

The Washington Post

Paris attacks spark new GOP debate about privacy and spying

David Weigel and Jose A. DelReal

November 19, 2015

Sen. Rand Paul's (R-Ky.) speech at George Washington University started with a familiar pitch. The crowd, around 150 undergrads invited by "Students for Rand," were invited to join the "leave us the hell alone coalition," and told that liberty retracted whenever government expanded. Suddenly, Paul addressed the elephant in the room.

"There is a danger, in this war on terrorism, that we give up the very liberty that separates us from them," Paul said. "When they stand up on television and say, the tragedy in Paris means you have to give up your liberty, we need more phone surveillance -- bullshit!"

The students burst into applause, and Paul briefly covered his mouth, as if the wrong word had escaped. Obviously it hadn't.

"Are we in a free speech zone?" Paul joked.

Since he arrived in the Senate in 2011, Paul has become Washington's foremost Republican civil libertarian. He led filibusters of the Patriot Act's renewal; he described government secrets leaker Edward Snowden as a participant in "civil disobedience" while most Republicans were calling him a traitor. Talk like that earned him the sobriquet of "the most interesting man in politics." It also led critics to predict that Paul and fellow surveillance critics could take blame if terrorists struck on American soil.

"He should be in front of hearings, in front of Congress, if there's another attack," said New Jersey Gov. Chris Christie, a rival for the Republican presidential nomination, this summer.

The Paris attacks have started that debate anew. While France's president François Hollande calls for more domestic surveillance in his country, CIA Director John Brennan criticized "handwringing over the government's role in the effort to try to uncover these terrorists." Sen. Tom Cotton (R-Ark.), a freshman who entered politics after criticizing national security leaks to

the New York Times, introduced a Liberty Through Strength Act to delay some NSA reforms, telling reporters that the aftermath of a terror attack was "not the time to sacrifice our national security for political talking points."

Paul's other rivals have clambered past each other to present the toughest crackdown on terrorism, and assign blame to anyone who might prevent it. "What happened in Paris could happen in an American city at any time," Rubio said this week at a Wall Street Journal forum. "At least two of my colleagues in the Senate aspiring to the presidency, Sen. [Ted] Cruz in particular, have voted to weaken the U.S. intelligence programs just in the last month and a half. And the weakening of our intelligence-gathering capabilities leaves us vulnerable."

On Thursday, the unnamed "colleague" -- Paul -- dismissed Rubio's critique.

"If Marco Rubio spent more time in the Senate doing his job, he might understand that that program is still in existence," Paul snarked in a pre-speech scrum with reporters. "The bulk collection of phone data still goes on, so when people like him say, 'Oh just give up your liberty and you'll be secure and we have to give up more liberty' -- we already do the bulk collection program, it hasn't stopped."

The circumstances of the Paris attacks, and the recent politics of surveillance, gave Paul more running room than some analysts might have guessed. Some campaign groups have used the Paris attacks to attack surveillance critics; this week, the National Republican Senatorial Committee attacked former senator Russ Feingold (Wis.) anew for his 2001 vote against the Patriot Act. (Feingold is seeking his old seat in the 2016 election.)

But since 2001, and especially since Snowden's revelations about bulk metadata collection, Congress's privacy coalition has grown to include most Democrats and a large minority of Republicans. The USA Freedom Act, the bill that Cotton seeks to delay implementation of, was the compromised culmination of a years-long reform push. Most current members of Congress are now on record for some sort of limits on metadata collection.

"Frankly I think the speed with which surveillance hawks leapt ahead of the facts -- blaming everything from Snowden to encryption to surveillance reforms that haven't even taken effect yet -- is likely to backfire," said Julian Sanchez, a senior fellow at the libertarian Cato Institute who studies privacy issues. "It's so clearly reflexive and not grounded in any kind of concrete evidence about this specific case. Playing on people's fears to shut down debate was a pretty effective strategy for many years after 9/11, but I think we saw in the debate over the USA Freedom Act that it's lost a lot of its effectiveness."

In interviews Thursday, the coalition that had voted with Paul on surveillance reform was generally unmoved. "I'm opposed to the mass surveillance on suspicion-less Americans," said Rep. Jason Chaffetz (R-Utah), the chairman of the House oversight committee and a USA Freedom Act supporter. "I think that's a good ground to be on. That's where we are as a country."

Sen. Ron Wyden (D-Ore.), whose questions about metadata collection gained force after the Snowden leaks, said that Brennan's post-Paris talk was baseless. Independent analysts determined that metadata collection did not lead to significant intel breakthroughs.

"What I'm trying to do is kind of stick the facts," said Wyden. "The passions of this moment are completely understandable. Once again, we have seen innocent people murdered. We stand with the French in the effort to defeat -- not just contain, but defeat -- ISIL. But you have to be careful about kneejerk policies which, at a time when Americans want both safety and liberty, don't help you with either."

Privacy advocates may also argue that France had, and did not properly use, tools that could have prevented last week's killings. Abdelhamid Abaaoud, the alleged "mastermind" of the Paris attacks, had given an interview to the Islamic State's magazine about the ease with which he infiltrated France. No new metadata collection was necessary -- his intentions, if not his plans, were in plain sight almost a year beforehand.

"In Paris, in France, they have bulk collection on steroids," Paul told reporters Thursday. "They have a bulk collection program a thousand times more invasive than ours and it didn't predict the attack. So the thing is, how much liberty does Marco Rubio want us to give up before we're going to be safe?"