



Silicon Valley Libertarians Cling to Their Guns: "Gun Control is Technology Control"

By: Sarah Lai Stirland - February 19, 2013

Gene Hoffman is standing in the middle of his sunny corner office in Belmont, California, and he's showing me his AR-15.

If California State Senator Leland Yee had his way, Hoffman could get arrested for this. In 1989, the California legislature passed a law banning semi-automatic rifles like the AR-15 on the basis of a combination of features such as pistol grips and telescoping lenses. But Hoffman and some other gun enthusiasts scrutinized state regulations and found a way around the legal code in 2007 by creating a button that fixes magazines in place. That theoretically renders a rifle legal because its magazine could then not be detached without using a tool, as required by state law. Gun owners could still rapidly reload with this button in place, because all they have to do is poke it with the tip of a bullet to unlock empty magazines. Last year, Yee floated a bill that would add button-equipped guns to a list of banned weapons.

So when I asked Hoffman to explain the device — a controversial add-on called the "bullet button" — he didn't have to close his office door before pulling the seven-pound Lauer LCW-15, unloaded, from a large rectangular case on the floor. He did anyway — "Just so I don't alarm anyone," he said.

Hoffman, an affable Silicon Valley entrepreneur, speaks rapidly and logically, and his hands whiz expertly around the weapon as he attaches the lower receiver into the rest of the gun. At 38, he is the CEO of Vindicia, a digital subscription payments processing firm. But he's also chairman of the non-profit Calguns Foundation, which is part of a national network of gun-rights activists that are defending Second Amendment rights in court and fighting legislative battles in statehouses.

At first, this does not compute. In the wake of the Sandy Hook Elementary School tragedy in Newtown, Conn., gun control is emerging as a presidential priority. This push could be a successful one for progressives — perhaps one of the last battles of the culture wars. Silicon Valley money filled President Barack Obama's campaign coffers last year. San Francisco is an epicenter for progressive social causes, and there's an effort there to bring technology types into the gun control fight on the side of increased regulation. Yet here's Hoffman, in the offices of his tech company, describing Second Amendment issues in libertarian terms of a piece with copyright and encryption. His allies have been scoring incremental victories against gun control for years. Meanwhile, people who say they're for gun control are not giving as much money, not engaging as much with their lawmakers, and generally not taking as much action to push for new gun control legislation, according to a recent report from the Sunlight Foundation and a survey from the Pew Research Center for the People and the Press.

I am in Hoffman's office to understand how he, and Calguns, have come to sit at the center of a network of activists that are baffling efforts to roll back the nation's gun culture and stem the spread of deadly assault weapons. Here is what I found out.

"It's weird for me to hear about technologists in the wake of Sandy Hook saying that we should ban guns -- gun control is simply technology control," Hoffman says. "The only difference between this and my grandfather's one is that you can fire more rounds. Anything that can be used defensively can be used offensively."

The stakes of this fight are demonstrably higher and public attention more focused, but Hoffman draws parallels between the current gun control fight and past battles over public-key encryption, the powerful cryptography technology that federal authorities sought for a time to prevent U.S. companies from exporting, but is now ubiquitous. He also likens it to the fight over file-sharing, in which companies like Napster may have lost their battles, but digital music won the war.

Prior to Vindicia, Hoffman was CEO of eMusic, an early precursor of iTunes. He jokes that lawmakers saw him and his colleagues at eMusic as professional music pirates when they first started out. But what they were trying to do was to provide a legitimate alternative to what was illegally available over the file-sharing networks. Similarly, he spent the early part of his career watching federal law enforcement authorities try to prevent the export of encryption software to no avail.

As author Steven Levy recounts in his book *Crypto*, Phil Zimmerman, who created the encryption software Pretty Good Privacy or PGP, was convinced that encryption is fundamental to human rights because it has the capability of protecting activists' communications from oppressive governments. Meanwhile, the U.S. government treated cryptography tools as strategic weapons of war and wanted to limit other countries' access thereto. They lost that battle when some of Zimmerman's friends uploaded copies of PGP 2.0 onto the Internet from Amsterdam and Auckland.

As with file-sharing networks and encryption, it's not the technology of guns that should be regulated, but the behavior of those using the technology, Hoffman argues.

"We have the freedom to use technology: We don't have the right to use it the wrong way, but we do have the right to use it the right way," Hoffman says.

This isn't just the ideology of a Silicon Valley libertarian. A North Carolina native, Hoffman owns 17 guns. He founded Calguns with some gun-owning friends in 2007, after the California Department of Justice tried to take Californian Benjamin Cannon's guns away.

That year, the California DOJ seized 228 AR-15 gun parts that Cannon had bought from RMB Enterprises, a dealer in Milpitas. The DOJ argued that the dealer wasn't storing the parts securely as required by law, and that in addition, Cannon had no license to re-sell those parts, which is what he intended to do. At around the same time, the Los Angeles Police Department also arrested Matt Corwin, a gun owner in Los Angeles, for owning too many assault rifles, though they didn't technically fall into that legal category. That led to several pleas for help

among online gun owners, who went on to raise \$47,000 within a month for Corwin's legal defense.

"I got fed up of people complaining about having their guns taken away from them," Hoffman says. So after the online fundraising episode, and the frequent questions from gun owners online about the legality of various law enforcement actions against them, Hoffman and a few friends established Calguns as a resource center with a wiki, and a strategic litigation shop, filing lawsuits on behalf of gun owners and dealers to define the extent of their rights under the Second Amendment.

Hoffman has had to defend his own guns, too. A state-level grassroots group called the Firearms Policy Coalition spent most of last year lobbying against California State Senator Leland Yee's bill to ban the "bullet button." In response, activists, among other things, placed billboards along Highway 101 with the slogan "No Yee Can't."

In the wake of the shootings at Sandy Hook Elementary School, the Firearms Policy Coalition relaunched itself online on Christmas Day, embarking on a new digital outreach strategy in which its members used digital platforms to recruit new members in other states. Among other ideas, the coalition planned to form a policy communications network to update members on new developments in state and local lawmaking.

The original coalition was really Calguns, the California Association of Federal Firearms Licensees, and a couple of groups controlled by longtime Second Amendment political operative Alan Gottlieb. It has expanded to include gun rights groups in Florida, Hawaii, Illinois, Massachusetts, New Jersey, Texas and West Virginia.

Unlike the higher-profile professional lobbying groups Mayors Against Illegal Guns on the other side and the National Rifle Association, the firearms coalition hasn't yet made big television ad buys this year and isn't making constant headlines. But its members seemed to be showing up in large numbers on platforms such as the congressional bill tracking and contact service PopVox, where they opposed the many pieces of gun control legislation members of Congress began introducing after Newtown.

By certain measures, their digital volume is drowning out gun control advocates. The coalition's two-month-old Facebook page has 81,318 likes compared to the 32,101 fans of Mayors Against Illegal Guns' Demand A Plan page. On PopVox, the picture is mixed: 4,719 people support the Firearms Policy Coalition's sponsored general declaration of the principle of protecting Second Amendment rights, but 58,572 people support Demand A Plan's sponsored page advocating for "common sense" gun control legislation. Nevertheless, many of the gun control measures on PopVox seem to face more opposition than support.

"I have made it a point to note to our members that our job is not to preach to the choir," says Brandon Combs, the coalition's managing director, in a phone interview. "Our job is to keep the choir singing, and we have to bring folks in to the conversation. Going to gun shows and ranges are important, but I really want them going to dry cleaners and coffee shops."

As I sit with Hoffman in his office it becomes clear to him that I am not a part of the choir. When I nervously ask him to pose for a picture, he is more than happy to oblige.

"It's okay," he explains, trying to reassure me as he sits down with the weapon in hand, "it's normal!"

As a variant of the AR-15, the LCW-15 rifle Hoffman was holding in his office is a relative of the Bushmaster .223 that Adam Lanza wielded as he killed 20 kindergartners and six adults at Sandy Hook Elementary. An AR-15 variant was also in James Holmes' arsenal in July, when he walked into a movie theater in Aurora, Colo., and killed 12 patrons there to watch the film "The Dark Knight." Spurred by these events, lawmakers — including Sen. Dianne Feinstein, Democrat of California — have pushed recently to renew the lapsed federal ban on assault weapons. Vice President Joe Biden is scheduled to speak on gun control on Feb. 21 a short drive away from Sandy Hook Elementary.

This new search for energy behind gun-control efforts comes after a series of recent setbacks. In 2008, a Supreme Court ruling prevented lawmakers from outright bans on weapons "in common use at the time" — including guns — at home for self-defense. A subsequent decision called *McDonald v. Chicago* established that the decision applies across all 50 states. The 2008 ruling simply said that it's unconstitutional to ban individuals from owning guns at home for self-defense, but they didn't provide any more details on what the limits on the Second Amendment might be.

For a while, gun control advocates used the courts to try to place liability for shooting deaths on gun manufacturers. But a law enacted in 2005 ended up shielding manufacturers from those kinds of suits. And the 2008 Supreme Court ruling, *Washington, D.C. v. Heller*, followed by the court's subsequent decision in *McDonald v. Chicago*, signaled a tidal shift.

"Those were the two big ones that opened up the floodgates," says Gottlieb, the Second Amendment Foundation's founder and executive vice president, "and now there are a lot more suits being filed on the local level."

According to the gun control advocacy group the Law Center to Prevent Gun Violence, federal courts have issued more than 600 decisions on Second Amendment related cases since the Heller decision in 2008. These challenges surround questions about the nature of gun ownership: Should convicted domestic abusers be able to own guns? Should people be allowed to carry guns on college campuses, or in national parks? Should military, "assault"-type weapons and large capacity ammunition magazines be widely available? Do Americans have the right to carry hidden loaded handguns in public without any specific reasons, such as fear of an imminent danger to their lives?

Gun owners might credit those two initial victories to Alan Gura, a libertarian legal hero and the lawyer who sued on behalf of gun owners in both of those landmark court cases. But they could also credit Gura's fiscal sponsor: Gottlieb's Second Amendment Foundation.

With the legal doors open for gun-rights advocates like Hoffman's colleagues at Calguns, they are newly organized to take advantage. Not everyone agrees with this set of tactics, of course. On

Calguns.net, the group's online forum, one poster complained that gun owners are always in court filing lawsuits from a defensive posture. Hoffman chimed in to argue the reverse.

"In court we go on the offensive and, unlike in the legislature, we get to craft our challenges very, very carefully," he wrote.

He continued:

Everyone wants the offense to move faster, but it took 45 years to undermine our rights ... and it's taken far less months to start expanding them. As to why no bills - we can't get them out of committee. Wasting time wastes money. That money and time can be better spent beating back laws and regulations in courts. It's how we'll secure our rights.

Behind the scenes, in the shadow of congressional hearings and National Rifle Association press conferences, people like Hoffman are engaged in an ongoing battle to roll back efforts at gun control. But they say they're not of the same mind as their flashier fellow travelers in principle as well as methodology.

"We are asking no more or no less than what the civil rights movement was asking America in the 1960s and 1860s," says Combs, Calguns' managing director. "We have a fundamental right of self-defense, and that's enshrined in the Constitution, and that should be respected by the federal government, and right now in California, and in New Jersey, it's simply not."

In contrast to high-handed rhetoric from the NRA's Wayne LaPierre, the Calguns ilk take a softer line on regulation and safety.

"I think simply being an ostrich and saying the day is never going to come [for universal background checks] isn't forwarding the conversation," Combs told me.

He thinks the government could make the background check system easy through by extending access to federal databases through mobile phone apps.

"Buyers would put their info in it, get a 16-digit PIN, meet with a private seller, and they have a responsibility to go into the system and check the information. The PIN would have a 24-48 hour shelf life, and they'd check to see if the buyer really is who they say they are. If the PIN clears, and they've followed the law, they'd be removed from any liability," Brandon explains.

Jon Callas, a gun owner, former member of the NRA, a co-founder of PGP and its former chief technical officer, agrees. He's now digital security firm Entrust's chief technical officer, and he professes himself to be a follower of the liberal gun control skeptic Don Kates.

"I will point out that guns are not ipso facto good or bad," he said in an interview. But like the crypto wars, he says, in the debate on guns, the cat's out of the bag. According to production statistics from the NRA, there are 300 million guns in the United States. Yet, Callas notes, lawmakers who are in favor of gun control are still "screaming about the bag."

On Tuesday, the attorneys general for 20 states, the libertarian Cato Institute and several other groups filed friend-of-the-court briefs with the Supreme Court in *Kachalsky v. Cacace*, a Second Amendment Foundation-backed lawsuit against Westchester County in New York.

Alan Gura, the libertarian litigator, early this January asked the high court to hear an appeal of a lawsuit against the county for enforcing a state law that requires handgun owner permit applicants to demonstrate that they need a gun. (They need to prove that their lives are in imminent danger, for example.)

The Firearms Policy Institute posted an update on the development on its Facebook page with "***NEWS ALERT***" in bright orange letters.

The post was shared 1,313 times, and 1,357 people on Facebook 'liked' it.

Tommy Risi, who lists himself as an auxiliary police officer at the New York City Police Department, applauded the news: "I hope we get a favorable ruling -- AND SCREW YOU MICHAEL BLOOMBERG!"

People like Risi will have another tool at their disposal soon. The Firearms Policy Coalition is preparing to launch a custom iOS/Android app that will push updates, offer sharing tools, include event invitations and calendar integration, and a secure donation platform.

"They have access to tens of thousands of people, and they can activate them at a moment's notice," confirms Adam Keigwin, chief of staff for California State Senator Leland Yee, the Democrat who's authored numerous gun-control bills.

"Even though every national public opinion poll shows that Americans are in favor of more gun control legislation, these supporters have traditionally been quieter, and we're trying to get them to speak up."