

**U.S. CUSTOMS AND BORDER PROTECTION
UNITED STATES DEPARTMENT OF HOMELAND SECURITY**

**COMMENTS IN OPPOSITION TO
CUSTOMS' PROPOSED REVOCATION OF RULINGS
CONCERNING ASSISTED-OPENING KNIVES AND
CUSTOMS' PROPOSED RE-INTERPRETATION
OF THE SWITCHBLADE KNIFE ACT**

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I. INTRODUCTION

On behalf of the American Knife and Tool Institute (AKTI), we submit the following comments in opposition to U.S. Customs and Border Protection's ("Customs") proposed revocation of rulings, and its concomitant re-interpretation of the Switchblade Knife Act of 1958 ("the Act"). As described in further detail within, we respectfully request that Customs withdraw this proposal, which we submit is incorrect from a legal perspective. In addition, we submit that this proposal represents poor public policy and would be extremely harmful for a number of important reasons.

Formed in 1997, the American Knife and Tool Institute is a non-profit organization (501(c)6) representing the combined efforts of manufacturers, importers, catalog retailers, distributors, store-front retailers, custom knife artisans, journalists, and concerned citizens who have united to educate, promote, and inform the American public about various types of folding multi-tools and knives ... man's oldest tool. More than 30 industry companies are members of AKTI. The organization also includes scores of retail members, online retailers, and knife collector clubs as members. Several thousand individual and Grassroots Supporters provide their input to keep the organization focused on issues important to all knife owners.

II. SUMMARY OF POSITION

Customs' proposal contravenes 50 years of administrative precedent and violates fundamental tenets of the U.S. legal system. Under our constitutional system, the legislature creates the law and the executive branch enforces the law - as written by Congress. There is no merit to the proposal which would render section 1241(b)(1) essentially meaningless and which would misconstrue the operation of both switchblades and gravity knives alike. Moreover, the proposal would violate clear rules set in place by the judiciary which apply to interpretations of criminal law - such statutes are to be interpreted narrowly

according to clear and plain language – and in that regard, federal agencies are not entitled to substitute their voice to expand such criminal statutes in the place of Congress. Moreover, where an extensive web of state laws exist to regulate a subject area, courts have admonished agencies to strictly construe the federal laws in place - without impacting the carefully crafted frameworks that have been debated at the local level with the states. Hence, federal agencies ought to properly exercise restraint as a matter of policy in decisions which would preempt the state laws. In this instance, Customs is not reassessing its interpretation of the statutory language; rather Customs is overturning 50 years of practice by turning the narrow statute (against knives actuated by handle-buttons and gravity knives) into a prohibition on all manner of spring knives. Assisted-opening knives did not exist in 1958, and were not explicitly described by the statutory language. Hence, one is struck by the contortions which Customs re-interpretation require in order to reach a pre-determined position that assisted-opening knives would be covered by this law. Not only is it incorrect to construe *inertia* as describing the external vector force applied by a spring mechanism, but it is also contrary to the plain language to apply the Act to knives that do not contain an activating button on the handle – an important provision that Customs proposes (by connoting that the inertia provision applies to all spring knives) would essentially read out of the statutory law.

III. THE PROPOSED RE-INTERPRETATION OF SETTLED LAW IS UNLAWFUL AND SHOULD BE WITHDRAWN

Customs' Proposed Interpretation is Contrary to Principles of Statutory Construction

The Act at 19 U.S.C. section 1241,¹ defines Switchblade knives as follows:

As used in this chapter—

(a) The term “interstate commerce” means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

¹ The Act is codified in the Custom Regulations at 19 CFR § 12.95(a)(1).

(b) The term “switchblade knife” means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both.

Customs’ Proposal Contravenes The *Plain Meaning* of the Act

Regardless of whether *Chevron* applies, the plain language of the statute excludes assisted-opening knives. The United States Supreme Court long ago discussed the plain meaning rule of statutory construction, stating “[i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms.” Hence, if a statute’s language is clear, “the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.”²

Ample historical evidence exists to establish that section 1241(b)(1) was only intended to cover traditional switchblades which operated vis-à-vis an activating button embedded in the handle - while the second portion, section 1241(b)(2) pertained to a class of knives then referred to as “gravity knives,” which also had a release button or switch embedded in the handle of the knife. Such were the knives of the era -- indeed, the modern assisted-opening knives had simply not yet been invented.

Although Congress in 1958 could certainly have chosen to provide an outright ban against the wide class of “spring knives” – it did not do so. Instead, Congress chose narrow language using two separate defining clauses. This was clearly an attempt to narrowly tailor the Act and to address numerous historical concerns expressed on behalf of the outdoorsmen and others concerned with

² See, *Caminetti v. United States*, 242 U.S. 470 (1917)

statutory over-breadth.³ The resultant statute therefore proscribes only the narrowest possible subset of spring-knives which were of concern to Congress at that time in history – namely, the handle-activated switchblades and the gravity-knives that were being procured by the youth of the day.

AKTI tenders that this long-standing and narrow reading is the more appropriate interpretation of the statute. For reasons described within, AKTI hopes that Customs will agree that the judiciary must hold this particular statute be subjected to narrow legal interpretation.

Application of the Word “Inertia” Does Not Support A Reference To Outside Force Vectors Such As Springs

Congress intended inertia to refer to knives that open by momentum, *i.e.* gravity knives. "In assessing statutory language, unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage." *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 787-88 (Alaska 1996).

Inertia is commonly defined by Merriam-Webster as:

³ Congressman Yates had sought input from the Izaak Walton League, an angler's organization. In response to a written inquiry from Congressman Yates, the Director of the Izaak Walton League, responded as follows in a letter dated May 27, 1957:

“DEAR MR. YATES: We have your recent letter with respect to H.R. 7258, the legislation which you have introduced to ban the shipping of switchblade knives in interstate commerce. You asked what the league's position on this bill would be, and if its enactment would place a burden on sportsmen's clubs. . .

The Izaak Walton League has no policy on this matter to my knowledge. Many of our State divisions and local chapters have firmly resisted State or municipal legislation which would restrict the ownership and use of sporting arms in efforts to control the ownership of weapons by thugs. Generally, I believe our membership does not believe that such legislation would achieve its objective but would hinder and thwart the law-abiding citizen in his use of arms for sporting purposes....”

In his appearance before the House Subcommittee, Congressman Yates stated as follows, “[a]s I read from this letter from the Izaak Walton League most sportsmen do not use knives of this type. I think perhaps this may have been a hasty consideration of the bill by the Attorney General. I think he might want to reconsider it.” (Page 25).

1 a: a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force b: an analogous property of other physical quantities (as electricity)

2: indisposition to motion, exertion, or change : inertness

The applicable definition here would be 1a, which captures the widely understood principal that an object of mass will remain motionless, or if moving will remain in motion unless an outside force acts on it. This concept is, of course, closely related to the concept of momentum.

Inherent in the definition is the concept that the *inertia* of the object is different from the outside force applied, either to create motion or to stop it. To equate the inertia of an object with the outside force is to misapprehend entirely the physics involved.

A blade that moves by gravity or its own inertia (momentum) is within the Act's definition of a switchblade. However, a knife blade which requires an outside force vector from the human to overcome the natural bias against the blade's opening –as well as an outside force vector from a spring mechanism lies entirely outside of the definition of *inertia*.

The Term *Automatically* Does Not Apply to Assisted-Opening Knives

The federal statute also addresses the fact that a switchblade must open *automatically*. A manual maneuver by thumb, finger, or hand has to be used to start the blade opening on any folding knife or assisted-opening knife, all of which are designed to have a bias toward closure. If the bias toward closure has to be overcome by any greater or lesser amount of external force, then the blade opening is not automatic. It is also important to note here that all assisted-opening and one-hand-opening knives are in the same class mechanically; all have a bias toward closure. These include the common Boy Scout knife; other traditional pocket knives in scores of

styles and models; various multi-tools with knife blades; Swiss Army knives; hundreds of models of one-hand-opening knives used for hunting, fishing, construction, rescue and a variety of recreational activities; and assisted-openers. This entire class of knives is distinguished by a bias toward closure (for safety reasons) created by a variety of cams, detents and springs. By contrast, a switchblade knife has a constant bias toward opening. As soon as the activating release button on the handle is touched, the blade instantly springs open.

Although Customs states that once the blade is automatically in motion (caused by a spring) the word inertia applies to describe the knife. This reasoning is incorrect, as it would also apply to any ordinary knife whose blade is somehow manually pushed into motion, and therefore once in motion becomes subject to being described as an inertia knife. Plainly, such a result is absurd.

Customs' Proposal Would Render Section 1241(a) Meaningless

A long-enduring principal of statutory construction forbids an interpretive body from interpretations which serve to render other clauses meaningless within the statutory framework. Classically stated, "a fundamental rule of statutory construction requires that every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary."⁴

Had Congress intended the Act to cover "spring-loaded knives" of any variety – then clearly, there would have been no reason for the explicit language concerning a handle-situated activation button. Rather, Congress would have instead drafted clear language prohibiting knives which operate by the push of a button in the handle which "automatically" slams the blade open.

Customs' proposal that clause 1241(b)(2) cover spring-activated knives would inherently read out the purpose of section 1241(b)(1) from the statutory

⁴ See, *Raven Coal Corp. v. Absher*, 153 Va. 332, 149 S.E. 541 (1929).

framework. The purpose of which is both to (1) define the scope of the Act and (2) to limit the scope of the act. By expansively reading implied meaning into section 1241(b)(2), Customs derogates section 1241(b)(1) to the trash bin.

Given Customs' proposal – one must ask, why would Congress have bother writing 1241(b)(1) at all to describe the spring-loaded switchblades activated by a button in the handle?

Indeed, Customs has not answered plainly, the simple question – if all spring-loaded knives were the target of the Switchblade Act, then why did Congress not plainly state "all spring-loaded knives"?

Congress Wrote the Act to Address Specifically the Italian Switchblades and German Gravity Knives

What is a switchblade and what did Congress intend in 1958 when it drafted the Switchblade Knife Act? Contradictory lexicographic sources widely place the origin of the word Switchblade as appearing sometime between the early 1900s to as late as the 1940s. The word appears to have been a variant of the term "knife switch" (the device which closed an electrical circuit). Indeed the "switch" aspect appears to have been a clear play on the "switch" in the handle that is pressed to spring the knife open.

In the early 1950s the word came into American popular culture through a series of Hollywood films and Broadway plays which featured switchblades. For example, *Rebel Without a Cause* (1955), and *West Side Story* (1957). See also, *High School Confidential* (1955); *The Wild One* (1954); *Twelve Angry Men* (1957). These portrayals set the indelible image of the Italian Stiletto Switchblade Knife as the implement of the delinquent or thug -- the rebellious James Dean



defending his honor at the Planetarium; Frank Sinatra fighting with Ernest Borgnine in a Honolulu alleyway; and Vic Morrow threatening Glenn Ford in a classroom.

Throughout, the use of *switchblade* has been acknowledged as being largely synonymous with the Italian Stiletto, a thin-blade knife manufactured largely as a novelty item that only began to find popularity in the United States shortly after WWII:

Despite the mystery surrounding the origin of the word, there is one aspect that is nearly universal. Ask anyone, whether a person who has only seen switchblades in the movies, or an advanced collector, to close his eyes and visualize a switchblade and almost without exception he will think of an Italian Stiletto. Considering that both the term and the knife arrived in this country almost simultaneously in the years after World War II, it is perhaps not surprising that the two are essentially synonymous.⁵

It is important therefore to understand that in 1958, Congress was focused on these very specific knives, characterized by the Italian stiletto switchblade. Co-sponsor, Senator Carey E. Kefauver had in 1950 famously headed the U.S. Senate committee investigating organized crime. Popularly known as the Kefauver Committee, these hearings in fourteen cities with over 600 witnesses occurred on live television, making Kefauver nationally famous, and introducing many Americans to the concept of a criminal organization known as "the Mafia".⁶ The legislation in 1958, continued Senator Kefauver's attack on the perceived weapons of the prototypical street "thug" of 1950s:

U.S. Senator Frederick G. Payne of Maine asked a witness, "Isn't it true that that type of knife, switchblade knife, in its several different forms, was developed, actually, abroad, and was developed by the so-called scum, if you want to call it, or the group who are always involved in crime?" The

⁵ See, *Switch Blades of Italy*, Zinser, Fuller, and Punchard, at p.5 (Turner Publishing 2003).

⁶ Following on attempts to secure the Presidential nominations in 1952 and 1956, Senator Kefauver introduced the Switchblade Knife Act as an attack on crime; the bill which passed in 1958. In 1959, Senator Kefauver let it be known that he would not seek the party nomination and thereafter faded from the public eye.

witness, New York State Justice John E. Cone, co-founder of the Committee to Ban Teen-Age Weapons, enthusiastically agreed.⁷

Again, bear in mind that the modern assisted-opening knife mechanisms had not yet been invented. Rather, the knives which Congress was focused on opened *via* an activating button in the handle and these knives had been arriving in significantly larger quantities since the end of WWII. These were essentially being manufactured in post-war Italy as novelty items for the American youth market. Congressional testimony portrayed these purchasers as “thugs and delinquents”:

In his testimony before the House commerce committee on April 17, 1958, Delaney stated, “Every day our newspapers report numerous muggings and attacks, most of them involving knives. Can we sit by complacently and ignore the bloodshed in our streets? Doing away with switchblades will not be a cure-all for the crime wave sweeping the Nation, but it will remove one of the favorite weapons of our juvenile and criminal element.... it was not until about 1949 or 1950 that these things came into common usage. In the gathering of juvenile gangs and clans, nearly every one of them has a switchblade. It is a ritual with some of them to carry switchblades. It is not only the boys, but I was surprised to find that a great number of the girls carry them also.”⁸

Indeed, these novelty knives were a part of the youth counterculture of the day, and were less of a tool, than perhaps a symbol of rebellion:

These Italian switchblades have more in common with baseball cards and comic books than with fine Renaissance daggers or even Randall knives. Even Latima, the purveyor of perhaps the finest quality knives advertised switchblades as “novelties.” And even the Italian craftsmen who made the knives didn’t take them seriously. The blades were seldom hardened -- meaning that they would not hold an edge – nor were they intended to be working knives or used for anything – except perhaps stabbing. Perhaps, part of the enduring charm of the Italian Stiletto is their essential uselessness.⁹

⁷ See, *Switchblade Legacy*, Bernard Levine, Knife World August 1990.

⁸ See, *Id.*

⁹ See, *Id.* at 6.

[Emphasis added.]

As such, these stiletto knives with non-hardened, novelty blades possessed little *utilitarian* value and were therefore unreliable tools, whether that use be carving, slicing, or cutting – the blades would not hold an edge. Indeed, the history of the Act specifically characterizes these types of “useless” stiletto knives as follows:

The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them.¹⁰

In the 1950s, these Italian stiletto switchblades universally operated by means of an activating button in the handle of the knife. While there may have been variations on the shape or material of the handle activation button, (metal, horn or even ivory) the construction was all largely the same as the knives predominantly originated from one particular region in Italy, Maniago, near the Italian Alps on the Venuti Plain, about an hour north of Venice.¹¹

While one-hand spring-opening knives had long been useful tools (having been invented and used as far back as the late 1800s they have always been a part of Americana – see, later references to Boy Scout Knives) – Congress was not aiming to eliminate *all* such *spring-operated* knives. Again, we re-iterate, had Congressional intent been so *broad*, the Congress would have then worded the statute to include *all* knives which opened automatically by means of a spring mechanism (and would not have included the specific language pertaining to the activation button on the handle). Rather, Congress crafted narrow, specific language to squarely target only those knives that possessed an activation button on the handle of the knife (the majority of which were then the variety of

¹⁰ See, S. Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. &Ad. News 1958, at 3435-37.

¹¹ See, *Id.* at 10.

Italian stiletto knives). Again, the language and the legislative history has captured concerns which existed about the statute potentially being over-broad. As a result, the final Legislation could not have been more clear or more narrowly defined. Congress banned, principally, a narrow class of knives (exemplified by the Italian Stiletto) whose automatic opening was activated by a button in the handle of the knife.

Traditional Pocket-Knives Typically Employ Spring-Assists

Customs' proposal to redefine section 1241(b)(2), to pertain to all spring-activated knives perhaps indicates a misapprehension of folding knife technology and practical design considerations recognized within the knife trade.

An extremely simple folding knife design would incorporate a blade free to pivot on a pin in a handle into which the blade would fold. This design would be nothing more than a blade on a pivot "sandwiched" between two handle pieces. Such a design is similar in many respects to the "straight razor" typically seen in barber shops. In this design, the blade may be readily opened by a rapid movement or pronation of the wrist. Depending upon the amount of friction at the pivot pin, this design might also open by operation of gravity. Such a design is not suitable for a pocketknife, since there is no safety feature to keep the knife closed when it is in the user's pocket or open when in use. Outside of the barbershop, such a tool with a freely pivoting blade is generally impractical and unsafe.

The traditional "Slip Joint" knife design was therefore designed as a safe knife that would address both of these design objectives. The Slip Joint features a mechanism which provides a bias toward closure as well as a bias to opening. The blade is retained safely within the handle until there is some deliberate effort to open the blade or use the knife; however, the same mechanism also forces the knife open - thus preventing the knife from closing in error upon the user's hand.

A well-known example of the Slip Joint is embodied in the ubiquitous “Boy Scout Knife.” With this traditional pocket knife in hand, the bias-to-close feature can be appreciated by opening the blade 10 to 15 degrees and then releasing it. The blade is designed to snap back into the closed position. Similarly, a bias-to-open can be seen when the blade is pivoted approximately 150 or 160 degrees from the open position. **At that point, the spring action provides assistance in opening the blade.** The spring load then provides a force to keep the blade in the open position (what is referred to as a *bias* to the open position).

Several simple drawings which help to illustrate these points are attached as **EXHIBIT A**. (See, AKTI Recommended Definitions published in 2005). These illustrations also depict several other design variations with respect to common folding knives, including the ball detent, which is often used to provide a means of creating a bias toward closure.

In the instance of the switchblade knife (automatic knife), there is no bias toward closure. Rather, a compressed spring will always exert pressure on the knife blade to pivot the blade into the open position. Therefore, in such knives, a positive locking mechanism is required to keep the blade in the closed position. This lock is released by the activation button – giving the switchblade its legal definition.

Assisted-Opening Knives Are Not Gravity Knives (Nor Inertia Knives).

Customs, in its proposal to redefine 1241(b)(2), may also appreciate the trade’s discussion of the operation of what is known as a “gravity knife.”

The term “gravity knife” occurs in a number of places within the legislative record concerning the 1958 Federal Switchblade Act. The record contains almost no physical description of the gravity knife. However, the German World War II paratrooper knife is referenced at several points as the archetypical gravity knife. For instance, the record of the House of Representatives, Subcommittee

on Commerce and Finance, Meeting of April 17, 1958, and in particular, comments by Congressman James Delaney, of New York it was stated:

Mr. DELANEY. That is right. I am sorry I did not bring some switchblades along. Some of them are that long when they are folded, of course, they are half the size. Youngsters can put them in a bag or in their coat pocket or jacket pocket. As they take them out the thing springs open. The gravity knife was something that the German paratroopers used. By a flick of the wrist and gravity it opens without the switchblade mechanism." (Page 15)

...

In order to get around the switchblade prohibition in these States so-called gravity knives are coming into circulation. These knives are similar to the ones used by the German paratroopers in the last war. They open and lock automatically at a quick flick of the wrist. Technically they are not switchblades since they do not open as the result of spring action or by hand pressure applied to a button or other device in the handle." (Page 13)

[Interlineations added].

Photographs of a specimen World War II German paratrooper's knife, along with a description of the same, are attached at **Exhibit B**. The description, which is featured on the web site, provides as follows:

DESCRIPTION: Here is a paratrooper utility knife with gravity blade; an exceptionally practical item of rugged, but excellent quality. The *Fallschirmjager* of Germany were one of the world's forerunners in the employment of airborne forces, the *Wehrmacht* provided these elite troops with the best equipment German technology could produce, a good example of which is the specially designed paratroop gravity-blade knife. The unique method in which the blade extended into a lock position resulted in its common name, 'gravity knife.' The one-hand operation design was considered essential for paratroopers so the knife

could be employed during airborne descent to cut fouled suspension lines, tree limbs, etc. Also, it has a marlinspike for help in untying knots, etc. This is the nickel-plated model by SMF Solingen, unlike the blued takedown model seen elsewhere in our pages. This was the earlier model. This particular knife is in near-mint condition with bright unsharpened blade and unblemished wooden grips; just as nice as what you will ever find.

[Used with the permission of Germania International]

The German paratrooper knife, as referenced in the legislative history, has a button or device handle of the knife. In fact, the blade of the knife can only be released by the handle switch, which unlocks the knife. When the German paratrooper knife is in the closed position, the blade is entirely within the handle. It is held in a closed position by a positive locking mechanism.

This locking mechanism provides the means by which the blade is confined within the handle for the user's safety. Without the positive locking mechanism, the blade would have a tendency to slide out during routine or normal handling and certainly could be exposed by the inertial forces encountered during parachute drop operations.

To open or expose the blade, the user would simply hold it with the open end of the knife handle pointed down. Releasing the handle switch unlocks the blade, which is then pulled into the open position by gravitational force, where the blade is then locked.

Centrifugal force can be substituted for gravitational force by a flourishing movement of the user's hand and arm in an arc, while at the same time releasing the switch in the handle. This would be the inertial method of operation.

The German paratrooper gravity technology was later incorporated into folding knife designs. However, the same practical design limitations were still present. In particular, there had to be a locking mechanism to hold the blade in

the fully closed position and a button or other device on the handle to release it. There was no compressed spring load applied to the blade while it was in the closed position. There was also no spring generated bias to closure or bias to open feature.

The folding gravity knife was in many respects similar to the old-fashioned straight razor mentioned above, but with a lock on the handle. Releasing the lock on the handle enabled the user to snap the blade into the open position by rapid movement or pronation of the wrist or by swinging the arm. The expressed intent from the legislative history was that "gravity knives" were to be proscribed. Accordingly, application of the gravity knife definition to a style or design of knife, other than a design matching or substantially similar to the German World War II knife design, is beyond the scope of legislative authority.

In Department of Homeland Security, U.S. Customs and Border Protection, letter dated April 30, 2009, addressed to Thomas M. Keating, we note the following statement:

Given its legislative and judicial history, the Switchblade Knife Act is intended to proscribe the importation of any knife that opens automatically by hand pressure applied to a button or device in the handle of the knife *and* any knife with a blade which opens automatically by operation of inertia, gravity or both.

AKTI respectfully suggests that given the legislative history, the disjunctive "or" in 15 U.S.C. § 1241(b) was not intended to be the conjunctive "and," as now suggested by the Customs and Border Protection. Such an interpretation or construction would have resulted in a prohibition as to the common straight razor.

The Switchblade Knife Act did not prohibit and was not intended to proscribe the common straight razor. In fact, one of the sponsors of the Bill, namely Congressman Peter F. Mack, Jr., of Illinois, stated in response to a

particular question concerning applicability of the Switchblade Knife Act to straight razors, that it did not. The legislative history of the Federal Switchblade Knife Act reveals that it was focused on a specific configuration of a knife, which featured a switch mechanism on the handle.

Mr. MACK of Illinois. If I may answer the gentleman's question, I will say that it does not apply to razors as we know the razors referred to. This applies only to switchblade knives and applies to switchblade knives that open by gravity or inertia. It does not apply and would not limit the transportation of razors in interstate commerce.¹²

The various knives, which are the subject of the re-examination and re-determination by Customs, do not function in either the manner of the "paradigm switchblade" or the gravity knife, as understood and intended by Congress.

None of the knives, which are the subject of the revocation, feature a button or other such switch mounted on the handle of the knife. Rather, movement of the blade is initiated by finger or thumb pressure upon and movement of the blade. Mechanical action is introduced as the blade moves in an arc, to assist the blade in pivoting to the fully open position.

Again, we address Customs proposal that once movement is initiated by a spring, the inertial movement of the blade is described by the statute. We disagree. Rather, in some respects, the situation is similar to the feature of "power steering" and "power braking" now found on essentially all motor vehicles. To engage the brakes, one manually applied foot pressure to an activation pedal. Thereafter, additional force necessary to accomplish braking is provided by a mechanical supplement (usually hydraulic). This would not properly be called "inertial braking." Rather, it is appropriately referred to as "power" or "power assist" braking.

¹²

To open or expose the blade of a gravity knife, the user would simply hold it with the open end or side of the handle in the proper attitude. Releasing the switch unlocks the blade, which is then pulled into the open position by gravitational force.

In contrast, assisted-opening knives all have some mechanism which provides a bias to closure, or alternatively, a detent mechanism which must be overcome in order to move the blade. The bias to closure or detent is overcome by finger or thumb movement applied to the blade. This is manual operation with some mechanical assistance.

There is no bias-to-closure in the German paratrooper knife or, for that matter, any other gravity knife. A bias sufficient to hold the blade in the closed position would necessarily be of such strength that it could not be overcome by gravity. Rather, the blade is held and restrained within the handle by a positive locking mechanism. That locking mechanism is released by the button or latch on the handle. There is no finger or thumb pressure applied to the blade to initiate movement. Provided the gravity knife is either aligned so as to take advantage of the gravitational force or swung in an arc so as to generate centrifugal force, a switch mounted on the handle of the knife allows the blade to move.

Assisted-Opening Knives Do Not Open By Inertia Or Gravity

It is the position of Customs and Border Protection that:

The knives at issue open via inertia -- once pressure is applied to the thumb stud (or protrusion at the base of the blade), the blade continues in inertial motion (caused by the combined effect of manual and spring-assisted pressure) until it is stopped by the locking mechanism of the knife.

The above is not an accurate description of either the principle or operation of *inertia*. In the example of the German World War II paratrooper knife and other derivative gravity knives, there is no spring mechanism to provide

for the movement of the blade, nor a place to lever the knife open. If oriented correctly when the switch on the handle is activated, gravity alone will move the blade of the knife out of the handle sheath.

Alternatively, inertia alone can move the blade of this type of knife. This inertial force is supplied by the centrifugal force created by the movement of the user's arm in an arc or by rapid movement or pronation of the wrist. Motion, which is caused by the "combined effect of manual and spring-assisted pressure," is not inertial - it is mechanical motion. The Customs proposal has therefore misconstrued this law of physics.

Inertia is commonly understood as the tendency of a body in uniform motion to remain in motion unless acted upon by another force. Alternatively, it is the tendency of a body at rest to remain at rest unless acted upon by an outside force. There is no tendency of a body at rest to swing into motion without any outside input. Inertia neither principally initiates the movement nor does it principally continue the movement of the blade on any of the knives which are the subject of the intended revocation.

Certainly any knife-blade must possess mass, momentum and therefore inertia. To the extent that Customs attempts to zero in on the inertial movement of the blade in a spring-assisted knife, the industry sees little distinction from any other movement. It would be absurd to conclude that the mechanical initiation of a pocketknife would result in inertial blade movement to an open position – yet this is essentially the analysis that Customs would proffer.

Of critical importance is that none of the assisted-opening knives require a flourishing movement of the hand and arm or rapid pronation of the wrist (as does a true gravity/inertia knife) in order to open the blade. Similarly, none of these knives can be opened by operation of gravity alone, and none of them have an activating button or switch on the handle. The subject knives do require manual movement of the blade. At some point, a mechanical force assists and

completes the movement of the blade in the arc. As discussed above (with reference to the Boy Scout Knife), a certain amount of spring assist has always been present in the traditional Slip Joint pocketknife by reason of the design feature, which creates a bias to the fully open position after the blade has pivoted approximately 150 degrees of its 180-degree arc.

The Intent of the Legislature May Be Construed From the Long-Standing Legality of Assisted-Opening Knives

It is well appreciated that Congress is presumed to be aware of an administrative interpretation of a statute and adopts such interpretations when it amends legislation.¹³ Congress's intent when it re-visited the law in 1986, was in accord with the long-standing administrative interpretation of sections 1241(a) and 1241(b) which then construed assisted-opening knives as legal tools.¹⁴ No changes were made to those sections. Hence, Congress was deemed to have affirmed the current reading of the statute.

Conversely, had Congress disagreed with the long-standing interpretation, it would have included a clear amendment to ban all types of spring-assisted knives. Indeed, had Congress intended the law to apply so broadly, it would not have restricted itself to adding a very narrowly worded provision to merely ban "ballistic knives."¹⁵ Rather, Congress would have simply banned all knives operating via both spring and ballistic force. The careful wording of the Congressional amendment further supports the proposition that Congress favors a narrow reading of this criminal statute.

¹³ See, *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414 n. 8 (1975) ("Congress is presumed to be aware of an administrative or judicial interpretations of a statute and [is presumed] to adopt that interpretation when it re-enacts a statute without change.")

¹⁴ See, e.g. *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) "[W]here . . . Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." See also, *General Dynamics Land Sys. Inc. v. Dennis Cline*, 540 U.S. 594 (2004). See also, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabitt*, 547 U.S. 71, 85-86 (2006).

¹⁵ A ballistic knife operates by spring or other force physically ejecting the blade, as a projectile, away from the handle.

Furthermore, in the intervening decades, Congress has eschewed further amendments to the Switchblade Knife Act – despite (1) continuing administrative practice, (2) despite the issuance of numerous Customs rulings accepting such knives as admissible, (3) despite increasing sales of assisted-opening knives, and (4) despite having ample time and opportunity to effect such changes. Such a failure of the legislature to act is important evidence of the intent of Congress:

The 1986 Congressional Amendment to Include Ballistic Knives Confirmed that Customs' "Inertia" Provision in 1241(b) Was Not Intended to Cover All Spring-Loaded Knives

We submit that Congress felt compelled to provide for the addition of "Ballistic" knives in the 1980s, because it was not ever intended that the "inertia" provision of section 1241(b)(2) be used to encompass spring mechanisms. Further, while Congress was revising the law to include "ballistic knives" it would have also been a simple matter to include "assisted-opening knives" or even "all spring-activated knives" if that had been the Congressional intent. The fact that Congress chose to insert only the ballistic knife amendment and to eschew any further expansion of the Act, clearly contradicts Customs' proposed interpretation of 1241(b)(2).

Customs' Position Is Not Entitled to Chevron Deference Under Modern Legal Theory

The U.S. Supreme Court stated in 1984 that if the statute grants power to an administrative agency and is ambiguous with respect to the specific issue, the courts will defer to the agency's reasonable interpretation of the statute. Unlike other issues that are specifically delegated to Customs, the Switchblade Knife Act does not contain a delegation of authority to Customs. Litigation of this issue may impact more than a mere interpretation of the Switchblade Knife Act. Such litigation could also impact the zero-step analysis that many legal scholars have concluded may have resulted from the application of a string of modern cases, such as *Mead*, *MCI* and *Brown & Williamson*. In the 2006 Virginia Law Review, entitled *Chevron Step Zero*, Cass R. Sunstein writes:

Perhaps *MCI* and *Brown & Williamson* should not be understood to

say that major questions will be resolved by courts rather than agencies. Perhaps they should be taken to impose a more powerful limit on administrative discretion, in the form of a background principal to the effect that in the face of ambiguity, agencies will be denied the power to interpret ambiguous provisions in a way that would massively alter the pre-existing statutory scheme. [citing in footnote 241, “For a valuable discussion, see John F. Manning, *The Nondelegation Doctrine as a Canon of Avoidance*, 2000 Sup. Ct. Rev. 223.]

Specifically with regard to the Switchblade Knife Act, there has been no legislative delegation of authority, and the Act concerns multiple agencies and important broad public policy issues more appropriately regulated by the states. This proposed action relates to issues of criminal law, federalism, and Second Amendment Rights near the edge of Congressional sphere of power, and therefore, this constitutes a topic for which the agency is not necessarily endowed with Congressional authority to issue either “re-interpretations” or wholesale statutory inventions.

Despite prior court decisions prior to *Mead*, *MCI* and *Brown & Williamson*, which have assumed the application of Chevron applies with regard to the Switchblade Knife Act, Customs could be surprised with adverse administrative precedent should a court elect to review these issues *de novo*.

For example, in *International Customs Products*, the Court of International Trade declined to provide Chevron deference to a statutory interpretation of the agency. In that case, Judge Carman, quoting the Supreme Court’s well-established holding in *Shapiro*, wrote “we must heed the equally well-settled doctrine of this Court to read a statute, assuming that it is susceptible of either of two opposed interpretations, in the manner

which effectuates, rather than frustrates the major purpose of the legislative draftsmen.” Judge Carman’s holding accordingly stated, “the Court declines to read section 1525(d) in the limited manner Customs proposes, which undermines the purpose of the statute. . . [t]his court will not adopt a construction of §1625 that, contrary to congressional intent, treats the statutory procedures as avoidable at the whim of Customs and thus renders them meaningless.”

Likewise, in *Fabil Manufacturing*, the court held that “since Customs ruling is not in accord with – indeed is contrary to – the governing statute as interpreted by St. Paul, the ruling is not entitled to deference.” We would tender that many of the same or equally compelling arguments would apply in this instance.

Customs may wish to exercise appropriate discretion in rulemaking, as the consequence under judicial review could further restrict its ability to engage in appropriate and necessary rulemaking activities.

Customs’ Interpretation Would Abrogate the Laws of 50 States

Supreme Court precedent also holds that statutory interpretations should not abrogate the sovereignty of state decisions.¹⁶ Customs’ final published interpretation of the Switchblade Act - made ostensibly by an agency duly empowered to take such action would contradict the current legal regime in all 50 of the states.

As a consequence, federal law enforcement would henceforth be entitled to rely on this decision as the basis for indicting, and possibly convicting any U.S. citizen, manufacturer, or retailer for criminal felonies due to sales or possession of such assisted-opening knives.

¹⁶ See, *Gregory v. Ashcroft*, 501 U.S. 452 (1991); see also *Gonzales v. Oregon*, 546 U.S. 243 (2006); see also *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003).

Such unilateral action by Customs would therefore essentially serve to nullify and preempt the legislatures in all 50 of the states who have considered, studied, debated, and ultimately voted on state laws on the subject of these knives.

Customs' Re-Interpretation Interferes with the Powers Reserved to the Legislatures

Today, the long-established interpretations of the Switchblade Knife Act have served to provide both business stability and an *ethos* underlying everyday commerce within the knife industry. As written in the Columbia Law Review by Justice William O. Douglas, "*Stare decisis* provides some moorings so that men may trade and arrange their affairs with confidence."¹⁷

In light of the clear precedent and historical grounding of these knives in commerce, it is concerning that CBP now proposes to shake the legal foundations which retailers, importers, and manufacturers of knives have depended on by shunning long-established statutory interpretation *via* administrative interpretation. There was a time when federal agencies viewed their role as that of the enforcement branch of the government and would not think of so blithely violating the separation-of-powers doctrine (and thereby undermining the role of Congress in making law) merely for the sake of instigating litigation before the judiciary. Hence, we are left with the words of Judge Kelsey, who recently eloquently wrote:

"deference is not abdication, and it requires us [courts] to accept only those agency interpretations that are reasonable in light of the principles

¹⁷ An example is seen where importers sell goods to a U.S. customer while the goods are in transit to the United States ("on the water"). In many instances, the goods may be sold after the transmission of entry/entry summary information to CBP (transmission can occur as early as 5 days prior to actual entry). Taken literally, CBP's proposal would require this "last sale" to be the basis for appraisement even though the importer remains the party filing the entry and entry-summary information. Customs appears to imply that appraisement would absurdly be based on a U.S. transaction, i.e., U.S. importer to U.S. customer at a re-invoiced price marked up to account for the U.S. importer's selling expenses and profit. While Customs has pointed to the administrative difficulty in processing first-sale entries, CBP may not have fully considered some of the difficulties inherent in instituting a last-sale regime, such as the identification and re-filing last sale entries for shipments already entered.

of construction courts normally employ." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 260 (1991) (Scalia, J., concurring).

No matter how one calibrates judicial deference, the administrative power to interpret a regulation does not include the power to rewrite it. When a regulation is "not ambiguous," judicial deference "to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation." *Christensen v. Harris County*, 529 U.S. 576, 588 (2000). **Though agencies may be tempted to adjudicate their way around unwanted regulations, such overreaching undermines the notice and public hearing procedures of the rulemaking process - thereby putting in jeopardy the "enhanced political accountability of agency policy decisions adopted through the rulemaking process" and the democratic virtue of allowing "all potentially affected members of the public an opportunity to participate in the process of determining the rules that affect them."** 1 Richard J. Pierce, Jr., *Administrative Law Treatise* 6.8, at 369, 372 (4th ed. 2002); see generally 1 Charles H. Koch, Jr., *Administrative Law & Practice* 2.12, at 53 (2d ed. 1997).

[Emphasis added]

Respectfully, the industry **urges that Customs exercise restraint** on an issue which is properly reserved to the legislatures. These knives are not innocuous products that are likely to escape the notice of our legislators – but rather, they are tools sold in large numbers at well-known retailers.

AKTI avers that it would be reasonable for CBP to change its interpretation of switchblade knives if and when a court determined a particular knife was a switchblade as that term is defined in the Switchblade Knife Act. For example, in *Taylor*¹⁸, the U.S. Court of Appeals for the Sixth Circuit determined that the balisong knives at issue were switchblades, thus permitting CBP to ban them from importation. It would appear that rather than maintain long-standing precedent, CBP is inviting litigation on an issue where no controversy currently exists. AKTI avers that a desire on the part of CBP to litigate a claim or to have a

¹⁸ See, *Taylor v. United States*, 848 F.2d 715 (6th Cir. 1988)

judicial determination is not reasonable, and therefore, is not the '*reasoned analysis*' anticipated by the U.S. Supreme Court in *Rust v. Sullivan*.¹⁹

Customs' Proposal Would Violate Constitutional Law on the Interpretation of Criminal Law

Along with the principle of legality (the concept that crimes must have been defined prior to their enforcement), and the void-for-vagueness doctrine, the principal of strict construction of penal statutes in favor of the defendant is intended to limit overzealous enforcement of criminal laws the purpose of which is to not only assure a more complete notice of the prohibitions of the criminal law to those who are subject to the law, but also to limit the ability of police and prosecutors to use that law to harass and intimidate the public.²⁰

1. The Rule of Lenity Requires Narrow Construction

Supreme Court precedent provides for the well-known rule of lenity which holds that where a statute gives rise to criminal remedies, it must be narrowly construed in favor of the defendant.²¹ The prescription that criminal laws must be construed in favor of the defendant intentionally limits the range of discretion of those who enforce the law. Accordingly, in the classic *Wither's* case the Court pronounced:

It is an ancient maxim of the law that all such statutes must be construed strictly against the state and favorably to the liberty of the citizen. The maxim is founded on the tenderness of the law for the rights of individuals and on the plain principle that the power of punishment is vested in the legislature and not in the judicial department. No man incurs a penalty unless the act which subjects him to it is clearly within the spirit and letter of the statute which imposes such penalty. **There can be no**

¹⁹ See, *Rust*, supra at 186

²⁰ *Strict Construction Of Firearms Offenses: The Supreme Court And The Gun Control Act Of 1968*, 49 *Law & Contemp. Probs.* 163-198 (1986).

²¹ See *McNally v. United States*, 483 U.S. 350 (1987); See, e.g., *Muscarello v. U.S.*, 524 U.S. 125 (1998) (declining to apply the rule of lenity); *Evans v. U.S.*, 504 U.S. 255 (1992) (Thomas, J., dissenting); *Scarborough v. U.S.*, 431 U.S. 563 (1977) (Stewart, J., dissenting); See *United States v. Santos* (2008).

constructive offenses, and before a man can be punished his case must be plainly and unmistakably within the statute. If these principals are violated, the fate of the accused is determined by the arbitrary discretion of the judges and not by the express authority of the law." *Wither's Case*, 109 Va. 837 (1909).

[Emphasis added].

2.The Constitutional Rule of Vagueness Requires Interpretations be Apparent from the Plain Reading of the Statute

The void-for-vagueness constitutional doctrine limits arbitrary enforcement in much the same way as the rule of lenity. A vague criminal statute offers law enforcement personnel opportunities for selective interpretation, harassment, and intimidation. The primary vice of an ambiguous statute, therefore, is not that it delegates too much lawmaking power to the courts, but that it delegates too much law-enforcing discretion to police and prosecutors.²² Under Customs' proposed interpretation virtually any folding knife would be capable of falling into the definition of a Switchblade knife.

Indeed, enforcement is more likely to be voided by courts where "the threat of enforcement discretion has been perceived as impinging on constitutionally protected values such as freedom of speech and of the press." While AKTI considers these assisted-opening knives to be primarily tools, nevertheless a constitutional protected right to bear these knives certainly exists, to the extent that Customs here seeks to criminalize these implements as dangerous weapons.

3.The Strict Construction Rule Requires Strict Regard for Statutory Terms

²² *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), stands as an example. The Court struck down a municipal vagrancy statute used to arrest two white women and two black men traveling together in an automobile. "Of course, vagrancy statutes are useful to the police ...," the Supreme Court admitted, "[b]ut the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that evenhanded administration of the law is not possible."

The concept of narrowly interpreting criminal consequences is so pronounced in our system of law that it is also embodied in an important analogue, the *rule of strict construction*.²³ Stated simply, strict construction means that a criminal statute may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms.

Black's 6th describes the principle as such:

Strict construction. A close or rigid reading and interpretation of a law. It is said that criminal statutes must be strictly construed. Rule of "strict construction" has no definite or precise meaning, has only relative application, is not opposite of liberal construction, and does not require such strained or narrow interpretation of language as to defeat object of statute. *Southwestern Bell Tel. Co. v. Newingham, Mo. App.*, 386 S.W.2d 663, 665.

Such precedent from our highest courts also holds states that even where both civil and criminal remedies are involved, even the civil remedies must be narrowly construed.²⁴

The point here is that *strict construction* is exactly the opposite of the liberal construction into which Customs' proposal falls. Customs should recognize that the rule of strict construction prohibits any statutory construction that is not narrowly tailored.

4. Customs' Proposal Violates the Required Narrow, Plain and Strict Readings (as Established in 1-3 Above) and Would Therefore be Unlawful

Hence, (1) Customs' proposal to expand the scope of the Act beyond the plain meaning violates the narrow interpretation doctrine; (2) Customs' proposal

²³ H. Packer, *The Limits of the Criminal Sanction* at 95 (1968). Indeed, the analysis under the facets of principle of leniency and the vagueness doctrine also emerge during examination of the rule of strict construction of penal statutes, which has been labeled "something of a junior version of the vagueness doctrine."

²⁴ See generally, J. Hall, *General Principles of Criminal Law* 27-69 (2d ed. 1960).

to read-in hidden meaning to the terms *automatically* and *inertia* would be void-for-vagueness; and (3) Customs' proposal to choose the broader meaning over the more obvious, narrow textual definition of these terms suggest that Customs' theory would violate the strict construction rule.

Customs' proposal consists essentially of a re-interpretation based on the perceived spirit of the law as encompassing knives which deploy quickly by spring action – *in a fashion like or reminiscent to* a switchblade. In its proposal, Customs has ignored the critical fact that, these are not the knives that Congress envisioned when it passed the Act.²⁵

The proposed interpretation would cause actual constitutional harm to U.S. citizens by criminalizing sales and possession where Congress did not plainly speak on the subject. Under the "flick" analysis tendered in Customs' latest rulings, just about any folding knife would be implicated and subject to extremely *vague* enforcement. Further as detailed above, enforcement under federal or state law would be equally vague – or disparate to the extent that only importers might be restricted without actual enforcement against domestic sales.

Finally, a narrow interpretation is not served by creative and **over-broad** interpretations of such terms as *inertia*, **coupled with** conversely extremely **limited** interpretations of terms such as *utilitarian*. These extremely converse readings only serve to imply that Customs is proposing to avoid a literal interpretation and embarking on a pre-determined and unconstitutional course of action.

Customs' Re-Interpretation Contravenes the Clear Statement Rule

When a statute may be interpreted to abridge long-held rights of individuals or states, or make a large policy change, courts will not interpret

²⁵ Again, Congressional contemplation of assisted-openers would have been an impossibility since the modern assisted-opening mechanism had not even been invented in 1958. Further, the modern assisted-opening knives are not the plain subject of the Act – which is plainly limited to the "handle-button" and gravity knives.

the statute to make the change unless the legislature clearly stated it. This rule is based on the assumption that the legislature would not make major changes in a vague or unclear way, and to ensure that voters are able to hold the appropriate legislators responsible for the modification.

In this instance not only is Customs proposing a new interpretation to a 50-year-old law, but it is also proposing one with far reaching social, economic, federal and Constitutional repercussions.

Statutory Interpretation Must Avoid Absurdity

Although Customs states that once the blade is *automatically* in motion (caused by a spring) the word *inertia* applies to describe the knife, this reasoning is incorrect, as it would also apply to any ordinary knife whose blade is somehow manually pushed into motion, and therefore once in motion becomes subject to being described as an *inertia* knife. Plainly such as reading is absurd.

The legislature did not intend an absurd or manifestly unjust result, however, Customs' proposed definition would criminalize mere possession of knives now in public use – a manifestly unjust result. These knives have been sold in quantities measured in tens of millions over the course of many decades. The number in use and circulation is not even specifically tracked within the industry. Customs re-definition in this matter would cause widely circulated fire, police and other types of “rescue knives” to be banned – an absurd and potentially deadly result. It would be absurd for Customs to tender that Congress intended to criminalize a type of useful knife that did not exist at the time the statute was written. It would also be absurd to read-out important meaning (especially as that meaning implies the statutory limitation) from section 1241(b) (1) while simultaneously ignoring the countervailing statements and actions of Congress and of the 50 state legislatures.

The Constitutional Avoidance Doctrine Requires that Customs Respect the Constitutional Rights Here Implicated, Including the Right to Bear Arms

If a statute is susceptible to more than one reasonable construction, courts should choose an interpretation that avoids raising constitutional problems. In the US, this canon has grown stronger in recent history. The traditional avoidance doctrine required the court to choose a different interpretation only when one interpretation was actually unconstitutional; however, the modern avoidance canon tells the court to choose a different interpretation when another interpretation merely raises constitutional doubts.

"It has long been an axiom of statutory interpretation that 'where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.'"²⁶

The Legislative History Concedes That Many Spring Knives Have Utility

Despite the novelty of the Italian Stiletto which did not have a useful or hardened edge, Congress admitted that there might be other similar knives of value. A fair reading of the legislative history leading up to the passage of the 1958 Federal Switchblade Act reveals that the primary concern was that juveniles in large numbers were carrying switchblades. The utility of switchblades was conceded in the Statement of Senator Estes Kefauver, Committee on Interstate and Foreign Commerce, United States Senate, on July 23, 1958:

Invented by George Schrade in 1898, the pushbutton opening knife **was a useful article** produced on a limited scale. In the past 10 years, however, the large-scale manufacture of these articles, the reduction in price of the pushbutton knife so that it is easily available to juveniles, and the psychological effect of these articles

²⁶ See, *Public Citizen v. United States Department of Justice*, 491 U.S. 440, 466 (1989) (citing *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988)).

in antisocial and aggressive conduct has made such legislation necessary."²⁷

The office of the then U.S. Attorney General of the United States did not support passage of the Federal Switchblade Act, as set forth in a letter by William P. Rogers, Deputy Attorney General, addressed to the Honorable Oren Harris, Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, dated April 12, 1957.

The Department of Justice is unable to recommend enactment of this legislation.

The Committee may wish to consider whether the problem to which this legislation is addressed is one properly within the police powers of the various States. As you know, Federal law now prohibits the interstate transportation of certain inherently dangerous articles such as dynamite and nitroglycerin, on carriers also transporting passengers. The instant measures would extend the doctrine upon which such prohibitions are based by prohibiting the transportation of a single item which is not inherently dangerous but requires the introduction of a wrongful human element to make it so.

Switchblade knives in the hands of criminals are, of course, potentially dangerous weapons. **However, since they serve useful, and even essential, purposes in the hands of persons such as sportsman, shipping clerks, and others engaged in lawful pursuits, the committee may deem it preferable that they be regulated at the State rather than the Federal level.** [Emphasis added.]

Also, the then Secretary of Commerce, namely Sinclair Weeks, advised of a Department of Commerce recommendation against passage of the Switchblade Act in a letter dated April 21, 1958, addressed to the Honorable Oren Harris.

The general intent of these legislative proposals appears to be to improve crime prevention by control of the use of the switchblade knife as a weapon of assault. . . . **This would ignore the**

²⁷ See, The Senate Committee on Interstate and Foreign Commerce Hearings, page 4.

legitimate needs and uses for these knives on the part of those who derive and augment their livelihood from 'outdoor' pursuits, such as hunting, fishing, trapping, etc., as well as those of the country's sportsmen, and many others. We feel that these objections are valid." [Emphasis added.]

Assisted-Opening Knives Possess High Utility

Within the April 30, 2009 letter addressed to Thomas Keating, as mentioned above, Customs and Border Protection asserts:

We therefore find that knives with spring-assisted opening mechanisms that require minimal "human manipulation" in order to instantly spring the blades to the fully open and locked position cannot be considered to have a primary utilitarian purpose; such articles function as prohibited switchblade knives as defined by the relevant statute and regulations.

This so-called "finding" by Customs and Border Protection is inconsistent with the legislative history of the Switchblade Act. It is also contrary to the real life usage of assisted-opening knives. These knives possess hardened blades shapes that are specifically designed to facilitate reliable and accurate cuts, slices, carvings, skinnings, chopping and etc. **See, Exhibit C.** (A.G. Russell Glossary of Blade Shapes).

IV. CUSTOMS' PROPOSAL IS POOR POLICY

A. Sensible Policy Favors Individual Knife Regulation by the States

Indeed, today it is difficult to understand the continued relevance of the federal Switchblade ban, as enforcement has largely been ceded to individual states all of which have codified specific detailed provisions on knife control.

It is also important to understand that in all 50 of the states assisted-opening knives are legal under state law. Further, in some of these states

assisted-opening knives are expressly called out by the state law as legal devices.

It is unlikely that ranchers in Wyoming, oilmen in Texas, sailors in Hawaii, or outdoorsmen and fishermen in Alaska would hold the same policy concerns as citizens in Washington D.C. It is therefore unfortunate that Customs Headquarters now believes that it is appropriately situated to run roughshod over the duly deliberated legislation enacted in all 50 of the state legislatures.

Customs' decision on this point will serve to force scores of legitimate companies out of business for the sake of an intellectual exercise as to whether *inertia* can rationally be construed as describing an external vector force applied *via* a spring mechanism. We not only propose that inertia cannot be so rationally construed, but we also tender that the very exercise of proposing re-definition to this criminal statute is properly the province of the various legislatures.

We observe that all 50 states, the U.S. House of Representatives and the U.S. Senate have themselves felt no obligation to alter the stated scope of the Act since their last review in 1986. Because any of these legislative bodies could have chosen to pass more restrictive knife regulations (to cover assisted-opening knives) at any point in the last five decades – and have not done so – we submit that neither is it Customs place in the federal scheme to interrupt real commerce, eliminate real jobs, and deprive real people from tools of the trade. In counterpoint, the trade has seen no evidence that these ranchers, outdoorsmen, fishermen, etc are thugs, nor is there any other apparent need for regulation of these devices.

A. Customs Proposal Will Deprive Citizens of Needed Tools

There are thousands of varied examples of the unique utility of a one-hand opening knife – such utility is well-understood by anyone who works on projects requiring a knife to cut, shave or slice. AKTI truly believes that there can be no good-faith argument that these knives do not possess a high degree of utility. If

Customs does not understand this utility, then it is respectfully tendered that Customs should consider that an experiential knowledge gap may exist and that outreach may be necessary to those who utilize knives in everyday projects.

In specific response to Customs' proposal, AKTI respectfully asserts that it is a specious and circular argument to state that assisted-opening knives hold no utility (and should be considered switchblades – based on the legislative history that states that switchblades hold no utility that other knives do not better serve.

Further, the argument that assisted-opening knives serve no utility that fixed blade knives do not, is both false and a mis-characterization of the historical argument. (As explained, that argument was tendered against the Italian Stiletto Knives which maintained an unhardened blade – a blade that would not hold an edge and which was only useful perhaps in stabbing motions and intimidation by street gangs.)

Customs action to ban these knives will deprive everyday citizens of the tools that are sorely needed by everyday citizens of all walks of life. The reason that these tools have found a market in Target, Wal-Mart, Big-5 and thousands of other retail outlets lies in the vast utility of the knives. This retail market in these products has not been driven by youthful offenders of the law.

B. Customs Proposal Would Create Significant Economic Harm

The American Knife & Tool Institute (AKTI) represents all segments of the U.S. sporting knife industry and educates millions of Americans on how to legally and safely use them every day. AKTI produced its 2007 Report: The AKTI State of the Sporting Knife Industry.

What emerged was a picture of a vibrant, essential American industry that has been providing tools for work and recreational activities for decades. The survey concluded that there were:

- 3,881 direct employees identified in 61 U.S. companies at the manufacturer/ importer level

- Another 19,405 U.S. workers supply materials, packaging and shipping services to keep this basic industry productive
- The industry generated \$968.87 million in gross revenue at the manufacturer/ importer level in 2007
- The total economic impact of these dollars circulated through local, regional and national economies was \$5.921 billion

Finally, let's look at just one state where the industry has a significant presence. The nine major Oregon knife companies employ more than 1,200 people in a state where unemployment is the second-highest in the nation (more than 12 percent). That state and 49 others cannot afford any more job losses, dislocations or mortgage foreclosures that the Customs action would generate.

If Customs has their way, they will cripple several tax-paying companies, perhaps drive some out of business, and would surely drive more Americans out of their jobs and homes. And we haven't even discussed the multiplier effect of this at the retailer level across the country, nor the impact on the hunting, fishing and tourism industries that keep several states afloat.

C. Even if Customs Were the Congress, Such Policy Fails to Effect a Needed Social Change

The teenagers of the mid 1950s are now, for the most part, retired and collecting social security benefits. There is simply no reason to believe that they continue to present a threat. There is also no evidence that there is a switchblade fad or that knives of the type included in the proposed revocation are being acquired by any particular demographic group, other than people who use them for legitimate and wholesome purposes.

V. CONCLUSION:

For the reasons asserted above, AKTI respectfully requests Customs confirm withdrawal of its proposal to revoke the four referenced admissibility rulings concerning assisted-opening knives.

EXHIBITIO A

APPENDIX

Straight Razor — No Lock

In the typical folding knife the blade swings or pivots in an arc of approximately 180° from the closed position to the open position. Without some means of providing a bias or lock to the closed position, the knife could simply swivel open unexpectedly—for instance, while in the user’s pocket exposing the blade and creating a potential for injury.

An old-fashioned “straight razor” is an example of a folding knife-like device with no bias or other such mechanism to hold it in either the closed, or for that matter, the open position. (See Figure 1)

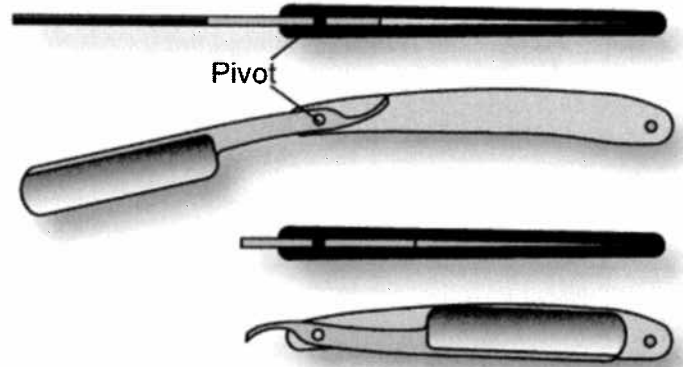


Figure 1

FOLDING POCKET KNIFE

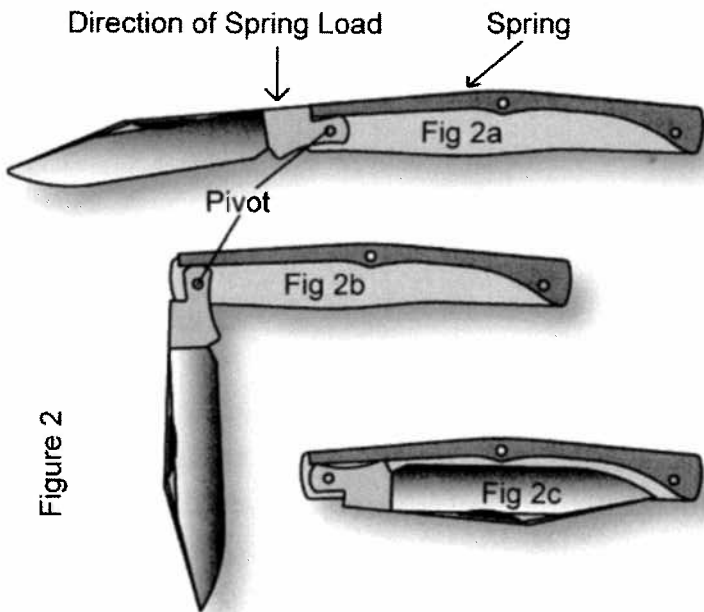


Figure 2

(Drawings provided by Buck Knives and are the property of AKTI.)

Folding Pocket Knife

A common design for providing a spring-loaded bias to both the closed and fully open position utilizes a spring which applies pressure against the base of the blade near the pivot point. This is referred to as the “slip joint knife.” (See Figure 2) The direction of the spring load is from the outer edge of the blade toward the center of the pivot hole. (See Figure 2)

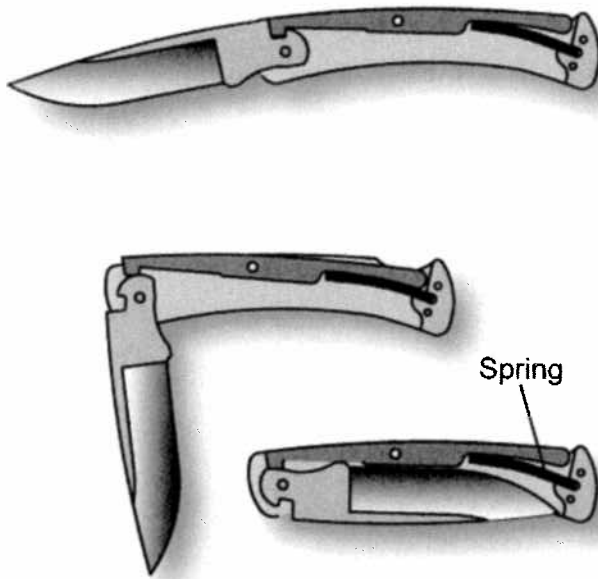
When the blade is in the fully open position, the force or load of the back spring tends to keep the blade in the fully open position. (See Figure 2A)

When the blade is in the fully closed position (Figure 2C), the pressure of the back spring similarly tends to hold the blade closed within the handle of the knife.

Opening the blade requires a force to create a camming action. For the first 45° of pivot, there is a bias toward the closed position. After the blade has been pivoted toward the open position in an arc of approximately 135°, there is a bias toward the fully open position. Such bias toward the open position, which begins at approximately 135°, is often capable of moving the blade to the fully open position. This, however, does not cause the knife to otherwise be classified as a Switchblade.

FOLDING KNIFE with LOCK FEATURE

Figure 3



Folding Knife with Lock

Figure 3 is a simple variation which utilizes a notch or mortise at the back of the blade into which a tenon or projection of the spring locks when the blade is pivoted to the fully open position.

Another method of providing a bias to the closed position and/or resistance which must be overcome to manually open the blade of a folding knife utilizes a spring load applied against the side of the blade.

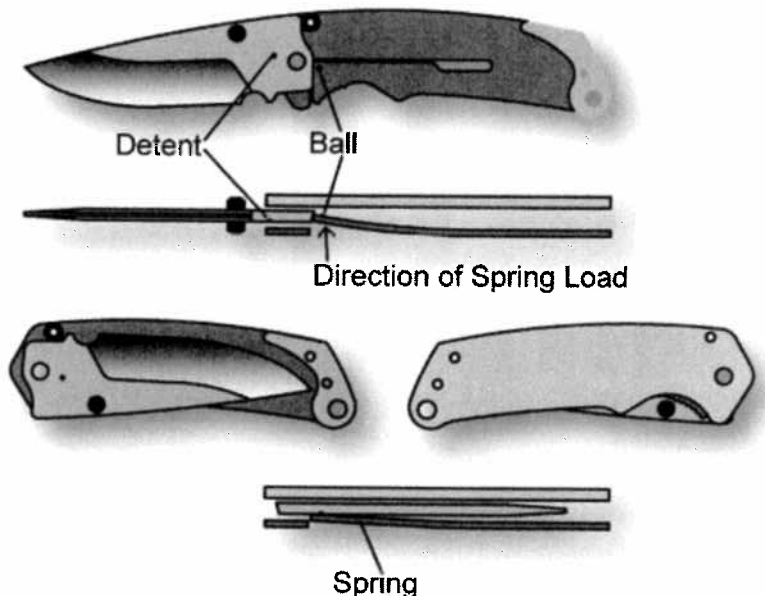
Detent and Bias

Typically, there is a small depression or detent on the blade near the pivot hole. When the blade is in the fully closed position, this detent is engaged by a ball partially embedded or set in the spring. (See Figure 4)

Opening the blade requires sufficient force to overcome the spring load, and, by camming action, force the ball against the load and out of the detent. As the blade swings or pivots in the arc toward the fully open position, the spring load continues to exert pressure, and accordingly, friction, which must be overcome to move the blade.

FOLDING KNIFE WITH LOCKING LINER

Figure 4



In Appreciation

A special thanks to Daniel C. Lawson, Esquire, of Meyer, Darragh, Bucker, Bebenek & Eck, P.L.L.C, Pittsburgh, PA, for his authorship and revisions of the AKTI APPROVED KNIFE DEFINITIONS.

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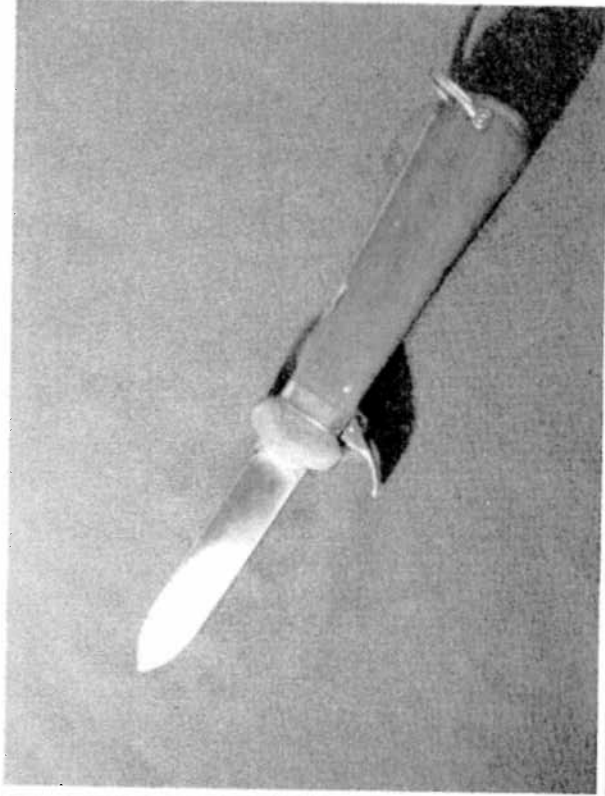
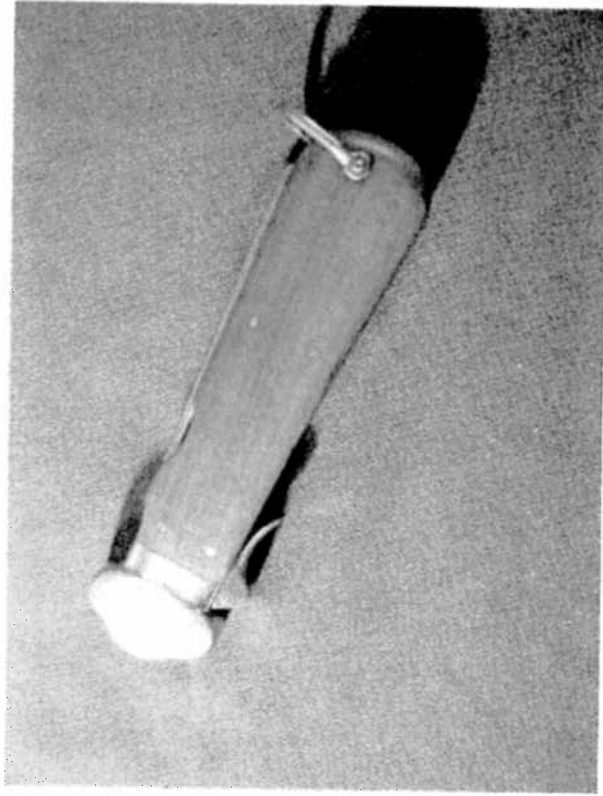
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EXHIBITIO B



Luftwaffe Fallschirmjäger Knife (Item LUFT 11-12)

DESCRIPTION: Here is a paratrooper utility knife with gravity blade; an exceptionally practical item of rugged, but excellent quality. The *Fallschirmjäger* of Germany were one of the world's forerunners in the employment of airborne forces, the *Wehrmacht* provided these elite troops with the best equipment German technology could produce, a good example of which is the specially designed paratroop gravity-blade knife. The unique method in which the blade extended into a lock position resulted in its common name, "gravity knife." The one-hand-operation design was considered essential for paratroopers so the knife could be employed during airborne descent to cut fouled suspension lines, tree limbs, etc. Also, it has a marlinspike for help in untying knots, etc. This is the nickel-plated model by SMF Solingen, unlike the blued takedown model seen elsewhere in our pages. This was the earlier model. This particular knife is in near-mint condition with bright unsharpened blade and unblemished wooden grips: just as nice as what you will ever find.

PRICE: SOLD

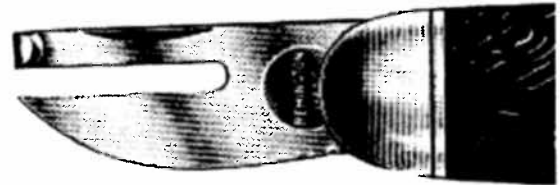
EXHIBITIO A

A.G. Russell KNIVES

Glossary: Blade Shapes

Can Opener (<http://www.agrussell.com>)

The name speaks for itself.



Can Opener

Clip Blade (<http://www.agrussell.com>)

Clip blades have for Centuries been the main blade in more knives than not. You have only to look at these knives to know the main feature of a clip blade.

Often found as the main blade in Premium Stockman, Trappers, Jack Knives and other knives.



Clip Blade

Clip Blade, California Clip (<http://www.agrussell.com>)

The clip is even longer than the Turkish clip, it starts just in front of the tang.

Clip Blade, Long (<http://www.agrussell.com>)

Main blade in large folding hunters and other large knives.



Long Clip Blade

Clip Blade, Sabre (<http://www.agrussell.com>)

The Sabre grind is one half to three quarters from the edge with a deep cut swedge.



Sabre Clip Blade

