

JAMES CLAPPER HAILS CHECKS AND BALANCES WHILE TREATING OVERSIGHT “TOO CUTE BY HALF”

I’ve been citing bits of this interview between James Clapper and Andrea Mitchell here and there, but the whole thing needs to be read to be believed.

But the quick version is this. Mitchell asks Clapper whether “trust us” is enough, given that some future President or Director of National Intelligence might decide to abuse all the programs in question. Clapper responds by celebrating our constitutional system’s checks and balances.

ANDREA MITCHELL:

The president and you and the others in this top-secret world, are saying, “Trust us. We have your best interests, we’re not invading your privacy, we’re going after bad guys. We’re not going after your personal lives.” What happens when you’re gone, when this president or others in our government are gone? **There could be another White House that breaks the law.**

There could be another D.N.I. who does really bad things— we listened during the Watergate years to those tapes. With the President of the United States saying, “Fire bomb the Brookings Institution.” You know, what do you say to the American people about the next regime who has all of these secrets? Do they— do they live forever somewhere in a computer?

JAMES CLAPPER:

No, they don't live forever. That's a valid concern, I think. You know, people come and go, presidents come and go, administrations come and go, D.N.I.'s will come and go. But **what is, I think—important about our system is our system of laws, our checks and balances.**

You know, the— I think the founding fathers would actually be pretty impressed with how— what they wrote and the organizing principles for this country are still valid and are still used even in you— to— to regulate a technology then, they never foresaw. So that's timeless. That— those are part of our institutions. Are there people that will abuse those institutions? Yes. But we have a system that sooner or later, mostly sooner these days, those misdeeds are found out. [my emphasis]

But when, earlier in the interview, Mitchell asks him about his lie to Ron Wyden, here's how he answered.

ANDREA MITCHELL:

Senator Wyden made quite a lot out of your exchange with him last March during the hearings. Can you explain what you meant when you said that there was not data collection on millions of Americans?

JAMES CLAPPER:

First— as I said, I have great respect for Senator Wyden. **I thought, though in retrospect, I was asked— “When are you going to start— stop beating your wife” kind of question, which is meaning not—answerable necessarily by a simple yes or no.** So I responded in what I thought was the most truthful, or least untruthful manner by saying no.

And again, to go back to my metaphor.

What I was thinking of is looking at the Dewey Decimal numbers— of those books in that metaphorical library— to me, collection of U.S. persons' data would mean taking the book off the shelf and opening it up and reading it.

ANDREA MITCHELL:

Taking the contents?

JAMES CLAPPER:

Exactly. That's what I meant. Now—

ANDREA MITCHELL:

You did not mean archiving the telephone numbers?

JAMES CLAPPER:

No.

ANDREA MITCHELL:

Let me ask you about the content—

JAMES CLAPPER:

And this has to do with of course somewhat of a semantic, perhaps some would say too— **too cute by half**. But it is— there are honest differences on the semantics of what— when someone says "collection" to me, that has a specific meaning, which may have a different meaning to him. [my emphasis]

I'm grateful that Clapper himself describes this ploy as "too cute by half," because I've been struggling for a description that didn't involve potty mouth words.

Nevertheless, the semantics at issue have nothing to do with the word "collection" (except in a way I'll describe in a follow-up post). Rather, it has to do with the definition of "data." Elsewhere, Clapper is clinging to the fact that the Section 215 er, um, collection involves "just metadata." And yet here, when

asked specifically about “any type of data,” Clapper pretended that data meant content.

Mitchell then went on to ask Clapper about whether the rest of Congress had been adequately informed about the NSA programs, and he responded, in part, by pointing the important role the Intelligence Committees serve in that process.

ANDREA MITCHELL:

Do they— do they know what they’re voting on?

JAMES CLAPPER:

I— I trust so. Obviously, our primary congressional interlocutors are— are two Intelligence Oversight Committees, both in the House and the Senate.

Remember, he has just said that he treats the Intelligence Committees, his primary congressional interlocutors, as “too cute by half.”

Which brings us to the point, much later in the interview, when the man who explains away his lies to his primary interlocutors in Congress as “too cute by half” semantics, admits how important personal trust is to keeping secrets.

ANDREA MITCHELL:

And are new procedures being put in to try to protect against this flow of leaks?

JAMES CLAPPER:

Well, we’ve— we’re constantly trying to institute new procedures. I’m in the process of attempting to institute some practices and policies that will try to stem the hemorrhage of— leaks, leaking that we’ve— we’ve had in recent years. But this is a tough problem because when it boils down to it, we operate, even though we have clearances and we have skiffs and— and secure areas, when it

all boils down to it, it's all about personal trust.

And we've had violations of that personal trust in the past and we will continue to have them. And all we can do is learn lessons from what we— when we find out what caused— a revelation like this and make improvements and go on.

James Clapper, who has treated an important check on his power as “too cute by half”—and with it, effectively misinformed Congress and the American people, making it impossible for elections to serve as another of those checks our founders laid out—now wonders why someone violates the personal trust of a security agreement.

Congress, especially the members of the Intelligence and Judiciary Committees who have voted against key limits on these powers, are clearly complicit in these programs.

But before you even get there, you're at the point where Executive Branch officials have bypassed the checks and balances of our Constitution by engaging — by James Clapper's own admission! — in “too cute by half” semantic games to keep Congress and the public misinformed.

Well before you get to the violation of the personal trust of a security clearance, you've got these lies masquerading as cute semantics. No wonder we have leaks.