00 a.m. when Brennan made it home. He thankfully crawled into bed, but as usual, it would be but a brief night's sleep. His wife, Elaine, the perfect game warden wife, always believed he deserved as much sleep as possible after working long nights. But his daughter, Rachael, age three, disagreed. Brennan found himself jarred awake shortly after 7:00.

Brennan had not intended to work on this day, for it was October eighth. Six years earlier on this date, he had married Elaine, a choice he considered one of the best of his life. Over the years he had tried to take that special day off when possible, but he would be spending his anniversary morning *this* year writing his report on his spotlighting arrests of the night before. He had related to Elaine his observation of Bates, the pot grower, and the man's particularly disgusting trash-dumping violation. He then explained his need to follow up. He told Elaine that he would be gone for only a couple of hours, and he would be home in plenty of time to take her out to dinner.

"You'll be home for dinner?" she said with a twinkle in her eye. "I've heard *that* before." It was something of a joke between them, for she had been married to a game warden far too long to believe her warden husband when he told her he would be home for dinner.

"Well, *this* time I'll be home," he replied.

But he was wrong.

He could feel fall in the air as he descended Bardees Bar Road to the river-

bar below, and what he found there disturbed him. What had been a heaping pickup load of trash and garbage dumped there by Bates the night before was still smoking, only partially burned. There were old paint cans, propane bottles, household chemicals, rodent poison, fertilizer bags, food wrappers and bags of household trash and garbage. On top of it all were the smoldering remains of a recliner. Brennan was disgusted. After thoroughly photographing the dump, he headed back up the canyon.

He passed the locked gate to Bates' steep, roughly graded driveway, continuing on to a high place where he knew his radio would work. He called dispatch and advised them of his location, and advised them he would be citing Clinton Bates for his misdeeds. He then turned around and drove back down to the locked gate. He parked there and hiked up the driveway.

It was a steep, 100-yard grade to the log landing on which sat two vehicles. When they first came into view, Brennan noted that both were parked against the steep cut bank on the upslope side of the landing. The big Ford camo pickup was parked immediately ahead of a medium size motorhome. Bates was busy between the two vehicles and a man Brennan knew only as "Crowder" was at work, standing in the bed of the pickup. Both were wiry-looking, sun-tanned men in their early thirties. Bates, medium height, looked like a surfer with shoulder-length sun-bleached hair. As soon as Brennan saw them, he called out to them.

"Fish and Game, men." Startled, the two men froze and stared at the warden. "Mr. Bates," said Brennan. "I need to talk to you."

Brennan got Bates aside and informed him that he had seen him dump trash by the river and set it on fire. He further explained that it was against state law to deposit trash or litter within 150 yards of state waters.

"I'm sorry, man," said Bates, hanging his head. "I'm really sorry." He was calm and soft-spoken. Brennan explained to him that he, Bates, would have to accompany him down to the patrol vehicle where he would be issued a citation. Bates complied, appearing genuinely

ashamed of himself. Brennan wrote the citation, and Bates signed it and accepted his copy. Bates then did something unexpected. He held out his right hand. Brennan regarded the grimy hand, then reluctantly gave it a shake.

Upon leaving Bates, Brennan drove up to the high spot where he had earlier radioed dispatch. He now called dispatch again, provided them with Bates' full name and asking them to run the man for warrants. Brennan soon learned that Bates was a fugitive, wanted in Hawaii for violating parole. Not only was there a felony warrant out for him, but Hawaiian authorities were eager to fly to the mainland and pick him up.

Brennan was about to request backup for the felony arrest, but hesitated. It would take most of an hour for backup to get to him, and he was in a hurry to get home. Besides, he thought, he had just left Bates. The man had been completely mellow and cooperative. So, he decided to make the arrest on his own, as he was well accustomed to doing.

Again Brennan parked by the locked gate, and again he hiked up the steep driveway. What he saw first, upon reaching the landing, was Crowder, still standing in the pickup bed, but now he was holding a huge pipe wrench the length of his arm. Bates, standing by the pickup's passenger door, looked up, spotted Brennan, and was not happy to see him.

"Mr. Bates. There's a warrant out for your arrest," said Brennan. "I'm gonna have to take you in."

Bates just stood there for a moment, then began to hyperventilate, a wild and desperate look coming over him.

"Turn around and put your hands behind your back," said Brennan, taking a step toward him.

At this, Bates, looking like he would explode, blurted out, "I need a drink," and in an instant, he turned, jerked open the pickup's door and grabbed for something inside.

"Don't," shouted Brennan, certain he was going for a gun. Brennan went for his sidearm, but Bates emerged almost instantly, not with a gun, but with a juice box, one of the small cardboard drinking containers children carry in lunch boxes. With trembling hands,

Bates ripped the tiny drinking straw from the side of the box, jammed it through the foil opening in the top, and with eyes bulging, he sucked mightily on the straw, draining the box in less than three seconds. Tossing it aside, he walked in tight circles for a few seconds, ignoring commands from Brennan. Then suddenly he sprinted for the motorhome. Brennan shouted for him to stop, but Bates threw open the side door on the motorhome and dove inside.

Brennan pulled his handset radio from his belt and spoke urgently into it, calling for backup. As he did so, he backed away from the vehicles so that he could see both the motorhome door and Crowder, who was looking on in astonishment. He jammed his radio back into the carrier on his belt and reached for his gun. He had no sooner begun his draw, when Bates jumped out the door with a shotgun.

"Drop it," shouted Brennan, but it was too late. Bates, partially hidden behind the open door, was swinging the shotgun barrel toward Brennan when Brennan fired four quick shots.

Bates staggered and went down onto all fours, losing the shotgun which landed a few feet from him. He began crawling towards the shotgun, a torrent of blood gushing from his neck wound. Brennan shouted for him to stop and get on the ground, but Bates again ignored him. Bates grabbed the shotgun and was turning with it when Brennan fired again. Bates collapsed on top of the shotgun and lay still in a pool of blood.

Brennan stood for a few seconds, stunned by the enormity of what had happened. A man lay bleeding, and he had just survived a gunfight by the narrowest of margins. He sucked in great draughts of air as it all sunk in. He then turned to Crowder and said, incredulously, "Did you see that? *What* was he *doing*?"

"Don't know," said Crowder, "But I know what he's doin' *now*. He's dyin'."

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Within a few hours of the shooting, Brennan was the subject of an officer-involved shooting investigation. Butte County's task force for this purpose had rented two adjoining rooms at Holiday Inn Express in Oroville, the county

seat. Brennan went into one room, and witness Crowder was taken into the other. It was there that Brennan was asked to turn over his gun. Immediately after he handed over his sidearm, they provided him loaner gun to temporarily replace it. Then Brennan met with his attorney, who had traveled there from Sacramento.

Upon leaving the motel, Brennan went to the District Attorney's office. It was there that he was encouraged to tell his story. Then came a careful reconstruction of the violent events of the day, and Brennan was impressed at how thoroughly and respectfully he was questioned. When coaxed through his memories of the actual shooting, he recalled something that had probably saved his life. When Bates first burst from the motorhome with the shotgun, the man was attempting to pump the shotgun, to jack a shell into the firing chamber. But the shotgun wouldn't cycle because there was a shell *already* in the chamber. The shotgun was ready to fire. It was the half-second it took Bates to realize this that allowed Brennan to complete his draw and bring his Glock sidearm into play before Bates could fire.

Brennan would learn that his first round went through the motorhome door, ripped through Bates' left hand, continued through the shotgun stock, then bounced harmlessly off his chest, its energy spent. The second shot sent a hollow-point bullet through Bates' neck, demolishing at least one of his carotid arteries. The third shot went through the door, just above his head. The fourth shot missed entirely. The last shot, when Bates was on the ground, again trying to point the shotgun at Brennan, ripped through his heart.

Following the questioning, Brennan waited in another room for a short time, then Mike Ramsey, the district attorney of Butte County, joined him. Ramsey, an aggressive, well-respected prosecutor and master of his trade, informed him that the shooting was clearly justified, and that Crowder, the only witness, had fully corroborated Brennan's account of the incident.

"Unless some new evidence falls from the stars, you're in the clear," said

Ramsey. But Ramsey, out of concern that Crowder might be encouraged to reconsider his testimony, had seen to it that Crowder, with a one-way ticket, was soon on a jet bound for Hawaii.

On the day of the shooting, Elaine Brennan returned from an overnight visit with her sister in the Bay Area. When she arrived home that afternoon, she found a nice bouquet of flowers with a note from her husband wishing her a happy anniversary. Then she was stunned by a call from Lt. Kent Harrison, a Fish and Game friend of theirs. Harrison broke the news to her that Josh was okay, but that he had been involved in a fatal shooting. A short time later, Elaine received *another* call from a Fish and Game employee, this one scaring her by offering to have a female officer come and sit with her. "Is he alright or isn't he?" she asked, much distressed. The caller quickly assured her that her husband was safe and uninjured. But now Elaine urgently needed to talk to her husband. It wasn't until after midnight that he finally walked through the door.

It's a well-known fact that officers involved in fatal shootings have notoriously bad memories of exactly how the shootings went down. It's like their brains go into slow motion, and they only remember bits and pieces of what occurred. For instance, an officer who claims with certainty that he only fired twice is astonished to learn later that investigators on the scene recovered eight of his fired shell casings. It's therefore not surprising that there were differences in the way Brennan and Crowder remembered what happened that day. The most surprising difference was that Crowder remembered Bates actually firing the shotgun at Brennan, while Brennan had no memory of that whatsoever. The shotgun, found beneath Bates' body, had a live round in the chamber and the safety was in the "off" position. The four-round magazine contained only three rounds, and there were numerous fired shotgun empties scattered over the landing. It's quite possible that Bates fired prematurely when he came out of the motorhome, then pumped another round into the

firing chamber an instant before Brennan fired at him.

It's also well-known that officers involved in fatal shootings often deny that they have been emotionally affected by it, and they resist counselling. While they truly believe this to be true, it most often is not. Almost all such officers suffer at least some level of PTSD. In Brennan's case, he experienced several months of unreasonable anger over small annoyances following the shooting. He and Elaine would also find that he had problems watching movies containing bloody shooting scenes. At first, Brennan would simply get up and walk away. Later, however, he discouraged his family from watching such movies in his home.

Brennan is a genuine tough guy with remarkable courage, and he handled the disturbing incident well. Many officers would have been forever haunted by it or even destroyed by it, but Brennan felt only anger towards Bates for making it happen. The man had done his best to leave Elaine Brennan a widow and little Rachael fatherless, and Brennan experienced no guilt whatsoever over what he had been forced to do.

But there was one sad afteref-

fect that would always remain with Brennan. His close brush with death had taken some of the enjoyment out of the job he loved, and from that day forward he was no longer the fearless swashbuckler of a game warden he had been before. His grim reminder of the tenuous nature of his existence had changed him, left him far more cautious, and the job became far less fun.

A few months following the shooting, little Rachael Brennan celebrated her fourth birthday. Her father was in attendance on that day ... and he was particularly grateful to *be* there.

**AUTHOR'S NOTE:** *Several decades ago, I learned that a young boy, age 11, was reading my books and had decided that he wanted to become a game warden when he grew up. I signed a book for him then, including the words, "I hope someday that you will be a game warden." He never gave up on his dream, and not only did he become a warden, he ultimately became one of the absolute best wardens I have ever known. His name? Josh Brennan. 🐾*

➔ *By Terry Hodges, Retired Lt., California Department of Fish and Wildlife, and author of the WARDEN FORCE Series*

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