

# Criminal Use of Switchblades: Will the Recent Trend Towards Legalization Lead to Bloodshed?

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## I. INTRODUCTION

In the 1950s, there was a widespread perception that switchblade knives were the tool of thugs and juvenile delinquents. In the late 1950s and early 1960s, switchblades were banned, or severely restricted, in almost every state.<sup>1</sup> New York, for example, banned switchblades in 1954, but allowed exceptions for those who could show they were being used for professional or sporting purposes.<sup>2</sup> Today, possession of a switchblade is a crime in just twenty states.<sup>3</sup> In a few other states, there are such severe restrictions on switchblades so as to be effectively banned. For example, Arkansas and Oklahoma have banned carrying any switchblade on or about the person, whether concealed or not.<sup>4</sup> In most other states, switchblades are illegal to buy, sell, or transfer and are considered deadly weapons. They are illegal to carry concealed, and illegal for felons to possess.<sup>5</sup> In

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<sup>1</sup> The only states that never placed significant restrictions on switchblades are Alabama, Georgia, Kentucky, Idaho, Iowa, North Carolina, South Carolina, South Dakota, Utah and West Virginia, although, even in these states, they were usually illegal to carry concealed. States that banned switchblades in the 1950s include: California, 1957 (People v. Bass, 225 Cal. App. 2d 777, 780 (1963) (although blades less than two inches are legal in California)); New York, 1954 (*see infra*, Note 2); Pennsylvania, 1956 (Sale of Switch Blades, 15 Pa. D. & C. 2d 405 (1958)); Texas, 1957 (Curson v. State, 313 S.W.2d 538, 540 (Tex. App. 1958)); Virginia, 1955 (Charles Woltz, Criminal Law, VA. L. R. 42:7 (1956)); Wisconsin, 1959 (Wis. Stat. 941.24); Michigan, 1961 (People v. Crow, 13 Mich. App. 594 (1968)); and Illinois, 1967 (People v. Sullivan, 46 Ill.2d 399 (1970)).

<sup>2</sup> Act of Mar. 26, 1954, ch. 268, 1954 N.Y. Laws; New York Penal Law 265.20(6) (West 2013). This was apparently a concession to sportsmen who opposed the ban. *See infra* Sec. III.

<sup>3</sup> In addition to the states listed in note 1, switchblades are currently banned in Colorado (COL. REV. STAT. § 18-12-102), Connecticut (illegal over 1.5 inches (CONN. GEN. STAT. § 53-206)), Hawaii (HAW. REV. STAT. § 134-51), Kansas (KAN. STAT. ANN. § 21-4201), Louisiana (LA. REV. STAT. § 14:95), Maine (ME. REV. STAT. § 43-1055), Massachusetts (illegal over 1.5 inches (MASS. GEN. LAW Ch. 269 § 10)), Minnesota (MINN. STAT. § 609.02 (6)), Montana (MONT. CODE ANN. § 45-8-331), Nevada (NEV. STAT. § 202.355), New Jersey (N.J. REV. STAT. § 2C:39-3e), New Mexico (N.M. STAT. ANN. 30-1-12), and Washington (WASH. REV. CODE § 9.41.250). There are narrow exceptions in some of these states. For example, in New York, it is an affirmative defense that a knife was possessed while physically engaged in hunting or fishing. New York Penal Law 265.20(6) (West 2013).

<sup>4</sup> ARK. CODE ANN. § 5-73-120 (2005); OKLA. STAT. ANN. §21-1272 (West 2002) (“It shall be unlawful for any person to carry upon or about his or her person . . . any . . . switchblade knife . . . whether such weapon be concealed or unconcealed.”).

<sup>5</sup> *See, e.g.*, OHIO REV. CODE ANN. §§ 2923.13, 2923.20(1), (3) (LexisNexis 2010); *see also, e.g.*, MD. CODE ANN., § 27-339 (LexisNexis 2010); *see also, e.g.*, MD. CODE ANN., CRIM. LAW § 4-101,

1958, Congress enacted the federal Anti-Switchblade Act, which banned interstate sale of switchblades, and outlawed them in federal territories or on federal waters. Because few states had domestic switchblade factories at that time, the federal act made it illegal to purchase switchblades in most states.

In recent years, however, several states and the federal government have liberalized these restrictions. Oregon legalized switchblades in 1984, Florida in 2003, New Hampshire in 2010, and Missouri in 2012. In 2010, Arizona legalized the carrying of deadly weapons, including switchblades, which had been legal to own but not to carry.<sup>6</sup> In 2010, Georgia repealed its law against carrying concealed knives, and now any knife with a blade of five inches or less (including a switchblade) may be legally carried.<sup>7</sup> In 2013, five states—Alaska, Indiana, Kansas, Tennessee, and Texas—repealed laws banning switchblades.<sup>8</sup> Moreover, in 2009, the United States Congress amended the federal Anti-Switchblade Act to clarify that pocketknives which could be opened with one hand are not switchblades.<sup>9</sup>

Critics of switchblade bans have three basic criticisms. First, they argue that such laws, even assuming they made sense once, are outdated and no longer serve any useful purpose. As one wag said, “I think that the people of New Hampshire can safely lower their guard now that the youngest members of the Sharks and the Jets are in their 80s.”<sup>10</sup> As one story on the Indiana repeal explained:

“It was an obsolete law,” said state Sen. Jim Tomes, a Republican from Posey County who supported the change. His argument: There is very little difference between the illegal spring-loaded switchblade of the past and the one-handed, spring-assisted handheld knives that are legally on

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105 (LexisNexis 2012); DEL. CODE ANN., §11- 222 (2007). Delaware, like many states, also makes it a felony to carry a concealed switchblade. DEL. CODE ANN., § 11-1457(b)(1) (2007).

<sup>6</sup> Marc Lacey, *Pushing a Right to Bear Arms, The Sharp Kind*, N.Y. TIMES, Dec. 5, 2010, at 1 available at <http://perma.cc/CP5D-Q72W>.

<sup>7</sup> GA. CODE ANN. § 16-11-125.1 (West 2012). See also Ed Stone, *GA Bills: SB 308 The Common Sense Lawful Carry Act*, EXAMINER.COM, <http://perma.cc/3UKG-JCPP> (last visited Feb. 4, 2014).

<sup>8</sup> Maureen Hayden, *Indiana to Lift Decades-Old Ban on Switchblades*, NEWS AND TRIBUNE, Jun. 5, 2013. There appears to have been little opposition to these repeals even from law enforcement. One article quotes an Indiana sheriff as saying “Switchblades get sensationalized in movies a lot, but they are no more dangerous than any other knife.” Elkhart, *Switchblades now Popping up as Ban in State Nears End*, ASSOCIATED PRESS, Jun. 16, 2013, 3:00AM, available at <http://perma.cc/M9X3-Y496>. See also Dion Lefler, *Bill Legalizing Switchblades Passes Senate*, THE WICHITA EAGLE, Apr. 3, 2013, <http://perma.cc/UP8Q-84FA> (noting the bill passed the Senate unanimously but was opposed by at least one house member).

<sup>9</sup> See *infra*, note 34.

<sup>10</sup> Evan F. Nappen, *Miracle in New Hampshire, KNIVES 2013*, 174, 174–75 available at <http://perma.cc/Z6G-SSYD> (last visited Feb. 10, 2014).

the market and widely sold today.<sup>11</sup>

Second, opponents argue that many knife laws are so vague as to what is legal or illegal that innocent people commit crimes without knowing. For example, the Alaska statute passed in 2013 legalized switchblades and gravity knives for anyone sixteen or over.<sup>12</sup> Sponsors explained that the legislation was for “clarifying that hunting, fishing and utility knives which are easily opened with one hand do not qualify as a switchblade . . . [and] protect Alaskans who carry one of these knives from running afoul of local laws.”<sup>13</sup> Third, opponents of the bans also argue that such laws are selectively enforced.<sup>14</sup>

Supporters of knife bans counter that knives are dangerous weapons and getting them off the street can only make society safer. As one critic states: “[T]hese knives are, I would say inherently dangerous, they have only one purpose. They are just deadly.”<sup>15</sup> They also argue that possession of a switchblade indicates a propensity towards violence and lawlessness.<sup>16</sup> Another argument is that allowing citizens to carry concealed switchblades may result in criminals carrying more deadly weapons—setting off a kind of arms race between citizens and criminals.

The movement towards liberalizing knife laws appears to have been jumpstarted by the expansion of gun rights. In Georgia, for example, the concealed weapons law was “criticized for permitting the arrest of any Georgian carrying a concealed knife, even if that person has a Georgia firearms license and is carrying a firearm.”<sup>17</sup> Knife advocates may have been encouraged by recent court cases which have held that the Second Amendment to the United States Constitution guarantees the right of private citizens to bear arms. Whether the Second Amendment protects knife ownership is an interesting question, but not one this Article will address.<sup>18</sup> What this Article hopes to accomplish is to analyze the historical record (with particular focus on Oregon and Florida, where

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<sup>11</sup> Hayden, *supra* note 8.

<sup>12</sup> See AK HB33 available at <http://perma.cc/HQ6T-QMWE>.

<sup>13</sup> Will Gandergriff, *House Passes Knife Rights Act*, THE ALASKA HOUSE MAJORITY, <http://perma.cc/F48W-T6G7> (last visited Mar. 5, 2014). See generally Statement of Rep. Mark Neuman (R) House Judiciary Committee Hearing, Feb. 27, 2013, 2:06:30–49PM available at <http://perma.cc/UB5B-8K5V>.

<sup>14</sup> Dan Tuohy, *Switchblade Knives Now Legal in New Hampshire*, N.H. UNION LEADER, May 20, 2010, at A1, A10, available at <http://perma.cc/4ED2-N4KV>.

<sup>15</sup> Hearing before the Committee on Interstate and Foreign Commerce on H.R. 12850 and S. 2558, 85th Cong. 2d session (1958), at 24.

<sup>16</sup> *Id.* at 22; see also *infra* Sec. IV.

<sup>17</sup> Stone, *supra* note 7.

<sup>18</sup> See generally David B. Kopel et al., *Knives and the Second Amendment*, 47 U. MICH. J.L. REFORM 167, 167–215 (2013). This appears to be one of the very few scholarly articles addressing knife laws. The article also argues that knife laws are often vague and lead to prosecution of innocent people.

switchblades were legalized some time ago) to examine the potential dangers associated with ownership and prohibition of switchblades.<sup>19</sup>

There does not appear to have ever been any academic study of how frequently switchblades or pocketknives are used in crime. One article in the *British Medical Journal* estimated that at least half of all assaults with edged weapons in Britain involved ordinary kitchen knives.<sup>20</sup> While there have occasionally been articles in the popular press about switchblades, these are frequently misleading. For example, one oft-cited article in the *Wall Street Journal* in 2000 reported:

While the U.S. crime rate is falling, the use of knives in murders is rising slightly as a percentage of overall killings. Federal Bureau of Investigation figures show that knives were used in 13.3% of the nation's 14,088 murders in 1998, the most recent year for which weapons statistics are complete, compared with 12.7% of 22,084 killings in 1994.<sup>21</sup>

This article was, at best, misleading. In fact, the use of knives in murders generally fell throughout the 1990s. From 1991 through 1997 the average rate of knife use in murder was 13.64%, and picking out one year when the rate was at its lowest gives a false impression that knife use in murder was on the rise.<sup>22</sup> Moreover, the article clearly implies that the availability of switchblades and similar knives may be responsible for this alleged rise in knife crime—but fails to provide any evidence of this.

Given the trend towards liberalizing switchblade laws in the United States, it is time for a more systematic examination of how legalization and criminalization may affect violent crime. The Uniform Crime Reports published each year by the FBI contain a fair amount of data on the use of edged weapons in crime, including a state-by-state breakdown. Hopefully, an examination of this data will help to determine whether switchblade

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<sup>19</sup> Although the Internet seems full of discussion of switchblades and a number of popular publications discuss them, there has been almost no scholarly research on use of switchblades in crime, or even on the use of knives in crime generally. As the March 2006 FBI Law Enforcement Bulletin dealing with the issue in 2006 noted, “[a]lmost all the research on edged weapon assaults has come from Great Britain.” *Id.* at 14.

<sup>20</sup> “Unfortunately, no data seem to have been collected to indicate how often kitchen knives are used in stabbings, but our own experience and that of police officers and pathologists we have spoken to indicates that they are used in at least half of all cases.” Emma Hern, *Reducing Knife Crime*, 330 BRITISH MED. J. 1221, 1221 (2005). Such is the lack of hard statistics about the use of different types of knives in crime.

<sup>21</sup> See Robert Johnson, *Sales of Switchblades in U.S. Get a Boost From Internet*, W. ST. J., Mar. 7, 2000, available at <http://perma.cc/J9T3-TVSL>.

<sup>22</sup> See *infra* Table 1 showing the rate of knife-use in murder.

legislation has had any effect on the use of knives in violent crime. Of course, given the large number of states to legalize switchblades in the last three years, in another few years we should have a fairly large amount of data to examine; in the meantime, we have data from a few states.

## II. WHAT IS A “SWITCHBLADE”?

The problem of defining terms has plagued philosophers and legislators for millennia. There is a famous story that Plato once defined “human” as a “featherless biped,” so Diogenese the Cynic plucked a chicken and carried it around mocking Plato by showing people “Plato’s man.”<sup>23</sup>

One may think that the difference between a legal pocketknife and an illegal switchblade is as obvious as the difference between a human and a chicken, but police, prosecutors, and courts have frequently had trouble differentiating. Traditionally, a “switchblade” is a knife that has a spring loaded blade that snaps open when a button is pressed; however, 15 U.S.C. § 1241(b) provides:

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.<sup>24</sup>

Under the federal definition of switchblade, there is no mention of a spring. In fact, a blade which opens with a spring is not a “switchblade” as long as there is no button in the handle. In fact, there are a wide range of spring-assisted opening knives which open by pressing on the blade, not the handle.<sup>25</sup>

The word “automatically” suggests that the knife must have some sort of internal mechanism, but “automatically” is not defined in the statute, and subsection 2 includes knives that open automatically “by operation of inertia,” which seems to be a contradiction.<sup>26</sup> For example, an opinion of the Pennsylvania Attorney General on the 1956 Pennsylvania statute banning knives that opened “automatically” opined that a knife whose

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<sup>23</sup> JOSEPH CROPSEY, *PLATO’S WORLD: MAN’S PLACE IN THE COSMOS* 116 (1995).

<sup>24</sup> See also 19 C.F.R. § 12.95 (containing a slightly expanded definition including listing specific types of knives and as switchblades).

<sup>25</sup> Many web sites advertise these types of knives. See, e.g., *Black Carbon Fiber Handle & Black Blade Assisted Opening Pocket Knife Milano Godfather Style*, <http://perma.cc/TZ9G-VST2>. This knife is virtually indistinguishable from a traditional switchblade, except it is legal under federal law (unless it can be opened by inertia).

<sup>26</sup> 19 C.F.R. § 12.95.

“blade, either by gravity or by motion given to it by the flip of the wrist, ‘automatically’ extends to an open position” is a switchblade.<sup>27</sup> In any event, the definition includes knives which can be opened “by inertia,” that is, by a flick of the wrist. Most, if not all, pocketknives can be opened by inertia. An estimated 80% of pocketknives sold in the United States are designed to be opened one handed, usually by using the thumb to open the blade while the fingers of the same hand hold the handle.<sup>28</sup> Virtually all of these knives could be considered a switchblade.

Knives which open by inertia or gravity are also referred to as gravity knives. Many states classify switchblades and gravity knives as different types of knives. In New York, for example, the definition of gravity knife is almost the same as 15 U.S.C. § 1241(b)(2), while a switchblade is the same as section (b)(1).<sup>29</sup> For purposes of this paper, the term “switchblade” will be used in the federal definition to apply to both gravity knives and classic spring-loaded blades as switchblades. Different states may define switchblades differently, and some states do not provide any definition at all.<sup>30</sup>

To illustrate this ambiguity, consider the story of John Irizzary:

On March 9, 2007, at approximately 11:55 a.m., New York City Police Department (NYPD) officer Brendan R. McCabe, a 16-year veteran of the force, was on foot patrol in uniform at the Broadway Junction subway station in Brooklyn, New York. He observed defendant walk past him in the station with an instrument jutting out of his right front pocket. Officer McCabe testified that he recognized the instrument to be a cutting tool in the form of a gravity knife. He stopped defendant and said, “You know you’re not allowed to carry that knife.” The defendant immediately informed the officer that he was employed at a U-Haul facility and that he used the

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<sup>27</sup> Sale of Switch-blades, 15 Pa. D. & C. 2d 405 (1958).

<sup>28</sup> Chris Strohm, *Knife Fight*, CONGRESSDAILY, Jul. 17, 2009, available at <http://perma.cc/A2AM-WUFV>. A Wall Street Journal article noted that “the trend in the industry is to make exposing the blade quickly easier in manual folding knives.” Johnson, *infra* note 118.

<sup>29</sup> The federal statute was actually modeled on the New York statute although there are some minor differences. New York, Penal Law § 265.00 (5) states: “Gravity knife means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.” (Internal quotes omitted.)

<sup>30</sup> See, e.g., *State v. Weaver*, 736 P.2d 781, 782 (Alaska 1987) (noting that “[n]either ‘switchblade’ nor ‘gravity knife’ is defined in the criminal law statutes” but judicially defining a gravity knife as “operating automatically or semi-automatically.”). Some states also use Webster’s Dictionary to define “switchblade.” See *McMillan v. Commonwealth*, 686 S.E.2d 525, 528 (Va. App. 2009); *Brock v. State*, 424 S.W.2d 436 (Tex. App. 1968).

instrument for cutting sheet rock as directed by his employer . . . He had not altered the instrument in any way. The instrument was a Husky Sure-Grip Folding Knife (“Husky”), described on its packaging as a “Folding Lock-Back Utility Knife.” The instrument is colored silver, about three and one half inches long when in its closed position, and about 6 inches in its open position, with a one inch cutting edge.<sup>31</sup>

It might seem obvious that a utility knife with a one-inch cutting blade designed for cutting sheet rock is not a switchblade, but that is far from obvious. In fact, as the Court went on to explain:

Defendant’s Husky is capable of being opened by an adept person with the use of sufficient centrifugal force. Officer McCabe demonstrated this after three strenuous attempts to open the Husky using one hand and centrifugal force.<sup>32</sup>

In other words, the knife could be snapped open with a flick of the wrist.

So Officer McCabe, the 16-year veteran of the force who arrested Mr. Irizarry, looks to have been on firm ground in his belief that the Husky, which could be opened by inertia, was an illegal weapon.<sup>33</sup> Irizarry’s Husky clearly met the definition of an illegal knife under either New York or federal law as it was in 2007.

In 2009, however, the Department of Homeland Security proposed banning the importation of any folding knife that could be opened with one hand because they were being classified as illegal switchblades.<sup>34</sup> This proposal caused a public outcry, and prompted Congress to add an exception providing that penalties for possession of a switchblade under federal law will not apply to “a knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife.”<sup>35</sup> Because one would not want a pocket knife flopping open in one’s pocket, most pocket

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<sup>31</sup> U.S. v. Irizarry, 509 F. Supp. 2d 198, 199–200 (2007) (internal references omitted). After Irizarry was arrested he was found to have a gun, but luckily for him he was prosecuted in federal court which held that the stop was unconstitutional.

<sup>32</sup> *Id.* at 204.

<sup>33</sup> *Id.* at 200.

<sup>34</sup> Shawn Zeller, *A Cutting Edge Debate Over Switchblades*, CQ ROLL CALL., Jun. 29, 2009, at 1503, available at <http://perma.cc/T56X-QZQ6>; see also David Alan Coia, *Is Your Utility Pocket Knife A Homeland Security Threat?*, HUMAN EVENTS, Jul. 14, 2009, 3:01AM, available at <http://perma.cc/6MRF-7L9E>.

<sup>35</sup> 15 U.S.C. § 1243 (1958).

knives have some sort of mechanism designed to keep the knife closed. This 2009 amendment was designed to ensure that ordinary pocket knives were not illegal. While the intent of Congress seems clear, the statute is poorly drafted. When read literally, it does not apply to any knife that does not “require[] exertion applied to the blade by hand . . . to assist in opening the knife.”<sup>36</sup> Thus, read literally, any knife that can be snapped open by inertia is still illegal.<sup>37</sup>

In fact, in many jurisdictions, people have been prosecuted for possession of what the owners reasonably regarded as ordinary pocketknives. In a recent California case, Gilbert R. was convicted in juvenile court of possession of a switchblade.<sup>38</sup> A police officer stopped and frisked Gilbert, finding a pocketknife on him.<sup>39</sup> The officer “discovered she could open it with a flick of her wrist.”<sup>40</sup> Gilbert was arrested and ultimately convicted of illegal possession.<sup>41</sup>

The California Court of Appeal in 2012 overturned the conviction based on an exception in the statute virtually identical to the federal exception.<sup>42</sup> The Court explained:

The legislative history for Senate Bill No. 274 reflects its purpose was to “narrow[]” existing statutory “language to only allow knives to fall under the exemption from the switchblade law if that one-handed opening knife contains a detent or other mechanism. Such mechanisms ensure there is a measure of resistance (no matter how slight) that prevents the knife from being easily opened with a flick of the wrist. Moreover, a detent or similar mechanism is prudent and a matter of public safety as it will ensure that a blade will not inadvertently come open. Although some one-handed opening knives can be opened with a strong flick of the wrist, so long as they contain a detent or similar mechanism that provides some resistance to

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<sup>36</sup> *Id.*

<sup>37</sup> The California Court of Appeal interpreting a virtually identical state provision reasoned: “[F]or the amendment exemption to apply, the knife must be one that ‘opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade’ and has the detent or resistance mechanism. The knife in question was not of that type: It opened by merely a flick of the wrist, not with pressure on the blade or thumb stud.” *In re Angel R.*, 163 Cal. App. 4th 905, 912 (2008). This holding was recently called into question by *In re Gilbert R.*, 211 Cal. App. 4th 514 (2012), which appears to have held that so long as the detent mechanism is functioning in the least degree the exception applies.

<sup>38</sup> *In re Gilbert R.*, 211 Cal. App. 4th at 516

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 517.

<sup>42</sup> *Id.* at 520.



opening the knife, then the exemption is triggered. These knives serve an important utility to many knife users, as well as firefighters, EMT personnel, hunters, fishermen, and others.”<sup>43</sup>

The Court of Appeal’s decision provided a further explanation of the purpose of this exception:

Sam Martin of Plaza Cutlery at South Coast Plaza testified as a knife and cutlery expert called by the defense. He explained that while military or law enforcement personnel and others trained in the use of knives might be able to open the knife with relative ease by a flick of the wrist, lay users generally would not be able to do so, at least at first. But with practice, “[t]hose who have it in their hand a good number of hours a day would learn a dexterity that could indeed flip the blade like this open.” Martin demonstrated that the knife did not easily open because it had a “positive detent, . . . a mechanism which holds the blade in the closed position and you have to provide enough resistance to overcome that for the blade to swing open.” Martin held the knife upside down and shook it, but the blade did not descend despite the shaking. Martin explained the detent operated as “a positive retention device” to keep the blade closed. The detent feature was held in place by a “set screw,” which had become “a little bit wobbly,” reducing the detent pressure by approximately 15 percent according to Martin, but he explained it remained “well within” the manufacturer’s parameters, “functioning in all [sic] fashion.”<sup>44</sup>

This case reveals one of the potential problems with switchblade statutes: the statutes are frequently so convoluted that an ordinary person (not to mention the police officer, prosecuting attorney, and trial judge) could not tell the difference between a legal knife and an illegal knife. In fact, the California Court of Appeal decisions themselves are inconsistent, as prior to *Gilbert R.*, the Court has repeatedly interpreted the statute to prohibit any knife that could be opened with a flick of the wrist.<sup>45</sup>

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<sup>43</sup> *Id. citing* ASSEMBLY COMM. ON PUBLIC SAFETY, ANALYSIS OF SENATE BILL 274, 2001 – 2002 Reg. Sess. 1–2 (Cal. 2001).

<sup>44</sup> *In re Gilbert R.*, 211 Cal. App. 4th 514, 516–17 (2012).

<sup>45</sup> *People v. Recinos*, No. B206800, 2009 WL 2939688 (Cal. App. Sept. 15, 2009); *In re Angel R.*, 163 Cal. App. 4th at 907.

Most pocket knives are designed to be opened manually (usually by using the thumb of the hand holding the knife). As the knife expert in the Gilbert case explained, a spring can weaken over time, through use or corrosion, and knives that could not be flicked open when new may be able to be flicked open once they are broken in. In other words, virtually every pocketknife in existence is potentially a switchblade.<sup>46</sup> Thus the California Court of Appeal held that when a pocket knife is “accidentally damaged so that the resistance mechanism did not function,” the knife becomes illegal.<sup>47</sup> Thus, a knife that was legal when purchased may at some point become an illegal switchblade.

Furthermore, some jurisdictions do not have the exception found in both federal and California law. In Ohio, for example, “gravity knives” are not defined by statute, but the Ohio Court of Appeals has held that any knife that can be opened with a flick of the wrist is a gravity knife.<sup>48</sup> In New York, any pocket knife that can be opened by a flick of the wrist and locks open is an illegal “gravity knife.”<sup>49</sup> The State need only prove that the defendant knew she had a knife, and she need not be aware that it has the characteristics that make it an illegal gravity knife.<sup>50</sup> In New York City alone, there appear to be thousands of arrests each year for possession of a gravity knife.<sup>51</sup>

While New York courts have repeatedly upheld convictions for “gravity knives” that can be opened with centrifugal force, the federal

<sup>46</sup> In fact, nothing in the federal definition of switchblade states that the knife must be held by the handle. Even knives that cannot be flipped open by holding the handle can always be flipped open by holding the knife blade and using the inertia of the handle when the handle is heavier than the blade.

<sup>47</sup> *In re Angel R.*, 163 Cal. App. 4th at 908.

<sup>48</sup> *State v. Cattledge*, No. 10AP-105, 2010 WL 3972574, at \*4, \*6 (Ohio Ct. App. Oct. 12, 2010). The court also outlined several characteristics that aid in finding whether a folding knife is a deadly weapon:

the following characteristics may, but not always, support a finding that a folding knife is a deadly weapon within the definition of R.C. 2923.11(A): (1) a blade that can easily be opened with one hand, such as a knife with a switch, a spring-loaded blade, or a gravity blade capable of instant one-handed operation; (2) a blade that locks into position and cannot close without triggering the lock; (3) a blade that is serrated; (4) a blade tip that is sharp; (5) an additional design element on the blade, such as a hole, that aids in unfolding the knife with one hand; (6) does not resemble an “ordinary” pocket knife.

*Id.*; see also *In re Gochneaur*, No. 2007-A-0089, 2008 WL 3126172, at \*3 (Ohio Ct. App. Jul. 25, 2008) (holding that “knives opening easily with one hand may be considered (for obvious reasons), as being designed or adapted for use as weapons”).

<sup>49</sup> See N.Y. PENAL LAW § 265.00 (McKinney 2013).

<sup>50</sup> See, e.g., *People v. Herbin*, 86 A.D.3d 446, 447 (N.Y. 2011).

<sup>51</sup> In one case the arresting officer testified “he had been an officer for 4 1/2 years and had made approximately ten arrests of his own for possession of a gravity knife and participated in two dozen other arrests for the same crime.” *People v. Brannon*, 16 N.Y.3d 596, 600 (2011). From the number of reported cases it appears that New York has more prosecutions for possession of switchblades and gravity knives than all other states combined.

district court in New York examined the legislative history of the state and declared that “[t]he legislature’s plan in making items such as gravity knives ‘per se’ weapons under New York law was to ban only those items that are manufactured as weapons, not to criminalize the carrying of utility cutting instruments which are widely and lawfully sold.”<sup>52</sup> Thus the federal court held that possession of knives that can be opened with a flick of the wrist “was not a crime” in New York.<sup>53</sup> Senior Judge Weinstein pointed out that holding it a crime to possess an “instrument supplied by his employer for cutting and installing sheet rock” would effectively “transform thousands of honest mechanics into criminals, subject to arrest at the whim of any police officer.”<sup>54</sup> Judge Weinstein was not exaggerating; he noted that “[i]n fiscal year 2006 Home Depot alone sold over 67,000 Huskies in the State of New York.”<sup>55</sup>

Recorded cases across the country are full of examples of courts trying to figure out what is or is not an “ordinary” pocket knife and what is a switchblade. In California, for example, it is illegal to carry any concealed knife except for “the types of hunting and folding knives designed primarily for use in various outdoor recreational activities.”<sup>56</sup> In a case from Alaska, the Court of Appeals stated that “the statutory definition of ‘deadly weapon’ is ambiguous” and therefore “[t]o resolve this ambiguity in the meaning of deadly weapon, we look to the legislative history of the statutes at issue.”<sup>57</sup> Apparently, in Alaska, to know what is or is not a legal weapon to carry, the average citizen was expected to research legislative history. The New Jersey Supreme Court has gone so far as to hold: “In using general language, the legislature intended to allow juries and judges to define, through the use of their own community standards and through an evaluation of the relevant facts and circumstances, what constitutes manifestly inappropriate possession of an object in each individual case.”<sup>58</sup> Both these cases would appear to run afoul of the Supreme Court’s holding in *Bouie v. City of Columbia* that “a criminal statute must give fair warning of the conduct that it makes a crime.”<sup>59</sup>

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<sup>52</sup> U.S. v. Irizarry, 509 F. Supp. 2d 198, 209 (2007).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 199.

<sup>55</sup> *Id.* at 209.

<sup>56</sup> *In re George W.*, 80 Cal. Rptr. 2d 868, 870 (Cal. Ct. App. 1998). See also ALASKA STAT. § 11.61.220 (West 2013); FLA. STAT. ANN. § 790.01(13) (West 2013); KAN. STAT. ANN. § 500-080 (West 2013); N.C. GEN. STAT. § 14-269(a) (West 2013).

<sup>57</sup> *Liddicoat v. State*, 268 P.3d 355, 360 (Alaska Ct. App. 2011) (holding that based on legislative history a steak knife could be regarded as a deadly weapon).

<sup>58</sup> *State v. Kelly*, 118 N.J. 370, 372 (1990) (upholding conviction for possession of carpet cutter when woman armed herself in response to threat from a man who “on many occasions he had beaten her severely.”).

<sup>59</sup> *Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964). The danger is that the difference between a legal object and an illegal object may be so subtle that one cannot tell what is legal or illegal.

In *D.J. v. State*,<sup>60</sup> the trial court held that the pocket knife carried by the defendant was not an ordinary pocket knife “because it was larger and heavier than a common pocketknife, snaps out in a smooth action and locks into place, and the blade has serrations, is very sharp, and very pointy.”<sup>61</sup> The Court of Appeals overturned, noting that “[i]n this case, the three-inch knife carried by D.J. lacks any of the weapon-like characteristics we noted in *T.S.W.*, and includes features we have previously held to not distinguish a knife from a common pocketknife.”<sup>62</sup> The idea that a knife could become illegal because it is too sharp would be laughable if people were not going to jail for these offenses.<sup>63</sup>

Virginia Code § 18.2-311 prohibits possession of any “switchblade knife, ballistic knife, or like weapons.” Virginia Code § 18.2-308(A) further prohibits the concealed carry of various weapons, including “any dirk, bowie knife, switchblade knife, ballistic knife . . . [or] any weapon of like kind as those enumerated” in the statute.<sup>64</sup> The Virginia Court of Appeals has explained that “a ‘weapon of like kind’ includes a knife that, while not possessing the exact physical properties of the enumerated knives, has the characteristics of a fighting knife just the same.”<sup>65</sup> One defendant was convicted of possession of an illegal weapon in part because “Ohin’s knife blade also locks securely when opened, much like a switchblade or a butterfly knife, and can be retracted only when unlocked.”<sup>66</sup> The Court also went on to say that “Ohin’s knife . . . has a fixed blade, sharp point, and single-sharpened edge affording it unquestionable utility as a stabbing weapon.”<sup>67</sup> This case suggests that any pocket knife which is sharp, pointy, and locks in place is an illegal weapon, yet in a concurring opinion in 2009, two judges of the Virginia Court of Appeals accused Virginia courts of lacking any coherent rules defining illegal knives:

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<sup>60</sup> *D.J. v. State*, 83 So. 3d 857 (Fla. Dist. Ct. App. 2011).

<sup>61</sup> *Id.* at 858; *In re George W.*, 80 Cal. Rptr. 2d at 858.

<sup>62</sup> *In re George W.*, 80 Cal. Rptr. 2d at 858; *see also C.R. v. State*, 73 So. 3d 825, 827 (Fla. Dist. Ct. App. 2011) (reversing the trial court which held that a pocket knife was not “ordinary” because it had “a clip to attach to a belt, a knob that makes the blade easy to open, a locking mechanism, and a textured handle”).

<sup>63</sup> *State v. Manning*, No. 18347, 2001 WL 127860 at \*1 (Ohio Ct. App. 2001) (the court found the knife in question to be a deadly weapon; the blade was less than two inches in length but was “pointed and sharp” and could be opened “using only one hand.”).

<sup>64</sup> VA. CODE ANN. § 18.2–308(A).

<sup>65</sup> *Ohin v. Commonwealth*, 622 S.E.2d 784, 786 (Va. Ct. App. 2005).

<sup>66</sup> *Id.* at 787. A feature to lock the blade in the open position prevents the blade from collapsing on the fingers of the user and has become a regular feature on most pocket knives today.

<sup>67</sup> *Id.* (quoting *Delcid v. Commonwealth*, 526 S.E.2d 273, 275 (Va. Ct. App. 2000) and citing *Richards v. Commonwealth*, 443 S.E.2d 177, 179 (Va. Ct. App. 1994) (noting that a “retractable blade that can be locked into place” gives a knife a weapon-like quality)) (internal quotation marks and citation omitted).

A review of these [illegal knife] cases demonstrates the perplexity that exists among law enforcement officers, prosecutors, trial judges, and appellate judges over the scope of this statute. In an attempt to define its terms, we have resorted to embracing the "I know it when I see it" logic of Justice Stewart, *see Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S.Ct. 1676, 1683, 12 L.Ed.2d 793 (1964) (Stewart, J. concurring), by including a picture of the offending knife in our opinion.<sup>68</sup>

A common criticism of laws such as the knife laws of New York, Ohio, and Virginia is that they give enormous discretion to police, leading to arbitrary enforcement. As we saw in the Irizarry case, the Court held that the statute was interpreted so broadly that it subjected citizens "to arrest at the whim of any police officer."<sup>69</sup> In Virginia and New York, virtually any pocket knife is potentially an illegal weapon and police can arrest the owner. In reality, police do not arrest everyone who carries a pocket knife, but the statute allows police to arrest those people they believe are really criminals.<sup>70</sup> So, for example, an elderly white man in a suit carrying a pocketknife will not be arrested but a young black man in a t-shirt will be arrested for the exact same knife. Murkus D. Dubber, for example, argues that as courts have struck down vagrancy and loitering statutes as vague and giving police too much discretion, police are now using possession offenses to do essentially the same thing, targeting undesirable elements of the community.<sup>71</sup> Police can always cite a "suspicious bulge" to initiate a stop and frequently can use possession of drugs (including alcohol or tobacco), burglary tools, or weapons to make an arrest.<sup>72</sup>

Moreover, there is substantial evidence that such knife laws are a

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<sup>68</sup> *McMillan v. Commonwealth*, 686 S.E.2d 525, 531 (Va. Ct. App. 2009) (en banc) (Petty, J. concurring) (overturning conviction for felon in possession of concealed weapon).

<sup>69</sup> *United States v. Irizarry*, 509 F. Supp. 2d 198, 199 (E.D.N.Y. 2007).

<sup>70</sup> The author of this article resides in the New York area, asked NYPD officers about the pocketknife law, and was told by more than one officer that as long as a person is not doing something he should not be doing, he does not worry about carrying a pocketknife.

<sup>71</sup> Markus Dirk Dubber, *Policing Possession: The War on Crime and the End of Criminal Law*, 91 J. OF CRIM. L. AND CRIMINOLOGY 4, 829, 856–57, 910–11 (2001). Courts have also acknowledged the need for sufficiently precise weapons definitions in preventing "arbitrary and discriminatory application of our concealed weapons statute." *A.P.E. v. People*, 20 P.3d 1179, 1184 (Col. 2001) (en banc) (reversing conviction for possession of knife which was determined to be a deadly weapon because it was "ugly").

<sup>72</sup> In New York City, for example, between 2004 and 2009 police conducted over 2.8 million stops of suspects and in 10.4% of all stops "suspicious bulge" was given as the reason for the stop; yet guns were found in only 0.15% of cases. *Floyd, v. City of New York*, 08 Civ. 1034, Decision and Order, (S.D.N.Y. May 16, 2012).

pretext for arresting suspicious characters.. The *Irizarry* case showed that Home Depot sold 67,341 Huskies in 2006.<sup>73</sup> Despite selling these apparently illegal gravity knives by the hundreds of thousands, the state of New York has made no attempt to actually prevent their sale by Home Depot or anyone else. The fact that the New York Police Department does not seem to take any action to prevent “gravity knives” from being sold strongly suggests that the real intent of the law is to give police a basis for arresting selected suspects.

Of course, a case could also be made that the *Irizarry* case was a perfect example of the usefulness of such laws. After all, Irizarry had a concealed gun. So when the officer saw he had a pocket knife, he immediately had probable cause to arrest him for possession of a gravity knife. Had the officer not found a gun, the cop may well have let him off with a warning or a citation. Perhaps Irizarry was planning to commit a robbery or other crime with the gun, and the alertness of the officer prevented a serious crime. We will never know.

With the above caveat that there is substantial disagreement between jurisdictions as to what qualifies as a “switchblade,” this Article will follow the federal definition and use the term to refer to any folding knife that can be opened by means of a spring mechanism or by inertia. Of course, when we turn to looking at individual states that have legalized switchblades, those states may have their own definitions.

### III. WHY NOT BAN SWITCHBLADES?

In 1958, Senator Estes Kefauver (D-TN), a sponsor of legislation to ban switchblades, framed the issue as thus:

A value judgment must be exercised in determining whether a ban should be imposed on the transportation and distribution of an article. In the case of the switchblade knife, the question resolves itself into whether the antisocial, negative and criminal uses this knife is put to sufficiently outweigh the occasional constructive uses that can be made of the knife to justify the prohibition contained in the legislation.<sup>74</sup>

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<sup>73</sup> *Irizarry*, 509 F. Supp. 2d at 209.

<sup>74</sup> *An Act to Prohibit the Introduction, or Manufacture for Introduction, into Interstate Commerce of Switchblade Knives, and for other Purposes and a Bill to Amend Title 18 of The United States Code in Order to Prohibit the Sale to Juveniles of Switchblade Knives which have been Transported or Distributed in Interstate Commerce, and for other Purposes: Hearing on H.R. 12850 and S. 2558 Before the Comm. on Interstate and Foreign Commerce, 85th Cong. 4 (1958) [hereinafter *Hearings on H.R. 12850 and S. 2558*] at 4.*

Senator Kefauver's statement seems reasonable, and more than fifty years later, we are in a good position to try to answer this question. First, let us examine the "occasional constructive uses . . . of the knife"<sup>75</sup> and then turn to negative aspects; in particular, by looking at the arguments put forth by advocates of banning these knives.

There is no question that a knife which can be opened with one hand is useful in a wide variety of situations, as both courts and legislatures have acknowledged. Examples of situations in which one hand is needed to open a knife are numerous. A fisherman might get a hook through his hand and need to use the other hand to cut the fishing line. A person attacked by a dog or wild animal may have her hand or arm caught in the jaws of an animal. A person attacked by an assailant may have her hand restrained by the assailant. A medical provider may need to use one hand to push pressure on a wound and need to use the other hand to cut away clothing or restraints. Representative Jennifer Coffey, who sponsored legislation legalizing switchblades in New Hampshire, for example, is an emergency medical technician who emphasized the use of such knives by first responders.<sup>76</sup> As the New Hampshire Union Leader reported:

The bill took shape after Coffey, the vice president of the Andover Rescue Squad, was looking for a new tool for her job as an emergency medical technician. She was looking for an all-in-one tool with an automatic mechanism, a knife that would free up use of one hand. As she shopped around, Coffey said she discovered what she wanted she could not legally buy in the state. And though state law provided an exemption for EMTs, along with law enforcement, hunters and others, she found the exemption would not apply when she was off-duty.<sup>77</sup>

There have certainly been people who have carried switchblades for protection who were not juvenile delinquents or violent criminals. For example, in one story from the 1960s, entitled "Coeds in Michigan Carrying Weapons in the Wake of Series of Five Slayings," reported:

"My boyfriend gave me this switchblade," said Roni Freidman, of Portland, Maine, a pretty 19-year-old Blonde nursing student at the University of Michigan. "And I

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<sup>75</sup> *Id.*

<sup>76</sup> Lacey, *supra* note 6, at 1.

<sup>77</sup> Tuohy, *supra* note 14, at A1, A10. The article also noted that "[t]he bipartisan bill sailed through the New Hampshire legislature, with committees hearing support for the change from law enforcement officers, wildlife groups and outdoors people."

carry it everywhere,” she said. “When you are scared you do these things.”<sup>78</sup>

The usefulness of a one-hand opening knife is not seriously in dispute, but the vast majority of pocket knives can be opened by one hand, so who needs a spring-loaded switchblade?<sup>79</sup> In other words, setting aside the problem that most pocketknives could be considered switchblades, is there a legitimate use for spring opening automatic knives? Under ordinary circumstances, one can open a pocket knife with one’s thumb in less than a second.<sup>80</sup> Of course, there will be people who, through medical problems like arthritis or nerve damage, may have trouble opening a pocket knife one handed; one of the reasons given for ending the switchblade ban in Indiana is precisely this reason.<sup>81</sup> The primary reason given for utility of a switchblade over a normal pocketknife is that when one is in an emergency situation (for example, a wild animal is chewing on your hand, or a medic is attempting to apply pressure to a bleeding wound), one’s fine motor skills will deteriorate greatly, and in a life threatening situation one cannot afford to be fidgeting around trying to get a knife open. Yet, despite admitting that there may be extreme situations in which an automatically opening knife might be useful, surely these situations are rare.

Ultimately, then, we must balance the dangers of switchblades against their utility. Of course, there are dangers associated with both legalization and prohibition of switchblades. Because there is very little difference between a switchblade and an ordinary pocket knife, innocent owners of pocket knives may find themselves under arrest and with a criminal record for possession of objects they reasonably believed were legal.<sup>82</sup>

Another potential problem is that when someone does commit a crime, the presence of an “illegal weapon” or “deadly weapon” can turn a minor offense into a felony, or subject the offender to enhanced penalties. The

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<sup>78</sup> Karl Mantyla, *Coeds in Michigan Carrying Weapons in the Wake of Series of Five Slayings*, NASHUA TELEGRAPH, Apr. 18, 1969, at 3.

<sup>79</sup> There are some critics of one-hand opening knives. See, e.g., Mark Fritz, *How New, Deadly Pocketknives Became a \$1 Billion Business*, WALL ST. J., Jul. 25, 2006, at B1, available at <http://perma.cc/7PFL-GFXG> (noting, for example, that many pocket knives can be “flicked open with one finger faster than the widely outlawed switchblade.”). Nonetheless, there is no jurisdiction which has outlawed one-handed opening knives per se. When DHS threatened to ban their import, Congress overwhelmingly rejected the idea.

<sup>80</sup> See *id.*

<sup>81</sup> *Indiana Panel Advances Bill Legalizing Switchblades*, NEWS-SENTINEL, Jan. 16, 2013, <http://perma.cc/V6ZW-VY5Z>.

<sup>82</sup> But surely there must be a way for the law to distinguish “good” pocket knives from “bad” switchblades. The only way states seem to be able to give clear guidance as to what is legal or illegal is a restriction on blade length, that is, any folding knife with a blade length of over a certain length is illegal regardless of any other features. This type of statute gives clear guidance to citizens and enforcers as to what is legal and illegal.



problem is that two offenders with essentially identical crimes may receive very different sentences based on minor differences making one knife legal and another a deadly weapon.<sup>83</sup> This is true for almost every state in the country, because even most states that permit possession of switchblades classify them as deadly weapons.

Another danger that must be considered with every criminal statute is that some people will be falsely accused, arrested, and convicted. A witness may mistakenly believe an object is a switchblade when it is not, or it may simply be a case of arresting the wrong person. Furthermore, not every case will have the object available for examination by police.<sup>84</sup> For serious crimes like murder and robbery, the fact that innocent people will be wrongly convicted is not much of an argument, but for marginal crimes when the harm to society is small, the danger of false conviction is a reasonable concern.

Finally, there are always associated costs to any criminal law. With marginal offenses, enforcement costs such as time and expense of policing and prosecuting the offense may not be worth the benefit to society. Even keeping firearms out of the hands of criminals is notoriously difficult, so keeping knives out of the hands of criminals may not be possible.

There are also unintended consequences of banning some weapons. In some states, such as in the case of the Virginia statute cited above, the penalties for carrying a concealed weapon or being a felon in possession of a weapon are the same for a knife or a gun. Although a full exploration of alternatives to switchblades is beyond the scope of this paper, heightened penalties for the use or possession of knives might lead some would-be criminals to conclude that they may as well carry a gun.<sup>85</sup>

If the above are the practical and legal concerns with banning

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<sup>83</sup> See, e.g., *State v. Gotcher*, 759 P.2d 1216, 1220 (Wash. Ct. App. 1988) (reversing defendant's conviction for committing burglary with a deadly weapon when he possessed a switchblade).

<sup>84</sup> For example, there is the novelty "switchblade comb" which looks like a switchblade when closed but has a comb instead of a knife blade. *Switchblade Comb*, ARCHIE MCPHEE, <http://perma.cc/ZGJ4-2UVC> (last visited Feb. 26, 2014). Under federal law this is considered an illegal switchblade and may not be imported. Letter from John Durant, Dir., Commercial Rulings Division, to John Kelly, Gen'l Mgr, Allied Import Corp. (Oct. 3, 1989) available at <http://perma.cc/7PVF-VKGG>. The reasoning provided was that the comb could easily be replaced by a knife blade, and therefore, the mechanism operated as a sham to import knife parts. *Id.* at 2-3.

<sup>85</sup> This is common criticism of banning one type of weapon that is easily replaceable. For example, Gary Kleck has argued that banning all handguns would likely result in their substitution by more deadly shotguns and rifles. See generally Gary Kleck, *Handgun-Only Gun Control: A Policy Disaster in the Making*, in *FIREARMS AND VIOLENCE: ISSUES OF PUBLIC POLICY*, 167, 186-94 (Don B. Kates, Jr. ed., 1984); see also David B. Kopel, *Peril or Protection: The Risks and Benefits of Handgun Prohibition*, 12 ST. LOUIS U. PUB. L. REV. 285, 329 (1993) (arguing the same). As in the case of knives, the substitution for guns in many circumstances is probable, but the overall impact is more debatable. At least in the case of armed robbery use of a firearm means the victim is less likely to resist, so while a firearm is more deadly than a knife it is less likely to be actually used to injure a victim.

switchblades, what are the arguments for banning them? To answer this, this Article will go back to the federal legislation enacted in the 1950s and examine how these bans began.

#### IV. THE HISTORY OF SWITCHBLADE LEGISLATION: WHY WERE THEY BANNED?

Some of the most famous movies of the 1950s prominently featured switchblades, including *Stalag 17* (1953), *From Here to Eternity* (1953), *Blackboard Jungle* (1955), *Oklahoma* (1955), *Rebel Without A Cause* (1955), *Twelve Angry Men* (1957), and *High School Confidential* (1958).<sup>86</sup> Although “*West Side Story*” was not made a movie until 1961, it debuted on Broadway in 1957.<sup>87</sup> Switchblades came to be associated with crime, and especially juvenile delinquency in New York. Whether this perception was correct or not, we may never know, but there is no question that switchblades were quite popular in the 1950s. A Senate judiciary report published in 1958 estimated that more than 1.2 million switchblades were purchased in the United States each year.<sup>88</sup>

One of the first attempts to ban switchblades was introduced in the New York legislature in 1953, but failed to pass.<sup>89</sup> In 1954, Governor Dewey supported a weaker plan to ban the sale, but not the possession, of switchblades in New York.<sup>90</sup> A legislative report on that bill explained:

This bill prohibits the sale of switchblade knives in this State. It also makes possession of such knives unlawful except for persons who require their use in a business, trade or profession or for sportsmen holding hunting, trapping and fishing licenses under the Conservation Law. Last year there were 4,420 felonious assaults and 99 homicides reported in New York City in which knives were used. Analysis indicates that over one-third of these crimes involved the use of switchblade knives.<sup>91</sup>

Within a few years, about ten states had banned the sale or possession

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<sup>86</sup> For a longer list of movies from this period featuring switchblades, see *Switchblades in the Movies (1920-1969)*, ASSISTEDKNIFE.COM, <http://perma.cc/YSE9-98Q9> (last visited Feb. 26, 2014).

<sup>87</sup> *WEST SIDE STORY* (Mirisch Pictures, Inc. and Seven Arts Prods. 1961); Jack Gottlieb, *West Side Story Fact Sheet*, WEST SIDE STORY, <http://perma.cc/364G-CVHB> (last visited Feb. 18, 2014).

<sup>88</sup> S. Rep. No. 1429, at 6 (1958).

<sup>89</sup> J.F. Wilkinson, Jr., *Plan Letter Drive on Switchblades*, BROOKLYN EAGLE, Jan. 5, 1954, at 1.

<sup>90</sup> *Id.*

<sup>91</sup> Memorandum of Governor Thomas E. Dewey, *reprinted in* 1954 Legis. Ann. 385 (New York, 1954).

of switchblades.<sup>92</sup> In 1957, several bills were introduced in Congress to ban switchblades or to prevent them from being mailed across state lines.

The Eisenhower Administration opposed banning switchblades. When asked for the opinion of the Department of Justice, Deputy Attorney General William Rogers wrote the Commerce Committee:

The Department of Justice is unable to recommend enactment of this legislation. . . . 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 sportsmen, 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.<sup>93</sup>

The Secretary of Commerce, Sinclair Weeks, expressed similar views stating that the proposed bill ignored the needs of many legitimate users of switchblades.<sup>94</sup> The administration did not oppose a ban on mailing switchblades, although the Administration expressed “doubts as to the effectiveness of such limitations in controlling the wrongful use of switchblades.”<sup>95</sup> The broader ban on possession also ran into trouble as many legislators did not believe that the federal government had constitutional authority to prohibit possession of switchblades and regarded that as a state or local matter.<sup>96</sup>

While some witnesses acknowledged that a switchblade might have some usefulness, Pino testified:

Actually, these knives are, I would say inherently dangerous, they have only one purpose. They are just deadly. They are lethal weapons and they are suited for crime, that is all they are suited for. So the sportsmen really have nothing substantial to complain about. But

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<sup>92</sup> S. Rep. No. 1429, at 7, 27.

<sup>93</sup> *Hearings on H.R. 12850 and S. 2558, supra* note 74, at 11–12 (letter from of William Rogers, Deputy Att’y Gen.).

<sup>94</sup> *Id.* at 12 (letter from Sinclair Weeks, Sec’y of Commerce).

<sup>95</sup> *Id.* at 15 (letter from Phillip S. Hughes, Acting Dir. for Legis. Reference, Exec. Office of the President).

<sup>96</sup> For example, Senator Butler commented, “We have no business to legislate on possession, that is a state and local matter.” The Chairman of the committee, Senator Warren Magnuson, expressed similar reservations, as did Senator Thurmond (S.C.), a noted advocate of states’ rights. *Id.* at 22, 25. This opposition to a general ban meant that a ban would be enacted only in federal territories.

they do complain.<sup>97</sup>

Similarly, John E. Cone, a local New York judge who headed a movement to ban switchblades in New York, testified: "You see, the possession of these knives are [sic] only for three purposes, mainly: murder, assault, robbery, possibly even rape."<sup>98</sup> He later added: "I think you will find this type of knife only in the hands of juveniles and in the hands of footpads around our city. . . . Footpads, highwaymen, thugs."<sup>99</sup>

Fortunately, the claims of Cone and Pino are empirically verifiable to some extent. According to manufacturers' numbers provided to the committee, there were at least 1.2 million switchblades sold in the United States each year.<sup>100</sup> We also know that for the years 1957 and 1958, there were an average of 8,145 homicides, 71,210 robberies, and 112,235 aggravated assaults.<sup>101</sup> Even assuming that half of all these crimes used knives, and further assuming that every knife used was a switchblade, there would have been 95,795 violent crimes involving switchblades.<sup>102</sup> Even using these extremely cautious presuppositions, and further assuming that 95,795 different switchblades were used for crimes, with six million switchblades in circulation, it would mean that only 1.6% of switchblades were used in murder, assault, or robbery. In fact, the use rate is almost certainly well under 1%.<sup>103</sup> Given that 99% of switchblades were never used for any illegal purpose, the assertion that they are only used for or suited for murder, assault, and robbery is demonstrably false.

As to how such knives cause crime, Cone told a story of how possession of switchblades led to criminal activity.<sup>104</sup> He explained how one young person accidentally hit another young boy with a stick, and then:

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<sup>97</sup> *Hearings on H.R. 12850 and S. 2558, supra* note 74, at 24.

<sup>98</sup> *Id.* at 7.

<sup>99</sup> *Id.* at 22.

<sup>100</sup> S. Rep. No. 1429, at 6 (1958).

<sup>101</sup> FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 5 (1960).

<sup>102</sup> These are obviously extremely liberal estimates. The first classification of murder weapons in the UCR is from 1960, and this shows less than 20% use of knives in murder, the UCR from 1965 shows that knives were used in one-third of all aggravated assaults, and no weapon was used in 42% of robberies in 1965. To err on the side of caution, the author assumed a use rate of one-half, although one-third of robberies and assaults utilizing knives is probably a more accurate estimate. *Id.* at 59. *See infra* Table 1.

<sup>103</sup> In reality there were probably far more than 6 million traditional switchblades in circulation, since that was only the number sold in the previous five years, and it is highly unlikely that every knife used in a crime was a switchblade. Moreover, those criminals who used a switchblade for a crime likely used the same weapon repeatedly. Thus, a more realistic estimate is that less than 1/10 of one percent of switchblades in circulation were used in crime.

<sup>104</sup> *Hearings on H.R. 12850 and S. 2558, supra*, note 74, at 23.

He, as youngsters are prone to do, yelled some angry words to the lad who hit [him with] the stick, who in turn yelled back more angry words. They rushed together quickly, and unfortunately the boy who hit the stick had a switchblade in his pocket. I say to you, before he had time to think of the consequences of his act, or the other lad to think of it, the knife was out, in a twinkling of an instant it was buried in his chest and he was dead. Had he had a Boy Scout knife, the other kid would have had warning, the tragedy would not have occurred. But with this deadly thing there could be only one result.<sup>105</sup>

One thing to bear in mind is that the typical Boy Scout knife, or jackknife, in the 1950s was designed to be opened with two hands. The one-handed opening knives described above have come to dominate the market since the ban of switchblades. With that point in mind, we see two distinct arguments made by Cone. The argument typically made is that because switchblades open so quickly, an assailant can surprise a victim who does not know the other person has a switchblade, and thus it is harder to defend oneself. Similarly, the Alaska Court of Appeals explained the danger from switchblades was that they are “easily concealed and quickly brought to bear.”<sup>106</sup>

The second argument made by Cone is that the assailant will have more time to think about what he is doing. However, while an extra two to three seconds to deploy a knife might give a victim enough time to run away, it seems unlikely that a boy angry enough to stab another will cool off in two to three seconds.

Senator Cotton expressed his opinion that “those knives are exactly the things that fascinate a perfectly good boy.”<sup>107</sup> The Senator did not elaborate, but he seems to have been arguing that many boys would carry switchblades who would not carry other types of pocketknives, simply because they are so fascinating, and presumably they will be more inclined to use such knives.

Thus, there were five distinct arguments against switchblades used by advocates of the legislation: (1) they have no legitimate use; (2) someone found with one is likely a criminal (i.e. the proxy theory); (3) they are attractive to otherwise good boys who will misuse them; (4) their ease of use makes it more likely a person will use them in anger; and (5) their quickness and concealability makes them harder to defend against than

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<sup>105</sup> *Id.*

<sup>106</sup> *State v. Weaver*, 736 P. 2d 781, 783 (Alaska 1987).

<sup>107</sup> *Hearings on H.R. 12850 and S. 2558*, *supra* note 74, at 27.

other knives commonly carried.

Pino confidently predicted that fewer switchblades would mean less crime:

We don't expect that by passing a bill like this we will completely solve the problem. But the fewer of these weapons we have around the less is going to be the incidence of crimes.<sup>108</sup>

The Senate Committee had surprisingly little hard data on the use of switchblades.<sup>109</sup> Senator Thurmond asked Cone if more wounds were caused by switchblades or other types of pocketknives, and Cone responded: "The jackknife is no problem. We have no objection to them at all. They serve a legitimate purpose."<sup>110</sup> Although the Committee Report lists a number of figures on the volume of switchblades confiscated, it gave almost no numbers on how often they were used in crime. One of the very few statistics was that "[i]n Kansas City 15 switchblades were used in assaults and robberies in 1956."<sup>111</sup> Given that there were 269 armed robberies and 175 aggravated assaults in Kansas City, Missouri in 1956, fifteen switchblades out of 444 assaults and robberies (about 3.3%) does not appear to be a very large number.<sup>112</sup>

The Congressional Committee sent questionnaires to municipal and military police across the country and collected a wide assortment of anecdotes. Although these anecdotes confirm the prevalence of switchblades, they provide little solid information on how often they were used in crime. In one section, the report explains that military regulations forbade switchblades on post, and further notes:

During 1956 at Fort Bragg, N.C., it was necessary for the military police to confiscate from military personnel 161

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<sup>108</sup> *Id.*

<sup>109</sup> As the Oregon Supreme Court stated, the congressional report "offers no more than impressionistic observations on the criminal use of switch-blades." *State v. Delgado*, 692 P. 2d 610, 612 (Or. 1984).

<sup>110</sup> *Hearings on H.R. 12850 and S. 2558, supra* note 74, at 24 (1958). Indeed, one is almost surprised at the attitude of some witnesses towards other knives. Senator Thurmond went on to ask Cone about carrying a combat knife with an eight-inch blade, and Cone said as long as it was carried openly it was not a problem to carry it in public. *Id.*

<sup>111</sup> *Id.* at 3.

<sup>112</sup> FED. BUREAU OF INVESTIGATION, *supra* note 101, at 97. This number does not include assaults or robberies from Kansas City, Kansas where there were 143 armed robberies and ninety-eight aggravated assaults in 1956. These numbers were provided by W.E. Parker acting head of the Kansas City, Missouri PD. See *The Kansas City Trouble*, TIME, Jan. 27, 1958, available at <http://perma.cc/RD6G-Z4BD> (detailing efforts to keep switchblades and razor blades out of Kansas City, Missouri public schools).

switchblade knives, an average of 3 a week. At Fort Sill, Okla., in 1956, 75 of these knives were confiscated as a result of aggravated assault.<sup>113</sup>

Given these types of numbers from just two posts in one year, it seems likely that tens of thousands of switchblades were in the hands of military personnel.

#### V. PROVISIONS AND ENFORCEMENT OF THE FEDERAL ANTI-SWITCHBLADE ACT

Congress did not believe it had constitutional authority to ban the possession of switchblades in the states, but the legislation did place some significant restrictions on switchblades. 15 U.S.C. § 1242 bans the “transport[ation] or distribut[ion] in interstate commerce” of switchblades, which means that a manufacturer or distributor cannot sell across state lines.<sup>114</sup> Violation of the Act is a felony and the offender may be sentenced to up to five years in jail. The Act does not restrict individuals from purchasing a switchblade where they are legal and bringing it back to her home state, but presumably this statute would greatly restrict access to switchblades in many states where there was or is no domestic manufacturer. While there are numerous local manufacturers in states such as Oregon and Florida, lack of competition from foreign manufacturers undoubtedly increases the price of switchblades, making them more expensive than their non-switchblade equivalent.<sup>115</sup>

The other major provision of the federal Anti-Switchblade Act is that it is a felony to possess a switchblade “within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18).”<sup>116</sup> This provision is actually fairly broad, as the special maritime jurisdiction includes all navigable waters of the United States not within the jurisdiction of any state, as well

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<sup>113</sup> *Hearings on H.R. 12850 and S. 2558, supra* note 74 at 3 (Statement by Senator Estes Kefauver). Notably this does not say that 75 switchblades were used in assaults, and it is not clear how many of these knives were used for an illegal purpose. FED. BUREAU OF INVESTIGATION, *supra* note 101, at 97.

<sup>114</sup> 15 U.S.C. § 1242 (2012).

<sup>115</sup> For example, Benchmade Knife Company has a factory in Clackamas, Oregon and appears to be a major seller of switchblades in Oregon. BENCHMADE KNIFE COMPANY, <http://perma.cc/LP7G-W8FQ> (last visited Feb. 26, 2014). A review of their products shows that their switchblades frequently cost well over \$100. Similarly, The Knife Factory in Saint Augustine, Florida advertises “a full line of automatics.” KNIFE FACTORY, <http://perma.cc/8UJB-HN4H> (last visited Feb. 26, 2014); as does Arizona Custom Knives, also in Saint Augustine. ARIZONA CUSTOM KNIVES, <http://perma.cc/D89L-UXWL> (last visited Feb. 26, 2014).

<sup>116</sup> 15 U.S.C. § 1245 (2012).

as any U.S. flagged vessel. It is therefore illegal for a fisherman in Alaska, California, Oregon, or Florida to take a switchblade on a fishing boat outside her home state.

The main point of the law was to support states that did ban switchblades. Congressional witnesses expressed to the Committee that “in your own State you can manufacture them, if they are going to be permitted, and there would be no problem.”<sup>117</sup> Senator Thurmond also acknowledged this and asked “Have we gained anything?”<sup>118</sup> It seems clear that with millions of switchblades in circulation and with them remaining legal in most states at that time, expectations were low for any immediate effect.

As to enforcement of the Act, it does not appear that the Act has ever been enforced very vigorously with respect to interstate transport. Although the federal government has actively stopped importation of knives believed to be illegal, the number of criminal prosecutions for selling or purchasing knives across state lines appears to be very small. There are only a handful of recorded prosecutions, despite reports of widespread distribution.<sup>119</sup> In fact, when one considers that prior to the 2009 amendment to the Anti-Switchblade Act, the vast majority of pocketknives were illegal, it is fair to say the Act was violated with impunity, at least with regard to knives that could be opened by force of inertia.

As we saw, the Eisenhower administration was opposed to a switchblade ban, and while the President did not veto the Act, the administration probably did not make enforcement a priority. There are also two important exceptions to the Act. Interstate distributors are permitted to sell to individuals with one arm and “the Armed Forces or any member or employee thereof acting in the performance of his duty.”<sup>120</sup> Yet, in addition to these two exceptions, the U.S. Post Office has adopted regulations permitting switchblades to be mailed interstate to “[s]upply to procurement officers or employees of the municipal government of the District of Columbia, or of the government of any state or territory, or of any county, city, or other political subdivision of a state or territory.”<sup>121</sup> This provision goes back at least to 1971.<sup>122</sup> While the provision was

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<sup>117</sup> *Hearings on H.R. 12850 and S. 2558, supra* note 74, at 26 (Statement by Senator Estes Kefauver).

<sup>118</sup> *Id.*

<sup>119</sup> Robert Johnson, *Sales of Switchblades in U.S. Get a Boost from Internet*, WALL ST. J., Mar. 7, 2000, <http://perma.cc/Z5LQ-MZBB> (last visited Feb. 26, 2014).

<sup>120</sup> 15 U.S.C. § 1244 (2012).

<sup>121</sup> U.S. POSTAL SERV., PUB. NO. 52, MAILING STANDARDS OF THE UNITED STATES POSTAL SERVICE PUBLICATION 52, HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL, § 442 *available at* <http://perma.cc/5R3G-TP6N> (last visited Feb. 26, 2014).

<sup>122</sup> 39 C.F.R. § 124.6 (1971).



clearly intended to ensure that state and local governments would not be affected by the ban, the provision is worded quite broadly. Manufacturers and distributors have taken advantage of this provision and will ship switchblades interstate to anyone who certifies that he or she is an employee of a state or local government.<sup>123</sup>

One criticism of the Anti-Switchblade Act is simply that it has not been enforced effectively, and federal regulations create exceptions which allow millions of people to purchase them legally, not to mention people who falsely claim to be a state or local employee. If these criticisms are correct, naturally, the Anti-Switchblade Act will have had little or no effect on crime.

While the above criticisms of the Act are valid, anecdotal evidence suggests that the Act has significantly reduced the possession of traditional spring-loaded switchblades. This author spent six years in the Marine Corps from 1986 to 1992, and virtually every marine carried a pocket knife—it was simply basic equipment. Yet in this author's six years in the Marine Corps, he never once saw a Marine with a traditional switchblade. It follows that traditional switchblades are far less prevalent today than they were in the 1950s (with the exception of a few states like Oregon, where they are legal and common).

Thus, the criticism of lack of enforcement is not persuasive, at least as it relates to traditional, spring-loaded switchblades. The criticism is more forceful with respect to other types of pocketknives. Although any knife that could be snapped open by inertia was theoretically illegal, the sponsors of the Act made clear that they were not banning ordinary pocketknives. The Act was never enforced to include non-traditional switchblades, and when the administration suggested banning the importation of pocketknives, Congress overwhelmingly rejected the proposal. So while the Anti-Switchblade Act seems to have been successful in significantly reducing the number of spring-loaded switchblades, these knives appear to have been replaced by other types of pocketknives that are identical for almost all practical purposes. If this last criticism is valid, one would not expect to see any effect on crime as a result of the Anti-Switchblade Act.

## VI. THEORIES AND METHODOLOGY

As we have just seen, advocates of banning switchblades argued that switchblades are uniquely suited for criminal purposes and predicted that the ban would reduce crime in general, and knife crime in particular. If these knives are so valuable for criminal purposes, then we would expect murders, robberies, and especially assaults to increase as more of such

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<sup>123</sup> The author has a sample form used by a distributor on file, which requires the purchaser to affirm he or she is an employee of a state or local government.

knives are introduced into a community. Because murders and robberies are far more likely to use a firearm than a knife, the presence of more switchblades might not affect these numbers very much, even if they are heavily used in crime. We would expect to see the greatest effect on aggravated assault.

First, the sheer volume of aggravated assault is much larger than murder or robbery.<sup>124</sup> The larger number of assaults than murder or robbery is explained by the fact that assaults are much more likely to be unplanned and spontaneous,<sup>125</sup> such as the incident described by Judge Cone's testimony. Second, knives are much more common in assaults than murder or robbery.<sup>126</sup> The presence of deadly weapons means that verbal arguments are far more likely to escalate into aggravated assault.

The alternative hypothesis is that switchblade knives are not different from other pocketknives in any significant respect, and so long as other pocketknives are widely available, the ban or introduction of switchblades will have no discernible effect on crime.

Of course, given that there were millions of switchblades in circulation when states began to ban them, it could take years before the ban had any real impact on crime. Conversely, when a state legalizes switchblades after a long period of prohibition, we would expect the supply to grow rapidly among the criminal element if these knives are uniquely useful for criminal purposes by footpads, highwaymen, and thugs. Because switchblades cannot be sold interstate, one might expect that it would take some time before they become widely available. At least in recent years, however, the market has shown a remarkable ability to provide switchblades soon after legalization. Soon after legalization in Missouri, an article in the *St. Louis Post Dispatch*, reported: "After the state law change, customers flocked to stores to shop for switchblades, which had been banned for years."<sup>127</sup> Although sale of switchblades across state lines is theoretically illegal, there have been reports of widespread internet sales.<sup>128</sup>

A second theory worth exploring is the proxy theory; that is, even if switchblades are no more dangerous than any other knife, people who use switchblades are likely to be violent criminals.<sup>129</sup> If the proxy theory is

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<sup>124</sup> In 2012, there were 14,827 murders in the U.S., 354,520 robberies, and 760,739 aggravated assaults. FED. BUREAU OF INVESTIGATION, *supra* note 101, at 97 (Table 1).

<sup>125</sup> As one court put it: "Assaults and batteries are frequently the result of transient ebullitions of passion." *Gillman v. State*, 51 So. 722, 723 (Ala. 1910).

<sup>126</sup> See *infra* Tables 2–4.

<sup>127</sup> Michael D. Sorkin, *Pocket Knife Sales Soar on Renewed Popularity*, ST. LOUIS POST-DISPATCH, Dec. 30, 2012, <http://perma.cc/5RSM-8DNP> (last visited Feb. 26, 2014).

<sup>128</sup> See generally Johnson, *supra* note 111.

<sup>129</sup> One author has described the use of proxies for law enforcement as "taking an innocent characteristic, believing it to be correlated with a real or potential threat, and using that characteristic to

correct, switchblade laws are an excellent tool used by police to identify and arrest potentially violent criminals. There is an obvious logic here. If switchblades are criminalized, then only criminals will have switchblades. Law-abiding citizens will carry other types of pocketknives which are legal. Thus, if switchblades are illegal, we would expect them to be an excellent proxy for other criminal behavior.

There are two potential flaws with this proxy theory. First, if the definition of switchblade is unclear, many otherwise law-abiding citizens may end up arrested for possession of knives they honestly believed were legal. Because possession offenses are typically strict liability offenses, the state need not prove that the defendant had any intent to break the law.<sup>130</sup> Second, the proxy theory assumes that violent criminals are more likely to break switchblade laws than other citizens, but that may not be true. Again, if the utility between a switchblade and ordinary knife is minimal, violent criminals may well have no trouble complying with the ban. In fact, as many of these statutes are obscure and complicated, professional criminals are likely to be the ones who are most familiar with these statutes. Hence, it is entirely possible that most people who violate switchblade statutes are just ordinary citizens who are ignorant that their pocket knife is illegal. If this is true, then the proxy theory is the exact opposite, and innocent citizens are more likely to possess illegal knives than professional criminals.<sup>131</sup>

Yet, if the proxy theory is correct, then we would expect laws against switchblades to reduce crime even if switchblades are harmless, because it will lead to more violent criminals being arrested and imprisoned. Accordingly, we should again see a reduction in crime when switchblades are outlawed and an increase in crime when they are legalized.

Of course, there will be other factors that might affect the use of switchblades, regardless of their legal status. The main factor one would expect to affect use of knives is the prevalence of firearms. There is an old saying “Don’t bring a knife to a gun fight.”<sup>132</sup> Knife wielders are unlikely

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enforce the law.” Lindsey B. Lawrence, *The Money-Laundering Conundrum: Mugging Privacy in the Assault on Crime? In THE FUTURE OF FINANCIAL PRIVACY*, 165 (Washington: Competitive Enter. Inst., 2000).

<sup>130</sup> See, e.g., *People v. Voltaire*, 852 N.Y.S.2d 649, 652 (Crim. Ct. 2007) quoting *People v. Visarities*, 220 A.D. 657 (N.Y. 1927) (“mere possession of per se weapon, if knowing and voluntary, constitutes the offense”) (sic).

<sup>131</sup> Because a person can be in constructive possession of an object, such as a switchblade in one’s vehicle which is unknown to the driver, a person can be convicted of a possession offense effectively without *mens rea* or *actus reus*. See Dubber, *supra* note 71, at 916–17.

<sup>132</sup> This expression was made popular in the movie “The Untouchables” (1987) in which Sean Connery’s character, armed with a shotgun, tells the knife wielding assassin sent to kill him: “Just like a Wop to bring a knife to a gunfight!” The particular knife in the movie, not surprisingly, was a switchblade. The expression has entered the English language as a kind of proverb. See USINGENGLISH.COM, <http://perma.cc/9BAH-JERA> (last visited Mar. 5, 2014).

to attack those who they think may have guns. For example, among aggravated assaults on the general public, knives and guns are used in about equal numbers, whereas in aggravated assaults on police officers, an aggressor is twice as likely to use a gun as a knife.<sup>133</sup>

Secondly, if a potential criminal has access to guns as well as knives, the criminal seems likely to opt for the more powerful weapon. Some researchers have challenged the assumption that criminals will substitute knives for guns when guns are not available.<sup>134</sup> Nevertheless, statistics on the use of guns and knives in crime have consistently shown that when gun use in crime goes up, knife use goes down. This is consistent with the theory that knife control may be counterproductive, as the weapon substituted for a knife may be a gun. If the penalty for possession of a knife and gun are the same, then presumably criminals would opt for a gun.

In fact, if we look at the use of knives in crime, there is a steady increase in the use of knives in murder, aggravated assault, and armed robbery throughout the 1960s and 1970s. Across the country as a whole, violent crime doubled between 1958 and 1967.<sup>135</sup> Although we can never know what might have happened otherwise, there is no indication that the federal Anti-Switchblade Act (in conjunction with state bans) had any significant effect on violent crime across the country. Violent crime involving knives also increased dramatically in the 1960s and 1970s.<sup>136</sup>

Table 1 shows the U.S. homicide rate per 100,000 from 1951 through 2000, followed by (when available) the homicide rate using knives (or other cutting instruments), the U.S. robbery rate, the robbery rate using knives, the aggravated assault rate, and the assault rate using knives. Note that all of the crime data is for knives and other “cutting instruments”; for ease of reference, this entire category is referred to simply as knives. Note, also, that the first year the UCR classified robbery by weapon used was 1974; thus, these numbers have been supplemented by including the rate of armed robbery from 1964 to 1980.

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<sup>133</sup> In 2010, there were 137,857 aggravated assaults using firearms and 127,509 using knives. *Uniform Crime Reports 2012, Table 19*, FBI, available at <http://perma.cc/P36J-FZ5C> (last visited Mar. 12, 2014). However, in assaults on police officers, there were 1,831 assaults with firearms and 884 with knives. *Uniform Crime Reports 2012, Table 70*, FBI, available at <http://perma.cc/4X28-92SX> (last visited Mar. 12, 2014). 884 seems like a high figure, although many of these may have been on undercover officers or attacks by mentally unstable suspects. In any event, it is clear that when attacking a person who has a gun, an assailant is more likely to use a gun than a knife.

<sup>134</sup> See generally Lisa Stolzenberg & Stewart J. D'Alessio, *Gun Availability and Violent Crime: New Evidence from the National Incident-Based Reporting System*, 78 SOC. FORCES 1461 (2000).

<sup>135</sup> See *infra* Table 1.

<sup>136</sup> *Id.*

TABLE 1: U.S. VIOLENT CRIME RATE PER 100,000 INHABITANTS 1951–2000<sup>137</sup>

Year	Homicide Rate	w/ Knives	Robbery	% Armed Robbery	w/ Knives	Ag. Assault	w/ Knives
1951	4.4						
1952	4.6						
1953	4.5						
1954	4.2						
1955	4.1						
1956	4.1						
1957	4.0						
1958	4.8						
1959	4.9		40.3			67.3	
1960	5.1		60.1			86.1	
1961	4.8	1.16	58.3			85.7	
1962	4.6	1.11	59.7			88.6	
1963	4.6	1.05	61.8			92.4	
1964	4.9	1.18	68.2	57%		106.2	
1965	5.1	1.17	71.7	57.6%		111.3	
1966	5.6	1.25	80.8	58.3%		120.3	40.42
1967	6.2	1.24	102.8	57.8%		130.2	42.71
1968	6.9	1.29	131.8	60.3%		141.3	43.80
1969	7.3	1.49	148.4	61.5%		154.5	46.04
1970	7.9	1.70	172.1	63.3%		164.8	46.14
1971	8.6	1.71	188.0	N/A		178.8	50.06
1972	9.0	1.71	180.7	66.1%		188.8	49.65
1973	9.4	1.67	183.1	65.9%		200.5	49.32
1974	9.8	1.72	209.3	65.9%	27.42	215.8	52.22
1975	9.6	1.70	220.8	65.0%	27.38	231.1	54.31
1976	8.8	1.57	199.3	63.5%	25.91	233.2	54.80
1977	8.8	1.68	190.7	63.3%	25.17	247.0	57.30
1978	9.0	1.69	195.8	62.5%	24.87	262.1	59.23
1979	9.7	1.86	218.4	62.3%	28.83	286.0	64.35
1980	10.2	1.97	251.1	62.2%	32.40	298.5	67.16
1981	9.8	1.90	258.4		33.85	289.3	63.65
1982	9.1	1.90	238.8		32.48	289	67.05
1983	8.3	1.81	216.7		29.47	279.4	66.78
1984	7.9	1.67	205.7		27.56	290.6	67.42
1985	8	1.69	209.3		27.84	304	69.01
1986	8.6	1.77	226		30.51	347.4	76.43
1987	8.3	1.68	213.7		28.85	352.9	75.52
1988	8.5	1.62	222.1		30.21	372.2	76.30
1989	8.7	1.58	234.3		31.40	385.6	75.52
1990	9.4	1.65	256.3		30.76	422.9	82.47
1991	9.8	1.59	272.7		30.0	433.4	79.75
1992	9.3	1.35	263.7		27.95	441.9	80.43
1993	9.5	1.21	256		25.60	440.5	77.53
1994	9	1.143	237.8		22.59	427.6	76.11
1995	8.2	1.07	220.9		20.10	418.3	76.55
1996	7.4	1.00	201.9		18.17	391	70.77

<sup>137</sup> For ease, the author used the UCR “Data tool” for crime rate data when available (that is, crime rates going back to 1960); otherwise, the author used the printed volumes of UCR data prior to 1960 and for weapon specific data. *Id.*

1997	6.8	0.87	186.2		15.83	382.1	68.40
1998	6.3	0.84	165.5		14.56	361.4	66.50
1999	5.7	0.75	150.1		12.61	334.3	59.51
2000	5.5	0.74	145		12.18	324	58.32

Thus, as we see from the above chart, the murder rate with knives almost doubled between 1960 and 1980, the rate of aggravated assaults with a knife doubled between 1965 and 1990, and the rate of knife use in armed robbery remained relatively constant (although the rate of robberies using a weapon increased significantly between 1964 and 1975). Moreover, the effect on crime overall appears to be even more dismal. After 1958, violent crime of all types skyrocketed. The reasons for this are complicated and still debated by criminologists, but it is difficult to look at the huge increases in violent crime and conclude that the switchblade laws had much success in reducing crime.

Strictly speaking, of course, the above numbers do not prove anything, especially because we have nothing with which to compare these numbers. Nevertheless, these numbers provide us with a starting point and a point of comparison for individual state crime statistics. These numbers also should be viewed in conjunction with the rate at which guns were used in crime. While the assault and murder rates with knives increased throughout the 1960s and '70s, the use of guns in crime increased even faster. This is shown in Table 2.

TABLE 2: PERCENTAGE OF GUNS AND KNIVES USED IN MURDER IN U.S.  
1961–2012

Year	% Guns	% Knives	Year	% Guns	% Knives
1961	52.5	24.1	1987	59.1	20.3
1962	54.2	24.2	1988	60.7	19.1
1963	56.0	22.8	1989	62.4	18.2
1964	55	24	1990	64.1	17.5
1965	57.2	23.0	1991	65.4	16.2
1966	59.3	22.3	1992	68.1	14.5
1967	63.6	20.0	1993	69.6	12.8
1968	65.4	18.7	1994	70.0	12.7
1969	64.5	19.9	1995	68.0	13.0
1970	65.4	18.9	1996	67.8	13.5
1971	65.1	19.8	1997	67.8	12.8
1972	66.2	19.0	1998	64.9	13.3
1973	67.0	17.8	1999	65.2	13.2
1974	67.9	17.6	2000	65.6	13.5
1975	65.8	17.7	2001	63.4	13.1
1976	63.8	17.8	2002	66.7	12.6
1977	62.5	19.1	2003	66.9	12.6
1978	63.6	18.8	2004	66.0	13.2
1979	63.3	19.2	2005	68.0	12.9
1980	62.4	19.3	2006	67.9	12.2
1981	62.4	19.4	2007	68.0	12.1
1982	60.2	20.9	2008	66.9	13.4
1983	58.3	21.8	2009	67.1	13.4

1984	58.4	21.2	2010	67.5	13.1
1985	58.7	21.1	2011	67.7	13.4
1986	59.1	20.5	2012	69.3	12.4

Between 1961 and 2012, the percentage of guns used in murder increased from one year to the next thirty-one times, and in those thirty-one years, the percentage of knives used in murder decreased twenty-four times. Similarly, the percentage of guns used in murder decreased from one year to the next eighteen times, and in those eighteen years when gun usage decreased as a percent of murder, knife usage increased fifteen times. In the three years when gun use in murder was unchanged (1981, 1987 and 1997), the change in knife usage was either .2 or less. Thus, there is a strong statistical correlation between use of guns and knives in murder: when gun use goes up, knife use usually falls, and vice versa. It is not a precise 1:1 correlation. During the late 1960s and early 1970s, gun violence was increasing even faster than knife violence. Even so, the combined total percent of knives and guns used in murder has been remarkably consistent at around 80%, with the lowest combined total at 76.5% and the highest at 85.5%.

In 1961, the U.S. murder rate was 4.8 per 100,000; the rate peaked in 1980 at 10.2. So while knife use in murder decreased from 24% to 19% by weapon used, the murder rate with knives increased from 1.16 in 1961 to 1.97 in 1980 (see Table 1).

So in looking at knife violence, we need to look at knife crime in conjunction with gun crime. If we only looked at the percentage of knives used in murder, we might conclude that knife control is working because between 1961 and 2011, knife murders as a percentage fell almost in half, from 24% to 13%. However, the knife numbers only look good because there has been such a huge increase in gun violence. Moreover, insofar as knife laws may have deterred possession of dangerous knives, these laws may have encouraged criminals to turn to guns (as opposed to even less dangerous weapons, or no weapon at all).

TABLE 3: PERCENT OF GUNS AND KNIVES USED IN AGGRAVATED ASSAULT IN THE U.S. 1965–2012

Year	% Guns	% Knives	Year	% Guns	% Knives
1965	N/A	N/A	1989	21.5	19.9
1966	18.8	33.6	1990	23.1	19.5
1967	20.9	32.8	1991	23.6	18.4
1968	23.1	31.0	1992	24.7	18.2
1969	23.8	29.8	1993	25.1	17.6
1970	24.3	28.0	1994	24.0	17.8
1971	25.1	27.0	1995	22.9	18.3
1972	25.3	26.3	1996	22.0	18.1
1973	25.7	24.6	1997	20.0	17.9
1974	25.4	24.2	1998	18.8	18.4
1975	24.9	23.5	1999	18.0	17.8

1976	23.6	23.5	2000	18.1	18.0
1977	23.2	23.2	2001	18.3	17.8
1978	22.4	22.6	2002	19.0	17.8
1979	23.0	22.5	2003	19.1	18.2
1980	23.9	22.0	2004	19.3	18.6
1981	23.6	22.0	2005	21.0	18.9
1982	22.4	23.2	2006	21.9	18.7
1983	21.2	23.9	2007	21.4	18.8
1984	21.1	23.2	2008	21.4	18.9
1985	21.3	22.7	2009	20.9	18.7
1986	21.3	22.0	2010	20.6	19.0
1987	21.4	21.4	2011	21.2	19.1
1988	21.1	20.5	2012	21.7	18.7

TABLE 4: PERCENT OF GUNS AND KNIVES USED IN ROBBERY IN THE U.S.  
1973–2012

Year	% Guns	% Knives	Year	% Guns	% Knives
1973	N/A	N/A	1993	42.4	10.0
1974	44.7	13.1	1994	41.6	9.5
1975	44.8	12.4	1995	41.0	9.1
1976	42.7	13.0	1996	40.7	9.0
1977	41.6	13.2	1997	39.7	8.5
1978	40.8	12.7	1998	38.2	8.8
1979	39.7	13.2	1999	39.9	8.4
1980	40.3	12.9	2000	40.9	8.4
1981	40.1	13.1	2001	42.0	8.7
1982	39.9	13.6	2002	42.1	8.7
1983	36.7	13.6	2003	41.8	8.9
1984	35.8	13.4	2004	40.6	8.9
1985	35.3	13.3	2005	42.1	8.8
1986	34.3	13.5	2006	42.2	8.6
1987	33.0	13.5	2007	42.8	8.3
1988	33.4	13.6	2008	43.5	7.7
1989	33.2	13.4	2009	42.6	7.7
1990	36.6	12.0	2010	41.4	7.9
1991	39.9	11.0	2011	41.3	7.8
1992	40.3	10.6	2012	41.0	7.8

We see that the use of knives or cutting instruments in armed robbery is fairly low. Between 1974 and 1989, knives were used relatively consistently in about 13% of robberies. Of course, the robbery rate increased substantially during this time, so the actual numbers of robberies with knives increased. Nevertheless, given the relatively small percent of knives used in robbery, knife legislation is unlikely to have a serious effect on robbery.

There is a noticeable drop in the rate of knife use in robbery beginning in 1990, and during this period the rate of robbery overall also decreased substantially. There were no significant knife laws passed anywhere in the late 1980s or early 90s that would have affected knife use, so the apparent reason for the decline was the increased use of firearms. During the 1980s the percent of robberies with guns was consistently in the low to mid 30%



range. This percentage of gun robberies increased substantially after 1990. This again suggests that the availability of guns is the single greatest factor affecting use of knives in crime.<sup>138</sup> The conclusion to be drawn from this data is that unless the government can effectively keep guns out of the hands of criminals, reducing the availability of knives is unlikely to be effective.

## VII. INDIVIDUAL CASE STUDIES: OREGON, FLORIDA, AND NEW HAMPSHIRE

### A. Oregon

Oregon banned the possession of switchblades in 1957, making it one of the first states to do so.<sup>139</sup> Switchblades remained illegal until the Oregon Supreme Court, on December 28, 1984, declared the ban to be an unconstitutional infringement on the constitutional right to bear arms as guaranteed in the Oregon Constitution.<sup>140</sup>

At the same time, the Oregon Court of Appeals was considering a related provision which made it illegal to carry any knife concealed, other than an “ordinary pocket knife.”<sup>141</sup> The court held that “ordinary” was not a meaningful distinction, and therefore all pocketknives were covered by this exception.<sup>142</sup> The court further held that because a switchblade is a type of pocketknife, it was not illegal to carry a concealed switchblade.<sup>143</sup> Within a few months, however, the legislature amended the statute, making it illegal to carry a switchblade concealed, and this restriction was upheld by the courts.<sup>144</sup> Since 1985, it has been legal in Oregon to carry a switchblade or other knife if it is not completely concealed.<sup>145</sup> The knife is not considered “concealed” so long as enough is visible that it is “readily identifiable as a weapon,” even if most of the knife is not visible.<sup>146</sup> Many

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<sup>138</sup> The correlation between knives and guns in robbery, though still significant, is less with respect to homicide and assault, primarily because from the mid-1970s through the 1980s, the percentage of gun-use fell substantially, while knife-use remained constant. Thomas B. Marvell & Carlisle E. Moody, *Specification Problems, Police Levels, and Crime Rates*, 34 CRIMINOLOGY, NO. 4. 609 (1996).

<sup>139</sup> State v. Delgado, 692 P.2d at 614 n.7.

<sup>140</sup> *Id.* at 614.

<sup>141</sup> State v. Pruett, 586 P.2d 800, 801 (1978).

<sup>142</sup> *Id.* (noting that it is not “reasonable to uphold a statute by determining as a matter of Law that a particular knife is as a matter of Fact “an ordinary pocket knife.” . . . [because] [t]hat leaves the statute even less certain of meaning”).

<sup>143</sup> State v. Ramer, 671 P.2d 723, 724 (Or. Ct. App. 1983).

<sup>144</sup> State v. Smoot, 775 P.2d 344, 345 (Or. Ct. App. 1989) (upholding statute banning concealed carry of switchblades).

<sup>145</sup> State v. Johnson, 772 P.2d 426 (Or. Ct. App. 1989)

<sup>146</sup> State v. Turner, 191 P.3d 697, 701 (Or. Ct. App. 2008). This seems to differ from the statutes of other states that consider switchblades *per se* dangerous weapons. Even states where switchblades

switchblades and other pocketknives are now designed with a pocket/belt clip to allow them to be carried so that they are open to view. Thus, a switchblade could be carried with a pocket clip so that just the top of the knife is visible, so it would be impossible to tell that it was a switchblade.

Whether the open carry requirement has any effect on crime is arguable. In theory, if a knife is carried openly, then potential victims, or police, know about the threat and can protect themselves better. It might be true that some people who do not want to display a knife will choose to carry an “ordinary” pocketknife which they can legally carry concealed. While the open carry requirement might deter some people from carrying switchblades, if these knives are so valuable to criminals as opponents claim, it is hard to imagine that a ban on concealed carry will dissuade many would-be criminals.

There are a surprisingly large number of knife manufacturers in Oregon. Benchmade Knives is one of the largest domestic producers of switchblades. Benchmade started operations in California but set up a factory in Oregon in 1990, apparently to take advantage of the growing market for switchblades there.<sup>147</sup> Kershaw Knives, founded in Tualatin, Oregon in 1974, advertises a wide variety of switchblades.<sup>148</sup> Although it is unclear how quickly knife manufacturers were able to flood the Oregon market, certainly by the late 1980s switchblades were quite common in Oregon.

If we look at the overall rate of violent crime in Oregon, the state has long had an admirably low rate of violent crime. Violent crime in Oregon peaked in the mid-1980s and has declined dramatically ever since. Aggravated assault as a percent of the national average peaked in 1985, although it increased only 3% from the previous year. Murder as a percent of the national average peaked in 1986, and armed robbery in 1987. Table 5 shows the rate of aggravated assault, robbery, and homicide in Oregon from 1971 to 2000.

TABLE 5: RATE OF AGGRAVATED ASSAULT, ROBBERY, AND HOMICIDE IN OREGON 1971–2000

Year	Agr. Assault Rate	Agr. Assault % of National	Robbery Rate	Robbery % of National	Homicide Rate	Homicide % of National
1971	157.7	89.20%	110.4	58.72%	3.2	37.65%

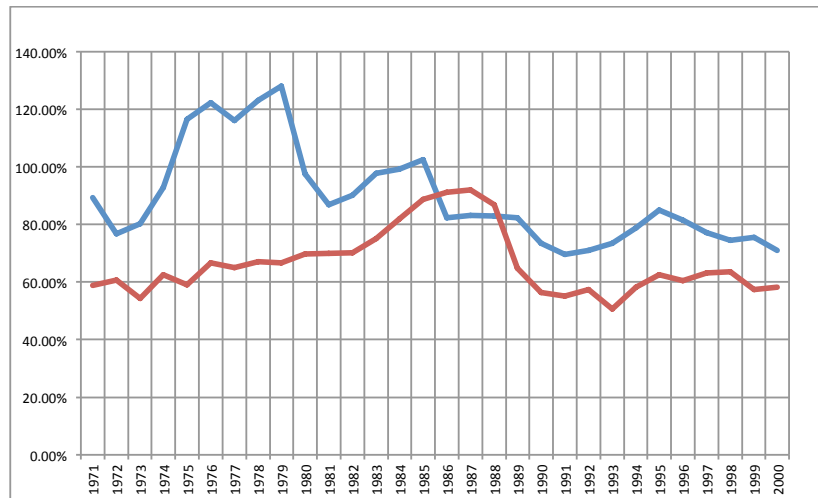
are not banned entirely, but are considered dangerous weapons, it appears to be illegal to carry them in any way that disguises the fact that they are switchblades. For example, the West Virginia statute provides, “A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.” W.VA. CODE § 61-7-2 (2010).

<sup>147</sup> See BENCHMADE KNIFE COMPANY, *supra* note 115.

<sup>148</sup> See KERSHAW STORE, <http://perma.cc/S7RE-3FDF> (last visited Feb. 26, 2014).

1972	143.1	76.69%	109.5	60.60%	5.5	61.80%
1973	159	80.14%	99.4	54.29%	4.9	52.69%
1974	198.7	92.76%	130.8	62.49%	5.6	57.73%
1975	269.4	116.57%	130.3	59.02%	6.2	64.58%
1976	285	122.21%	132.7	66.58%	4.2	47.73%
1977	286.9	116.15%	124.1	65.08%	5.1	57.95%
1978	325	123.00%	131.1	66.96%	5	55.56%
1979	366.2	128.04%	130.6	66.70%	4.2	43.30%
1980	291.4	97.62%	152.4	69.78%	5.1	50.00%
1981	251.9	86.84%	180.6	69.90%	4.4	44.90%
1982	260.6	90.11%	167.3	70.06%	5.1	56.04%
1983	273	97.78%	170.3	75.12%	4.1	49.40%
1984	287.8	99.17%	168.6	81.96%	4.8	60.76%
<b>1985</b>	<b>310.1</b>	<b>102.38%</b>	<b>185.6</b>	<b>88.68%</b>	<b>4.7</b>	<b>58.75%</b>
1986	286.1	82.35%	205.9	91.10%	6.6	76.74%
1987	292.2	83.18%	196	91.89%	5.6	67.50%
1988	307.2	82.98%	193	86.90%	5.1	60.00%
1989	315.4	82.27%	151.8	64.79%	4.8	55.17%
1990	311.8	73.52%	144.3	56.30%	3.8	40.43%
1991	301.5	69.58%	150.1	55.04%	4.6	46.94%
1992	313.5	70.96%	151.4	57.41%	4.7	50.54%
1993	323.7	73.52%	129.6	50.63%	4.6	48.42%
1994	337.2	78.86%	138.2	58.12%	4.9	54.44%
1995	355.8	85.06%	137.9	62.43%	4.1	50.00%
1996	318.6	81.50%	122.2	60.53%	4	54.05%
1997	295.1	77.23%	117.5	63.10%	2.9	42.65%
1998	268.5	74.48%	105.2	63.56%	3.8	60.03%
1999	252.6	75.56%	86.2	57.43%	2.7	47.37%
2000	229.9	70.96%	84.4	58.21%	2	36.36%

TABLE 5A: AGGRAVATED ASSAULT AND ROBBERY IN OREGON AS A PERCENT OF NATIONAL AVERAGE RATE 1971–2000



### *1. Aggravated Assault*

From 1975 through 1983, the rate of aggravated assault in Oregon was 289.9 per 100,000 inhabitants. From 1985 through 1990, the rate of aggravated assault rose 4.8% to 303.8 per 100,000. However, during this same period, the national rate of aggravated assault rose 35.3% (from 268.4 from 1975 through 1983, to 363.2 for 1985 through 1990). In the five years prior to the legalization of switchblades in Oregon, the assault rate was 94.3% of the national average, and in the five years following legalization, it declined to 86.6% of the national average. The ten year trends are even more striking. In the ten years following legalization, the aggravated assault rate in Oregon dropped to 79.96% of the national average, and continued to fall. In the ten years prior to legalization, the aggravated assault rate in Oregon was 107.75% of the national average. Thus, we see a significant decline in the Oregon aggravated assault rate in the decade following legalization, and this trend has continued ever since.

### *2. Robbery*

The numbers for robbery tell a slightly different story, and are not as clear cut as the assault numbers. In the five years prior to legalization, the robbery rate in Oregon was 73.36% of the national average, and in the ten years prior to legalization, the rate was 69.12% of the national average. In the five years after legalization, the Oregon robbery rate increased to 84.67% of the national average, which is clearly a significant increase. However, in the following years, the robbery rate plummeted, and in the ten years following legalization the robbery rate was 70.09% of the national average. Thus, while there was a short term rise in robberies in the four years from 1985 through 1988, robberies fell hugely in 1989 and have remained well below the national average ever since. Moreover, looking at the robbery numbers for the 1980s, we see a clear trend. From 1979 through 1984, Oregon robberies rose each year from 67% to 82% of the national average. This trend continued through 1987 when it peaked at 92% of the national average, and then began to decline rapidly. Thus, the increase in the years immediately following legalization can be explained as part of a trend that preexisted the 1984 legalization decision. More convincing, however, is the long term trend which has seen almost thirty years of robbery rates well below the national average.

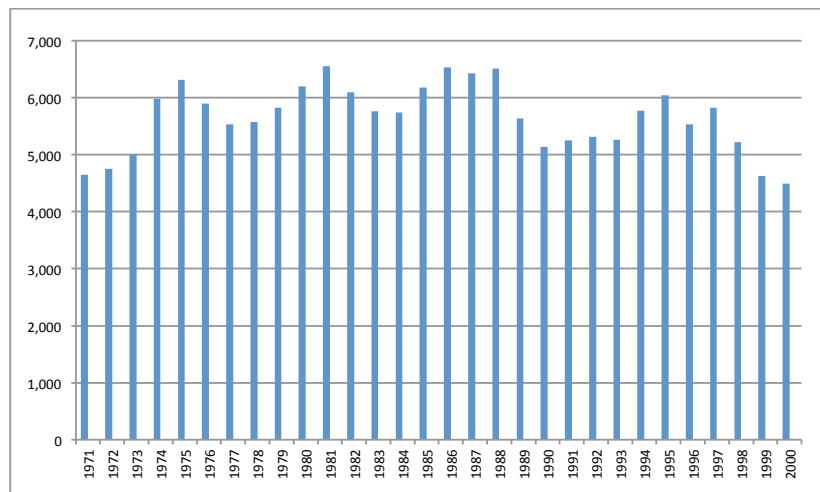
### *3. Homicide*

In the five years prior to legalization, the Oregon murder rate was 52.22% of the national average. In the five years following, the murder rate increased to 63.63%; however, in the next five years, the murder rate fell to 48.15% of the national average.

Following within a year or two of the legalization of switchblades in Oregon, there was a substantial decrease in the rate of violent crime. Whether this decrease can be traced to legalization is questionable, but it certainly is not the result we would expect if switchblades contribute to violent crime. Because the legalization of switchblades should not affect non-violent crime, the rise or fall of non-violent crime should be independent of knife crimes. If non-violent crime were falling or remaining even during a period of time that violent crime was increasing, then this would suggest something other than just a general increase in criminal activity is responsible for the rise in violent crime. On the other hand, if non-violent crime rises and falls proportionately to violent crime, this suggests that both categories of crime are being influenced by the same factors. In other words, factors such as incarceration rates would be expected to influence both the violent and non-violent crime rates, while weapons laws should only affect the violent crime rate.

In fact, if we look at the non-violent crime rate in Oregon, we see that non-violent crime was low in the early 1980s, followed by a peak in 1988, and falling off sharply thereafter. See Table 6.

TABLE 6: RATE OF PROPERTY CRIME IN OREGON (PER 100,000) 1971–2000



Thus, the story for property crime as well as violent crime tells a consistent story. Property crime peaked in 1988, aggravated assault as a percent of the national average peaked in 1985, and the armed robbery and murder rates in Oregon in absolute terms (not as a percent of the national average) both peaked in 1986. Thus, both property and violent crime began to fall in the late 1980s, although it is significant for our study that

violent crime began to decline before property crime, again a surprising result if switchblades contribute to violent crime.

Of course, to put these declines in proper perspective, we need to see if there are other factors that explain Oregon's reduction in crime in the late 1980s. Crime across the country declined dramatically beginning in the early 1990s, for reasons which are still hotly debated by criminologists.<sup>149</sup> The reduction in crime in Oregon appears to have presaged a reduction across the country, but it began several years earlier in Oregon. Unfortunately, there is no clear reason why this occurred. Of the various reasons suggested for reduction in crime nationally, none of them seem to apply in Oregon. Marvel and Moody, for example, have argued that having more police prevents crime.<sup>150</sup> But the number of police compared to the population in Oregon remained constant from 1986 to 1994, at 1.6 per 1000 residents.<sup>151</sup> Another factor suggested by criminologists is the incarceration rate.<sup>152</sup> Yet while the incarceration rate in Oregon increased rapidly in 1990 and following years, the incarceration rate was relatively constant through the 1980s, meaning this is not a plausible explanation for the sudden decrease in the mid 1980s.<sup>153</sup> Donohue and Levitt have argued that abortion rates have affected crime by reducing the highest criminal cohorts, pointing out that the five states that legalized abortion in 1969 or 1970 saw declines before the declines in crime began nationally.<sup>154</sup> But Oregon was not one of the five states to legalize abortion early, and by Donohue and Levitt's own terms, this should not have affected the crime rate in Oregon. Lott and Mustard have argued that liberalization of concealed carry laws in Oregon helped reduce crime, but the shall-issue laws in Oregon came into effect in 1990, several years after the decline began.<sup>155</sup>

Finally, some writers have suggested a link between crime and the

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<sup>149</sup> Stephen D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. OF ECON. PERSP., NO. 1, 163-90 (Winter 2004).

<sup>150</sup> Thomas B. Marvel & Carlise E. Moody, *supra* note 140, at 609-46.

<sup>151</sup> Criminal Justice Comm'n, *Public Safety Plan* 17 (Mar. 2001), available at <http://perma.cc/L92G-W9CN>; Oregon Annual Crime Report, 1995 at 7-3, <http://perma.cc/3GY3-BH8N>.

<sup>152</sup> See Steven D. Levitt, *The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation*, 111 THE Q. J. OF ECON. NO. 2 (1996).

<sup>153</sup> *Public Safety Plan*, *supra* note 151, at 37-38. Oregon adopted sentencing reform in November 1989 that caused incarceration rates to rise thereafter.

<sup>154</sup> John J. Donohue & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*, 116 THE Q. J. OF ECON. NO. 2, 379, 395 (2001). The five early legalization states were Alaska, California, Hawaii, New York and Washington. Moreover, Oregon had both a lower abortion rate and a greater reduction in crime from 1985 to 1997 than either of its neighbors California and Washington. *Id.* at 398.

<sup>155</sup> John Lott & David Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J.LEGAL STUD. 1 (1997).

economy.<sup>156</sup> If we look at Oregon unemployment rates, the unemployment rate peaked in Oregon in the winter of 1982 to 1983 at 21.1%. As crime continued to increase from 1982 through 1986 as the unemployment rate was falling, there appears to be no correlation between unemployment and crime in Oregon.<sup>157</sup> Accordingly, the reason for the decrease in crime in Oregon in the mid 1980s appears to be even more of a mystery than the nationwide decrease in crime. In fact, the Oregon Supreme Court's rulings on knives appear to be one of the few important changes in Oregon law in the mid 1980s. Obviously, this does not prove that the introduction of switchblades caused the reduction in crime, but we see no major changes in Oregon that would compensate for the introduction of switchblades, assuming such introduction was a problem.

In addition to the overall crime rates, we also have statistics on the rate at which knives were used in violent crime in Oregon. The rate of knife use in assault and robbery in Oregon follows the same pattern noted for the overall crime rate. The rate of knife assault in Oregon peaked in 1985 at 58.3, while the rate of robbery using a knife peaked in 1986 at 29.1. As a percent of the national average, knife robbery peaked a year later in 1987. In the following years, the rate of knife use in assault declined slightly, while the rate of knife use in robbery declined markedly. The rate of knife use in assault and robbery is shown in Table 7.

TABLE 7: AGGRAVATED ASSAULT AND ROBBERY USING FIREARMS AND KNIVES IN OREGON 1975–1993

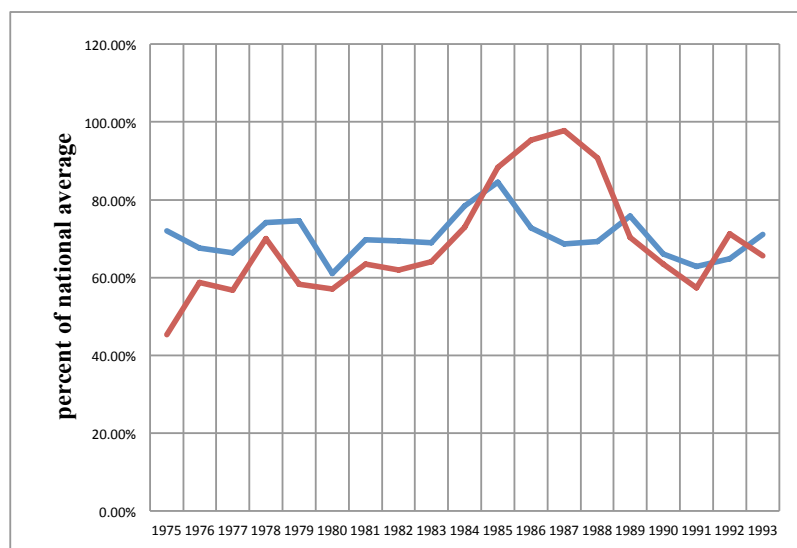
Year	% Agr Assault w/ Firearm	% Agr Assault w/ Knife	Rate of Assault w/ Knife	Knife Rate as % of National	% Robbery w/ Firearm	% Robbery w/ Knife	Rate of Robbery w/ Knife	Knife Rate as % of National
1975	15.98%	14.55%	39.1	71.99%	43.00%	9.53%	12.4	45.29%
1976	16.32%	13.08%	37.0	67.52%	41.86%	11.43%	15.2	58.66%
1977	16.32%	13.08%	38.0	66.32%	39.43%	11.61%	14.3	56.81%
1978	15.61%	13.61%	43.9	74.12%	39.35%	13.32%	17.4	69.96%
1979	15.37%	13.21%	48.0	74.59%	40.22%	12.86%	16.8	58.27%
1980	19.08%	14.23%	41.0	61.05%	40.44%	12.16%	18.5	57.10%
1981	21.24%	17.61%	44.4	69.76%	36.97%	11.88%	21.5	63.52%
1982	20.09%	17.85%	46.5	69.35%	36.10%	12.02%	20.1	61.88%
1983	18.98%	16.75%	46.0	68.88%	33.62%	11.02%	18.9	64.13%
1984	18.72%	18.37%	52.9	78.46%	30.95%	11.87%	20.1	72.93%
<b>1985</b>	20.26%	18.70%	58.3	84.48%	30.64%	13.20%	24.6	88.36%
1986	19.20%	19.54%	55.6	72.75%	32.34%	14.16%	29.1	95.38%
1987	19.18%	17.81%	51.8	68.59%	34.42%	14.30%	28.2	97.75%
1988	22.04%	17.29%	52.9	69.33%	34.37%	14.21%	27.4	90.70%
1989	22.57%	17.81%	57.3	75.87%	31.24%	14.30%	22.1	70.38%
1990	20.52%	17.50%	54.5	66.08%	28.64%	13.45%	19.5	63.39%

<sup>156</sup> See Levitt, *supra* note 150, at 163.

<sup>157</sup> See *Historical State Unemployment Rates Since 1976*, <http://perma.cc/N7PR-2YDJ> (last visited Feb. 26, 2014).

1991	20.67%	18.31%	50.1	62.82%	28.96%	12.70%	17.2	57.33%
1992	22.32%	17.62%	52.1	64.78%	30.47%	13.30%	19.9	71.20%
1993	24.01%	16.28%	55.1	71.07%	32.49%	11.84%	16.8	65.63%

TABLE 7A: AGGRAVATED ASSAULT AND ROBBERY USING FIREARMS AND KNIVES IN OREGON 1975–1993



The rate of knife use in armed robbery is particularly striking. The use of knives in armed robbery increased quite dramatically, in the late 1970s and early 1980s, remaining high until 1988 when the knife-involved robbery rate fell sharply. So the rate of knife robbery and the percentage of robberies committed with knives was significantly higher in the four years following legalization of switchblades. In itself, this would suggest that legalization may have led to greater use of knives in robbery. However, the large declines in the rate of knife robbery in the following years suggests that legalization did not have such an effect, as it is hard to imagine why the effect of legalization would be only temporary.

Once again, we see a general correlation between use of knives and guns in armed robbery.<sup>158</sup> The rate of gun use in robbery declined from

<sup>158</sup> For nineteen years, from 1975 through 1994, in twelve of those years, the percentage of knives and guns used in armed robbery were inversely correlated (i.e. one moved down when the other moved up). In five years (1981, 1983, 1987, 1988, and 1990) both declined, while in 1986 and 1992 both went up. It is reasonable to assume that the substitution effect is stronger with respect to robbery than for assault, because robberies are more likely to be planned.



about 40% in the 1970s to about 30% in the mid 1980s and early 1990s. Accordingly, part of the reason for the increase in knife use in the mid 1980s is the reduction in the use of firearms and their replacement with knives. What is most surprising is that in the late 1980s and early 1990s, the use of knives in robbery decreased, while the use of guns in robbery did not increase. So, for example, from 1975 through 1980 the rate of armed robbery using either a knife or a gun was always above 50% (averaging about 52%), while in the 1990s the rate of robbery with a knife or gun had declined to about 43%. Assuming there is a substitution factor between knives and guns, the temporary increase in the rate of knife use in robbery might be explainable if criminals in Oregon were having trouble obtaining firearms. Even if we assume the substitution effect was that fewer criminals used guns because switchblades were more readily available, that is not necessarily a bad effect, as most people consider guns to be more dangerous than knives.

If we look at the numbers for aggravated assault, in the four years preceding the legalization of switchblades, knives were used in 17.65% of aggravated assaults. In the four years following legalization, the rate of knife use in assault rose slightly to 18.34% of assaults. Not only is the increase very modest, but it is consistent with the ten year trend which showed a rise in knife use.

As a percentage of the national average, the rate of assault with knives in the ten years prior to 1985 was 70.2%, while in the following nine years the average very slightly increased to 70.64%. The assault rate with knives was 71.61% of the national average in the four years prior to 1985 and 73.79% of the national average in the four years following legalization. This is a small increase, but this is entirely attributable to one year, 1985, in which the rate peaked as a percent of the national average at 84.48%. In fact, both 1984 and 1985 saw significant increases in the rate of knife use in assault, which suggests that the increase in 1985 was part of a trend unrelated to legalization. It seems likely that the supply of switchblades in Oregon in 1985 was fairly low. With the exception of a slight two-year blip in 1984 and 1985, the rate of knife assault as a percent of the national average was consistently around 70% from 1975 through 1993.

It is also interesting to compare the rate of knife and gun use in assaults. We see less of a replacement correlation with assault than we saw with other crimes. This makes sense because many assaults will be spontaneous and unplanned using whatever weapon happens to be available. The numbers from Oregon show a steady increase in the rate of assault with both guns and knives between 1975 and 1986. From 1987 through 1993, the knife rate decreased slightly while the gun rate for assault increased slightly. One way to explain the increase in the rate of gun use in assaults is that more criminals carry guns in response to more law abiding citizens carrying switchblades. We could imagine a kind of

personal arms race: if switchblades are legal, perhaps more criminals will resort to firearms. While this is a theory to be examined for other states, in Oregon, the data provides minimal support for this theory. What the trends in Oregon seem to show is that there was a general increase in the use of both guns and knives for many years prior to 1985. Moreover, 1986 and 1987 actually show a slight decrease in the rate that firearms were used in crime. Thus, we see no correlation between legalization of switchblades and the increase in gun use in assault.

The Oregon data suggests that the legalization of switchblades did not cause an increase in violent crime. The data is somewhat mixed for the first couple of years following legalization, but by the late 1980s and early 1990s, we see a clear decrease in violent crime overall, and a clear decrease in the rate of knife use in violent crime. Thus, the Oregon experiment indicates that the legalization of switchblades did not cause an increase in violent crime.

#### *B. Florida*

In 1985, the Florida legislature passed a statute providing as follows:

It is unlawful for any person to manufacture, display, sell, own, possess, or use a ballistic self-propelled knife which is a device that propels a knifelike blade as a projectile and which physically separates the blade from the device by means of a coil spring, elastic material, or compressed gas.<sup>159</sup>

On its face, this does not appear to describe or apply to switchblades, but rather ballistic knives; that is, an object that shoots a knifelike blade. Indeed, according to the chief sponsor of this legislation in 1985, it was intended to cover objects that shot knife blades up to 35 feet.<sup>160</sup> Switchblades do not usually use a “coil spring,” certainly not “elastic material,” nor “compressed gas,” from which the statute seems clearly to be referring to a spear-gun-like mechanism.<sup>161</sup>

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<sup>159</sup> FLA. STAT. § 790.225 (1985).

<sup>160</sup> See House of Representatives Staff Analysis of HB 1227 at 2, available at <http://perma.cc/5UMX-8MWN> 9 (last visited Feb. 26, 2014).

<sup>161</sup> See generally *State v. Darynani*, 774 So. 2d 855 (Fla. Dist. Ct. App. 2000). Although the Florida Court of Appeals in *Darynani* asserted that “It is common knowledge that a switchblade operates on a coil spring or other device that springs the blade out from the handle or casing,” in fact, most switchblades use a leaf spring, not a coil spring. See *Switchblade Knife LEAF SPRINGS*, <http://perma.cc/AC39-57F4> (last visited Feb. 26, 2014). However, some traditional switchblades do not use a coil spring. *Switchblade Knife COIL SPRINGS*, <http://perma.cc/YAF5-SRBZ> (last visited Feb. 26, 2014). Ballistic knives, however, use a coil spring or sometimes compressed gas. *Ballistic*

It is not entirely clear when the state began using this statute to prosecute people for possession of switchblades, but in 2000 Pariya Darynani was prosecuted for selling switchblades at a flea market.<sup>162</sup> Darynani argued that the statute did not cover switchblades.<sup>163</sup> The trial court ruled that they did not know exactly what the statute covered so any prosecution under the statute was unconstitutional because it did not give owners of switchblades fair notice that such objects are illegal.<sup>164</sup> The Court of Appeals in a unanimous, per curiam decision, reversed the trial court, declaring that “it seems apparent the Legislature intended to distinguish switchblade knives from folding-type knives that require manual and deliberate removal of the knife blade from the handle or casing.”<sup>165</sup> As a result, the court interpreted the statute to ban all switchblades, including knives equipped with a leaf spring, and the court’s language could even be interpreted to ban gravity knives, although there are no reported cases of prosecution for gravity knives in Florida.

In 2003, the Florida legislature amended the statute to clarify that the projectile in question must physically separate from the knife, thereby legalizing switchblades.<sup>166</sup> The bill was passed unanimously by both houses of the legislature and signed by the governor in June of 2003.<sup>167</sup> The statute now reads: “This section shall not apply to: (a) Any device from which a knifelike blade opens, where such blade remains physically integrated with the device when open.”<sup>168</sup>

Aside from once again illustrating that courts and citizens do not know what to make of such statutes, the benefit of this story for a researcher is that we have a clear date at which switchblades were legalized. Although it is unclear how many prosecutions there were under this statute or when they began precisely, spring-operated switchblades were clearly illegal between the time the Court of Appeals ruled in 2000 and the legislature changed the law in 2003. Other than apparently not being able to carry a concealed switchblade, there are no other restrictions on adults owning or

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*Knife*, WIKIPEDIA, Feb. 12, 2014 5:45PM, <http://perma.cc/S6MJ-3EB6>. There is no indication that the knife in the *Darynani* case had a coil spring.

<sup>162</sup> *Darynani*, *i* at 857–58 (Fla. Dist. Ct. App. 2000).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 857. In legal terms, he argued that the statute was unconstitutionally vague.

<sup>165</sup> *Id.* at 858. The Court did not look at legislative history which might have resolved this issue. A per curiam opinion (literally “by the court”) means the opinion was unsigned and usually means the court did not take the argument very seriously and could dismiss it without much discussion. Had they checked the legislative history the meaning of the statute would have been clear.

<sup>166</sup> *House of the Rep. Staff Analysis of HB 1227*, available at <http://perma.cc/QDU4-U5QK> (last visited Feb. 26, 2014).

<sup>167</sup> *Id.*

<sup>168</sup> FL. STAT. § 790.225 (2013).

carrying switchblades in Florida.<sup>169</sup> There are a number of Florida switchblade manufacturers, making them common in that region.<sup>170</sup>

Of course, one could argue that the 2003 legalization might not be expected to do very much—the statute never covered “gravity knives.” Without including gravity knives, a switchblade ban might be ineffective.

In any event, Florida showed a clear decline in knife use in both armed robbery and assault following the legalization of traditional switchblades in 2003. The rates from 1995 to 2011 are shown in Table 8 below.

TABLE 8: FLORIDA CRIME RATE 1995–2011

Year	Ag Assault	Ag As as % national ave.	Robbery	Rob. as % national ave.	Homicide	Homicide as % national ave.
1995	715.1	170.95%	299.9	135.76%	7.3	89.02%
1996	702.2	179.59%	289.2	143.24%	7.5	101.35%
1997	688.7	180.24%	276.1	148.28%	6.9	101.47%
1998	639.9	177.06%	242.7	146.65%	6.5	103.17%
1999	590.5	176.64%	211.6	140.97%	5.7	100.00%
2000	563.2	173.83%	199.0	137.24%	5.6	101.82%
2001	551.7	173.16%	200.7	135.15%	5.3	94.64%
2002	530.1	171.28%	195.2	133.61%	5.5	98.21%
<b>2003</b>	<b>500.6</b>	<b>169.47%</b>	<b>185.4</b>	<b>130.11%</b>	<b>5.4</b>	<b>94.74%</b>
2004	495.8	171.79%	172.5	126.19%	5.4	98.18%
2005	497.2	170.98%	169.6	120.45%	5.0	89.29%
2006	485.6	168.90%	188.8	126.37%	6.2	108.77%
2007	473.2	166.74%	209.1	141.67%	6.6	117.86%
2008	449.7	162.52%	196.9	135.14%	6.3	116.67%
2009	410.6	155.12%	166.7	125.24%	5.5	110.00%
2010	369.8	146.57%	138.7	116.46%	5.2	108.33%
2011	348.0	142.92%	134.4	114.77%	5.2	107.50%

Violent crime was declining throughout this period both in Florida and nationally. However, in the years 1995 through 2003, the decline in violent crime in Florida basically kept pace with the national decline, and in the years 2004 through 2011, there was a clear decrease in both aggravated assault and robbery as a percent of the national average. Interestingly, there was an increase in the murder rate of about 8% compared to the national average, which was about the same rate of decrease for aggravated assault and robbery.

<sup>169</sup> Other than what the statute calls a “common pocketknife,” all other knives are treated equally. FL. STAT. 790.001 (2013). Unlike many states where switchblades are *per se* “deadly weapons” they are not treated as such in Florida.

<sup>170</sup> Microtech Knives was established in 1994 in Vero Beach, Florida and advertises a wide variety of military style switchblades. *History*, MICROTECH, <http://perma.cc/3DV2-E4PX> (last visited Mar. 1, 2014).

TABLE 9: VIOLENT CRIME IN FLORIDA AS A PERCENT OF NATIONAL AVERAGE

	Aggravated assault	Robbery	Homicide
1995-2002 average	175.34%	140.11%	98.71%
2004-2011 average	160.69%	125.79%	107.08%

TABLE 10: RATE OF PROPERTY CRIME IN FLORIDA (PER 100,000) 1995–2011

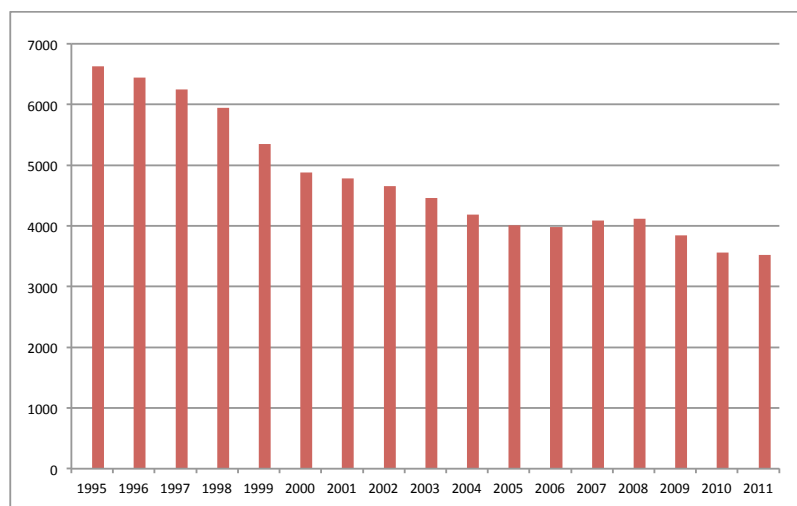
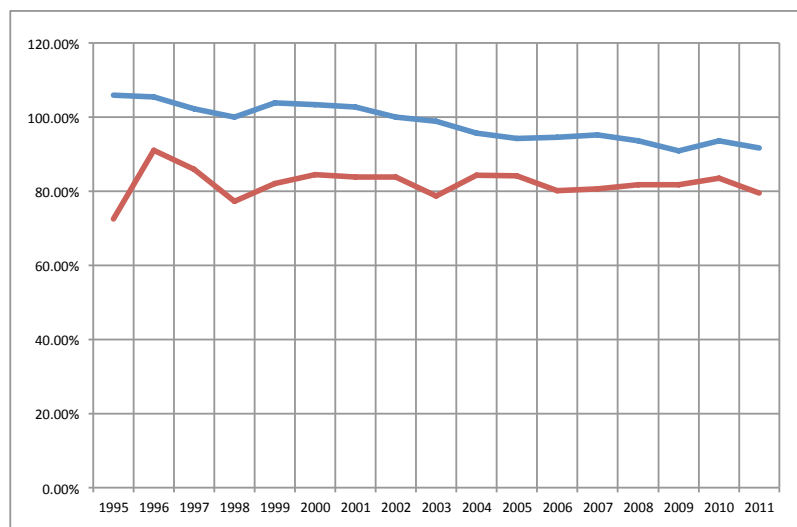


TABLE 11: FLORIDA AGGRAVATED ASSAULT USE OF FIREARMS AND KNIVES BY PERCENTAGE 1995–2011

Year	Ag Assault w/ Firearm	Ag Assault w/ Knife	Ag Assault w/ Knife as % of National	Robbery w/ Firearm	Robbery w/ Knife	Rob. w/ Knife as % of National
1995	21.9	19.4	106.01%	38.9	6.6	72.53%
1996	23.8	19.1	105.52%	40.8	8.2	91.11%
1997	20.7	18.3	102.23%	40.8	7.3	85.88%
1998	17.4	18.4	100.00%	39.5	6.8	77.27%
1999	15.3	18.5	103.93%	38.0	6.9	82.14%
2000	14.0	18.6	103.33%	37.5	7.1	84.52%
2001	14.1	18.3	102.81%	39.0	7.3	83.91%
2002	14.7	17.8	100.00%	39.0	7.3	83.91%
<b>2003</b>	<b>15.1</b>	<b>18.0</b>	<b>98.90%</b>	<b>39.0</b>	<b>7.0</b>	<b>78.65%</b>
2004	15.7	17.8	95.70%	38.3	7.5	84.27%
2005	17.1	17.8	94.18%	39.7	7.4	84.09%
2006	18.3	17.7	94.65%	42.0	6.9	80.23%
2007	20.2	17.9	95.21%	46.9	6.7	80.72%
2008	20.2	17.7	93.65%	46.7	6.3	81.82%
2009	19.8	17.0	90.91%	44.2	6.3	81.82%
2010	19.2	17.8	93.68%	42.6	6.6	83.54%
2011	19.8	17.5	91.62%	42.0	6.2	79.49%

TABLE 11A: AGGRAVATED ASSAULT AND ROBBERY IN FLORIDA AS A PERCENT OF NATIONAL AVERAGE 1995–2011



Florida shows a clear decline in knife use for armed robbery and assault, both in the rate per 100,000 and as a percent of the national average.

With respect to aggravated assault, in the eight years prior to 2003 the average rate of knife use was 18.55%, and in the eight years after it was 17.64% (a decline of 4.9%). With respect to robbery, in the eight years prior to 2003 the rate of knife use was 7.19%, and in the eight years after it was 6.74% (a decline of 6.3%).<sup>171</sup> These decreases are not huge, to be sure, and they are accompanied by an increase in the use of firearms. One explanation for the decrease in knife use as a percentage of crime is that criminals had wider access to firearms and preferred firearms to knives, switchblade or not. Certainly the numbers indicate that wider availability of switchblades in Florida did not lead to wider use of knives in violent crime.

Moreover, the percentage at which knives were used in robbery and assaults in Florida is well below the national average. The national average of cutting instruments used in aggravated assaults was 18.84% between 2004 through 2011, while in Florida it was 17.64%. Between 1995 and 2002, on average knives in the United States were used in

<sup>171</sup> If we used 2001 through 2003 as the comparison years (because of uncertainty regarding how strenuously the law was enforced prior to 2000), the numbers would be virtually identical and show a slight decline.

18.01% of aggravated assaults. The 4.9% drop in knife usage in Florida in the eight years following legalization is all the more dramatic when noting that nationally, knife use in aggravated assaults actually increased by about 5%. To put this in further perspective, it should be noted that gun use in aggravated assaults in Florida rose from 17.74% in the eight years before legalization to 18.9% in the years following, although this rise was almost identical to the rise seen on the national level over the same period (which rose from 19.64% to 20.7%). Thus, when compared to the national average, we see the rate of gun usage in aggravated assault remaining about the same but a significant decrease in use of knives. This is surely not the result one would expect if switchblades were heavily used in violent crime.

The national average for use of cutting instruments in robbery between 2004 and 2011 was 8.21%, while in Florida the rate was only 6.74%. In contrast, the rate of gun usage in Florida is only slightly higher than in the United States as a whole, 42.8% compared to 42.06% between 2004 and 2011. Although it should be noted that the rate of knife-involved robbery in Florida has been constantly lower than the national average, which has also been declining. The national rate of knife usage in robbery between 1995 and 2003 averaged 8.72%. Thus, the national average declined 5.8% while Florida declined 6.3%, just barely beating the national average. Using the national average as a comparison, the decline in use of knives in Florida robberies suggests that the legalization of switchblades had little effect on the use of knives in robbery.

### *C. New Hampshire*

Although New Hampshire legalized switchblades only in May of 2010,<sup>172</sup> it presents something of a unique case that makes it worthwhile to examine, despite limited data. For one thing, the Northeast consistently has higher rates of knife use in violent crime than other parts of the country.<sup>173</sup> While the reasons for this are not entirely clear, two factors are clearly relevant. Most states in the Northeast have strict gun control, and these laws may have made it more difficult for criminals to acquire guns, and therefore they turn to knives as an alternative. Conversely, the lower overall ownership of firearms in the northeast means that victims of crime are less likely to be armed with a gun, and therefore criminals may not

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<sup>172</sup> H.B. 1665-FN, (N.H. 2010), available at <http://perma.cc/7YZ-AL5Y>.

<sup>173</sup> In 2012, for example, the Northeast region, as defined by the FBI Uniform Crime Reports, showed that knives were used in 15.4% of homicides; in 22.7% assaults; and in 10.1% robberies. All three categories were higher than the other three regions (South, Midwest, and West). See *Uniform Crime Reports (2012)*, FBI, available at <http://perma.cc/6UAQ-8FDV> (last visited Mar. 6, 2014). Prior year UCR report similar results. See *Uniform Crime Reports*, FBI, available at <http://perma.cc/3F3E-G4GK> (last visited Mar. 6, 2014).

think they need more powerful weapons. The second factor is that there appears to be a long culture of knife use in northeastern cities such as New York, Boston, and Philadelphia.

New Hampshire, like other northeastern states, has knife crime rates that are much higher than the national average. Thus, in many ways, New Hampshire is the polar opposite of Oregon. Oregon never seems to have had a serious problem with knife crime, and so legalization of switchblades in Oregon may be expected to have little effect on crime. In the northeast, where knife use is more prevalent, we would expect to see a greater effect on crime rates from legalization.

The New Hampshire Act became effective May 18, 2010.<sup>174</sup> The new statute not only repealed the provision prohibiting possession of a switchblade, but also removed any restriction on carrying concealed knives.<sup>175</sup> It should also be noted that in 2011, the legislature passed a further provision which prevented any local government from restricting knives.<sup>176</sup> There are a number of companies in New Hampshire that are advertising switchblades for sale.<sup>177</sup>

In the short time since the legalization of switchblades and the end of all restrictions on knife carry, knife violence in New Hampshire has shown a marked decline, although violent crime and property crime have risen.

Table 12 shows the crime rate in New Hampshire from 2001 through 2012. Tables 14 and 15 show the rate of knife violence in assaults and robberies from 2005 through 2012.

TABLE 12: NEW HAMPSHIRE ASSAULT AND ROBBERY RATES 2001–2012

Year	Ag Assault	Ag Assault as % of National	Robbery	Robbery as % of National
2001	97.2	30.51%	35.3	23.77%
2002	93.0	30.05%	32.4	22.18%
2003	77.8	26.34%	37.2	26.11%
2004	93.8	32.50%	38.5	28.16%
2005	74.3	25.55%	27.9	19.82%
2006	93.9	32.66%	34.7	23.23%
2007	82.8	29.18%	33.4	22.63%
2008	97.5	35.24%	32.1	22.03%
2009	95.2	35.97%	34.3	25.77%
2010	100.4	39.79%	34.3	28.80%
2011	118.2	49.03%	36.0	31.66%
2012	118.7	48.15%	38.9	33.45%

<sup>174</sup> H.B. 1665-FN, (N.H. 2010), available at <http://perma.cc/7YZ-AL5Y>.

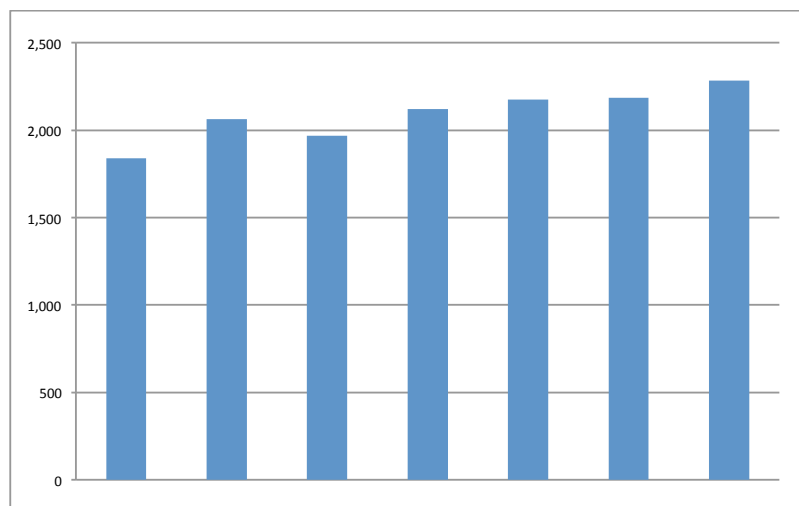
<sup>175</sup> Felons are still prohibited from carrying any concealed weapon, however.

<sup>176</sup> H.B. 544 (N.H. 2011), available at <http://perma.cc/99AK-MH8D>.

<sup>177</sup> White Mountain Knives, in Barrington, advertises a small selection of switchblades. WHITE MOUNTAIN KNIVES, <http://perma.cc/D6TA-S9W3> (last visited Feb. 19, 2014). Highlander Arms in Spofford advertises it is a distributor of Benchmade knives. HIGHLANDER ARMS, <http://perma.cc/5X3C-V3MY> (last visited Feb. 19, 2014).



TABLE 13: NEW HAMPSHIRE PROPERTY CRIME RATE PER 100,000 2005–2011



We see a small but steady increase in property crime in New Hampshire between 2005 and 2011. This suggests that part of the increase in violent crime is explained by the same causes of the increase in property crime. While the robbery rate increase is consistent with the increase in property crime, the rate of increase in aggravated assaults for 2011 is substantially higher than the increase in property crime.

TABLE 14: NEW HAMPSHIRE USE OF KNIVES OR CUTTING INSTRUMENTS IN AGGRAVATED ASSAULT 2005–2012

Year	Total Ag Assaults in NH	Ag Assaults w/ Gun	Ag Assaults w/ Knife	% of Ag Assaults w/ Knife	% of National
2005	825	112	286	34.7%	183.60%
2006	884	140	309	35%	187.17%
2007	713	130	233	32.7%	173.94%
2008	1,023	167	343	33.6%	177.78%
2009	1,151	191	392	34%	181.82%
<b>2010</b>	<b>1,220</b>	<b>202</b>	<b>401</b>	<b>32.9%</b>	<b>173.16%</b>
2011	1,435	171	409	28.6%	149.74%
2012	1,386	177	406	29.3%	156.35%

Admittedly, two full years of data is of limited value statistically, but the first year of switchblade legalization in New Hampshire (2010) saw a decline in the rate of knife use in aggravated assaults. In the two following years, there was a dramatic decline in the rate at which knives were used in assaults. Between 2005 and 2009, knives or cutting instruments were used

in 34% of assaults. There was a slight decline in 2010, but in 2011 and 2012 the percentage was 28.95%, which is a drop of 15% in the rate at which knives were used in assaults over the prior five-year period. Surprisingly, there was also a significant decline in the use of firearms in assault in 2011 and 2012. The rate of knife use compared to the national average declined from 180.62% to 153.05% of the national average in the five years prior to 2011 and 2012. A decrease in the rate of both knives and guns in aggravated assaults in the two and a half years following legalization and concealed carry of all types of knives is certainly not what we would expect if switchblades were a serious criminal problem.

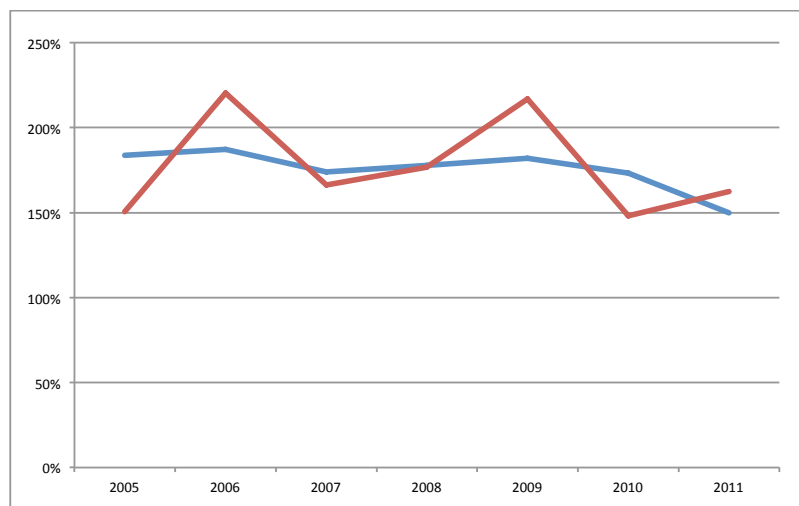
The New Hampshire numbers are particularly interesting because the overall assault rate in these years increased (actually doubling from 2007 to 2011), but the rate of knife assault has declined. On the one hand, it could be argued that if the overall assault rate increased, the experiment with legalizing switchblades was a failure, as the obvious goal is not just to reduce knife crime but to reduce all crime. In this instance, however, we can see that the crime rate was trending up prior to legalization, and nonviolent crime also rose, suggesting that legalization was probably not responsible for the increase of assaults. What is more interesting is that despite the fact that switchblades and other concealed knives were more prevalent on the streets of New Hampshire, this did not result in these knives being used more frequently in assault.

TABLE 15: NEW HAMPSHIRE USE OF KNIVES OR CUTTING INSTRUMENTS  
IN ROBBERY 2005–2012

Year	Total Robbery in NH	Rob. w/ Guns	Rob. w/ Knife	% of Rob. w/ Knife	% of National
2005	332	75	44	13.25%	150.57%
2006	380	75	72	18.95%	220.35%
2007	174	44	24	13.79%	166.14%
2008	353	76	48	13.60%	176.62%
2009	431	85	72	16.71%	217.01%
2010	427	94	50	11.71%	148.10%
2011	450	111	57	12.67%	162.44%
2012	454	104	65	14.32%	184.06%

With respect to armed robbery, we have a small sample size, and while the numbers are not as dramatic as for assault, there is a significant decrease in the rate of knife use in robberies. From 2005 through 2009, an average 15.26% of robberies used knives in New Hampshire. Obviously there was a huge decrease in 2010, but even 2011 and 2012 averaged 13.5%. As a percent of the national rate, New Hampshire averaged 186.14% from 2005 to 2009, and there is a clear decline in the use of knives in armed robbery following legalization.

TABLE 15A: NEW HAMPSHIRE KNIFE USE IN AGGRAVATED ASSAULT AND ROBBERY AS A PERCENT OF NATIONAL AVERAGE 2005–2011



Again, with the caveat that two and half years is not a very large sample size, we see a clear decline in the rate of knife use in robbery and assault. Yet, at this same time there was a significant increase in overall crime as well as an uptick in the use of firearms used in robbery in 2010 and 2011. From 2005 through 2009, firearms were used 21.77% of robberies, and this percentage increased to 22.01% in 2010 and 24.67% in 2011. Although long-term trends remain unknown, this uptick in the use of firearms could be a result of the legalization of the possession and concealed carry of knives. If robbers are concerned that victims may be armed with knives, robbers may be arming themselves with guns in response. It is harder to explain the increase in crime as a reaction to the legalization of knives and concealed carry of knives. If the rate of knife usage declines, even if they are replaced by guns, there is no apparent reason that should increase in the total number of crimes.

Of course, it is entirely possible that the increase in crime in 2010 through 2012 is simply unrelated to the legalization of knives. This theory is supported by the fact that there was a trend of increasing assault and robbery in New Hampshire in the three years preceding the legalization, and there is a clear trend of increasing property crime during these years.

With respect to homicide, the number of murders each year in New Hampshire is so small that the statistics are not very useful. However, the reader may be interested to know that on average from 2005 through 2009 there were 12.2 homicides per year in New Hampshire and a knife was used in 31.15% of the cases. In 2010, the rate of knife use in murder in

New Hampshire increased to 38.46%, and in 2011 fell to 25.0%, and 21.4% in 2012.<sup>178</sup>

#### D. Missouri

Missouri legalized switchblades in July 2012, but news accounts suggest people began purchasing switchblades in large numbers that year.<sup>179</sup> We obviously have extremely limited data for Missouri, and while statistically these numbers are not worth much weight, the following table shows the crime rate for knife use in the Show-Me State for 2012 compared to earlier years.

TABLE 16: MISSOURI USE OF KNIVES OR CUTTING INSTRUMENTS IN CRIME<sup>180</sup>

	Ag Assault w/ Knife	Robbery w/ Knife	Murder w/ Knife
2012	13.13%	5.81%	7.46%
Prior 5 years	13.40%	5.60%	9.04%

Again the reader is cautioned not to put much weight on these numbers, especially as one would not expect a partial year of legalization to have much effect. Despite this, there is very little change in the knife use in assault or robbery, and while the rate of use in homicide is significant, there were only 29 knife murders in Missouri in 2012.

#### E. Arizona

Before concluding this article, a brief comment on Arizona is in order. As noted earlier, Arizona legalized carrying any concealed weapon, either a firearm or anything else, without a permit.<sup>181</sup> Although switchblades had been legal, this law made them easier to carry. Therefore, this general concealed carry law only incidentally affected knife owners.<sup>182</sup> Moreover, the effect on knife use seems likely to be overshadowed by the more significant change in permitting concealed carry of firearms without a permit. Presumably, if a would-be criminal can legally carry a knife or a

<sup>178</sup> *Uniform Crime Reports 2012, Table 20*, FBI, available at <http://perma.cc/CN9Y-U3Y5> (last visited Mar. 6, 2014). While there was a decrease in the rate of knife use in homicide, the samples are so small, the author would not wish to place any emphasis on the murder rate.

<sup>179</sup> Michael D. Sorkin, *Pocket knife sales soar on renewed popularity*, ST. LOUIS POST DISPATCH, Dec. 30, 2012, available at <http://perma.cc/5RSM-8DNP>.

<sup>180</sup> Based on data from the Uniform Crime Reports, 2007–2012. See *Uniform Crime Reports*, FBI, available at <http://perma.cc/V769-RLRM> (last visited Mar. 1, 2014).

<sup>181</sup> Lacey, *supra* note 6, at 1; see also S.B. 1153 (Ariz. 2010), available at <http://perma.cc/76LB-A8MP>.

<sup>182</sup> See Kevin Kiley, *Arizona's concealed-weapon law takes effect*, ARIZ. REPUBLIC, Jul. 29, 2010, available at <http://perma.cc/X3P8-PX2X>.

gun, then he or she would choose the gun. We would typically expect that if guns are more prevalent, then knife crime would tend to decrease anyway, so a decrease in knife crime may have more to do with an increase in gun carrying. However, some people may be far more comfortable carrying a pocketknife—even a switchblade—than carrying a gun. Thus, the law might have more effect on a knife-user than one would initially suspect. At the end of the day, however, Arizona data is difficult to interpret given the context of the law change, which might have a very small effect on knife use.

That said, I present here limited data on Arizona crime comparing knife use in crime since 2010 with the prior five years, as shown in the table below.

TABLE 17: ARIZONA USE OF KNIVES OR CUTTING INSTRUMENTS IN CRIME<sup>183</sup>

	Ag Assault w/ Knife	Robbery w/ Knife	Murder w/ Knife
2010-12	17.20%	9.94%	13.86%
Prior 5 years	17.06%	10.25%	11.72%

As can be seen, the effect on knife crime of the concealed weapons law on assault and on armed robbery appears quite small, with a very slight increase in knife use in assaults, and a small decrease in use of knives in robbery. These numbers suggest the new law had little effect on knife use in crime, but this is somewhat surprising given the liberalization of firearm carrying laws. One would expect to see a far larger decrease in armed robbery using knives if robbers are concerned about encountering armed citizens. Even more surprising is the increase in knife use for murder after the new law. One might have thought that the Arizona law would lead to an “arms race” where citizens and criminals become more heavily armed, but preliminary data suggests the law has not had that effect.

#### VIII. CONCLUSIONS

It should be emphasized that conclusions at this point are preliminary and based on limited data. As more data becomes available for New Hampshire and other states that have recently legalized switchblades, hopefully more definitive conclusions can be reached. Proponents of banning switchblades predicted that the ban would reduce crime.<sup>184</sup> Based

<sup>183</sup> Based on data from the Uniform Crime Reports, 2005–2012. See *Uniform Crime Reports*, FBI, available at <http://perma.cc/73FQ-TFM7> (last visited Mar. 6, 2014).

<sup>184</sup> *Hearings on H.R. 12850 and S. 2558*, *supra* note 74, at 27 (statement by Mr. Pino, New York state senator).

on existing data there is no evidence that switchblade bans have had any significant effect either on crime overall, or on the use of knives in crime. After the widespread banning of switchblades in the United States in the late 1950s, violent crime skyrocketed. After switchblades were legalized in Oregon and Florida, violent crime also fell. This is particularly true with respect to aggravated assault where knives are far more common than in other types of violent crime. The New Hampshire data is even more striking, because the use of knives in crime dropped significantly after legalization in a culture where knife use in crime was common, although the overall crime rate (both violent and non-violent) rose.

With respect to the rate at which knives have been used in violent crime, following the bans in the 1950s the use of knives in crime continued to increase, but the use of guns in crime increased even faster. Accordingly the decrease in the *percentage* of crimes committed with knives appears to be due to the increase in availability and use of firearms. Given the lack of solid data on the use of knives in crime during the 1950s, it is possible that the widespread criminalization of switchblades may have encouraged criminals to switch to guns. That is, while the juvenile delinquent of the 1950s carried a switchblade, the juvenile delinquents of the 1960s and '70s were more likely to carry guns.

In all three states that legalized switchblades (Oregon, Florida, and New Hampshire), there was an overall decrease in the percentage of crimes committed with knives. There are two theories with respect to these declines. First, there may simply be no relationship between legalization and decreased rate of knife use in crime. Under this theory, switchblade laws simply have no effect on criminal behavior. An alternative theory however, is that if knives are more prevalent, would-be criminals will turn to guns in order to be more heavily armed than law-abiding citizens who now may arm themselves with knives. The data from New Hampshire is consistent with this theory, although not conclusive given the limited data. In any event, there is no data showing that legalization of switchblades has caused any significant increase in the rate of knife use in crime.

The data is consistent with the observation of critics of bans that there is no practical difference between switchblades and other pocket knives. If these knives have only cosmetic differences, it makes sense that banning them or legalizing them will have little to no effect on crime.<sup>185</sup> Furthermore, there is no evidence of any proxy effect or utility in crime fighting that might make cosmetic differences relevant. That is to say, even cosmetic difference (like gang colors) might be a useful law

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<sup>185</sup> Although strictly beyond the scope of this paper, this data suggest that whenever the government bans something which has readily available alternatives, or merely induces cosmetic changes to a product that there is unlikely to be any significant effect on human conduct.

enforcement tool for identifying criminals and ultimately fighting crime. Such circumstances would be difficult to document statistically. There is no doubt anecdotal evidence from law enforcement that have utilized switchblade laws to arrest suspects they “just knew were up to no good.” But there is no evidence from the data on the states surveyed here that such laws have any significant effect on crime.