



Letter to the New York Times Editor from ODNI General Counsel Robert Litt

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To the Editor:

“Edward Snowden, Whistle-Blower” (editorial, Jan. 2) repeats the allegation that James R. Clapper Jr., the director of national intelligence, “lied” to Congress about the collection of bulk telephony metadata. As a witness to the relevant events and a participant in them, I know that allegation is not true.

Senator Ron Wyden asked about collection of information on Americans during a lengthy and wide-ranging hearing on an entirely different subject. While his staff provided the question the day before, Mr. Clapper had not seen it. As a result, as Mr. Clapper has explained, he was surprised by the question and focused his mind on the collection of the content of Americans’ communications. In that context, his answer was and is accurate.

When we pointed out Mr. Clapper’s mistake to him, he was surprised and distressed. I spoke with a staffer for Senator Wyden several days later and told him that although Mr. Clapper recognized that his testimony was inaccurate, it could not be corrected publicly because the program involved was classified.

This incident shows the difficulty of discussing classified information in an unclassified setting and the danger of inferring a person’s state of mind from extemporaneous answers given under pressure. Indeed, it would have been irrational for Mr. Clapper to lie at this hearing, since every member of the committee was already aware of the program.

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Washington, Jan. 3, 2014