

## CASE ANALYSIS: NATIONAL SECURITY AGENCY SURVEILLANCE

An analysis of the decisions and actions by public managers and policymakers during this 7-month period in 2013 provides a number of insights into public management practice, even as the events and repercussions of this case continue to unfold. To support such an analysis, this section is divided into two parts: the first part introduces an analytic structure for considering the many issues that arise, and the second part poses a number of specific questions that could be considered within that analytic structure.

### Conducting a 3D Analysis Using the Model Deliberative Process

Using the model deliberative process outlined in Chapter 1, an analyst can systematically consider the facts of this NSA case.

#### 1. *Gather facts and form initial opinions and ideas.*

This chapter includes many details of the unfolding story of NSA domestic surveillance.<sup>1</sup> Rich facts, details, and observations are the primary data that an analyst needs to build a solid analysis. The analyst builds initial opinions based on these data and on his or her prior experiences and knowledge.

#### 2. *Analyze facts through the lens of public management's dimensions—structure, culture, and craft.*

The three-dimensional framework provides a structure for interpreting the primary data. Some facts are relevant to multiple dimensions. The three-dimensional framework provides a way to gain traction on the mass of information:

- Information about the structure dimension is provided in details about reporting relationships, organizational structures, laws, executive orders, FISC operations, contracting out and contractors, the technology and processing of data collected from it, accountability requirements between and within branches of government, and more.
- Information about the culture dimension is provided in details about interactions between branches, within branches across IC actors, within the Obama administration, and about interactions with the public and with news outlets.
- Information about the craft dimension is provided in details about DNI Clapper's management style, his operating paradigm, his response to reporters' questions, and his adaptation to changing circumstances and information revelations. Information about the craft of other actors, such as President Obama, is evident as well.

#### 3. *Develop and synthesize insights from the three-dimensional analysis, drawing on specific theories and frameworks. Use counterfactual analysis to identify potential causal mechanisms.*

---

**The three-dimensional framework provides a structure for interpreting the primary data. Some facts are relevant to multiple dimensions. The three-dimensional framework provides a way to gain traction on the mass of information.**

---

This step aims to engage in an analytical process and produce an "informed diagnosis" with respect to a particular question or problem. Relevant ideas and frameworks presented in Chapters 1 and 2 can be used to analyze the facts of the case. These include market failures, the politics of bureaucratic structure, "finding the law," and types of accountability systems.

Parts II, III, and IV of the book discuss additional theories and frameworks that can illuminate issues raised in this case. For example, consideration of "inherently governmental activities," principal-agent relationships, transaction costs, and incomplete contracts (Chapter 6) provide frameworks for analyzing the NSA's reliance on contractors. Consideration of ethics, neutral competence, and "high-reliability" organizations (Chapter 8 and 9) provide frameworks for analyzing the NSA's culture. Consideration of leadership theories, strategy, and learning styles (Chapters 10 and 11) provide frameworks for analyzing DNI Clapper's managerial craft.

---

<sup>1</sup>More details of this time period and beyond relevant to the case are included in a number of sources, such as Glenn Greenwald's book *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*, as well as original source material such as press briefings and interviews, some of which are cited here.

Initial counterfactual analysis is possible at this point. In retrospect, what if specific facts or processes had been different in this case? Might a problematic sequence of events have been forestalled or led to a different outcome? In such a complex case, many avenues for analysis are possible. But the key to a good counterfactual analysis is its plausibility and its focus on the most important of the many possible alternatives. Fanciful conjectures about unrealistic possibilities are ruled out. For example, in the NSA case, one might ask,

- What if . . . the managers of intelligence programs had insisted that a rigorous investigation be conducted prior to issuing a security clearance? That would have been fully consistent with the prevailing view in the IC that danger lurked in every corner. Snowden aroused the suspicions of at least one CIA supervisor. If those suspicions had been taken seriously, the leaks might not have occurred. Such a rigorous investigative process for every security clearance could be very expensive. Should haste or scarce resources undermine an essential, politically sensitive administrative process of such paramount importance?
- What if . . . IC managers had consistently communicated to their employees that the bearers of bad news or idealistic potential whistleblowers would not be punished but, instead, would be given a fair hearing? President Obama said that Edward Snowden was wrong to go public with revelations about secret surveillance programs because "there were other avenues available for somebody whose conscience was stirred and thought that they needed to question government actions."<sup>ii</sup> But Snowden must have believed that to going through these avenues would have been futile. Protections for whistleblowers in cases of sexual assault, fraud, and waste have been effective. Why were they not effective in this case?
- What if . . . IC leaders, such as the DNI and the Director of NSA had taken the initiative to release information about surveillance programs and their governance, instead of being on the defensive as information was leaked? This counterfactual might seem implausible given the secretive ethos of the IC culture. Yet a former NSA director from the Cold War era, Bobby R. Inman, said of the NSA's post-Snowden predicament, "My advice would be to take everything you think Snowden has and get it out yourself. It would certainly be a shock to the agency. But . . . the sooner they get it out and put it behind them, the faster they can begin to rebuild."<sup>134</sup> Would managers have been better served by thinking like a chess master instead of a boxer: looking ahead several moves, assessing possible countermoves, and being proactive concerning the release of information?
- What if . . . President Obama and his administration had reacted more consistently and strategically to the ongoing revelations in the news media by either putting forward a strong but nuanced explanation and justification for NSA's bulk surveillance programs or taken a more conciliatory stance toward Snowden in keeping with Obama's long-held commitment to transparency and democratic accountability? The administration's efforts to limit damage and the resulting statements seemed to compound, instead of reduce, the damage.

Some other possible counterfactual scenarios are less insightful for *management analysis* because they suggest no plausible alternatives for the managers who are confronting the situation (though these questions may be of interest to historians and public management reformers). What if the FISC had been designed to incorporate an adversarial process? What if someone other than Alexander—there were other, less openly zealous candidates for the position—had been chosen to head the NSA? What if a nonmilitary

---

<sup>ii</sup>Barack Obama, "Remarks by the President in a Press Conference," White House, August 9, 2013, <https://www.whitehouse.gov/the-press-office/2013/08/09/remarks-president-press-conference%20>.

(Continued)

(Continued)

candidate had been chosen to be the DNI? What if President Obama had maintained closer, more cordial relationships with key congressional leaders of both parties, including the heads of congressional intelligence committees? Posthoc counterfactual analysis can provide valuable insights into what might work in public management. Drawing on theories, heuristics, and frameworks such as those described in this book helps illuminate the critical issues.

4. *Formulate specific strategies based on the three-dimensional analysis.*

Using the diagnoses and insights obtained through the previous step, the analyst develops conclusions or strategies. For example, an analysis of contracting out may conclude that reliance was too extensive on private contractors for intelligence collection and analysis. The analyst would develop and communicate the findings of his or her analysis, with specific steps and implications. The analyst could use the method of argument (see Appendix) or some other rhetorical framework to organize and support the analysis.

5. *Form persuasive arguments for internal and external audiences.*

Different formats and forums might be used for communicating the findings of the analysis, depending on a number of factors (see Appendix).

The model deliberative process provides a roadmap for absorbing the raw data of a case or situation. It provides a method for analyzing these data and helps to identify the most important dimensions of structure, culture, and craft in a particular case, either *ex post* or *ex ante*. The next section poses some questions that might be considered, using the model deliberative process.

## **Reflecting Society's Values, Performing Effectively, Earning Trust**

In balancing the constitutional imperatives of national security and individual freedom, how can public managers ensure that our governments reflect our society's values, perform effectively, and earn the people's trust? This case raises a number of questions concerning public managers' responsibilities in a democratic society, as well as broader questions of governance. For many questions, there is no single correct answer, but analyses should be supported with argument. That is, they must provide a compelling answer of *why?* in each response.

## **Discussion Questions**

### *Public Managers' Responsibilities, Decisions, Actions*

1. What does accountability to the rule of law mean for public managers in this case?
2. Did the public managers in this case practice "lawful public management," using the concepts and frameworks described in Chapter 2?
3. What aspects of market failures are evident in this case? What are the implications for the design and management of public programs?
4. Identify at least one instance of each of the eight distinctive challenges of public management evident in this case.
5. Does the challenge arise primarily due to structure, culture, or craft?

6. How did the public manager respond to the challenge? Could he or she have reasonably made a different choice? If so, what was that choice? Could it have changed the course of events?
7. What are the ethical responsibilities of public managers in this case?
8. Under what circumstances and to what extent is deference to experts and expertise preferable to reliance on partisan and adversarial processes of deliberation and choice?
9. What are the roles of different accountability institutions (described in Chapter 2) in this case? Were these institutions effective in ensuring accountability?
10. Consider the four types of accountability systems identified by Romzek and Dubnik (discussed in Chapter 2): hierarchical, legal, political, and professional. What types of accountability systems were relied on, implicitly or explicitly, in this case? Were any of these systems particularly effective or ineffective?
11. How should General Alexander be evaluated as a public manager?
12. Who—elected officials, senior political executives, professional staff, technical experts—should know what, when, and how much in matters of national security? How should information be shared?

### *Governments and Governance in a Democratic Society*

This book is about public management, but necessarily broader issues of governance arise in the cases and examples included throughout this book. Public managers and citizens at large need to engage with these kinds of questions and understand the importance of their views on such matters for the stability of American democracy.

1. Does this case suggest that the government's efforts to balance national security and civil liberties were successful?
  - a. Was too much weight given to the need for secrecy? Or was too much weight given to the need for transparency?
  - b. Who should decide where the balance is between transparency and the need for secrecy? To what extent is trust in government (elected officials, unelected officials) to make these decisions justified? How should or can citizens be involved in deciding where this balance rests?
2. How can trust and legitimacy be earned by lawmakers and public administrators? General Alexander told an information security industry conference that only 35 NSA analysts could "query a database" of phone records when it is lawful to do so.<sup>135</sup> Can U.S. citizens trust General Alexander? Can they trust the 35 NSA analysts, who could conceivably violate policy without his knowing it? Can they trust those who, like Edward Snowden, had high-level security clearances and unauthorized access to metadata? Can they trust Snowden himself, whose sincerity in believing that, in the depths of surveillance programs, large numbers of individuals are in a position to "defy policy" and jeopardize our privacy and our security?
3. In the light of their potentially far-reaching consequences, what risks are U.S. citizens willing to take, and what risks are they willing to have government take, to secure freedoms? For example, James Bamford in *Wired* quotes a former NSA director for information assurance as saying: "If you

(Continued)

are engaged in reconnaissance on an adversary's systems, you are laying the electronic battlefield and preparing to use it."<sup>136</sup> Indeed, General Alexander "now says the possibility of 'zero-day exploits' [attacks which exploit a previously unknown information system vulnerability] falling into the wrong hands is his 'greatest worry.'"<sup>137</sup>

4. What is the role of a free press where the nation is threatened by enemies who operate outside of any recognized regime or rule of law? In light of the media's freedom to keep a story alive, or to drop it, or to negotiate its content with public officials, should the media be trusted to do the right thing?

## NOTES

1. Masuma Ahuja, "Electronic Surveillance under Presidents Bush and Obama," *The Washington Post*, June 7, 2013, <http://apps.washingtonpost.com/g/page/national/electronic-surveillance-under-presidentsbush-and-obama/213>.
2. Glenn Greenwald, "NSA Collecting Phone Records of Millions of Verizon Customers Daily," *The Guardian*, June 5, 2013, sec. World News, <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>.
3. Spencer Ackerman, "NSA Revelations of Privacy Breaches 'the Tip of the Iceberg'—Senate Duo," *The Guardian*, August 13, 2013, sec. World News, <http://www.theguardian.com/world/2013/aug/16/nsa-revelations-privacy-breaches-udall-wyden>.
4. Ruth Marcus, "Ruth Marcus: The NSA Is Losing the Benefit of the Doubt," *The Washington Post*, August 22, 2013, [http://www.washingtonpost.com/opinions/ruth-marcus-the-nsa-is-losing-the-benefit-of-the-doubt/2013/08/22/16e5a740-0b4f-11e3-b87c-476db8ac34cd\\_story.html](http://www.washingtonpost.com/opinions/ruth-marcus-the-nsa-is-losing-the-benefit-of-the-doubt/2013/08/22/16e5a740-0b4f-11e3-b87c-476db8ac34cd_story.html).
5. Dana Priest, "NSA Growth Fueled by Need to Target Terrorists," *The Washington Post*, July 21, 2013, [http://www.washingtonpost.com/world/national-security/nsa-growth-fueled-by-need-to-target-terrorists/2013/07/21/24c93cf4-f0b1-11e2-bed3-b9b6fe264871\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-growth-fueled-by-need-to-target-terrorists/2013/07/21/24c93cf4-f0b1-11e2-bed3-b9b6fe264871_story.html).
6. Charlie Savage, "N.S.A. Said to Search Content of Messages To and From U.S.," *The New York Times*, August 8, 2013, sec. U.S., <http://www.nytimes.com/2013/08/08/us/broader-sifting-of-data-abroad-is-seen-by-nsa.html>; As discussed later, NSA officials have considerable discretion over "operational" decisions, such as "target selection."
7. Ewen MacAskill, "NSA Paid Millions to Cover Prism Compliance Costs for Tech Companies," *The Guardian*, August 22, 2013, sec. World News, <http://www.theguardian.com/world/2013/aug/23/nsa-prism-costs-tech-companies-paid>.
8. "Foreign Intelligence Surveillance Court Orders," *Electronic Frontier Foundation*, accessed September 26, 2014, <https://www EFF.org/issues/foia/07403TFH>.
9. The Editorial Board, "More Independence for the FISA Court," *The New York Times*, July 28, 2013, sec. Opinion, <http://www.nytimes.com/2013/07/29/opinion/more-independence-for-the-fisa-court.html>.
10. Even Perez, "Secret Court's Oversight Gets Scrutiny," *The Wall Street Journal*, June 9, 2013, <http://www.wsj.com/articles/SB10001424127887324904004578535670310514616>; Matt Sledge, "FISA Court: We Only Approve 75 Percent of Government Warrants without Changes," *The Huffington Post*, October 15, 2013, [http://www.huffingtonpost.com/2013/10/15/fisa-court\\_n\\_4102599.html](http://www.huffingtonpost.com/2013/10/15/fisa-court_n_4102599.html).
11. Eric Lichtblau and Michael S. Schmidt, "Other Agencies Clamor for Data N.S.A. Compiles," *The New York Times*, August 3, 2013, sec. U.S., <http://www.nytimes.com/2013/08/04/us/other-agencies-clamor-for-data-nsa-compiles.html>.
12. David Ignatius, "James Clapper Manages the Secret Empire," *The Washington Post*, October 23, 2013, [http://www.washingtonpost.com/opinions/david-ignatius-james-clapper-manages-the-secret-empire/2013/10/23/361a0d16-3b62-11e3-a94f-b58017bfee6c\\_story.html](http://www.washingtonpost.com/opinions/david-ignatius-james-clapper-manages-the-secret-empire/2013/10/23/361a0d16-3b62-11e3-a94f-b58017bfee6c_story.html).
13. *Ibid.*
14. FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436 (2002), 702a.
15. Exec. Order No. 12333, 46 FR 59941, 3 CFR, (1981), p. 200.
16. Charlie Savage, "Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence," *The New York Times*, October 26, 2013, sec. U.S., <http://www.nytimes.com/2013/10/27/us/federal-prosecutors-in-a-policy-shift-cite-warrantless-wiretaps-as-evidence.html>; The government's opposition to the suit is at [https://www.aclu.org/sites/default/files/assets/muhtorov\\_-\\_govt\\_response\\_to\\_motion\\_to\\_suppress.pdf](https://www.aclu.org/sites/default/files/assets/muhtorov_-_govt_response_to_motion_to_suppress.pdf).