# IN THE DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PETER ROA, and )	CIVIL ACTION No.: 23-00079
DIRCK SIELKEN,	
Plaintiffs, S	DECLARATION OF DANIEL C. LAWSON
ANNE E. LOPEZ, in her official capacity as Attorney General for the State of Hawai'i,	
Defendant.	

## **DECLARATION OF DANIEL C. LAWSON**

#### **DECLARATION OF DANIEL C. LAWSON**

I am Daniel C. Lawson, a natural born U.S. citizen currently residing in Greenville County, South Carolina. It is my understanding that this Declaration will be submitted to the court in connection with a Complaint to be filed in the United States District Court for the District of Hawaii. If called as a witness in this matter, I would provide the following testimony and express the opinions herein based on my knowledge, experience, and expertise.

- 1. I have been licensed to practice law in the Commonwealth of Pennsylvania since 1983. While in private practice, I have provided and continue to provide legal services to various manufacturers and purveyors of knives. I was employed as General Counsel by Microtech Knives, Inc. a corporation organized and existing under the laws of the Commonwealth of Pennsylvania for the period of May 2015 through August 2019.
- 2. Microtech Knives, Inc. is recognized as one of the primary makers of automatic knives.
- 3. I have been asked to opine, by way of this declaration, as to whether the knives described in HRS §134-52 (a) are weapons in common use, as well as being items typically possessed by law-abiding citizens for lawful purposes, including being armed and ready for offensive or defensive action in case of conflict with another person.

- 4. I have examined §134-52 and related statutes and various appellate level decisions involving the same.
- 5. I have also studied and followed knife law development in all states in the United States as well as the District of Columbia. These efforts have been the basis for written works pertaining to knife possession, commerce, and crime. These same efforts have helped me to prepare of state-specific knife law summaries and analysis. These analyses appear on the website of The American Knife and Tool Institute (AKTI) <a href="www.akti.org">www.akti.org</a>. I have also authored more than 35 articles published in <a href="Knife Magazine">Knife Magazine</a> under the monthly feature entitled "Know Your Knife Laws." I have been retained as an expert on knife issues in various cases and have testified as an expert witness on knife mechanisms. (A copy of my CV is attached hereto).
- 6. HRS § 134-52 captioned Switchblade knives; prohibitions; penalty was enacted in 1959. Sub- section (a) reads:
  - (a) Whoever knowingly manufactures, sells, transfers, possesses, or transports in the State any switchblade knife, being 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, shall be guilty of a misdemeanor.
- 7. HRS § 134-52 was enacted during the period of 1951 to 1959 when various states within the U.S. passed "switchblade" knife prohibitions which included in the prohibited category knives which could be opened with one hand, using gravity alone or combined with a flick action of the wrist.

- 8. In the 1980s decade, pocket knife designs which enabled one hand openability by finger or thumb movement without the need of a flicking the wrist or arm became widely available and have largely displaced designs requiring the use of two hands.
- 9. Twenty states have repealed restrictions or prohibitions pertaining to automatic knives during the period of 2010 through 2022.
- 10. One-hand openable pocket knife versions now predominate the U.S pocket knife market and have done so for a period of at least fifteen years.
- 11. HRS § 134-52 (a) creates a total prohibition on 2 sub-categories of one hand operable pocket knives which are:
  - (1) any knife having a blade which opens automatically by hand pressure applied to a button or other device in the handle of the knife, or
  - (2) any knife having a blade which opens automatically by operation of inertia, gravity, or both.
- 12. The knives described in HRS § 134-52 (a) -- both sub-categories -- may be possessed and publicly carried in 44 states in this country.
- 13. Hawaii is one of only four states that prohibit commerce and public carry of the described knives. New York and Washington state allow commerce and carry of the described knives by certain classes of exempted individuals.
- 14. The Washington statute 9.41.251 captioned "Dangerous weapons--Application of restrictions to law enforcement, firefighting, rescue, and military

personnel" exempts firefighters, rescue members, law enforcement officers, state patrol offices and military personnel from "spring blade" or automatic knife possession and carry restrictions and permits commerce in such knives for the benefit of the exempted class.

- 15. New York Penal Law §265.20. captioned "Exemptions" excludes broad classes of individual including state and federal military personnel from the commerce and carry restrictions applicable to switchblade knives which obtain in that state.
- 16. Federal level restrictions on interstate commerce in knives described in HRS § 134-52 derive from Public Law 85-623 entitled "An Act To prohibit the introduction or manufacture for introduction into interstate commerce of switchblade knives and for other purposes" enacted on August 12, 1958, as HR12850.
- 17. Public Law 85-623 which is sometimes referred to as the Federal Switchblade Act of 1958 is codified at 15 U.S.C §§ 1241 1244 and 18 U.S.C § 1716 (g). The description of "switchblade" in 15 U.S.C. § 1241 (b) is the same wording as the description in HRS § 134-52(a).
- 18. Exceptions to the manufacture and commerce prohibitions obtain under The Federal Switchblade Act for among others:
  - - The Armed Forces and any member or employee thereof.

- - State and municipal governments.
- - Militia of a State, Territory, or the District of Columbia.
- 19. The broad nature of the exceptions was noted by the comments of the Secretary of Commerce regarding HR12850 who reported:

WE FEEL THAT THE PROBLEM OF ENFORCEMENT POSED BY THE MANY EXEMPTIONS WOULD BE HUGE UNDER THE PROPOSED LEGISLATION. (Senate Report the Commerce Committee) (All capitals in original)

- 20. It is my opinion that the knives described in HRS § 134-52(a) are not "highly unusual in society at large" and as such are protected by the Second Amendment to the U.S. Constitution as stated in *New York State Rifle and Pistol Association v Bruen.* 142 S.Ct. 2111, 2143 (2022).
- 21. The preferred term for pocket knives in the category that open automatically upon pressure applied to a button or other device in the handle (subcategory 1 in paragraph 10 above) is "automatic" knives. This is consistent with the definition promulgated by the American Knife and Tool Institute which provides:

**Automatic knife** A knife with a blade exposed in an automatic way and moved from the closed position to the open position exclusively by potential energy upon release of a restraining mechanism.

**Comments:** Automatic knife is a term used to refer to a specific knife type based on functionality. Within the knife industry, "automatic knife" is the preferred term for what is often imprecisely and pejoratively referred to as a "switchblade." The distinguishing aspect of an automatic knife is that it uses *only* stored or potential energy to move the blade, which is typically biased or "spring-loaded" to the open position and held closed by a mechanism released by a trigger. That energy becomes "stored" by compressing a spring when

manually pivoting the blade to the closed position. The only manual force involved in the automatic opening operation is applied to the release control – typically a pushbutton switch on the handle – thereby allowing the blade to move.

- 22. A patent was issued by the U.S. Patent and Trademark Office in 1892 to one George Schrade for a knife in this category. (SPECIFICATION forming part of Letters Patent No. 470,605, dated March 8, 1892 attached as **Exhibit "A"**).
- 23. At least twenty domestic entities are producing automatic knives on a commercial scale. I estimate that the annual production of automatic knives for acquisition by private individuals within the U.S. is 580,000 knives.
- 24. My observation and experience have been that the annual number of automatic knives from sources outside of the U.S. (primarily China) appears equal to, if not in excess of, domestically produced automatic knives.
- 25. I estimate that the total number of automatic knives available for individual consumers on an annual basis is at least 1,100,000.
- 26. It is my opinion that the current supply of automatic knives from all sources does not exceed the demand for such knives.
- 27. It is my good faith estimate that the universe of automatic knives privately possessed with the U.S. is at least 20 million knives.
- 28. The description of knives in the sub-category two above derives from an attempt to include folding knives that could either be "flicked" open with one

hand, opened solely by operation of gravity, or opened by gravity combined with manual manipulation.

- 29. The Supreme Court of Hawaii in *In the Interest of John DOE*, *Juvenile–Appellant* 828 P.2d 272 (1992) has recognized that manual manipulation is inconsistent with automatic operation as specified in HRS § 134-52(a).
- 30. It has been my observation and experience that many knives not designed or intended for one hand openability may be opened with only one hand using wrist action alone or in combination with gravity. This is attributed to factors ranging from the adroitness of the user to normal wear.
- 31. This same observation is mentioned in *Cracco v Vance* 376 F.Supp.3d 304, S.D.N.Y (2019) :

Under the Penal Law, possession of a gravity knife is illegal *per se*, but a gravity knife is defined by function and not design. A knife is not illegal because it is designed to open by the force of gravity and lock into place; the knife is illegal when it actually opens by the force of gravity and locks into place by means of a procedure used by the District Attorney's office to identify a gravity knife, called the "wrist flick test."

Because the wrist flick test is a functional one, it is difficult if not impossible for a person who wishes to possess a folding knife to determine whether or not the knife is illegal. For example, a customer might attempt, but fail at applying the wrist flick test on a common folding knife she wishes to purchase at a store in New York, and purchase the knife believing it is permissible because she was unable to get the knife to lock into place. Yet that same customer's consistent use of the knife might loosen a screw over time, making it capable of flicking into locked position when the wrist flick test is applied. Or, a police officer who is more adept than an ordinary customer at conducting the wrist flick test could succeed in getting the knife to lock into place in the store, and the knife could be illegal at the time of purchase without the

customer realizing. Or, one police officer who is less adept at the wrist flick test could test out the knife at the time of purchase and fail to flick it open, leading the customer to believe it is legal, even though a second police officer who is more adept at the wrist flick test might succeed at getting it to lock into place the very next day, and could arrest the customer for illegal possession.

This decision was vacated as moot as the New York Legislature repealed the gravity knife prohibition while an appeal therefrom was pending.

- 32. The U.S. Patent and Trademark office issued a patent for a pocket knife opened solely by gravity to one W.F. Rockwell in 1885. (SPECIFIC-ATION forming part of Letters Patent No. 317,208, dated May 5, 1885, **EXH. "B"**).
- 33. Pocket knives designed to be opened with one hand by gravity have been displaced by improvements in technology such as the Schrade Patent.
- 34. Souvenir Second World War German military issue knives openable with one hand by gravity were brought back to this country by returning American servicemen and were common in the post-war period.
- 35. Gravity knives were historically possessed in this country by lawabiding citizens for lawful purposes, including being armed and ready for offensive or defensive action in a case of conflict with another person.
- 36. It is my opinion that pocket knives described by HRS § 134-52(a) above are commonly and typically possessed by law-abiding citizens for lawful purposes, including being armed and ready for offensive or defensive action in a case of conflict with another person and are weapons in common use. Accordingly, it is

also my opinion that the knives described by HRS § 134-52(a) are weapons in common use.

I, Daniel C. Lawson, declare under penalty of law that the foregoing is true and correct.

DATED: Greeneville, South Carolina, January 27, 2023

DANIEL C. LAWSON

**CURRICULUM VITAE** 

# CURRICULUM VITAE Daniel C. Lawson

#### **Education:**

1983 Duquesne University School of Law – Pittsburgh, PA

Juris Doctorate

1975 Dickinson College – Carlisle, PA

Bachelor of Arts: English

### Military:

**United States Marine Corps** 

1975-1979 Active Duty

1979-1988 Active Reserve

Rank at time of Honorable Discharge: Major

### **Employment:**

1981-2015 Meyer, Darragh, Buckler, Bebenek & Eck

Pittsburgh, PA

Practice included legal representation of various

knife industry clients and knife purveyors regarding applicability of State and Federal

criminal law to knives.

2015 -2018 Microtech Knives, Inc. Mills River, NC

General Counsel

2018- Consultant to Knife Industry and expert witness

#### **Affiliations:**

1999- American Knife and Tool Institute (AKTI)

- Contributing Legal Counsel
- Authored and developed:
  - Brochure entitled "Understanding Knife Laws."
  - Standard definitions for several types of knives and knife law terms entitled "AKTI Approved Knife Definitions."
  - Article entitled "Understanding Bias
     Towards Closure" as that term appears in
     the 2009 Amendment to the Federal
     Switchblade Act and other State laws.
     Judicial Notice taken In Re Gilbert 149
     Cal. Rptr. 3d 608 (2012)
  - Website Summaries of all 50 states entitled "United States Knife Laws by State" as appears on the AKTI.org website.
  - "AKTI Protocol for Measuring Knife Blade Lengths"
  - Amicus Curiae brief Supreme Court of California, People v. Castillolopez (2016)
  - Monthly articles under the heading "Know Your Knife Laws for <u>Knife</u> <u>Magazine</u>

### **Legislative Appearances:**

2012	- Testimony before Louisiana State Senate Judiciary Committee regarding amendment to weapon possession law (enacted)
2015	- Testimony before Nevada State Senate Judiciary Committee regarding amendment to knife law (enacted)
2015	- Testimony before Maine Joint Judiciary Committee regarding amendment to knife law (enacted)

### **Published articles:**

Knife Magazine

Concerning Concealment - February 2020

Brandishing a Knife – March 2020

Is There a 50-State Legal Knife? – April 2020

The Misunderstood Dirk – May 2020

Vagueness – June 2020

Affirmative Defenses – July 2020

The Elusive Stiletto – August 2020

Driving While in Possession of a Knife – September 2020

Circumstances of Possession – October 2020

Knives as Arms – November 2020

Collectors – December 2020

Preemption Law and Knives – January 2021

Tools or Weapons – February 2021

The Federal Switchblade Act-Is it Constitutional? – March 2021

The Bowie Knife Frenzy – April 2021

Age-Based Knife Laws – May 2021

The Unwelcome Butterfly – June 2021

The Useful Sword Cane – July - 2021

A Century of Puzzlement – August - 2021

Knives in Outdoor Pursuits – September - 2021

A Gravity Knife by Any Other Name – October 2021

The Long and Short of it- November 2021

Steak Knives and Statistics – December 2021

Knife Laws Scrutinized – January 2022

The Other Part of the Iceberg – February 2022

The Uncommon and Extraordinary Pocket knife - March 2022

School and Knife Laws – April 2022

FSA- A Huge Problem Foreseen – May 2022

Daggers by Design or Description – June 2022

The Pocket Clip Conundrum – July 2022

Bruen Decision- A First Glance – August 2022

Swords and Sensibilities – September 2022

Exceptionality – October 2022

Location – Location: Sensitive Spaces - November 2022

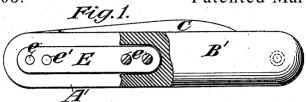
The Everyday Knife – December 2022

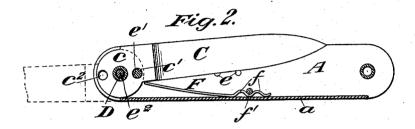
The Toy That Would Not Be Killed – January 2023 Uncertainty in New Jersey – February 2023 (No Model.)

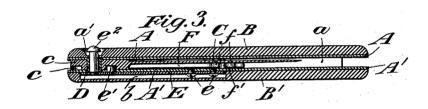
## G. SCHRADE. POCKET KNIFE.

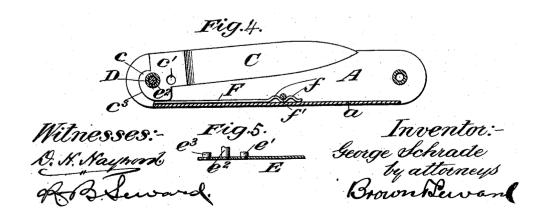
No. 470,605.

Patented Mar. 8, 1892.









## UNITED STATES PATENT OFFICE.

GEORGE SCI-IRADE, OF NEW YORK, N. Y., ASSIGNOR TO GOTTLIEB SCHRADE, OF SAME PLACE.

#### POCKET-KNIFE.

SPECIFICATION forming part of Letters Patent No. 470,605, dated March 8, 1892.

Application filed December 4, 1891, Serial No. 413,980, (No model.)

To all whom it ~mayconcern:

Be it known that I, GEORGE SCHRADE, of New York, in the county and State of New York, have invented a new and useful Improvement in Pocket-Knives, of which the following is a specification.

My invention relates to an improvement in pocket-knives in which provision is made for the automatic opening of the blade when released and for locking the blade in both its open and closed adjustment.

A practical embodiment of my invention is represented in the accompanying drawings,

in which-

Figure 1 is a view of the knife in side elevation, a portion of the mounting being removed to show the locking and releasing spring. Fig. 2 is a longitudinal sectional view taken in the plane in which the blade
swings. Fig. 3 is a transverse longitudinal section. Fig. 4 is a longitudinal section showing the blade provided with cam-bearing for the actuating-spring, and Fig. 5 is a view in detail of the locking and releasing spring employed in connection with the form of shank shown in Fig. 4.

The sides of the casing are represented by A and A', and its back by a. The sides and back are preferably formed of a single piece 3° of metal. The mountings B and B' may be of pearl, bone, wood, or any other suitable material.

The blade is represented by C, and its shank by c. The ring c of the blade is pivotally se35 cured in position between the sides of the casing by a hollow pivot D. The shank c is provided with recesses c' and c², located upon opposite sides of the pivot D and adapted to receive a locking-pill, the one c' to hold the

40 blade closed and the other  $c^2$  to hold it open. The recesses c' and  $c^2$  are here shown as circular; but it is obvious that they might be oval or any desired polygonal shape in cross-section.

A locking-spring, consisting of a plate or bar spring E, is secured at one of its ends to tlie side of the casing, as shown at e, its opposite end being provided with a stude, adapted to project through the side of the cases ing and into the one or the other of the re-

cesses c' or  $c^2$ , according as the blade is closed or open. The spring E is further provided with an operating pin  $e^2$ , which projects through the hollow pivot D into a recess a', formed in the mounting B and in such position that it may be pressed upon by the finger to throw the spring E away from the side of the casing, and thereby withdraw the stud e' from the recess in the shank of the blade. The mounting B' is provided with a recess b 60 to permit the movement of the free end of the spring E away from the side of the casing.

The actuating-spring for throwing the blade when released from its, closed to its opened position is represented by F in Bigs. 1, 2, 3, 6s and 4. It consists of a bar-spring having one of its ends at the inner face of the back of the casing bent to form a pair of ridges f, between which a stud or pin f' extends transversely across the casing, and thereby secures 70 the spring in position. The free end of the spring bears against the under side of the shank of the blade, as clearly shown in Fig. 2, its tension being exerted in a direction to throw the blade up from the casing and over 75 into an extended or open position.

In the form shown in Fig. 4 the shank of the blade is provided with a cam-face  $c^3$ , along which the free end of the actuating-spring F rides as the blade C swings open, the spring 80 itself when the blade is full open having a tendency to keep it open. In this form, where the shank is cut away to form the cam-face, I fiud it desirable to provide only one recess c' for the reception of the locking-stud on the 85 spring and to provide the spring with an additional locking-stud  $e^S$ , (see Fig. 5,) which when the blade is swung full open is received into the same recess c' in the shank of the blade which receives the locking-stud b' when gc the blade is closed.

While I have shown a single blade secured to one end of the casing, it is obvious that another blade might be similarly secured at tho other end of the casing and operated in a manner quite similar to that shown and described with respect to the blade C.

What I claim is—

adapted to project through the side of the casso ing and into the one or the other of the repivoted blade, and its actuating-spring tend2 470,605

justment, and the push-pin located within the 5 pivotal connection of the blade, with the casing for operating the locking-spring, substantially as set forth.

2. The combination, with the casing, the blade pivoted therein, provided with a cam-10 surface on its shank, and the blade-actuating spring having an engagement with the cam-

ing to throw the blade open, of a locking-spring having an engagement with the shank of the blade to lock it in closed and open adwith studs, one in position to engage the blade when closed and the other in position to en- 15 gage the blade when open, and a push-pin located within the pivotal connection with the blade and the casing, substantially as set forth. GEORGE SCEIRADE.

Witnesses:

FREDK. HAYNES, C. E. SUNDGREET. It is hereby certified that in Letters Patent No. 470,605, granted March 8, 1892, upon the application of George Schrade, of New York, N. Y., for an improvement in "Pocket-Knives," an error appears in the printed specification requiring correction as follows: In line 3, page 2, the comma after the word "blade" should be stricken out and that the said Letters Patent should be read with this correction therein that the same . may conform to the record of the case in the Patent Office.

Signed, countersigned, and sealed this 15th day of March, A. D. 1892.

[SEAL.]

CYRUS BUSSEY,

Assistant Secretary of the Interior.

Countersigned:

W. E. SIMONDS,

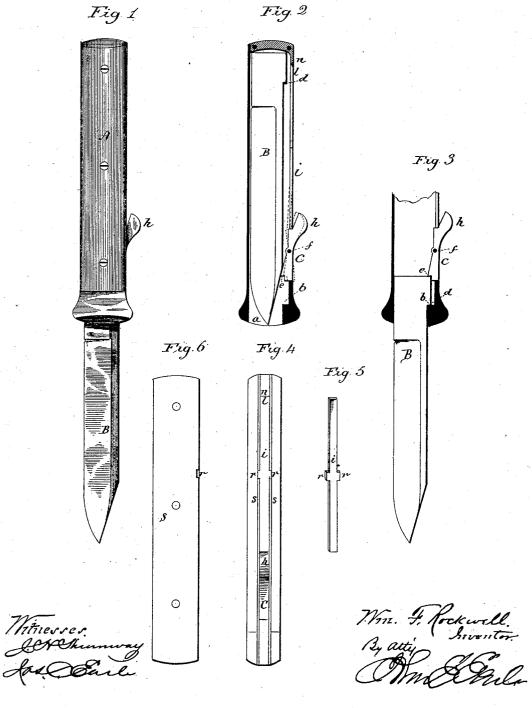
Commissioner & Patents.

(Model.)

# W. F. ROCKWELL. POCKET KNIFE.

No. 317,208.

Patented May 5, 1885.



N. PETERS. Photo-Lithographer, Washington, D. C.

## United States Patent Office.

WILLIAM F. ROCKWELL, OF MERIDEN, CONNECTICUT.

#### POCKET-KNIFE.

SPECIFICATION forming part of Letters Patent No. 317,208, dated May 5, 1885.

Application filed March 16, 1885. (Model.)

To all whom it may concern:

Be it known that I, WILLIAM F. ROCKWELL, of Meriden, in the county of New Haven and State of Connecticut, have invented a new Improvement in a Tubular-Handle Knife; and I do hereby declare the following, when taken in connection with accompanying drawings and the letters of reference marked thereon, to be a full, clear, and exact description of the same, and which said drawings constitute part of this specification, and represent, in—

Figure 1, a side view of the knife with the blade thrown out; Fig. 2, a sectional view of the handle, showing side view of the blade as within the handle; Fig. 3, the same showing the blade as thrown out; Fig. 4, a view of the back of the handle; Fig. 5, a perspective view of the spring; Fig. 6, a side view of the lining, showing the arrangement of the spring therein.

This invention relates to an improvement in that class of knives in which the blade is constructed to be moved longitudinally into the handle when not required for use, or thrown longitudinally outward to open the blade.

In the usual construction of this class of knives a latch of some character is necessary to hold the blade in its extreme positions. It is to the construction of the latch that my invention particularly relates; and it consists in the construction and arrangement of the latch and its spring, as more fully hereinafter described, and particularly recited in the claims.

and particularly recited in the claims.

A represents the handle, which may be of any desirable shape or style, according to the purpose for which the knife is intended.

The illustration shows the construction applied to a dirk-knife. The handle is closed upon all sides, but at the bolster end is open, as at a; B, the blade adapted to work through the opening a, and so as to stand entirely within the handle, as seen in Fig. 2, or be moved outward as seen in Fig. 3, for use. Upon the inside, at the bolster end, is a shoulder, b, against which a corresponding shoulder, d, on the blade will rest when the blade is in its out position, as seen in Fig. 3.

C is a latch hinged to the handle, and so that when the blade is in its extreme out position its nose e will engage the shank of the blade and hold the blade firmly in its out position and prevent its accidental return. The latch is hung upon a pivot, f, and from that

side of the pivot opposite the nose the latch extends outward to form a convenient handle, h, upon which the thumb may be placed to 55 depress the latch, as indicated in broken lines, Fig. 2. In the back of the handle, in rear of the latch, a spring, i, is arranged. This spring is constructed as seen in Fig. 5, and so that its rear end, l, may stand beneath a lug, n, in the 60 handle, as seen in Fig. 2. Midway between its rear and forward ends the spring is constructed with a lateral projection, r, upon each side, and the lining s of the handle is constructed with corresponding recesses, into which the 65 said projections will rest, as seen in Fig. 6. The spring extends forward beneath the handle h of the latch, and so as to hold the handle outward with the nose inward against the blade, but yet so as to yield under pressure 70 upon the handle, as indicated in broken lines, Fig. 2, to take the latch out of engagement with the blade, and when so out of engagement with the blade the blade may be thrown out, and when so thrown out, the latch re- 75 leased, the spring will throw the latch into engagement with the blade, and so as to hold it in its out or extended position, or when re-turned into the handle the nose of the latch also engages the back of the blade to hold it 80 in that closed position, and as seen in Fig. 2. This construction of latch and spring is simple and cheap, as the spring may be cut from a strip of sheet-steel. The latch is in a convenient position for operation, and not liable to 85 derangement.

The spring may be supported in the handle in the usual manner of supporting knifesprings, its free end extending beneath the handle end of the latch, as shown.

I claim-

1. The combination of a tubular handle open at one end, a blade adapted to slide longitudinally in said handle, the handle and blade each constructed with a shoulder to arrest the blade when thrown to its out position, the latch C, hung in the back of said handle and at the back of the blade, the nose of said latch adapted to engage the blade in either its out or in positions, with the spring *i*, arranged in the lock of the handle, its rear end supported beneath a lug in the handle, and constructed with lateral projections *r*, and the lining of the handle with corresponding recesses to re-

2 317,208

ceive said projections and form a support for said spring, the said spring extending beneath the latch in rear of its pivot, substantially as described.

2. The combination of a tubular handle open at one end, a blade adapted to slide longitudinally in said handle, the handle and blade each constructed with a shoulder to arrest the blade when thrown to its out position, the latch C, 10 hung in the back of the handle and at the

back of the blade, the nose of said latch adapted to engage the blade in either its out or in positions, with the spring *i*, arranged in the back of the handle, the said spring extending beneath the latch in rear of its pivot, substantially as described.

WILLIAM F. ROCKWELL.

Witnesses:

GEO. B. STEVENS, J. H. CHARLTON.