

JIM COMEY LIED WHEN HE CLAIMED FBI NEEDS A JUDGE TO READ YOUR EMAIL

I believe that Americans should be deeply skeptical of government power. You cannot trust people in power. The founders knew that. That's why they divided power among three branches, to set interest against interest. – FBI Director Jim Comey

As part of a piece on James Risen's stories, 60 Minutes did an interview with Jim Comey. It rehearsed his role in running up hospital steps in 2004 to prevent Andy Card from getting an ill John Ashcroft to rubber stamp illegal surveillance – without mentioning that Comey and the other hospital heroes promptly got the same program authorized by bullying the FISA Court. Trevor Timm called out this aspect of 60 Minutes' report [here](#).

CBS also permitted Comey to engage in Apple encryption fear-mongering without challenge. CNN, to its credit, called Comey on his misrepresentations [here](#).

But perhaps Comey's biggest stretcher came when Scott Pelley asked him whether FBI engages in surveillance without a court order.

Scott Pelley: There is no surveillance without court order?

James Comey: By the FBI? No. We don't do electronic surveillance without a court order.

Scott Pelley: You know that some people are going to roll their eyes when they hear that?

James Comey: Yeah, but we cannot read

your emails or listen to your calls without going to a federal judge, making a showing of probable cause that you are a terrorist, an agent of a foreign power, or a serious criminal of some sort, and get permission for a limited period of time to intercept those communications. It is an extremely burdensome process. And I like it that way.

Comey was admittedly careful to caveat his answer, stating that FBI does not engage in “electronic surveillance” without a court order. That probably excludes FBI’s use of National Security Letters. Though as DOJ’s Inspector General has made clear, FBI uses NSLs for a number of things – including communities of interest, obtaining one or possibly two degree collection of phone records, as well as a bunch of other things that remain redacted – that the NSL law didn’t envision. Indeed, FBI’s NSL requests have gotten so exotic that some Internet companies started to refuse – successfully – in 2009 to comply with the requests, forcing FBI to use Section 215 orders instead.

But the second part of that exchange – Comey’s claim that “we cannot read your emails without going to a federal judge” is egregiously false.

As both ODNI and PCLOB have made clear, FBI can and does query incidentally collected data obtained under Section 702 (PRISM) – that is, it accesses email content – without a warrant. Alarming, it does so at the assessment level, before FBI even has any real evidence of wrongdoing.

Second, whenever the FBI opens a new national security investigation or assessment, FBI personnel will query previously acquired information from a variety of sources, including Section 702, for information relevant to the investigation or assessment. With some

frequency, FBI personnel will also query this data, including Section 702-acquired information, in the course of criminal investigations and assessments that are unrelated to national security efforts.

That's not conducting electronic surveillance – because FBI gets the email after the electronic surveillance has already occurred. But that does entail warrantless access of US person content, and does so without any review by a judge. Indeed, with Section 702 collection, a judge never even reviews the foreign targets, much less the US incidental collection accessed by the FBI.

Now I get that Jim Comey is a terrifically charismatic guy, with great PR instincts. But still, 60 Minutes is supposed to be a journalism show. Why, when Comey was telling 60 Minutes straight out they should not trust the government, did they let him make so many bogus claims?