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**THE MAJOR CRIMES TASK FORCE-AFGHANISTAN:
A CASE STUDY AND EXAMINATION OF IMPLICATIONS
FOR FUTURE FBI CAPACITY BUILDING PROGRAMS**

by

Stephen A. Cyrus

December 2014

Thesis Co-Advisors:

Nadav Morag
Paul J. Smith

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AND EXAMINATION OF IMPLICATIONS FOR FUTURE FBI CAPACITY
BUILDING PROGRAMS**

Stephen A. Cyrus
Special Agent, Federal Bureau of Investigation, Washington, DC
B.A., Bowling Green State University, 1992

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Author: Stephen A. Cyrus

Approved by: Nadav Morag
Thesis Co-Advisor

Paul J. Smith
Thesis Co-Advisor

Mohammed Hafez
Chair, Department of National Security Affairs

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ABSTRACT

In 2009, to attack the financial and political support structure of the growing insurgency in Afghanistan, the FBI created the Major Crimes Task Force-Afghanistan (MCTF-A). However, within approximately two years, the FBI had withdrawn its personnel from the task force, and the MCTF-A's efforts to counter corruption within the highest levels of the Karzai government were at the center of a highly public diplomatic row that changed the strategic direction of U.S. national security objectives for Afghanistan and the region. Was the outcome predictable and can lessons be captured by examining the FBI's experience with the MCTF-A, and should the FBI ever consider attempting to build capacity in post-conflict or developing nations?

The FBI is now being asked by U.S. government partners to build similar rule of law (ROL) capacity-building programs around Africa and the Middle East. Through the MCTF-A case study, a set of cultural, legal and political criteria was developed for evaluating potential capacity-building partners and programs.

This thesis proposes a repeatable and structured process to help the FBI evaluate potential capacity-building partners, and design an end-based, sustainable law enforcement capacity-building program and build capable counterterrorism partners while improving the nation's entire ROL framework.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	STATEMENT OF PROBLEM AND BACKGROUND.....	1
B.	DATA SOURCES	5
C.	LITERATURE REVIEW	6
D.	OUTPUT	9
E.	SCOPE AND LIMITATIONS.....	9
F.	UPCOMING CHAPTERS	10
II.	“A KEY ELEMENT OF THE ROAD MAP” A CASE STUDY OF THE MAJOR CRIMES TASK FORCE-AFGHANISTAN.....	13
A.	THE AFGHAN BATTLE SPACE IN WHICH THE MCTF-A WAS DESIGNED TO OPERATE	14
1.	The Afghan FBI.....	19
2.	Analysis: Cultural Implications of the MCTF-A and Rule of Law Capacity Building.....	21
a.	<i>Alternative Justice Solutions</i>	<i>21</i>
b.	<i>Criminal Patronage Networks.....</i>	<i>24</i>
B.	STANDING UP THE MCTF-A: FASTER AND BIGGER RESULTS THAN EVER EXPECTED	25
1.	Analysis: Prior to the Salehi Arrest-Functioning As Designed	31
a.	<i>A Three-Part Problem.....</i>	<i>32</i>
b.	<i>Legal Authorities and Laws.....</i>	<i>35</i>
C.	THE EXPERIENCE OF THE MCTF-A FOLLOWING THE SALEHI ARREST	37
1.	Analysis: After Salehi, The Decline of the MCTF-A and the FBI’s Withdrawal	41
a.	<i>Political Will.....</i>	<i>42</i>
D.	SUMMARY	46
III.	MOVING TO THE NEXT CHALLENGE	47
A.	DEFINING RULE OF LAW PRINCIPLES TO BE ACHIEVED OR STRENGTHENED	47
1.	Step 1: Rule-of-Law Capacity-Building Assessment for Strategic CT Partners.....	50
a.	<i>History</i>	<i>50</i>
b.	<i>Culture.....</i>	<i>52</i>
c.	<i>Legitimacy of Government.....</i>	<i>53</i>
d.	<i>The Justice System.....</i>	<i>55</i>
e.	<i>Evaluation of the Assessment.....</i>	<i>58</i>
f.	<i>What To Do with a Partner with Significant Deficiencies</i>	<i>60</i>
2.	Step 2: Designing an ROL Capacity-Building Program	61
a.	<i>A Comprehensive Plan to Improve ROL Capacity</i>	<i>61</i>
b.	<i>Start Small and Build on Successes</i>	<i>64</i>

	c.	<i>Three-Part Solution</i>	65
	d.	<i>Legislative, Legal, and Governmental Support for Reforms</i>	66
	3.	Step 3: Implementation and Building a Winning Coalition	67
	a.	<i>Necessary External Partners</i>	68
	b.	<i>Necessary FBI Internal Partners</i>	72
	B.	SUMMARY	74
IV.		THE ARGUMENT FOR FBI CAPACITY BUILDING	77
	A.	THE MILITARY IS NOT THE ANSWER TO EVERY QUESTION	77
	B.	BUILDING A CAPABLE JUSTICE SYSTEM IS A KEY PART OF THE LONG-TERM SOLUTION	80
	C.	COOPERATION IS IMPORTANT, BUT COMPETENCE IS THE TRUE FORCE MULTIPLIER	83
	D.	SUMMARY	84
V.		CONCLUSION AND RECOMMENDATIONS	87
	A.	SOCIAL	88
	B.	LEGAL	88
	C.	POLITICAL	88
	D.	CONDUCT A STRATEGIC ASSESSMENT	90
	E.	DESIGN AND END-BASED CAPACITY BUILDING PROGRAM	90
	F.	BUILD A COALITION	91
	G.	THE WAY AHEAD	91
	1.	Start Now	92
	2.	Keep it Low Key and Out of the Press	93
	H.	SUMMARY	94
		LIST OF REFERENCES	97
		INITIAL DISTRIBUTION LIST	105

LIST OF TABLES

Table 1. Sample Rule of Law Assessment Scorecard.....59
Table 2. Afghan Military and Police Personnel Killed by Insurgent Attacks.....79

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LIST OF ACRONYMS AND ABBREVIATIONS

AG	Attorney General
AQ	Al Qaeda
AQAA	Al Qaeda affiliates and adherent
AQSL	Al Qaeda senior leadership
ATA	Anti-Terrorism Assistance
BG	Brigadier General
CIA	Central Intelligence Agency
CID	criminal investigative division
CIRG	critical incident response group
CJIATF	combined joint inter-agency task force
CT	counterterrorism
CTD	counterterrorism division
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
DoS	Department of State
FBI	Federal Bureau of Investigation
FID	foreign internal defense
GAO	Government Accountability Office
GWOT	global war on terror
HN	host nation
ICITAP	international criminal investigative training and assistance program
IED	improvised explosive device
IJ	investigative judge
INL	International Narcotics and Law Enforcement Affairs
IOD	international operations division
ISAF	international security assistance force
JSSP	judicial sector support program
LE	law enforcement
Legat	legal attaché

MCTF-A	major crimes task force-Afghanistan
MCTF-I	major crimes task force-Iraq
MOI	Ministry of Interior
MOU	memorandum of understanding
NATO	North Atlantic Treaty Organization
NDS	National Directorate of Security
NGO	non-government organization
OPDAT	Office of Overseas Prosecutorial Development, Assistance, and Training
PRT	provincial reconstruction team
RLA	regional legal advisor
ROL	rule of law
SIGAR	Special Inspector General for Afghan Reconstruction
SIU	sensitive investigations unit
SME	subject matter expert
SOF	Special Operations Forces
SUV	sport utility vehicle
U.S.	United States
UN	United Nations
USAID	U.S. Agency for International Development
USMS	U.S. Marshals Service

EXECUTIVE SUMMARY

THE CURRENT PROBLEM SPACE

The threat to the U.S. homeland and U.S. interests abroad posed by international terrorism has changed dramatically since the United States started its global war on terror (GWOT) in response to the attacks of September 11, 2001. While U.S. and international efforts in support of the GWOT were successful in targeting core Al Qaeda (AQ) members, and Al Qaeda senior leadership (AQSL), mainly in Afghanistan and western Pakistan, AQ fighters have since moved to nearly every part of the world and AQ-inspired Jihadists have taken root throughout the Middle East and Africa. Several of the most prominent Al Qaeda Affiliates and Adherent (AQAA) groups are now operating within sovereign countries in which the type of direct military action applied effectively in Afghanistan and Pakistan is simply not politically, diplomatically, or logistically possible.

Security operations and effective internal policing by local law enforcement (LE) and justice agencies to shrink or eliminate the ungoverned spaces in partner countries is needed to address the new generation of terrorist threats effectively, which are now spread around the globe and often intermingled with the civilian populations that these groups need to exist.

THE MAJOR CRIMES TASK FORCE-AFGHANISTAN

This mission of building capable international LE partners is not a new one for the Federal Bureau of Investigation (FBI). The FBI was asked to take increasingly larger and more prominent roles in helping train both Iraqi and Afghan LE agencies. In Kabul, the FBI was asked to work with Afghan partners to design, build and operate an entirely new LE agency, the major crimes task force-Afghanistan (MCTF-A), and to use this fledgling task force to counter the political and financial support being funneled to the rising Afghan insurgency through high-level corruption. This program was, by far, the most ambiguous capacity-building program the FBI ever took on and it went beyond the usual

template of simply making existing LE agencies more effective to creating what many U.S. officials dubbed “the Afghan FBI.”

However, the results of the FBI’s efforts in Afghanistan and experiences with MCTF-A led to a political row at the highest levels of U.S. and Afghan governments. Currently, the MCTF-A essentially operates in name only, with limited investigative capacity and without any direct FBI assistance or involvement.¹ Given the enormous resources devoted to this large-scale undertaking, and the apparent limited prospects for long-term success,² it is unlikely the FBI would assess this program as fully successful or as fulfilling its intended goals. Simply saying the FBI should never take on large-scale capacity building programs, like the MCTF-A, or partner with foreign LE agencies to attempt to tackle tough criminal and terrorism-related matter, would be short-sided and counterproductive to the strategic interests of the United States in many countries in which terrorist groups are now trying to establish a safe haven. Additionally, the current U.S. national counterterrorism (CT) strategy places great emphasis on development of competent CT partnerships with countries throughout the Middle East and Africa.

MOVING TO THE NEXT CHALLENGE

Developing a criteria for assessing the viability of success for potential LE and rule of law (ROL) capacity-building programs is essential for both avoiding the missteps of the FBI’s experience with the MCTF-A but still working to build capable CT partners around the world. This thesis, through the case study of the MCTF-A and the post-conflict environment in which it operated, develops a method and criteria for the FBI and its U.S. counterterrorism partners to evaluate potential host nation LE and justice sectors. This thesis also examines the critical elements to consider for developing a politically, socially, and legally sustainable framework for building LE and justice sector capacity, and creating a comprehensive ends-based program to improve the overarching ROL

¹ Michael Huffman, “How the U.S. Lost the Corruption Battle in Afghanistan,” May 28, 2012, www.USpolicyinaBigWorld.com.

² Ibid.

framework of host nations, as well as lays out the necessary partners within the FBI and other U.S. government departments to create a successful ROL program.

THE CASE FOR WHY CAPACITY BUILDING IS ESSENTIAL

Stopping or even slowing down the spread of terrorist groups throughout the developing world is a daunting and challenging task. However, the FBI must be prepared to accomplish this task because neither the FBI nor any U.S. government agency has the resources or ability to fight international terrorism unilaterally. Furthermore, building a more robust ROL framework within partner nations will have positive and broad societal impacts in these countries. Well-designed and implemented capacity-building programs will not only help the FBI to counter imminent threats but will also help the United States address the underlying political, social, and cultural issues and deficiencies that allow terror groups to grow. Such programs are a crucial component of the long-term battle to defeat terrorism.

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I. INTRODUCTION

A. STATEMENT OF PROBLEM AND BACKGROUND

The threat to the United States (U.S.) homeland and U.S. interests abroad posed by international terrorism has changed dramatically since the United States started its global war on terror (GWOT) in response to the attacks of September 11, 2001. Just days after those attacks, Congress authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.”¹ While U.S. and international efforts in support of the GWOT were successful in targeting core Al Qaeda (AQ) members and Al Qaeda senior leadership (AQSL), mainly in Afghanistan and western Pakistan, AQ fighters have since moved to nearly every part of the world and AQ-inspired Jihadists have taken root throughout the Middle East and Africa. Several of the most prominent Al Qaeda affiliates and adherent (AQAA) groups are now operating within sovereign countries where the type of direct military action that was applied effectively in Afghanistan and Pakistan is simply not politically, diplomatically, or logistically possible.

Addressing the new and constantly evolving threats to U.S. security interests at home and abroad will require a different approach from the large-scale direct military action used against AQ and similar terrorist groups during the early years of the GWOT in Afghanistan and Iraq. Security and internal policing by local law enforcement and justice agencies in the host country are needed to address the new generation of terrorist threats effectively, which are now spread around the globe and often intermingled with the civilian populations that these groups need to exist. As the 2011 National Counterterrorism Strategy stated, “Assisting partners to improve and expand governance in select instances is also critical, including strengthening the ROL so that suspected terrorists can be brought to justice within a respected and transparent system.”²

¹ Pub. L. No. 107-40, S2(a), 115 Stat. 224 (codified at 50 U.S.C. S. 1541 note).

² The White House, *National Strategy for Counterterrorism* (Washington, DC: The White House, 2011).

As recent resurgence in terrorist and insurgent groups in Iraq and Afghanistan have illustrated, establishing a robust ROL and effective law enforcement is essential to build a country that can maintain its own security and deal with terrorist groups attempting to operate within its borders. Developing, or countries that recently underwent significant political upheaval, are more threatened by internal violence and groups operating within their country than by groups from outside their borders. The principle of empowering a government with the law enforcement resources and other internal capacities needed to manage its own security effectively is one that the Federal Bureau of Investigation (FBI) and other agencies within the Department of Justice (DOJ) have been seeking to implement for decades with international law enforcement partners. As stated in a Government Accountability Office (GAO) study in May 2007, the DOJ believes that the long-term benefits of effective law enforcement capacity building are not limited to counterterrorism (CT) efforts.

Many CT experts within the military, diplomatic, and academic worlds agree that establishing and maintaining functional and effective law enforcement and justice sector agencies is critical to attacking the root causes of terrorism and preventing the creation and development of safe havens in which terrorist groups can operate.³ These beliefs and sentiments led the United States to devoted billions of dollars to building justice-sector capacity in Afghanistan from 2002 to 2011.⁴ As part of the U.S. government's justice-sector capacity-building efforts, the FBI also invested millions of dollars and assigned hundreds of FBI personnel to programs designed to build Afghan investigative, operational, and intelligence collection capabilities and capacities.⁵ However, the results

³ Garrett M. Graff, *The Threat Matrix: The FBI at War in the Global War on Terror* (New York: Little Brown and Company, 2011); Bruce Hoffman, *Combating Al Qaeda and the Islamic Militant Threat* (Washington: RAND Corporation, 2006); Jeffrey S. Davies, *Understanding Law Enforcement Support to National Security Problem and Prospects* (Norfolk, VA: Joint Forces Staff College, 2008).

⁴ Liana Sun Wyler and Kenneth Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance* (CRS Report No. R41484) (Washington, DC: Congressional Research Service, 2011).

⁵ Graff, *The Threat Matrix*; Vadim Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan* (Newport, RI: Naval War College, 2010).

of the FBI's efforts in Afghanistan, in particular with regard to large-scale capacity building, are mixed at best, and the long-term effects of these programs are uncertain.⁶

The FBI spent \$4.6 million on developing an "Afghan FBI" in Afghanistan, named the major crimes task force-Afghanistan (MCTF-A). However, currently, the MCTF-A essentially operates in name only, with limited investigative capacity and without any direct FBI assistance or involvement.⁷ Given the enormous resources devoted to this large-scale undertaking and the apparent limited prospects for long-term success,⁸ it is unlikely the FBI would assess this program as fully successful or as fulfilling its intended goals.

Despite these unsatisfactory results in Afghanistan, law enforcement and justice-sector capacity-building programs are still viewed as effective methods for countering terrorist factions operating or seeking to operate in countries throughout the Middle East and northern Africa, and the FBI will undoubtedly continue to be asked to assist with such programs. This situation raises a crucial question. Might it be possible to build a set of doctrines or criteria by which the FBI could evaluate the potential long-term effectiveness of proposed U.S.-sponsored law-enforcement capacity-building programs before committing personnel or resources to a multi-year endeavor that may have a low likelihood of ongoing viability or of significantly improving U.S. security at home or abroad?

Developing such criteria and using the criteria to evaluate the likelihood of success of proposed ROL capacity-building programs is essential to the FBI's international CT mission for a variety of operational, monetary, and investigative reasons. First, the FBI has approximately 13,500 agents and 21,700 professional support

⁶ Mark Mazzetti, "As Time Passes, the Goals in Afghanistan Shrink," *New York Times*, September 11, 2010; Rajiv Chandrasekaran, "Karzai Rift Prompts U.S. to Reevaluate Anti-corruption Strategy in Afghanistan," *Washington Post*, September 13, 2010.

⁷ Michael Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan," U.S. Policy in a BigWorld, May 28, 2012, <http://www.uspolicyinabigworld.com/?s=How+the+U.S.+Lost+the+Corruption+Battle+in+Afghanistan%2C%E2%80%9D+>.

⁸ Ibid.

personnel,⁹ but only a small fraction of these staff has the ability to train CV techniques or broader capacity-building expertise¹⁰ and is capable of deploying to developing countries.¹¹ Thus, devoting these limited personnel to the work with countries that have the best chances for success is required. Monetarily, the FBI does not have a dedicated international training cadre, and therefore, any personnel devoted to capacity-building efforts must be reassigned from their investigative and operational duties. Lastly, as the case study of the MCTF-A will demonstrate, the FBI should not be attempting to institute ROL programs into countries that will not be receptive to these programs, or if these programs run counter to the larger U.S. national security strategy for the country or region.

Of the FBI's current annual budget of approximately \$8.7 billion, no money set is aside within the FBI's budget for foreign capacity building programs. As with the MCTF-A, the vast majority of the funding for these endeavors is borne by other agencies, but the FBI is usually responsible for its own personnel-associated costs, including not only regular salary and benefits but also supplementary compensation for overseas deployment, hazardous-duty pay, and overtime.

Aside from the direct impact of participating in these large-scale and long-term capacity-building efforts on the FBI's ability to execute its mandates in the criminal and national-security realms, the failure of ill-conceived or poorly implemented ROL capacity-building programs can have detrimental effects on the FBI's relationship with (and its reputation and credibility within) the host country. The negative operational and investigative impacts of such a failure can be substantial and long lasting.

Since the FBI usually partners with other U.S. departments to sponsor large-scale capacity-building efforts, careful consideration must be given to proposed endeavors so as not to damage relationships with critical U.S. partners. As has occurred in Kabul, the FBI's involvement with capacity-building efforts that may appear to have broad U.S.

⁹ "Frequently Asked Questions," accessed August 5, 2014, <http://www.fbi.gov/about-us/quick-facts>.

¹⁰ Ibid.

¹¹ Ibid.

government support can actually create a wedge between the FBI and other U.S. departments and agencies that have divergent or competing interests or CT strategies.¹² Given its limited overseas resources, the FBI often requires the support and assistance of other U.S. government agencies and departments to conduct its mission.¹³ Entering into or endorsing capacity-building programs with international partners that create tension or disagreement with these same U.S. partners will not assist the FBI in maintaining or enhancing the domestic and overseas security of U.S. citizens.

Finally, ROL capacity-building programs are an essential part of the U.S.'s worldwide efforts to attack not only the terrorist groups threatening the United States, but the underlying conditions that lead to their rise and allow them to operate. Helping partner nations create or improve their capacity or capability to provide security to their citizens and build a more robust law enforcement and justice sector will not only improve the internal security of the partner nation, but will also have positive effects on the region and will deny terrorist groups the un- or undergoverned spaces they require to exist.

B. DATA SOURCES

This thesis relies on a variety of sources that include open-source government documents, articles, and books. Substantial literature documents the U.S. government's CT strategy and its desire to move away from reliance on military and direct action to other soft-power programs. Little research is available on the development of the MCTF-A, but numerous analyses can be found concerning its collapse, the resulting political implications, and the systemic governmental corruption it was designed to counter.

Sufficient literature examines the positive effects of improving a country's justice sector system and strengthening ROL. Much of the available literature is written in the wake of the Afghan and Iraq wars and examines the unique challenges of building ROL

¹² Sarah Chayes, "The Afghan Bag Man," *Foreign Policy*, March 5, 2013; Dan Murphy, "Vast Sums of Aid Continue To Be Stolen in Afghanistan," *Christian Science Monitor*, December 11, 2012.

¹³ Thomas V. Fuentes, Assistant Director, Office of International Operations, Federal Bureau of Investigation, Statement before the Subcommittee on Border, Maritime, and Global Counterterrorism House Homeland Security Committee, Washington, DC, October 4, 2007.

into post-conflict societies. Much of the available literature is created by non-governmental organizations, think tanks, and human rights organizations.

C. LITERATURE REVIEW

An examination of literature useful in a case study of the MCTF-A falls into two main categories, works that cover the political, social, and legal environment that the MCTF-A was attempting to operate in, and literature that describes the actual workings of the task force and the political and legal implications of the MCTF-A's work. To conduct a comprehensive case study of the MCTF-A, it is necessary to examine each of these two categories. The formation and operation of the MCTF-A did not happen in a vacuum and the actions of the MCTF-A, particularly concerning the investigation of high-ranking Afghan officials, had a direct and serious impact on the political and social climate of the entire country and efforts to fight the Taliban.

No shortage of literature documents the political, social, military, and legal environment of Afghanistan when the MCTF-A was created in 2009. Much of the available open source and unclassified literature takes great effort to detail the growing insurgency, the threat the rise of this insurgency poses to coalition efforts in the country, and the Afghan government's seemingly insatiable appetite for corruption. This type of literature documenting the toxic and often deadly mix of money, politics, corruption, and military action came from three broad primary sources: media, think tanks, and official U.S. government reports.

While most literature began documenting the quagmire of Afghan and coalition counterinsurgency efforts after the difficulties in Iraq helped highlight the issues, one work of note documented the future challenges early in the conflict. Rory Stewart's *The Places In Between* is an excellent work that describes Afghanistan's unique social and political challenges. Stewart does a tremendous job laying out the challenges that face any military force, government, or non-government organization (NGO) that seeks to change or "improve" the Afghans' views on justice or the broad concept of ROL. Stewart describes the players in the early days of reconstruction, the idealistic NGO workers, the urban Afghan government officials installed by the coalition, the "rogues" who ruled

outside Kabul, and the average Afghan citizen who had endured 25 years of continual regional conflict. Stewart's work paints a troubling picture of government officials, both Afghan and international, whose entire concept of Afghanistan is what they view from their sport utility vehicle (SUV) as they motor around Kabul, "Policymakers did not have the time, structures or resources for a serious study of an alien culture, They justified their lack of knowledge and experience by focusing on poverty and implying dramatic cultural differences did not exist. They acted as though villagers were interested in all the priorities of international organizations even though these priorities were mutually contradictory."¹⁴ Stewart's work foreshadows many of the same issues to be faced by the FBI and international mentors when designing and operating the MCTF-A.

Another leading contributor to the literature describing the unique operating environment within Afghanistan and the challenges facing the coalition is Seth Jones. Along with Jones's prolific works for RAND Corporation, testimonies to Congress, and books documenting American efforts in Afghanistan, Jones's works *How Terrorist Groups End* and *Establishing Law and Order After Conflict* are essential for understanding both the importance of creating effective law enforcement after conflict and the daunting challenges of attempting to do it effectively.

Articles and in-depth analyses, such as *Financing the Taliban* by Catherine Collins and Ashrah Ali, advocated that efforts to develop ROL programs along with expanding Afghan law enforcement's capacity were crucial to creating a lasting victory in Kabul by cutting off funds going to the insurgency.¹⁵ Many academics, government officials, and military leaders wrote articles, op-ed pieces or drafted cables lamenting that military force alone was simply not enough to end the near-daily attacks on international troops.¹⁶

¹⁴ Rory Stewart, *The Places In Between* (London: Houghton Mifflin Harcourt, 2007).

¹⁵ Ibid.; Catherine Collins and Ashrah Ali, *Financing the Taliban: Tracing the Dollars Behind the Insurgencies in Afghanistan and Pakistan* (Washington, DC: New America Foundation, 2010).

¹⁶ Eric Schmitt, "U.S. Envoy's Cables Show Deep Concerns on Afghan Strategy," *New York Times*, January 25, 2010; Lauren Miller and Robert Perito, *Establishing Rule of Law in Afghanistan* (Washington, DC: United States Institute for Peace, 2004).

Reporters, notably Mark Mazzetti, Joshua Partlow, and Sarah Chayes, and other media focused on the flow of money from international donors that was finding its way to Taliban and insurgent groups fighting the United States.¹⁷ Throughout the FBI's involvement with the MCTF-A, reporters from many of the leading traditional media outlets, such as the *New York Times*, *Washington Post* and the *Wall Street Journal*, devoted much coverage to documenting how Afghan government corruption was fueling the insurgency. Many stories and in-depth analyses were produced by media outlets that cited this corruption within the Afghan central government as the number-one issue impacting the U.S.-led coalition's short- and long-term prospects for success in Afghanistan.¹⁸

As well as traditional and Internet-based media coverage of the MCTF-A, and the corruption the MCTF-A was created to combat, government agencies produced open source reports on these topics also. The GAO, Department of Defense (DOD) and the special inspector general for Afghan reconstruction (SIGAR) all produced numerous reports documenting U.S. government efforts in the country and the region. Of particular interest is SIGAR since it began publishing quarterly reports and special investigations to Congress on the progress the United States was making in Afghanistan and the continuing challenges of reconstruction in 2008. One of these reports, *U.S. Agencies Have Provided Training and Support to Afghanistan's Major Crimes Task Force, but Reporting and Reimbursement Issues Need to be Addressed*, dealt directly with the MCTF-A and was very useful in documenting the inner workings of the MCTF-A and its efforts to train and mentor Afghan investigators.

One interesting aspect of the review of literature surrounding the MCTF-A is that the tone of literature concerning the task force and the entirety of U.S. anti-corruption efforts distinctly changed after the arrest of Mohammed Zia Salehi, a close personal advisor to President Karzai. Following the Salehi arrest, nearly all U.S. and Western media sources, in particular the *Wall Street Journal*, *Washington Post*, and *New York Times*, represented the MCTF-A in a very positive light but claimed that it had been

¹⁷ Mazzetti, "As Time Passes"; Chayes, "The Afghan Bag Man."

¹⁸ Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan*.

outmaneuvered in Karzai's effort to protect his corrupt cronies.¹⁹ Western media alleged, moreover, that Washington and the rest of the international community lacked the political will to stand up to Karzai and fight high-level corruption.²⁰ At this point, many within the media, along with U.S. military and civilian officials alike, perceived that the U.S.'s overarching corruption plan had backfired, that all "Afghan corruption inquiries [were] frozen,"²¹ and that the MCTF-A's efforts had been essentially wasted.²²

D. OUTPUT

This thesis should serve as a primer and blueprint for senior and mid-level FBI executives considering programs to build the law enforcement and ROL capacities of foreign partners. It outlines the potential benefits and risks to U.S. national security involved in helping a country to create a more robust and capable law enforcement and justice sector. By educating the highly transient FBI senior leadership regarding previous experiences in capacity-building programs, this thesis can help to ensure that previous bad decisions are not replicated and that best practices are repeated. By using the aforementioned case study, this thesis attempts to create a set of criteria that FBI policymakers should examine before committing FBI resources or the FBI brand to building the capacity of CT partners.

E. SCOPE AND LIMITATIONS

The crux of this thesis is a thorough case study of the MCTF-A's efforts to counter the growing terrorist threat posed by the rising insurgency in Afghanistan. Guiding questions include the following: What were the cultural, political, societal, and judicial influences that led to the MCTF-A's outcome? Would a thorough examination of these factors in advance have been able to predict with reasonable confidence the

¹⁹ Chayes, "The Afghan Bag Man."

²⁰ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan"; Strobel and Taylor, "U.S. Won't Pursue Karzai Allies in Anti-Corruption Campaign."

²¹ Rod Nordland and Alissa Rubin, "New Afghan Corruption Inquiries Frozen," *New York Times*, September 14, 2010.

²² Mazzetti, "As Time Passes"; Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

eventual outcome of the MCTF-A, or did other dynamics that impacted the result evolve subsequently?

The thesis does not focus on each individual international terrorist threat facing the United States but will view the terrorist threat as a phenomena that arises due to known political, social, and cultural influences. This thesis attempts to present recommendations that serve to help resolve one of the main factors that terrorist and insurgent groups use to build their popularity with their client population, illegitimacy of host governments due to the lack of ROL.

This thesis does not cover the many classified FBI-DOD joint programs designed to help this nation's partner countries fight terrorism within their countries. It also does not discuss any operational programs. Rather, it focuses on the FBI's role as trainer and mentor of foreign law enforcement and intelligence agencies.

F. UPCOMING CHAPTERS

Chapter II presents a thorough case study of the MCTF-A. This case study examines the conditions that led to the agreement between General Petraeus and FBI Director Mueller to create the "Afghan FBI," the creation of the MCTF-A, its successful early months of operation, and the eventual stalemate that came once the task force started building the corruption cases it was designed to investigate. The case study also presents the training and vetting process to train the Afghan investigators and the day-to-day difficulties faced by the FBI and international mentors trying to build the MCTF-A into a successful law enforcement agency.

Chapter II also documents and analyzes the political, social, cultural, and legal causes of the course the MCTF-A took from its inception in 2009 until the FBI withdrew from daily support of the task force in 2012. This chapter also presents the two sides of the U.S.'s own strategy in Afghanistan and how the MCTF-A came to be between the two opposing U.S. political factions and their distinctly different vision for U.S. involvement in Afghanistan and the region.

Chapter III presents recommendations for the development of criteria the FBI should work with the U.S. government inter-agency to assess potential CT partner countries' political, social, legal, and cultural framework. The criteria are based on experiences of the MCTF-A, and other ROL capacity-building programs promoted and run by other U.S. government agencies. This chapter also lays out political, legal, and societal considerations when devising, designing, and implementing ROL capacity-building programs around the world.

Chapter IV states the case for why capacity building, despite the FBI's experience with the MCTF-A, and the daunting task of designing, creating, and implementing a successful ROL capacity-building program, should be a key component of the U.S. government's, and specifically, the FBI's worldwide long-term CT strategy. This chapter also examines the second-order positive effects on a partner country's societal, political, and legal framework through strengthening the country's ROL and building law enforcement and justice capacity.

Chapter V summarizes key findings from the case study of the MCTF-A and reiterates recommendations presented in previous chapters for future capacity building endeavors. These recommendations combine the need for the United States and the FBI to continue ROL capacity-building efforts in post-conflict and developing countries to strengthen U.S. CT efforts while applying lessons learned from the MCTF-A.

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II. “A KEY ELEMENT OF THE ROAD MAP”²³ A CASE STUDY OF THE MAJOR CRIMES TASK FORCE-AFGHANISTAN

The FBI has a long history of providing advanced training and mentoring to foreign police services and internal security services. The FBI is one of the most respected law enforcement agencies in the world and is at the cutting edge of developing advanced technologies and investigative techniques. As such, the FBI often shares its expertise and experience with other developed nations and nations trying to enhance their police and intelligence collection procedures, capabilities and capacities further. Many of the FBI’s most active partners for capacity and capability building efforts are western and eastern European countries and other Western nations that share similar legal, cultural, and political frameworks.

However, following the attacks on September 11, 2001, it became increasingly evident that many of the most serious threats to U.S. national security interests were not directly coming from the types of countries the FBI had spent significant time and effort partnering with in the recent decades. As was pointed out by many inside and outside of the U.S. government, the greatest threats to U.S. national security came from weak or failing states not strong or developed ones. Additionally, it became evident following the U.S. invasions of both Iraq and Afghanistan that large-scale international efforts were needed to help reform the law enforcement system in Iraq. In addition, the entire law enforcement and justice systems would need rebuilt in Afghanistan. To help fight the growing insurgency in Afghanistan, and to give the nascent central government in Kabul the legitimacy needed to fight back the challenges from the Taliban, it was evident some form of justice system and functional law enforcement was necessary.

The FBI chose to enter into a capacity-building endeavor in Afghanistan that was far beyond the scale and scope of any previous FBI capacity-building programs. The FBI essentially signed on to create an entirely new investigative entity, and to train and mentor a law enforcement force larger than most police departments in the United States.

²³ “Major Crimes Task Force: A Key Element of the Road Map,” State Department cable, October 26, 2009.

While it was undoubted that the FBI had the requisite expertise and subject matter expertise to accomplish this task, it would become evident within months of starting this endeavor that building ROL capacity in countries that do not share a common cultural or legal history would present challenges the FBI had never faced previously. Also, the FBI would find itself wedged between two groups of adherents of starkly opposing national security doctrines neither of which fully appreciated the ramifications of building law enforcement capacity when many of the largest and highest-ranking crooks were key U.S. partners in Kabul.

The main problems that faced the FBI and its international partners attempting to improve and expand Afghanistan's law enforcement and justice system fell into three broad categories: social or cultural, legal, and political. Some or all of these categories or problems and challenges would be represented throughout the different phases of the MCTF-A. An examination of different phases of the MCTF-A and how these problems were present in these phases, and how these challenges manifested themselves leading to the ultimate withdrawal of the FBI from the MCTF-A, follow.

A. THE AFGHAN BATTLE SPACE IN WHICH THE MCTF-A WAS DESIGNED TO OPERATE

The MCTF-A was a ROL capacity-building program purpose built to counter the rising insurgency challenging the legitimacy of the Afghan government installed and supported by the United States and its international partners (the coalition). This growing insurgency, the largest portion of which was comprised of Taliban fighters, did not simply spring up in the Spring 2009 when the idea for standing up the MCTF-A was brokered between the FBI and DOD. The history of the U.S. involvement in the current Afghan conflict was years old and the reasons the insurgency was growing stronger while the coalition and its Afghan partners were facing stiffer resistance are complex and often inter-related.

The United States and its international partners began military actions within Afghanistan to target AQ and its Taliban hosts on October 7, 2001, 27 days after the attacks on New York and Washington, DC of September 11, 2001. U.S. and coalition

forces quickly overran the ruling Taliban and the foreign fighters who had traveled to Afghanistan to fight the U.S. and its partners. Within six weeks, coalition forces and their Afghan partners, the Northern Alliance, had captured the Afghan capital of Kabul. It took roughly another month for U.S. and Afghan forces, some of them led by future Afghan President Hamid Karzai, to capture the Taliban stronghold of Kandahar, effectively taking military control of the country.

From the fall of Kandahar in late 2001 until the autumn of 2008, U.S. operations focused mainly on the military targeting of Taliban and AQ leaders and cells. While much of the U.S. military focus was on managing the 2003 invasion of Iraq and putting down the AQ-inspired insurgency that followed during this period, the growing popularity and acceptance of the Taliban and the emergence of other like-minded groups, such as the Haqqani Network, was undermining the ability of the Afghan government to accept responsibility for security operations throughout the country or to police most parts of the country effectively. The number of U.S. troops in Afghanistan grew gradually from about 5,200 at the beginning of 2002 to just over 30,000 in late 2008.²⁴ While U.S. troop levels rose steadily, the increase of international troops did not keep pace, which forced the United States to take on greater responsibility for fighting the insurgency and rebuilding the Afghan government.²⁵ Of the more than 50 countries that supported Operation Enduring Freedom in the first year of the war,²⁶ only the United States and Great Britain still had more than 5,000 troops in Afghanistan by 2009.²⁷

Upon being promoted to the position of Commander, United States Forces-Afghanistan, international security assistance force (ISAF) in June 2009, General Stanley McChrystal immediately began stating publicly that 30,000 to 40,000 additional U.S. troops were needed in Afghanistan to fight the growing insurgency and the spread of

²⁴ Amy Belasco, *Troop Levels in Iraq and Afghan Wars, 2002–2012: Cost and Other Potential Issues* (CRS Report No. R40682) (Washington, DC: Congressional Research Service, 2009).

²⁵ *Ibid.*

²⁶ David Gerleman and Jennifer Stevens, *Operation Enduring Freedom: Foreign Pledges of Military and Intelligence Support* (CRS Order Code RL31152) (Washington, DC: Congressional Research Service, 2001).

²⁷ Simon Rogers and Lisa Evans, “Afghanistan Troop Numbers Data: How Many Does Each Country Send to the NATO Mission There?” *The Guardian*, June 14, 2011.

Taliban influence.²⁸ In a memo dated August 30, 2009, to Secretary of Defense Robert Gates, McChrystal indicated that an entirely new strategy was needed to defeat the insurgency threatening the Afghan government.²⁹ In a classified memo that was leaked and then later declassified,³⁰ McChrystal strongly advocated for a whole-of-government approach, and contended that joint civilian-military effort would be required to achieve victory in Afghanistan.³¹ Within the memo, he stated repeatedly that one of the key factors fueling the rising insurgency and propelling recent insurgent gains was the effect of unpunished corruption at all levels within the Afghan government. This claim seems supported by a 2009 OXFAM study according to which 48 percent of Afghans polled saw corruption and the ineffective Afghan government as the main causes of the current conflict.³²

Along with claims that money being siphoned off from international aid and military contracts was being rerouted to Taliban commanders and local power brokers,³³ U.S. military and diplomatic leaders expressed deep concern that the corruption of Afghan officials was undermining the legitimacy of the entire Afghan government; thereby, causing the Afghan population to turn to the Taliban shadow governments working within the provinces.³⁴ From January to April 2009, insurgent attacks were up 64 percent from the previous year,³⁵ improvised explosive device (IED) attacks were up

²⁸ Scott Wilson, "McChrystal Faulted on Troop Statements," *Washington Post*, October 5, 2009; Ann Scott Tyson, "U.S. Commander in Afghanistan Calls Situation Serious," *Washington Post*, September 1, 2009.

²⁹ Erik Schmitt and Thom Shanker, "General McChrystal Asks Obama for More Troops," *New York Times*, September 20, 2009.

³⁰ Bob Woodward, "McChrystal: More Forces or Mission Failure," *Washington Post*, September 21, 2009.

³¹ Stanley McChrystal, "COMISAF'S Initial Assessment," *Washington Post*, August 30, 2009.

³² OXFAM International, *The Cost of War: Afghan Experiences of Conflict 1978–2009* (Oxford, United Kingdom: OXFAM International, 2009).

³³ Global Post, "Who is Funding the Afghan Taliban? You Don't Want to Know," *Reuters*, August 13, 2009.

³⁴ McChrystal, "COMISAF'S Initial Assessment."

³⁵ Anthony Cordesman, *The Afghan War at End 2009: A Crisis and New Realism* (Washington, DC: Center for Strategic and International Studies, revised version, January 7, 2010).

80 percent,³⁶ and attacks on Afghan government officials and offices were up 90 percent.³⁷ More worrisome, only 35 percent of Afghans felt that security was better than in 2008,³⁸ and for the first time since the invasion, more Afghans had an unfavorable view of U.S. forces than in the previous year.³⁹ Further polls, along with statistics released by the ISAF, indicated that the number of attacks on coalition forces was rising, the effectiveness and size of these attacks were growing, and support for ISAF among the Afghan population was at its lowest point and was expected to continue dropping.⁴⁰

The rising number of attacks, a growing lack of support from Afghans for U.S. and ISAF efforts, and the widely held view that corruption had permeated all levels of Afghan government, all pointed to a need to reassess the current battle plan for defeating the Taliban and their allies.⁴¹ As McChrystal stated in his memo, “[C]riminality creates a pool of manpower, resources, and capabilities for insurgents and contributes to a pervasive sense of insecurity among the people. ... A number of Afghan government officials are reported to be complicit in these activities further undermining GoIRA [Government of the Islamic Republic of Afghanistan] credibility.” Admiral Mike Mullins, Chairman of the Joint Chiefs of Staff, stated bluntly in November 2009, “If we don’t get a level of legitimacy and governance, then all the troops in the world aren’t going to make a difference. ... [Karzai] has got to take concrete steps to eliminate corruption ... that means that you have to rid yourself of those who are corrupt and you have to actually arrest and prosecute them.”⁴² Along with these types of statements from Obama administration officials and the information leaked within the McChrystal memo, numerous studies assessing the current state of the Afghan conflict urged efforts to

³⁶ Cordesman, *The Afghan War at End 2009: A Crisis and New Realism*.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan* (Washington, DC: The White House, 2009).

⁴² “Afghan News, 11/04/2009—Bulletin #2513,” November 2009, http://www.afghanemb-canada.net/public-affairs-afghanistan-embassy-canada-ottawa/daily-news-bulletin-afghanistan-embassy-canada-ottawa/2009/news_articles/november/11042009.html.

increase the legitimacy of the Afghan government, and thereby, enhance its ability to govern effectively and counter the growing view of its illegitimacy fueling the insurgency throughout the country.⁴³ To establish the government's legitimacy and demonstrate its commitment to the ROL, U.S. and international officials advocated tackling corruption.⁴⁴

Based on the need to counter this dual threat to the Afghan mission—from insurgent attacks, which were increasing in both frequency and effectiveness, and from growing popular displeasure in Afghanistan with the central government and its international backers,⁴⁵ the U.S. government proposed several efforts to strengthen the ROL within the Afghan government. Multiple U.S. government departments and agencies were tasked to lend assistance, expertise, and training,⁴⁶ and many others volunteered to assist with the so-called “civilian uplift.”⁴⁷ Opinion pieces and editorials from former and current diplomats, political leaders, and generals advocated holding the Afghan government, at its highest levels, accountable for policing and prosecuting corruption within its ranks. To highlight the point and to punctuate the U.S. commitment to countering corruption, President Obama met with Afghan President Karzai in early May 2009 to convey the new strategy for U.S. efforts in Afghanistan,⁴⁸ and publicly admonished Karzai to address seriously the corruption within his administration.⁴⁹

By mid-2009, the United States had installed new leaders of the military and civilian efforts in Afghanistan (General McChrystal and Ambassador Karl Eikenberry, respectively) and declared a new strategy in Afghanistan. This strategy would focus on

⁴³ Anthony H. Cordesman, *Legitimacy and the Afghan Elections* (Washington, DC: Center for Strategic and International Studies, 2009).

⁴⁴ Ibid.; McChrystal, “COMISAF’S Initial Assessment.”

⁴⁵ Cordesman, *The Afghan War at End 2009*.

⁴⁶ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

⁴⁷ Office of the Special Inspector General for Afghan Reconstruction, *The U.S. Civilian Uplift in Afghanistan has Cost Nearly \$2 Billion, and State Should Continue to Strengthen Its Management and Oversight of the Funds Transferred to Other Agencies* (Arlington, VA: Office of the Special Inspector General for Afghan Reconstruction, 2011).

⁴⁸ The White House, *Remarks by the President after the Trilateral Meeting with President Karzai of Afghanistan and President Zardari of Pakistan* (Washington, DC: The White House, 2009).

⁴⁹ Helene Cooper and Jeff Zeleny, “Obama Warns Karzai to Focus on Tackling Corruption,” *New York Times*, November 2, 2009.

six key objectives, one of which was “[p]romoting a more capable, accountable, and effective government in Afghanistan that serves the Afghan people and can eventually function, especially regarding internal security, with limited international support.”⁵⁰ The new White House strategy also made recommendations, such as promoting civilian assistance and mentorship along with building the capacity and capability of Afghan police and security forces that favored civilian and diplomatic approaches to building a functional and legitimate Afghan government capable of acting as a willing partner in countering the Taliban.

1. The Afghan FBI

To tackle both the rampant Afghan government corruption and put a civilian face on reconstruction and capacity-building efforts instead of continuing the reliance on military personnel, the DOD turned to the FBI. In 2009, the DOD and the FBI signed an agreement under which the FBI would provide personnel, training, and expertise to support the MCTF-A.⁵¹ The MCTF-A was modeled after a similar effort created in Baghdad in 2005, the Major Crimes Task Force-Iraq (MCTF-I).⁵² However, the scale of the plan for the MCTF-A was much more ambitious than that for the MCTF-I, and the FBI would rely largely on DOD funding.⁵³ While coordination and approval for the creation of the MCTF-A was handled, on the Afghan side, at the ministerial-level, it is highly unlikely a decision of this order would have been made without discussion and ultimate approval of President Karzai or his most senior advisers.

The MCTF-A was to be led by the FBI, and the FBI would provide the largest portion of mentors, but law enforcement personnel from a wide variety of other

⁵⁰ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan*.

⁵¹ Office of the Special Inspector General for Afghan Reconstruction, *U.S. Agencies Have Provided Training and Support to Afghanistan’s Major Crimes Task Force, but Reporting and Reimbursement Issues Need to be Addressed* (Arlington, VA: Office of the Special Inspector General for Afghan Reconstruction, 2011).

⁵² Department of Justice, *Major Crimes Task Force* (Washington, DC: Department of Justice), accessed April 5, 2014, <http://www.justice.gov/archive/iraq/mctf.htm>.

⁵³ “Mission Afghanistan: Major Crimes Task Force,” accessed September 1, 2014, <http://www.fbi.gov/news/videos/major-crimes-task-force>.

international policing and investigative agencies would also participate.⁵⁴ The plan called for approximately 15 FBI agents and 20 to 25 U.S. and international law enforcement professionals to mentor approximately 250 Afghan investigators from both the Ministry of Interior and the National Directorate of Security, two groups that had historically not worked together.⁵⁵ The MCTF-A's launch marked the first instance of Afghanistan's police (part of the Ministry of Interior (MOI)) being co-located and operationally integrated with its internal security service (the National Directorate of Security (NDS)).⁵⁶

Both U.S. military and diplomatic leaders roundly lauded the creation of the MCTF-A as a major step forward in creating an atmosphere of accountability within the Afghan government.⁵⁷ The announcement of the MCTF-A was timed to coincide with a strongly worded statement by Secretary of State Hillary Clinton in which she publicly called on President Karzai to start taking responsibility for corruption within his administration.⁵⁸ In a harbinger of future disputes with U.S. officials concerning the MCTF-A, Karzai denied the accusations of corruption and rebuked the United States for interfering with internal Afghan matters.

Many within the U.S. government saw the MCTF-A as the best chance to date to create a mechanism for fighting corruption at the highest levels of the Afghan government and to finally start to stem the unchecked flow of cash to the Taliban and other insurgent leaders.⁵⁹ As evidenced in an October 26, 2009 cable from Ambassador Eikenberry, the United States was counting on the MCTF-A to play a major role in building law-enforcement capacity and advancing larger U.S. goals: "The MCTF is an

⁵⁴ "Mission Afghanistan: Major Crimes Task Force."

⁵⁵ Ibid.

⁵⁶ Office of the Special Inspector General for Afghan Reconstruction, *U.S. Agencies Have Provided Training and Support*.

⁵⁷ "Major Crimes Task Force: A Key Element of the Road Map."

⁵⁸ Mark Landler, "Clinton Presses Karzai on Corruption on Eve of Inauguration," *New York Times*, November 18, 2009.

⁵⁹ Jon Boone, "NATO Task Force to Form Afghan FBI and Root Out High Level Corruption," *The Guardian*, November 15, 2009.

emerging interagency and international cooperation success story with the MCTF playing a pivotal role in U.S. and Afghan anti-corruption efforts.”⁶⁰

Thus, before ever opening a single investigation or training the first Afghan MOI officer, U.S. leaders in Washington and Kabul were already looking to the MCTF-A and its FBI mentors to produce big results and quick successes. These expectations and desire for quick and public results countering the perceived rampant corruption within the Afghan central government would be a main driver of the MCTF-A’s creation and would have a direct impact on the aggressiveness with which MCTF-A investigators built and pursued cases.

2. Analysis: Cultural Implications of the MCTF-A and Rule of Law Capacity Building

Based on the problem set previously defined and the desire to not only build the legitimacy of the Afghan central government so that coalition forces could prepare to begin withdrawing from their duties required for security and stability, and to counter the rising insurgent threat leading to a near daily increase in attacks on U.S. and international forces, the creation and strengthening of existing ROL and law enforcement solutions was an obvious and logical step. However, building a centrally administered justice system and increasing law enforcement investigative capacity, particularly in regards to the investigation of what Western nations define as corruption, overlooks two fundamental cultural concepts in Afghanistan, alternate justice solutions and criminal patronage networks.

a. Alternative Justice Solutions

Rule of law was defined earlier as the state’s monopolization of the means of violence to ensure that its citizens turn to the state to handle criminal matters between individuals. This definition implies the presence of a sufficiently strong state-run government that either manages and administers the process centrally or shares authority with constituent political units (such as states or provinces). The recent history of

⁶⁰ “Major Crimes Task Force: A Key Element of the Road Map.”

Afghanistan shows that a government capable of effectively centrally managing or coordinating the administration of justice through constituent units has been absent for generations.⁶¹ The ethnic, political, and geographic divides present in Afghanistan, along with the people's religious beliefs, have tended to make the Afghan people more reliant on and inclined to trust local justice solutions rather than state-run institutions.⁶²

Additionally, the international coalition's early efforts to prop up a weak Hamid Karzai and mollifying the warlords and power brokers who could potentially challenge his authority and legitimacy in Kabul only strengthened this tendency.⁶³ By backing warlords whom the Afghan population feared or reviled as much as or more than they feared the Taliban leaders, and by making the central government in Kabul reliant upon these warlords to maintain stability within their local areas,⁶⁴ ISAF and United Nations (UN) officials only furthered the "weak-state-strong-society" reality on the ground.⁶⁵ One UN official derisively called this process "bribery for peace"⁶⁶ and a North Atlantic Treaty Organization (NATO) representative, as noted previously, termed it "keeping the warlords happy."⁶⁷

Based on the inability of the Kabul-based central government to influence affairs outside Kabul without the assistance of these warlords, and because these warlords viewed the placing of corrupt cronies in police and judicial positions as a means of rewarding allies and further building their patronage network, Afghans increasingly turned to local *jirgas* (traditional civil courts made up of village elders) and even the

⁶¹ U.S. Department of State, *Report of Inspection: Rule of Law Programs in Afghanistan* (Report ISP-I-08-09) (Washington, DC: 2008).

⁶² Ali Wardak, "Building a Post-War Justice System in Afghanistan," *Crime, Law and Social Change* 41 (2004): 319–41.

⁶³ John Braithwaite and Ali Wardak, "Crime and War in Afghanistan, Part 1: The Hobbesian Solution," *British Journal of Criminology* 53, no. 2 (2013): 179–196.

⁶⁴ United Nations Office on Drugs and Crime, *Corruption in Afghanistan* (Vienna, Austria: United Nations Office on Drugs and Crime, 2012).

⁶⁵ John Hooker, *A Cross-Cultural View of Corruption* (Pittsburgh, PA.: Carnegie Mellon University, 2003).

⁶⁶ United Nations Office on Drugs and Crime, *Corruption in Afghanistan*.

⁶⁷ Braithwaite and Wardak, "Crime and War in Afghanistan, Part 1."

Taliban for the civil justice that they were unable to find in state-run institutions.⁶⁸ Taliban leaders highlighted the inability of state-run institutions to administer justice services and the corruption of police and justice officials who viewed their jobs only as a mechanism for soliciting bribes, they seized upon public awareness of these systemic weaknesses to create a “shadow” system of justice.⁶⁹ Taliban courts even tried other Taliban members against whom local citizens brought complaints, and they used ombudsman-like positions to ensure a fair and equitable enforcement of the code of conduct by Taliban “judges.”⁷⁰ The Taliban and the Sharia law courts they administered proved to be more responsive to citizen complaints and more effective at carrying out sentences, although often in brutal methods.⁷¹ In areas in which the Taliban had established a parallel justice system, Afghans were more likely to indicate that they felt more secure and optimistic than those in areas solely administered by state-run institutions.⁷²

Along with the Sharia law based courts set up by the Taliban in many areas, the most prominent and respected method of legal and dispute resolution were the local *jirgas*. A poll of Afghans found that many mechanisms for addressing a civil or legal dispute (*jirgas*, district authorities, police, mullahs, members of parliament, non-governmental organizations, and foreign forces), the local *jirgas* were the most commonly preferred choice; they garnered 42 percent support in 2010, the year when the MCTF-A became operational, and 66 percent in 2011.⁷³ *Jirgas* received higher approval ratings in accessibility, fairness, following societal norms, effectiveness in delivering justice, and timeliness than all other mechanisms or institutions.⁷⁴ The broad conclusion reached of much of the research conducted prior to the U.S. invasion and through 2011

⁶⁸ U.S. Department of State, *Report of Inspection: Rule of Law Programs in Afghanistan*.

⁶⁹ Antonio Giustozzi, Claudio Franco, and Adam Baczeko, *Shadow Justice: How the Taliban Run Their Judiciary* (Kabul: Integrity Watch Afghanistan, 2013), 33.

⁷⁰ U.S. Department of State, *Report of Inspection: Rule of Law Programs in Afghanistan*.

⁷¹ *Ibid.*

⁷² John Braithwaite and Ali Wardak, “Crime and War in Afghanistan, Part 2: A Jeffersonian Alternative?” *British Journal of Criminology* 53, no. 2 (2012): 197–214.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

was that lower-level, society-based means of addressing justice concerns were the most effective and respected among Afghans.⁷⁵ In short, the Western idea of ROL and the traditional justice concepts and institutions touted by international politicians had no relevance to the 80 percent of Afghans who live outside Afghanistan's few large cities.⁷⁶

b. Criminal Patronage Networks

Criminal patronage networks (CPNs) are groups of individuals, businesses, and often government officials that seek to control either areas of the country, state assets, or public or private services or contracts.⁷⁷ These CPNs act in many ways like organized crime syndicates within the United States, and derive much of their profits from public corruption, such as skimming revenue from airports and other entry points, using public resources for private gain, extortion payments taken from citizens of the area, or from commercial, non-governmental, or government entities operating in the area of their control.⁷⁸

Due to Afghanistan's history of warlordism, and the lack of a central government capable of extending its reach much beyond Kabul, Afghan politicians have favored building or allowing the existence of CPNs to extend their power base.⁷⁹ The lifeblood of any CPN is a constant influx of cash or industrial activity into its area of control from which it can extort a percentage as revenue or gain financial benefit in other ways. As enormous amounts of money flowed into Afghanistan from international donors—a reported \$103 billion in non-military U.S. aid since 2002⁸⁰—a large percentage of this money was lost to corruption and CPNs.⁸¹ The percentage siphoned off is unknown but

⁷⁵ Braithwaite and Wardak, "Crime and War in Afghanistan, Part 2: A Jeffersonian Alternative?" *British Journal of Criminology*, 197–214.

⁷⁶ Rory Stewart, "What Went Wrong in Afghanistan," *Foreign Policy*, March 4, 2013.

⁷⁷ Yama Torabi, *The Growing Challenge of Corruption in Afghanistan* (San Francisco, CA: The Asia Foundation, 2012), 5.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Tony Cappacio, "Afghanistan Corruption Fostered by U.S., Pentagon Finds," *Bloomberg News*, April 30, 2014.

⁸¹ Joel Brinkley, "The Money Pit: The Monstrous Failure of U.S. Aid to Afghanistan," *World Affairs Journal*, January–February 2013.

estimates range from 20 to 50 percent of every dollar spent in Afghanistan. Even assuming accuracy of the lowest estimate, \$20 billion of non-military international aid donated from 2002 to 2013 has ended up in the hands of CPNs, which provided handsome support for the corruption and insurgency frequently tied to these networks.

President Karzai's late brother, Ahmed Wali Karzai, was often reported to be one such power broker. He controlled vast areas of southern Afghanistan, where his large and far-reaching CPN was based. The case of Ahmed Wali Karzai amply demonstrates how such power brokers and warlords are both sought out and despised by U.S. officials trying to shape actions in Afghanistan. Although Wali Karzai was widely known to control much of southern Afghanistan around Kandahar and to gain considerable profit through corrupt practices,⁸² the United States could not come to a consensus on the best way to deal with him. U.S. military leaders often called for placing him on their target list,⁸³ but it is also widely believed that the Central Intelligence Agency (CIA) employed Karzai to help execute their objectives in the south, and just two weeks before his assassination, U.S. diplomatic officials were publicly talking about him as the likely next governor of Kandahar.⁸⁴

B. STANDING UP THE MCTF-A: FASTER AND BIGGER RESULTS THAN EVER EXPECTED

The MCTF-A was officially established in October 2009, and construction of its physical headquarters began on a former Soviet-era base run by the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and named Camp Falcon. Construction of housing, classrooms, training facilities, and office space for both the FBI and international mentors along with the Afghan investigators was complete enough to be occupied by January 2010.⁸⁵ FBI Director Robert Mueller, U.S. Deputy Ambassador to Afghanistan Francis Ricciardone, UK Chargé d'Affaires Thomas Dodd,

⁸² Matthieu Aikins, "Who Killed Ahmed Wali Karzai?" *Foreign Policy*, July 12, 2011.

⁸³ Sami Yousafzai and Ron Moreau, "Why Ahmed Wali Karzai Was a Target," *Daily Beast*, July 12, 2011.

⁸⁴ *Ibid.*

⁸⁵ "Major Crimes Task Force: A Key Element of the Road Map."

and Afghan Minister of Interior Mohammad Hanif Attmar, inaugurated the MCTF-A facilities at Camp Falcon on February 25. The number of FBI and international law enforcement personnel stationed at the camp began to grow slowly through spring 2010.

Afghan investigators were assigned to and trained at the MCTF-A throughout the next few months. While the Afghan investigators were ready to report to the MCTF-A much earlier, the vetting process insisted upon by the FBI, in response to the rising number of “Green-on-Blue” attacks on U.S. trainers,⁸⁶ precluded the Afghans from reporting to the MCTF-A or having access to Camp Falcon before fingerprinting, background screening, and a polygraph test were completed. These vetting procedures, more stringent than those used for any other U.S.-sponsored police or security forces training program, were an ongoing point of contention between Afghan officials and their FBI trainers. FBI officials often referred to these vetting procedures as a “red line” for keeping the FBI involved in mentoring MCTF-A personnel, due to the number of attacks sustained by Afghan trainees and their American trainers throughout Afghanistan.⁸⁷ No attacks either by Afghans assigned to the MCTF-A or insurgents targeting U.S. personnel were aimed at Camp Falcon while the FBI was mentoring MCTF-A investigators.

The MCTF-A was divided into three investigative units—the corruption investigation unit, kidnapping unit, and the organized crime unit—but American and international partners viewed the primary specialty as targeting high-level corruption within the Afghan government.⁸⁸ Almost immediately, the MCTF-A began showing signs of promise in addressing the rampant corruption problems that top U.S. officials including President Obama, Secretary of State Hillary Clinton, Senator John Kerry,⁸⁹ and many others were describing frequently as a crucial issue in Afghanistan.⁹⁰

⁸⁶ Bill Roggio and Lisa Lundquist, “Green-on-Blue Attacks in Afghanistan: The Data,” *Long War Journal*, August 5, 2014.

⁸⁷ *Ibid.*

⁸⁸ Boone, “NATO Task Force to Form Afghan FBI.”

⁸⁹ Abdul Hadi Mayar, “Will Kabul’s New Anti-Corruption Task Force Establish Itself as Afghan FBI?” *China View*, November 17, 2009.

⁹⁰ Rod Nordland and Dexter Filkins, “Antigraft Units, Backed by U.S., Draw Karzai’s Ire,” *New York Times*, August 6, 2010.

The first arrest attributed to the MCTF-A occurred within days of its creation in October 2009.⁹¹ Within just weeks of the MCTF-A's creation, MOI and NDS investigators had built dozens of corruption cases, several of which resulted in the arrest of high-ranking Afghan officials.⁹² As investigators were trained, and more investigators were trained to a higher degree of investigative skill, the number of cases prepared for prosecution continued to expand.

The MCTF-A soon became a shining example of U.S. efforts to support the two-pronged "Obama doctrine" in Afghanistan; hold the Afghan government accountable for policing corruption, and provide a large civilian-led effort to teach Afghans to investigate governmental corruption themselves.⁹³ Soon, U.S. diplomats and politicians began visiting the MCTF-A to show their support and to hear about the task force's success in building a sizable caseload just months after being created. In roughly its first year of operation, the MCTF-A conducted 83 investigations, 43 of which were corruption-related.⁹⁴ The MCTF-A became the favorite illustration for Obama administration representatives, along with senior State Department and military officials, when they were questioned on what the United States was doing to counter the billions of dollars reportedly being siphoned off from international aid and taken to Dubai by Afghan officials and businessmen.⁹⁵ Even the Obama administration's highest-ranking diplomat for Afghanistan, Special Representative to Afghanistan and Pakistan Richard Holbrooke, highlighted the MCTF-A's efforts in testimony before Congress in 2010 when attempting to convince House oversight committee members to continue funding Afghan aid projects.⁹⁶

In the early months of MCTF-A operation, MCTF-A investigators and their FBI mentors took their initial mandate from Washington and targeted high-level corruption

⁹¹ Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan*.

⁹² Ibid.

⁹³ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan*.

⁹⁴ Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan*.

⁹⁵ Nordland and Filkins, "Antigraft Units, Backed by U.S."

⁹⁶ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

and arrested increasingly high-ranking Afghan government officials. Border police official Brigadier General (BG) Saifullah Hakim, former minister of the Hajj and religious affairs Mohammad Siddiq Chakari, and Herat border commander BG Malham Pohanyar, were all arrested and charged within the first few months of MCTF-A operation. These individuals were not just high-ranking officials; each one had a direct connection or relationship with President Karzai. Following these investigative breakthroughs, MCTF-A investigators and their international partners began searching for even higher-ranking officials to target to seek to prove the commitment to cleaning up the Afghan government at every level.⁹⁷ The speed and ease with which the MCTF-A was succeeding in targeting high-level corruption was a surprise to many senior officials within the DOD and Department of State (DOS).

The surprising part of the MCTF-A's early successes was the ease of building cases.⁹⁸ The sister unit of the MCTF-A, the Drug Enforcement Administration (DEA)-led sensitive investigations unit (SIU), was tasked with attacking Afghanistan's rampant drug trade and with cutting off funding to the Taliban and other insurgent groups generated by profits from this illicit activity. To accomplish this task, SIU and its DEA leaders set up a large wiretapping system, similar to that used in the United States, and began targeting the telephone and wireless communications of Afghan subjects.⁹⁹ As one unnamed U.S. law enforcement official stated in late 2010, "We looked around and realized how deep all this ran. The corruption went from the top [of the government] to the bottom."¹⁰⁰ The wiretapping system led to increasing numbers of cases against Afghan officials soliciting or discussing bribes, individuals seeking to curry favor with them, and Taliban commanders whom these officials were paying off for their support.¹⁰¹ While U.S. diplomats and policymakers all knew that considerable corruption existed within the Afghan government, no one guessed that it was as high-level or pervasive as

⁹⁷ "Afghan Corruption Prosecutor: I Was Forced Out," August 28, 2010.

⁹⁸ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

⁹⁹ Ibid.

¹⁰⁰ Matthew Rosenberg, "In Afghanistan, Prosecution of Malign Actors Stalls," *Wall Street Journal*, December 29, 2010.

¹⁰¹ Ibid.; Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

the investigations and wiretapping showed it to be.¹⁰² As the potential number of corruption-related cases seemed limitless, MCTF-A investigators and their FBI mentors continued to focus on the upper levels of government to seek to demonstrate that no one was too powerful to avoid their gaze.¹⁰³ With the nearly immediate success of the MCTF-A, numerous other DOD-led anti-corruption task forces, such as the combined joint inter-agency task force (CJIATF) 435, TF 2010, and TF Shafafiyet, were set up to target both governmental and private corrupt practices.

As the MCTF-A investigations aimed closer to President Karzai's inner circle and as arrests became public, Karzai became increasingly combative toward U.S. officials and Afghans involved with the MCTF-A.¹⁰⁴ Karzai began privately directing his ire toward Afghan officials, such as Attorney General Mohammad Ishaq Aloko, while publicly he criticized international interference in Afghan internal affairs. Those two words, "international interference," became Karzai's frequent refrain during the first year of the MCTF-A when U.S. officials publicly pressed him to address corruption seriously within his government or when one of his political allies was arrested for accepting bribes.¹⁰⁵ In March 2010, Obama paid an unannounced visit to Kabul to tell Karzai personally that the United States expected him to make serious strides in changing the culture of corruption within the Afghan government and that such action was essential to maintaining good U.S.-Afghan relations.¹⁰⁶ The U.S.-Karzai relationship was quickly falling apart due to the differing views on the importance and nature of the corruption problem in Kabul.¹⁰⁷ It would only get worse in the months to come. Just days after the Obama-Karzai meeting, and their tense joint press conference, Karzai accused

¹⁰² Rosenberg, "In Afghanistan, Prosecution of Malign Actors Stalls," Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

¹⁰³ Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan*.

¹⁰⁴ Dexter Filkins and Alissa Rubin, "Graft-fighting Prosecutor Fired in Afghanistan," *New York Times*, August 28, 2010.

¹⁰⁵ Joshua Partlow, "Karzai's Defiant Stance Concerns U.S., Other Afghans," *Washington Post*, April 5, 2010.

¹⁰⁶ Alissa Rubin and Helene Cooper, "Obama Presses Karzai for Crackdown on Corruption," *New York Times*, March 28, 2010.

¹⁰⁷ Michele Kelemen, "Relationship Between Karzai, U.S. Deteriorates," National Public Radio, April 8, 2010; Ahmed Rashid, "How Obama Lost Karzai," *Foreign Policy*, February 22, 2011.

“foreigners” of interfering in the disputed 2009 presidential election and stated that he may join the Taliban due to the West’s constant interference in Afghan affairs.¹⁰⁸

Although Karzai’s reactions showed that he was being pushed to the limit and was beginning to act in ways counter to the stated U.S. goals in Afghanistan, U.S. officials kept pushing the corruption issue through the MCTF-A and a myriad of other DoS and DOD-sponsored anti-corruption and good-governance task forces.¹⁰⁹ To reduce the tension between Karzai and the Obama administration, a White House visit was scheduled and administration officials began to publicly praise Karzai as a “good partner.”¹¹⁰ However, while policymakers and top officials began to soften their public stance on Karzai, the newly appointed commander in Afghanistan, General David Petraeus, made attacking corruption and the funding that it provided to the Taliban his top priority.¹¹¹ Petraeus began holding near-daily meetings with Karzai in early summer 2010, at which corruption within the government was frequently discussed.¹¹²

Meanwhile, the MCTF-A was conducting dozens of investigations and presenting them for prosecution. In response, the Afghan Attorney General’s Office was supporting the organized crime and kidnapping investigations but stonewalling any further high-level corruption cases and even dropping charges on several high-profile cases previously investigated.¹¹³ Attorney General (AG) Aloko originally told the media that he was acting at the direction of President Karzai, but both men later denied Karzai’s association with the abandoned charges.

Unsure of Karzai’s commitment to fighting corruption and unwilling to back down on the issue, U.S. officials in Kabul began looking for a test case squarely within

¹⁰⁸ Alissa Rubin, “Karzai’s Words Leave Few Choices for the West,” *New York Times*, April 4, 2010.

¹⁰⁹ Paula Broadwell and Vernon Loeb, *All In: The Education of General David Petraeus* (New York: Penguin, 2012).

¹¹⁰ Karen DeYoung, “Afghanistan’s Karzai Arrives in Washington for Visit Intended to Ease Tensions,” *Washington Post*, May 11, 2010.

¹¹¹ Broadwell and Loeb, *All In*.

¹¹² *Ibid.*; Joshua Partlow, “For General Petraeus, Battling Corruption in Afghanistan is a Priority,” *Washington Post*, July 29, 2010.

¹¹³ Huffman, “How the U.S. Lost the Corruption Battle in Afghanistan.”

his inner circle to assess his willingness to cooperate.¹¹⁴ They found such a subject in Mohammad Zai Salehi, Karzai's head of the Afghan National Security Council. SIU investigators had recorded Salehi soliciting a bribe from another high-profile corruption subject, Muhammad Rafi Azimi. Investigation into Salehi discovered that he had asked Azimi to provide a car for Salehi's son in exchange for help in getting the charges against Azimi dropped.¹¹⁵

U.S. officials in Kabul and Washington, including U.S. AG Eric Holder, put overwhelming pressure on AG Aloko to sign the arrest warrant generated by the SIU case,¹¹⁶ and Aloko did so.¹¹⁷ Afghan members of the SIU (although the media reported that they were MCTF-A officers) arrested Salehi on July 25, 2010, after a prolonged standoff with Salehi and a firefight between the officers sent to arrest him and other MOI officers whom he summoned to protect him.¹¹⁸ Allowed to make a phone call from his detention cell, Salehi called President Karzai, and within six hours of his arrest, Salehi was released.¹¹⁹ Eventually, the charges would be dropped and the Salehi arrest, although not carried out by the MCTF-A, would put the MCTF-A in the middle of a political test of wills between the U.S. and Afghan governments.

1. Analysis: Prior to the Salehi Arrest-Functioning As Designed

The experience of the FBI designing, creating, and operating the MCTF-A prior to the Salehi arrest by SIU officers was marked by mainly legal problems. While the cultural issues discussed previously did continue to fester and create challenges, the MCTF-A was able to either overcome or ignore these issues. However, the most daunting issues facing the MCTF-A during its successful rise were legal or justice system based.

¹¹⁴ Chayes, "The Afghan Bag Man."

¹¹⁵ Ibid.

¹¹⁶ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

¹¹⁷ Sandy Gall, *War Against the Taliban: Why It All Went Wrong in Afghanistan* (London: Bloomsbury, 2012), 265

¹¹⁸ Joshua Partlow and David Makamura, "Karzai Aide Part of Wider Investigation, Afghan Officials Say," *Washington Post*, August 19, 2010.

¹¹⁹ Ibid.

Two of the primary legal or justice issues detrimental to the successful operation of the MCTF-A prior to the Salehi arrest are discussed in the following sections .

a. A Three-Part Problem

The Afghan state-run justice system, like that of the United States and many other Western nations, is comprised of three separate and distinct entities: investigative, prosecutorial, and judicial.¹²⁰ For the ROL to function properly and equitably within a society, all three parts must function properly and be free from corruption and political influence. In 2012, the year in which the FBI removed its mentors from the MCTF-A, Afghans are believed to have paid approximately \$3.9 billion in bribes to public officials.¹²¹ The top three groups of recipients, in order, were the police, judges, and prosecutors.¹²² In terms of the size of the average bribe, judges and prosecutors were the top two groups.¹²³

The United States and international partners tried a variety of methods to address the corruption issue within Afghanistan’s ROL components and to address the education and training deficiencies of all three sectors.¹²⁴ However, their efforts were lacking for two broad reasons: the efforts and funding devoted to improving ROL issues started too late, and an uneven application of effort to assist the three sectors.

The United States provided funds to build ROL capacity-building programs through both civilian and military mechanisms. Often, programs to assist local police or build justice-sector programs have been sponsored in the same regions by both the DoS (with INL or the U.S. Agency for International Development usually doing the administrative work) and U.S. military units through its provincial reconstruction teams (PRTs), District Support Teams, or funds made available to military commanders to

¹²⁰ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

¹²¹ “UN Says Bribe Payments Soar in Afghanistan,” February 8, 2013.

¹²² United Nations Office on Drugs and Crime, *Corruption in Afghanistan*.

¹²³ *Ibid.*

¹²⁴ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

support ROL efforts in their area of operation.¹²⁵ The total amount spent by both DOD and the DoS to fund ROL capacity-building programs is unknown due to an inability to track DOD funding of such training accurately.¹²⁶ However, civilian funding of ROL assistance grew from \$7 million in 2002 to \$411 million in 2010, with a total expenditure of \$904 million through 2010.¹²⁷

The recognition by both the Bush and Obama administration that ROL programs were critical to the development of a legitimate government within Afghanistan came years after the initial invasion in October 2001. Also, the initial U.S. and NATO strategy of “keeping the warlords happy,”¹²⁸ and allowing these warlords and the Karzai administration to use staffing of police and justice-sector positions as a means of building their patronage network only ensured that, by the time that ROL funding did begin to pour into Afghanistan, the persons in positions of power were more interested in bettering their own financial situation than in improving ROL capacity and serving the people. This type of official graft was not a new phenomenon in Afghanistan; on the contrary, it is estimated that between 85 and 90 percent of Soviet aid given following the Soviet invasion of this country was lost to similar corruption.¹²⁹

Second, U.S. efforts to improve Afghan ROL were focused mainly on the investigative sector of the three-part system. As evidenced by the creation of numerous police and anti-corruption task forces such as the MCTF-A, SIU, and DOD-led programs including CJIATF-435, TF 2010, and Shafafiyet, the prevailing emphasis among U.S. officials looking to create an atmosphere of governmental accountability and improve ROL was to improve the capacity of investigatory agencies.¹³⁰

The DOJ and INL did partner on the Judicial Sector Support Program (JSSP), created to provide training and mentoring to prosecutors, defense attorneys, the AG’s

¹²⁵ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ United Nations Office on Drugs and Crime, *Corruption in Afghanistan*.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

Office, and the Ministry of Justice, which handles the Afghan prison system. Along with training the larger pool of Afghan prosecutors through the JSSP, the DOJ also provided eight attorneys from its agency as part of the senior federal prosecutors program, which was dedicated to specialized training for prosecutors working with the SIU and MCTF-A. The JSSP did provide training to Afghan judges, but the thrust of U.S. involvement with Afghan judges was in the form of providing judicial security through the U.S. Marshals Service (USMS). This lack of engagement and training of the judiciary meant that the ultimate arbiter of Afghan justice was left completely without mentoring or training on how to adapt to the new changes enacted throughout the entire Afghan justice system. Also, a lack of engagement left these judges to work outside the anti-corruption reforms being enacted in the other two parts of the Afghan justice sector. Training and mentorship was fundamentally skewed to the lowest rung of the justice ladder and the group least able to ensure anti-corruption cases were brought to a successful conclusion, the police.

No available data exists to document the funding discrepancy between investigative, prosecution, and judicial capacity-building efforts but the number of programs devoted to improving investigative capacity, compared to those in the other two areas, was sizable.¹³¹ This overwhelming push for building investigative capacity and capability was likely rooted in the dedication of both Generals McChrystal and Petraeus to attack the governmental corruption believed to be fueling the insurgency and the IED networks targeting U.S. soldiers every day.¹³² The reasoning of senior U.S. policymakers in 2009 was that criminality, by corrupt officials, regional powerbrokers, and the Taliban, was funding the insurgency, and that therefore, law enforcement, specifically policing, was better suited than military means to counter the problem.¹³³ Law enforcement came to be viewed as another weapon to be leveled against the malign actors supporting the insurgency. The hope was this law enforcement weapon would be usable by military

¹³¹ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

¹³² McChrystal, "COMISAF'S Initial Assessment"; Broadwell and Loeb, *All In*.

¹³³ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan*.

commanders unable, due to either political or other considerations, or unwilling to target these actors with lethal force.¹³⁴

As a whole, much of the police capacity building succeeded.¹³⁵ As evidenced by the large number of cases built by the MCTF-A and the high-profile arrests of several senior Karzai administration officials, the FBI and their international partners were very successful in training capable MOI and NDS investigators.¹³⁶ However, despite the hundreds of cases built, and the mountains of solid evidence compiled by these investigative agencies, not a single MCTF-A corruption case involving a senior Karzai administration official was ever successfully prosecuted.¹³⁷

The uneven efforts to build ROL capacity led to the worst possible outcome for long-term ROL reform, in that investigators saw their efforts to build corruption cases as futile. They were unable to gain convictions as prosecutors and judges were empowered to dismiss or disregard these corruption cases with impunity. To add insult to injury for the investigative agencies, many MOI and NDS officials and investigators assigned to the MCTF-A later met with reprisals or retaliation from the powerful figures that they had originally investigated.¹³⁸

b. Legal Authorities and Laws

One of the frequently cited reasons for the eventual dismissal of charges against Salehi and of other corruption cases was that Afghan law did not permit evidence collected by wiretaps to be used in corruption cases.¹³⁹ As stated by representatives from the AG's Office, Afghan law authorizes the use of wiretapping evidence only in crimes involving narco-trafficking or money laundering. While the AG's office originally signed

¹³⁴ Broadwell and Loeb, *All In*.

¹³⁵ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

¹³⁶ Mazzetti, "As Time Passes."

¹³⁷ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

¹³⁸ Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to Congress*, October 30, 2013.

¹³⁹ Rod Norland, "Afghans Drop Corruption Case Against Karzai Aide," *New York Times*, November 20, 2010.

the legal documents authorizing the tapping of the calls on which Salehi is reported to have solicited a bribe, it later indicated that such evidence is not legal or admissible.

The DEA-led SIU originally set up the wiretapping network for use in SIU's counter-narcotics investigations. As in the United States, the laundering of drug proceeds is a key part of the drug trade. Thus, targeting the illegal movement of these funds is a key aspect of attacking drug cartels and enterprises.

Establishing the legal authority to use advanced investigative techniques, such as wiretapping, was a key part of building Afghan investigative capability and capacity.¹⁴⁰ U.S. law enforcement officers who established and mentored SIU investigators ensured that the legal authority was in place to use the most useful techniques and then applied these techniques to build a successful counter-drug campaign and successfully target Afghan drug networks. The MCTF-A did not seek separate legal wiretapping authority for corruption cases. It is not clear if the task force's failure to obtain additional wiretapping authority was due to ignorance of the need for such authority or a belief that existing laws provided sufficient authorization, or if perhaps, additional authority was indeed requested from the Karzai administration but without success. Whatever the reason, clear legal authority to use wiretap evidence in MCTF-A corruption investigations was never granted explicitly; thereby, all the corruption cases built upon this type of intercepted evidence were undermined.

Additionally, legislation specifically authorizing the MCTF-A to operate and conduct the type of corruption investigations for which senior U.S. leaders were calling was continually stalled by the Karzai administration. FBI, the DOS, and DOD officials pushed the AG's office and President Karzai for the type of legal authority that can be granted only through legislation but the needed laws were never approved. Legislation authorizing the MCTF-A, had it been passed, may have helped the task force to maintain greater independence by creating a separation of powers from President Karzai.¹⁴¹

¹⁴⁰ Thomas, *The G-Men in Kabul: The FBI Combating Public Corruption in Afghanistan*.

¹⁴¹ Braithwaite and Wardak, "Crime and War in Afghanistan, Part 1," 179–196.

However, ample evidence is available that President Karzai was willing to ignore the separation of powers required for a truly independent, state-run justice system.

C. THE EXPERIENCE OF THE MCTF-A FOLLOWING THE SALEHI ARREST

President Karzai's response to the Salehi arrest was swift and public and (even though the MCTF-A was not directly responsible for either the Salehi investigation or the arrest) aimed squarely at the MCTF-A. President Karzai claimed, contrary to what U.S. officials said, that the MCTF-A was "essentially run by the foreigners."¹⁴² Even though it was not responsible for this particular case, the MCTF-A had established itself as the preeminent task force for attacking governmental corruption; therefore, it was in the crosshairs of the entire Karzai administration. One Afghan official would explain later how Karzai's administration viewed the task force: "Our assessments show that MCTF purports to be an Afghan institution but it is run by others."¹⁴³ Whereas, in previous clashes, Karzai had tried to deflect responsibility for derailing investigations or prosecutions of friends and political allies, this time he affirmed that he had acted to release Salehi,¹⁴⁴ even boasting in a U.S. television interview that "I intervened very, very strongly."¹⁴⁵ Moreover, he immediately ordered a commission to investigate both the MCTF-A and the SIU, and he directed AG Aloko to suspend the "top up" payments used to augment the salaries of MCTF-A investigators to attract the most qualified personnel and combat the risk of corruption within the task force itself. All these actions led the White House to respond in firm support of the MCTF-A and its anti-corruption initiatives.¹⁴⁶ A White House spokesman stated, "We are concerned about any attempt which could undermine the independence and authorities of Afghanistan's nascent anti-corruption bodies such as the Major Crimes Task Force."¹⁴⁷

¹⁴² Yaroslav Trofimov, "Karzai and U.S. Clash over Corruption," *Wall Street Journal*, August 3, 2010.

¹⁴³ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

¹⁴⁴ Chayes, "The Afghan Bag Man."

¹⁴⁵ *Ibid.*

¹⁴⁶ Nordland and Filkins, "Antigraft Units, Backed by U.S.."

¹⁴⁷ *Ibid.*

The public rift over the investigative independence of the MCTF-A caused by the Salehi arrest led to another round of meetings between Karzai and numerous senior U.S. officials from Kabul and Washington. Although Karzai was reported to have promised U.S. officials that the MCTF-A would retain its ability to operate without direct oversight,¹⁴⁸ on August 4, AG Aloko held a press conference to declare that his office would be taking control of the MCTF-A and SIU's operations and would examine each MCTF-A case as to its merits.¹⁴⁹ Direct communications from Secretary Clinton and Senator Kerry to President Karzai seemed to pull Karzai back from his most stringent positions and led him to withdraw some of the earlier sanctions.¹⁵⁰

However, Karzai's increasing volatility in dealing with the corruption issue, which was spilling over and poisoning other important aspects of the U.S.-Afghan relationship, drove U.S. policymakers in Washington and Kabul to hold a series of emergency meetings in late summer 2010 to reassess their anti-corruption strategy and their support for the MCTF-A.¹⁵¹ The debate broke down into two main points of view. Some top U.S. officials viewed tackling Afghan corruption and establishing the Afghan government's legitimacy as a fundamental requirement for mission success in Afghanistan.¹⁵² This requirement was a key tenet of the counterinsurgency doctrines of both Generals McChrystal and Petraeus. The opposing view held that pursuing good governance constituted mission creep for the main CT effort.¹⁵³ This argument rested on the assumption that accomplishing the overarching CT objectives in Afghanistan often called for working with the type of individuals whom the military often placed within its

¹⁴⁸ Jill Dougherty, "Karzai Pledges Non-Interference in Anti-Corruption Units," *CNN.com*, August 20, 2010.

¹⁴⁹ Matthew Rosenberg and Maria Ali-Habib, "Afghanistan Blunts Anticorruption Efforts," *Wall Street Journal*, August 20, 2010.

¹⁵⁰ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

¹⁵¹ Mark Mazzetti and Rod Nordland, "U.S. Debates Karzai's Place in Fighting Corruption," *New York Times*, September 14, 2010.

¹⁵² Woodward, "McChrystal: More Forces or Mission Failure."

¹⁵³ Dexter Filkins and Mark Mazzetti, "Karzai Aide in Corruption Inquiry is Tied to CIA," *New York Times*, August 25, 2010.

“malign actors” category and frequently targeted for detention.¹⁵⁴ This side also argued that attacking corruption would weaken Karzai to the point of ineffectiveness due to his inability to curry favor with the local warlords and powerbrokers on whose influence and power outside the Afghan capital he depended. Opponents of aggressively targeting corruption also posed a dilemma. While Karzai may not be an ideal partner for U.S. efforts in Afghanistan, did the United States have the patience or will to start over with a new partner?¹⁵⁵

As this debate continued to play out in Washington and Kabul, Karzai continued to press the issue. On August 25 and 26, two prosecutors within the AG’s office who were known to facilitate MCTF-A corruption investigations and aggressively prosecute the resulting charges were fired, although an official statement indicated that both were forced to retire. Both prosecutors, Deputy Attorney General Fazul Ahmed Faqiryar, and Amrodin Wafa, did not fall into the Karzai-Aloko camp and had openly defied the two top leaders by releasing the names of 25 senior Karzai officials currently under investigation for corruption.¹⁵⁶

While U.S. officials continued their internal debate over U.S. anti-corruption strategy, the MCTF-A’s kidnapping and organized crime units continued to build cases.¹⁵⁷ However, although MCTF-A officers continued to open and actively investigate corruption-related cases, no further arrests were approved and no individuals previously arrested were prosecuted. While AG Aloko insisted that the MCTF-A was operating normally, he did confirm in a late-summer interview that no arrests had been made and no further prosecutions were underway.

The issue came to a head on September 13, 2010 when President Obama called an emergency meeting at the White House to discuss the U.S. anti-corruption policy in Kabul. The main question was whether the U.S. could address corruption and still

¹⁵⁴ Warren Stroebel and Marisa Taylor, “U.S. Won’t Pursue Karzai Allies in Anti-Corruption Campaign,” *McClatchy DC*, January 6, 2011.

¹⁵⁵ Huffman, “How the U.S. Lost the Corruption Battle in Afghanistan.”

¹⁵⁶ Filkins and Rubin, “Graft-fighting Prosecutor Fired in Afghanistan.”

¹⁵⁷ Nordland and Rubin, “New Afghan Corruption Inquiries Frozen.”

maintain the relationship with Karzai required to execute its mission in Afghanistan. Following the White House meeting, Obama directed the CIA, DOD, DoS, and DOJ to develop guidelines for addressing corruption by functionaries and bureaucrats at the local and provincial levels but to stay away from investigating high-level officials and Karzai allies, the exact type of case the MCTF-A was created to pursue.¹⁵⁸

Although no official policy detailing the U.S. retreat on corruption matters was produced until January 2011, and then only in classified documents,¹⁵⁹ U.S. officials in Kabul slowly began to see the writing on the wall and previously fervent supporters, such as General Petraeus, slowly backed away from the anti-corruption strategy and the MCTF-A.¹⁶⁰ The only group that did not understand or follow the new “bottom-up” approach to tackling Afghan corruption was the MCTF-A. The Afghan investigators and their international mentors continued to build cases, only to have them disappear when they reached the AG’s office.¹⁶¹ In contrast to previous incidents, now no high-ranking U.S. diplomat or political leader was calling over to the AG’s office to demand information on the status of the investigations.

As *New York Times* reporter, Mark Mazzetti, wrote when relaying the thoughts of senior White House officials regarding the strategy change, “Will victory in Afghanistan be closer with each aide to Karzai who is hauled off to jail?”¹⁶² Many observers viewed the new corruption policy that effectively killed the MCTF-A as coming down to one question, whether it was in the U.S. interest to aggressively pursue its national security agenda through all means possible, even if that meant partnering with many of the “malign actors” who controlled most of Afghanistan, or to push for a western-ideal of good governance from the Karzai administration in hopes of eventually creating a lasting and legitimate Afghan democracy.

¹⁵⁸ Stroebel and Taylor, “U.S. Won’t Pursue Karzai Allies in Anti-Corruption Campaign.”

¹⁵⁹ Ibid.

¹⁶⁰ Chayes, “The Afghan Bag Man.”

¹⁶¹ Nordland and Rubin, “New Afghan Corruption Inquiries Frozen.”

¹⁶² Mazzetti, “As Time Passes, the Goals in Afghanistan Shrink.”

While the MCTF-A still operated successfully in its other two assigned areas, organized crime and kidnapping investigations,¹⁶³ the FBI and other international law enforcement partners began withdrawing personnel from the task force in early 2012. By the end of that year, only a couple international mentors remained. Within two years of the MCTF-A's establishment, and the arrival of the first full-time FBI personnel, all FBI staff had left Camp Falcon.¹⁶⁴

Following the FBI's withdrawal, the MOI and NDS, and the original Afghan commander of the MCTF-A, also withdrew most Afghan investigators, was relocated to the United States to avoid political reprisals for his work at the task force. The remaining, much smaller MCTF-A signed a memorandum of understanding (MOU) to partner with the ISAF's Combined Joint Interagency Task Force–Afghanistan in August 2013.¹⁶⁵ The purpose of the MOU is to use the information developed through the MCTF-A's criminal investigations to feed the ISAF's military efforts. This strategy of using law enforcement investigations to bolster military targeting of so-called "malign actors" had previously been dismissed by law enforcement mentors, since the stated purpose of the MCTF-A was to fight corruption and the insurgency through rule of law channels not military action. The MCTF-A still operates with support of DOD finances and personnel but the mandate to attack corruption actively, or the international law enforcement (LE) expertise needed to mentor the Afghans still assigned there are both gone.

1. Analysis: After Salehi, The Decline of the MCTF-A and the FBI's Withdrawal

As stated earlier, the arrest and subsequent release of Mohammad Zai Salehi, and the very public response from President Karzai, moved the challenges and problems faced from by the FBI and the MCTF-A from the cultural and legal realm into the much more dangerous political realm. Since the fight over the U.S.'s insistence on it campaign

¹⁶³ Dan Williams, "FBI Treads Lightly in Afghan Fight on Kidnapping," *Reuters*, June 17, 2010.

¹⁶⁴ "CJIATF-Afghanistan Signs MOU with Major Crimes Task Force," <http://www.isaf.nato.int/article/isaf-news-list/cjiatf-afghanistan-sign-memorandum-of-understanding-with-major-crimes-task-force.html>, accessed March 2, 2014.

¹⁶⁵ *Ibid.*

to hold Afghan political officials “accountable” and attack the corruption, many U.S. leaders in Kabul and Washington believed was fueling the insurgency became so public and well documented within the media, no alternative existed other than to make the issue a political test of wills. While political will did play an important part in the closing act of the FBI’s close association with the MCTF-A, the political camps were not as neatly defined as the coalition against their Afghan patrons.

a. Political Will

It would be easy to say that the FBI was in above its head in attempting to create a task force from scratch in a fourth world country, one that the DoS and DOD were counting on to play a key part in introducing an atmosphere of accountability that has been missing from the Afghan government for decades. As shown earlier, the MCTF-A quickly became seen as a panacea for battling both governmental graft and stopping the international aid flooding into Afghanistan from being siphoned off and feeding the insurgency.¹⁶⁶ The most senior Obama administration officials cited the MCTF-A by name when asked what the United States was doing to hold President Karzai and his cronies accountable for corruption within the Afghan government.

Once it became obvious that Karzai would not be a willing partner in targeting the CPNs on which he and his allies relied for political survival, many within the U.S. government, the international community, and the media said that the matter of helping the MCTF-A conduct its anti-corruption mission was simply a matter of political will.¹⁶⁷ Did the U.S. government, specifically the White House, have the will to make Karzai bend to its wishes? Was the United States truly committed to making members of the Afghan government act in a way that demonstrated concern for the well being of Afghan citizens rather than just using their power to improve their personal and financial circumstances? Many analyses of the U.S. government’s efforts to target government

¹⁶⁶ “Major Crimes Task Force: A Key Element of the Road Map.”

¹⁶⁷ Cappacio, “Afghanistan Corruption Fostered by U.S.”; Huffman, “How the U.S. Lost the Corruption Battle in Afghanistan.”

corruption by using programs like the MCTF-A to build investigative capacity claim that U.S. policymakers simply folded once the stakes got too high.¹⁶⁸

Many examples of U.S. leaders paying lip service to strengthening anti-corruption efforts are available, but then backing away from programs capable of controlling graft.¹⁶⁹ The MCTF-A was roundly praised for its efforts to target corrupt Karzai officials, until it succeeded. Was the FBI in over its head, or did the White House simply lack the will or fortitude to carry through on the statements from both President Obama and Congress about withholding U.S. funding if Karzai did not clean up his administration?

Lack of political will alone does not explain the debacle. However, U.S. policymakers began with a serious misunderstanding of the historical, current, and fundamental realities of the Afghan political system, which resulted in their inability to coalesce around one cogent strategy for advancing U.S. interests in Afghanistan.¹⁷⁰

As John Hooker explained in *A Cross-Cultural View of Corruption*, “[C]orruption is best understood as behavior that corrupts: it undermines the cultural system in which it occurs.”¹⁷¹ This explanation underscores the need to understand the Afghan cultural system. Like many others in the region, Afghan culture is based on ethnic ties and personal relationships, unlike most Western cultures that are generally based on laws and rules. As a result, authority and trust are accumulated and leveraged by individuals rather than lodged in rule-based systems in which the person’s position conveys power.¹⁷² In the West, people rely on the trustworthiness of government and legal systems, whereas in many more ancient and poorer cultures, such as Afghanistan, people trust only friends and other persons with whom they have an established relationship or familiar connection.¹⁷³ Simply put, government leaders are powerful in Afghanistan not because

¹⁶⁸ Stroebel and Taylor, “U.S. Won’t Pursue Karzai Allies in Anti-Corruption Campaign.”

¹⁶⁹ Broadwell and Loeb, *All In*.

¹⁷⁰ Chayes, “The Afghan Bag Man.”

¹⁷¹ Hooker, *A Cross-Cultural View of Corruption*.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

of the position that they hold, but by building networks of trusted partners. This relationship is often described as similar to the patron-client relationship seen in U.S. crime syndicates or the Italian Mafia, a concept well understood by the FBI.

The use of behaviors defined by rule-based cultures as corrupting, such as nepotism, cronyism, graft, and bribery, is at the heart of the conflict between the United States and President Karzai. As documented above, the United States frequently and publicly called on Karzai to clean up his government. This U.S. posture placed Karzai in a doubly precarious situation. He would be seen as bowing to the U.S. demands if he allowed his patrons to be targeted, and he would deliberately be permitting the shrinking of his patron base, and thus ultimately, of his own power. Applying the earlier observation about the source of power in traditional Afghan society, even President Karzai is not powerful because he is the president, but because he has significant control of the international aid and funding that he can use to fuel his network of patrons. When the situation is viewed from this perspective, in a sense, the United States was asking Karzai to commit what he may have viewed as political suicide and to act in a way that, while adding to his government's legitimacy in the eyes of international observers, ran counter to established cultural norms and to ways of ruling that have existed in his region of the world for centuries.¹⁷⁴

At some point during the public wrangling over the corruption issue between 2009 and 2011, U.S. policymakers may have come to understand that forcing Karzai to act in a way that actually weakened his position within the country would be counterproductive to the current U.S. strategy. At that point, the White House may have been unwilling to risk losing Karzai and having to start over with a new leader. Top U.S. policymakers must have asked themselves how putting Karzai allies in jail would practically advance the collective U.S. security interest in the country.

Secondly, revelations after the Salehi arrest exposed the fact that Salehi and virtually every significant political player in Afghan politics, including Karzai, were on

¹⁷⁴ Hooker, *A Cross-Cultural View of Corruption*.

the CIA payroll.¹⁷⁵ It has been reported that the CIA paid “tens of millions of dollars” directly to President Karzai and that similar but smaller payments went to Salehi and other close Karzai allies.¹⁷⁶ The CIA has not confirmed the payments, but it is widely believed that they are in line with similar payments it has made to other foreign leaders to purchase influence and curry favor. Following the arrest of Salehi and the eventual public disclosure of these direct CIA payments, Karzai himself confirmed the payments and indicated that the CIA station chief in Kabul had assured him that the payments would continue despite outcries from U.S. political leaders and public criticism.¹⁷⁷

This financial relationship between the CIA and Karzai demonstrates both the U.S. government’s inability to control all its own players in the Afghan conflict and a glaring instance of hypocrisy. U.S. leaders were publicly declaring that Karzai must stop the extra-governmental payments to his cronies that were designed to buy influence and expand his power base, while at the same time, the United States was secretly paying Karzai as part of an effort to buy influence and increase its power base! Again, whether the decision to back away from continuing to push Karzai to “clean up” his government was based on lack of political will to continue to empower forces like the MCTF-A is tied to the CIA payments is unknown. Perhaps U.S. advisors and policymakers simply became convinced that allowing Karzai to continue to build his power through his CPNs and then tapping into his increased power was more advantageous to U.S. national interests in Afghanistan than promoting a legitimate democracy but a weaker Karzai.

It is not clear if the 2010 decision to change the White House-sponsored anti-corruption campaign was due to one hand within the government not knowing what the other was doing, or if a fundamental disagreement was occurring over how best to advance the U.S.’s overarching but short-term national security interests in Afghanistan. In either case, much effort, millions of dollars, untold personnel resources, and many

¹⁷⁵ Chayes, “The Afghan Bag Man.”

¹⁷⁶ Ibid.

¹⁷⁷ Qadir Sediqi and Chelsea Carter, “Karzai: CIA Promises to Continue Cash Payments,” *CNN.com*, May 6, 2013.

U.S.-Afghan relationships were expended on efforts not only out of sync but often counterproductive.

D. SUMMARY

The MCTF-A was the first time the FBI attempted to field an industrial-sized rule ROL capacity-building program, and the first time that the FBI found itself between, not only, other U.S. agencies' strategic in a country but also between that country's and the U.S. presidents. Simply saying the FBI should never take on large-scale capacity-building programs or partner with foreign LE agencies to attempt to tackle tough criminal and terrorism-related matter would be short-sided and counterproductive to the strategic interests of the United States in many countries in which terrorist groups are now trying to establish a safe haven. The overarching lesson the FBI should take from this experience should not be never to take on difficult or large justice sector capacity-building programs again, but that a criteria must be created to independently evaluate each proposed program.

III. MOVING TO THE NEXT CHALLENGE

As the case study of the MCTF-A demonstrates, efforts to build ROL capacity and capabilities in a host nation (HN) without the necessary reflection on the viability of the endeavor, a realistic expectation of what is attainable, and an ROL strategy that fits with the U.S.'s strategic goals, are doomed to be marginally successful at best and counterproductive at worst. However, neither can the United States simply walk away from the business of building indigenous ROL capacity, because of the threats posed by Jihadist terrorist groups operating in countries that cannot maintain adequate security due to substandard policing or justice system components. Additionally, the current U.S. national CT strategy places great emphasis on development of competent CT partnerships with countries throughout the Middle East and Africa.¹⁷⁸ To build these capable law enforcement and intelligence partners, development of a competent and robust LE architecture is essential.

A. DEFINING RULE OF LAW PRINCIPLES TO BE ACHIEVED OR STRENGTHENED

Terrorist groups seeking long-term sustainability must gain popular acceptance of the group and its aims from the population in the area in which they seek to operate or conceal themselves. One common way to build this acceptance of an “us versus them” mentality, which Taliban and other insurgent groups in Afghanistan did very well, is to create strong in-group (ethnic Afghan, Muslim, etc.) and out-group dynamics (foreign, non-Muslim, etc.).¹⁷⁹ Terrorists frequently highlight the supposed injustices perpetrated against their in-group by the larger out-group. Allowing perceived or real injustices to fester or grow within a country in which terrorist groups are actively attempting to tear down the government's legitimacy not only threatens the government's survival but also can have degrading effects on regional security. Along with the example of the Taliban in Afghanistan appealing to local Afghans to rise up against the international forces they

¹⁷⁸ The White House, *National Strategy for Counterterrorism*.

¹⁷⁹ Fathali A. Moghaddam, “The Staircase to Terrorism,” *American Psychologist*, February–March 2005.

deemed as the out-group, the same type of message is commonly used by al Shabaab leaders during the deterioration of Somalia, and by current Islamic State fighters in Iraq and Syria.

U.S. and international officials attempting to counter this message and the Afghan insurgency knew that ROL principles, even if not constructed along the lines of the typical Western model, are critical not only for combating current terrorist threats but also for creating a societal framework resistant to the type of messages on which terrorists rely to create areas of safe haven. The emphasis on any ROL capacity building, whether small, focused skills-based training or industrial sized programs, such as the MCTF-A, should not be to import wholesale changes to an HN's justice system or to create a Westernized model in an area in which the rules-based approach is not culturally appropriate, or politically or socially viable. All ROL programs should be ends-based and not focused on a one-size-fits all approach.¹⁸⁰ While the United States and the West believed that the "Afghan FBI" would be eagerly accepted and U.S. views on LE reform and the justice system had universal applicability, they are not as commonly held within personality-based cultures.¹⁸¹ As such, the goals of ROL programs should be principle-based (what they are trying to accomplish) rather than procedurally based (how the ultimate goal is accomplished). Rachel Kleinfeld succinctly states the goals of an ends-based ROL program as follows:¹⁸²

- Law and order
- Government bound by law
- Equality before the law
- Predictable and efficient justice
- Protection of human rights

¹⁸⁰ Jane Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights? Building Rule of Law after Military Intervention* (New York: Cambridge University Press 2006).

¹⁸¹ Hooker, *A Cross-Cultural View of Corruption*.

¹⁸² Rachel Kleinfeld, "Competing Definitions of the Rule of Law," in *Promoting Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers (Washington, DC: Carnegie Endowment for International Peace, 2006), 31.

U.S. and international efforts to build ROL capacity and capabilities, particularly in areas with minimal or no history of centrally administered justice systems, should focus on how to accomplish the above desired end states rather than on building a system that mirrors Western systems.¹⁸³

To accomplish the desired end state of strengthening a CT partner's justice system and improving the country's ROL, it is first essential to determine if such an undertaking is advisable and if the likelihood of success is sufficiently high to justify the expected time, resources, and effort required. To address these two points requires a strategic assessment of the potential recipient country and its current state of justice and ROL. A description of the rudimentary framework for conducting this assessment and determining the viability and likelihood of success follows. The FBI or other international entities seeking to improve or reform the Afghan justice sector did not undertake this type of strategic assessment described in the following sections, but the international community's experience with ROL endeavors in Afghanistan indicate an assessment should be conducted prior to other large capacity-building programs. While conducting such an assessment is not a guarantee of success for building LE capabilities or enacting ROL reforms, the case of the MCTF-A demonstrates the downside of not taking any steps to assess the political, legal or social frameworks fully prior to undertaking a large-scale endeavor. The amount of data on mid to large-scale justice sector capacity building programs is very limited and the experience of the FBI with the MCTF-A serves as a potent example of how things can, even with the best intentions and efforts, fall short. However, while the unsatisfactory outcome of the MCTF-A and the steps taken to arrive at the outcome can serve as a guide of what to avoid in future projects, it simply is not possible to guarantee, based on the limited data, that different preliminary actions will lead to improved ultimate results. The following assessment is based on the political, social, and legal challenges that eventually derailed the MCTF-A, and proposes data that, if collected prior to the design or implementation of a ROL capacity-building program, can help the FBI avoid re-making prior mistakes.

¹⁸³ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

1. Step 1: Rule-of-Law Capacity-Building Assessment for Strategic CT Partners

To assess the potential of ROL capacity-building programs to take hold, function as designed, and make meaningful contributions to a partner nation's ability to strengthen its internal security, a strategic-level, in-depth ROL and justice sector assessment must be conducted. Such an assessment must occur before any ROL capacity-building programs are planned, designed, or attempted. It must fully examine the country's history, culture, and current political situation along with evaluating justice-sector components. As demonstrated by the history of the MCTF-A, a national justice system and ROL structures do not operate in a vacuum. Unless an in-depth understanding of the societal, cultural, and political forces in play is gained prior to the design of any programs, the likelihood of success is greatly diminished. I will review the key areas that must be included in any ROL assessment.

a. History

Reviewing the country's history means determining how the country, its justice system, and key leaders within the government reached the level at which they are today. The competence, capacities, and capabilities of all concerned parties will be assessed at a later time, but an detailed understanding of the internal and external forces that have led the country to its current ROL status is critical to understanding where, how, or even whether to begin any ROL programs.

An examination of the recent history of Afghanistan leading up to the U.S. invasion would have found the entire country of Afghanistan, including its justice system, had been decimated by decades of war. The Soviet invasion, the Afghan civil war, and constant squabbling among regional warlords and powerbrokers had left Afghanistan with no functioning central government. The Taliban-led government had tight control on some areas of the country and no control at all in others. The United States and its international partners could call on no existing government infrastructure to begin rebuilding an Afghan justice system and ROL.¹⁸⁴

¹⁸⁴ Wardak, "Building a Post-War Justice System in Afghanistan," 319–41.

Additionally, over the past generation the Afghan government, particularly during the Soviet occupation, had used the justice system as a means to control the population, not as a way to protect its citizens. The criminal justice system functioned largely as a political tool for those in power, as “rule *by* law” rather than rule of law.¹⁸⁵ This approach was particularly evident in the Taliban’s creation of the Ministry for the Propagation of Virtue and Prevention of Vice in 1992.¹⁸⁶ Taliban officials used the Virtue Ministry as a way of forcing the Afghan population to accept the Taliban’s strict form of Islam and to submit to their authority.

In view of both the lack of sufficient ROL partners and the fact that what little justice procedures were in place at the time of the U.S. invasion were being used to enforce the Taliban’s version of strict Islamic law, an ROL assessment would have indicated that the United States faced a double Herculean task, (1) building a functioning justice system essentially from the ground up, and (2) building trust in the state system among the Afghan people.

Additionally, the assessment should capture the most recent history and ongoing events. The MCTF-A was formed in an attempt to counter a corrupt political system that was believed to be a primary income source for the Taliban and other Afghan insurgent groups. An examination of Afghan history and culture would have made evident that corruption was a deeply ingrained part of Afghan politics and government but the recent examination would have also shown that this task was going to be even more insurmountable based on the tens of billions of dollars in U.S. and international aid that had already and was continuing to flow into the impoverished Afghan economy.

Every potential CT partner country has its own unique history that impacts its current functioning. Unless that history is fully understood, efforts to build physical infrastructure, train personnel, or achieve public support will likely underperform or be completely undermined. While the FBI and many LE partners were acting with admirable and honest intentions attempting to build a functional Afghan justice system, their efforts

¹⁸⁵ Soli J. Sorabee, “Rule of Law Should Not Be Confused With Rule by Law,” *New Indian Express*, January 21, 2014.

¹⁸⁶ Braithwaite and Wardak, “Crime and War in Afghanistan, Part 2,” 197–214.

would always bear the shadow of former Afghan governments that used the justice and legal system for their own selfish agendas.

b. Culture

Every nation has one or more culturally accepted methods of handling dispute resolution. As discussed previously, the U.S. and Western nations are rules-based cultures whose citizens have accepted that a government-administered justice system is the most advantageous way to maintain a robust rule of law that protects the rights of citizens. However, many poorer, less developed, or religious-centric cultures are less willing to accept the notion that a central government run by people with whom they have no personal experience is best able to protect their rights or adequately represent their concept of justice. Again, Afghanistan and the attempts to create a legitimate state-run justice system is a good example for examination.

Throughout modern history, Afghan culture has rarely if ever had a formal, central government-administered justice system, and certainly, Afghanistan has not had one since the Soviet invasion of December 1979.¹⁸⁷ While the constant conflict in Afghanistan has made creating or running such a system nearly impossible, the greater impediment, as discussed earlier, is Afghan culture's reliance on community-based justice solutions, such as *jirgas* or tribal councils.¹⁸⁸ As a result of this cultural preference, previous Afghan central or provincial governments placed little emphasis on building or strengthening justice institutions. As a personality-based culture, Afghanistan relied heavily on relations within tribes and well-respected elders to be the ultimate justice authority or source of dispute resolution.¹⁸⁹

When the U.S. invasion began, Afghan views on justice and the rule of law were predominantly the same as when the Soviets had invaded a generation earlier, or when the British had invaded a century and a half ago. Therefore, the window of opportunity to build a Western-style justice system that would be largely accepted by the majority of

¹⁸⁷ Wardak, "Building a Post-War Justice System in Afghanistan."

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

average Afghans was never truly open. However, the U.S.-led coalition could have sought to support the culturally accepted alternative justice system and ensure its continued functioning. Instead, the coalition began to build or rebuild Kabul-based Western-style police and justice institutions that had little or no influence on the vast majority of the mainly rural Afghan population. The coalition also attempted to replace the traditional alternative justice solutions with more formal, Western systems in the provinces, where such institutions had never functioned before. By de-emphasizing the traditional and culturally accepted justice solutions and attempting to replace them in the mainly rural Afghanistan with formal institutions that had no cultural acceptance, the coalition left an opening for the Taliban to create its own culturally accepted court system for dispute resolution.¹⁹⁰

The United States and the West view justice and the rule of law as a universal standard,¹⁹¹ which requires well-trained and respected police agencies, honest prosecutors, and a fair and educated judiciary. However, most cultures and societies around the world do not adhere to such a strict rules-based approach. An assessment of the culturally accepted norms for dispute resolution and administering justice must occur before the United States proposes any large-scale ROL endeavors. Creating or rebuilding a Western-style justice system or focusing exclusively on recreating HN “FBI’s” when the HN population has never been exposed to centrally administered ROL will undoubtedly be unproductive, and possibly, as in Afghanistan, could actually be counterproductive to U.S. long-term strategic interests.

c. Legitimacy of Government

The purpose of an insurgency, such as the Taliban in its present opposition status or the many Jihadist terrorist groups now posing threats to the United States, is to tear down the legitimacy of the government in the country in which they are operating or are targeting for attacks.¹⁹² Many governments, while battling terrorist threats or

¹⁹⁰ Giustozzi, Franco, and Baczko, *Shadow Justice: How the Taliban Run Their Judiciary*, 33.

¹⁹¹ Hooker, *A Cross-Cultural View of Corruption*.

¹⁹² Department of the Army, *U.S. Army Field Manual 3-24, Insurgencies and Countering Insurgencies* (Washington, DC: Department of the Army, version dated June 2, 2014).

insurgencies, unconsciously help the very groups they are fighting by carrying out actions that undermine their legitimacy and credibility with their citizens, who are the people most needed to defeat the opposing terrorist group.¹⁹³

The Afghan central government's legitimacy in the eyes of the 76 percent of Afghans who live in rural areas, and the over 90 percent not living in Kabul,¹⁹⁴ was low when the international coalition partners installed this government and has only continued to drop.¹⁹⁵ When the United States attempted to prop up this legitimacy, its very strategy aimed at building stability in the country by empowering regional warlords actually served to undermine the Kabul-based government further.¹⁹⁶

Similarly, many countries affected by the Arab Spring are facing the challenge of creating a government that can sustain any popular legitimacy among its citizens. Old regimes are kicked out because of their repressive policies or their failure to represent citizen concerns, but the incoming political leaders often adhere to similar policies and practices, although possibly for different purposes, as the ousted government. Unless a country has a history of representative and responsive government, or at a minimum, leaders who enjoy some popular support for their policies and governance, the foundation for ROL is not present.¹⁹⁷

Afghan leaders and the Afghan central government had neither a history of legitimacy nor a popular mandate to rule. It was impossible for the United States to help the Afghan government overcome its history of lack of governmental legitimacy. Additionally, the MCTF-A was designed to tear down the traditional mechanism within Afghan society to build a popular coalition.

Sufficient data is not available in the MCTF-A case study or on similar capacity-building endeavors to evaluate fully what benchmarks could be created to assess a HN

¹⁹³ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

¹⁹⁴ *Wikipedia*, s.v. "Afghan Demographics," accessed September 8, 2014, http://en.wikipedia.org/wiki/Demographics_of_Afghanistan.

¹⁹⁵ Cordesman, *Legitimacy and the Afghan Elections*.

¹⁹⁶ Cappacio, "Afghanistan Corruption Fostered by U.S."

¹⁹⁷ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

government's level of legitimacy completely. However, it can be evidenced that a government struggling to solidify its power and legitimacy in the eyes of its public cannot be expected to enact reforms that would have detrimental short-term effects on its hold on power.¹⁹⁸ A complete examination of where a country stands in its fight to gain legitimacy is essential to understanding the soil with which FBI or other ROL capacity builders have to plant any seeds of law enforcement or justice system reforms.

d. The Justice System

As evidenced by the frustration of U.S. and Afghan officials in attempting to prosecute corruption cases that intransigent prosecutors would not take to court or corrupt judges dismissed on dubious legal merits, an entire justice system must be functional to be effective. Along with determining the culturally accepted model for justice in HNs in which the United States would like to strengthen ROL capabilities and expand capacity, a thorough examination of existing justice institutions must also occur. The following sections discuss several of the most critical elements of this evaluation.

(1) Old vs. New.

Many post-conflict nations and countries that currently have terrorist groups operating or training within their borders have recently undergone political and governmental upheavals. The same as the U.S.-led invasion wiped away the Taliban-led government in Kabul, the Arab Spring has swept out many old regimes or completely rearranged the political landscape. In response to citizen demand, countries, such as Tunisia, Libya, and Egypt, have enacted significant reforms or changes in their justice system. Although these reforms, which often call for more openness and transparency and strengthening ROL, may be viewed positively by Western powers, the reforms often take time to be completely solidified within the government.

In areas in which the justice system was formerly used more for rule *by* law rather than rule of law, even former opposition leaders may not be willing to let go of previously accepted ways to manage dissent or control political rivals. Determining

¹⁹⁸ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan*.

whether political and justice reforms are actually taking hold is essential to assessing the ability or willingness of new leaders to enact or enforce ROL changes or expand capacity.

(2) Status of All Three Sectors.

As discussed previously, police reforms and training are overrepresented, and often garner the majority of effort in U.S. and internationally sponsored post-conflict and peacetime ROL capacity-building programs.¹⁹⁹ However, as vividly demonstrated by the MCTF-A experience, all three pillars of a justice system must be equally competent and capable for the system to function. When global powers seek to build ROL capacity in post-conflict societies, “If reformed police forces arrest criminal subjects only to have them released by corrupt and intimidated judges, for instance, or if subjects languish in squalid prisons for months or years without access to judicial process, the entire law enforcement system is undermined.”²⁰⁰

Police need both the skills and capabilities required to address the types of criminal activity present within their areas and the capacity to meet the demand. Prosecutors must thoroughly know the law and must be skilled in building competent cases and gaining convictions in their court system. Lastly, judges must be educated, fair, and able to render verdicts in line with the culturally accepted norms of punishment. Additionally, and possibly most important, all three sectors must function free from corruption or intimidation. Understanding the current state of the three sectors and their strength relative to each other is vital to assessing the viability of growing the HN’s ROL system.

(3) Societal–Justice System

Relations.²⁰¹ How do the police and justice officials view their role in society? Do police, prosecutors, and judges view their role as one of protecting citizens from those who wish to do them some type of harm, or as instruments of the government or political

¹⁹⁹ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

²⁰⁰ *Ibid.*, 218.

²⁰¹ *Ibid.*

leaders to control the population? The answer is likely be somewhere in the middle, but understanding how police view their role in society is instrumental to determining the type of training and capabilities that should be provided, if any. Technology and capabilities provided by Western countries under the auspices of CT capacity building can easily be used to target opposition parties or in other ways not supportive of comprehensive CT strategies in the region. In brief, due diligence with regard to how all justice sectors view themselves and how these three pillars have functioned in the past must be conducted before a decision is made on providing any additional capacity or advanced policing capabilities.

(4) Political Involvement.

How do the political leaders of the HN view ROL? Peaceful transitions of power are rare in areas in which terrorist groups have the freedom to operate in ungoverned spaces. Tyrants, dictators, and even democratically elected officials in these areas, often view their political survival as the most pressing matter of national security, and therefore, they view police and intelligence services as another tool to achieve that aim.²⁰²

A separate and independent judiciary free from political pressure and a police force that can conduct investigations without political influence are essential for strong ROL representative of the nation's citizens. However, the United States has maintained long and effective CT partnerships with countries that do not meet these conditions. It is not the responsibility of those making this assessment to determine if the U.S. government is willing to overlook certain uses of police or the justice system by HN political leaders; however, planners should collect the information and include it as another data point for evaluation.

(5) Past training.

Past performance is the best predictor of future performance, behavior, or success. Has the United States or have other international partners conducted ROL capacity-

²⁰² Bruce Bueno De Mesquita and Alastair Smith, *The Dictator's Handbook: Why Bad Behavior is Almost Always Good* (New York: Public Affairs, 2011).

building programs in this country in the past? Following the Bonn Conference in late 2001, Germany began providing police training to Afghan Ministry of Interior police units to establish basic ROL services.²⁰³ The German program focused on physical improvements and construction of police institutions.²⁰⁴ In the mid- to late 2000s, other international partners jumped in to assist, often without invitation and in an uncoordinated fashion.²⁰⁵ An examination of the previous training in Afghanistan should have been conducted prior to the agreement between the FBI and DOD to create the MCTF-A. Whether the training was coordinated or conducted in a manner consistent with the overarching strategic goals of the ISAF is not as important to predicting the success of future ROL programs as the actual return on investment on these programs, or whether the students put the information and training provided to them into use in an effective manner. Determining what has or has not worked well in the past, and why, and how the knowledge, training, or capabilities did or did not improve justice system performance, is critical for anyone designing or implementing an HN ROL training program.

e. Evaluation of the Assessment

Once this strategic assessment of the potential beneficiary of U.S.-sponsored policing or justice-sector capacity-building programs has been completed, the FBI and other U.S. government partners must decide if a comprehensive ROL program is appropriate, and if it would likely be successful in supporting overarching U.S. strategic goals within the country and region. Standardized evaluation criteria should be created, and the scoring must occur at the strategic level without undue influence by the tactical goals and strategies of those working in the country. The MCTF-A was created to confront what senior leaders in Afghanistan considered the most imminent threats to U.S. and international efforts to reconstruct the country. However, the MCTF-A, along with virtually all the other ROL capacity-building programs run out of Kabul, was out of step

²⁰³ Seth Jones et al., *Establishing Law and Order after Conflict* (Washington, DC: RAND, 2005).

²⁰⁴ U.S. Institute for Peace, *Establishing the Rule of Law in Afghanistan* (Washington, DC: U.S. Institute of Peace, 2004).

²⁰⁵ Wyler and Kenneth, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

with the eventual strategic interests of the Washington-based national security staff and the President.

An example of a simple evaluation scorecard for assessing issues related to building ROL capacity is provided in Table 1, with an estimate of how Afghanistan would have been scored had such an assessment taken place before the inception of the MCTF-A. This scorecard illustrates the type of analysis that must be conducted by honest brokers to assess the viability of ROL programs fully before the U.S. government or individual agencies partake in large-scale justice system training or reforms.

Table 1. Sample Rule of Law Assessment Scorecard

		Afghanistan 2009	
		Low Level	High Level
Legitimacy of Government	●	Low but dependent on location	
Cultural Acceptance of ROL	●	Good acceptance of societal ROL alternatives; little acceptance of centrally run system	
Development of 3 ROL Pillars	●	Very uneven	
Political Will for ROL	●	No political will for ROL, partly due to US actions undermining any ROL advances	
Success of Any Previous Attempts	●	Little success of post-invasion efforts by German and international partners	

Admittedly, this type of evaluative process will be open to manipulation by parties with political agendas or particular tactical problems that they are attempting to fix. An evaluation of this type would probably not have prevented the formation of the

MCTF-A, due to the intense political pressure felt by top American officials in Kabul to counter the growing insurgency. However, had such an objective assessment been conducted by people removed from the daily pressure of fighting the Taliban and AQ in Afghanistan, a more realistic design and approach to improving the ROL conditions and government legitimacy problems increasing Afghan support for the insurgency would likely have resulted, along with a more evenhanded application of assistance to all three justice pillars. Once the initial assessment has been completed, a plan to develop an appropriate program of training, mentoring, and equipping must be designed.

f. What To Do with a Partner with Significant Deficiencies

Some—perhaps many—of the countries in which the United States desires to build ROL in an effort to strengthen CT capacity will have deficiencies in the previously described strategic assessment. The result of the assessment, even if unfavorable, must be communicated to all U.S. partners, including those in the HN. Factors, such as regime changes, a personality-based culture, use of alternate justice solutions, and political will, can greatly affect a country's interest in or ability to implement the reforms that the United States envisions. Deficiencies in any of the categories on the scorecard will have adverse effects on the potential success of any ROL program. However, procedural and policy adjustments, such as accommodating the use of alternate justice systems for civil dispute resolution or diverting additional resources to one of the three pillars with the greatest needs, can help to compensate for societal, cultural, and some governmental deficiencies. These adjustments must be embraced early in the program design process.

Deficiencies in government legitimacy or in the political will of HN leaders must be solved politically, diplomatically, or perhaps, militarily. Appropriate U.S. government leaders must ensure that adequate incentives or risks of severe penalties are communicated to the leaders of potential CT partners. Additionally, ongoing evaluation must occur. All agencies must agree regarding the need to create a more legitimate government or stimulate political will, and both must fit with the U.S.'s strategic goals. A serious lack of political will or legitimacy should lead to the suspension of any potential ROL programs until the HN can be reassessed as having made adequate progress in both

categories. It is better to walk away from proposed efforts at an early stage than to expend significant resources in attempting to create a ROL program destined to fail that could poison political and diplomatic relations for years to come.

Conducting a comprehensive and accurate assessment of potential countries that the FBI or the larger U.S. government may seek to assist with ROL capacity building is required to give all parties involved the best chance of building a program that can navigate each HN's unique political, social, and legal framework. Once collected and analyzed, the information from the assessment should be used to inform those responsible for deciding if a ROL capacity-building program is feasible and what such a successful program should entail.

2. Step 2: Designing an ROL Capacity-Building Program

A cookie-cutter approach to building ROL capacity in partner HNs will not work. Each program must be specifically designed and implemented to account for that country's legal, societal, cultural, and governmental peculiarities. Wholesale importing of Western-based justice solutions is unlikely to function as designed. Each ROL capacity-building program should be built around the principles of comprehensiveness, an ends-based approach, and sustainability.²⁰⁶

a. A Comprehensive Plan to Improve ROL Capacity

Capacity building and “empowering partner nations” are common concepts among U.S. government agencies in the new focus on non-military CT strategies. However, efforts to train, mentor, and equip law enforcement and internal security forces in HNs have been generally piecemeal and not part of a well-defined U.S. government strategy to improve ROL. Additionally, an emphasis needs to be placed on creating a solution that will last, even if the scale or scope of the solution must be decreased to increase the likelihood of the program surviving after international personnel and resources are removed. The following topics are requirements of a comprehensive and strategic plan for ROL reform and development.

²⁰⁶ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

(1) Sustainability.

Creating or improving ROL capacity is useful only if the solutions created and programs established are sustainable with little input from international supporters.²⁰⁷ While the region of which this HN is a part may be of great strategic interest today to the U.S. government, and the terrorist group operating in or around this country may be an acute threat to U.S. national security, eventually that focus will change. If a sustainable program for improving ROL has not been implemented or if the justice solutions cannot operate effectively without substantial investment by international partners, ROL improvements will not last. Two main considerations are discussed next that should guide the design of an ROL capacity-building program likely to be sustained by the HN.

(2) Build On What Is Working.

The nations that require capacity building are by definition lacking the resources, expertise, and/or cultural or governmental willingness to create a workable justice system on their own. Therefore, creating a justice system model that heavily taxes the country's resources, cannot be effectively operated by the average practitioner, or will not gain social acceptance, is fruitless and wasteful.

The U.S.'s efforts in Afghanistan and the FBI's experience with the MCTF-A exemplify the creation of an unsustainable ROL system that violated all three of these principles. First, in 2010, the United States alone spent more than \$400 million in supporting civilian-led ROL programs in Afghanistan, and DOD expenditures on ROL programs, although not effectively tracked, likely reached well into the billions of dollars per year.²⁰⁸ In contrast, the entire Afghan government's 2014 budget was approximately \$2.5 billion.²⁰⁹ The U.S. government, even without accounting for the sizable influx of other international aid for ROL programs, created a system completely out of balance with the Afghan government's ability to sustain it financially.

²⁰⁷ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

²⁰⁸ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

²⁰⁹ Time Craig, "Afghan Official Says Government Has Nearly Run Out of Money, Needs U.S. Bailout," *Washington Post*, September 16, 2014.

With regard to cultural acceptance, the overwhelming majority of all civil and criminal disputes in Afghanistan are settled within the traditional justice process and outside the formal state-run justice system.²¹⁰ This Afghan traditional justice model is based on *shuras* and *jirgas*, and it places a greater emphasis on individual and community reconciliation as opposed to punitive measures. Although Afghans favor these alternative justice systems for a variety of cultural and legal reasons, a need still exists for a state-run system. The traditional justice system is often deeply entrenched along ethnic lines, and thus, fails to protect the rights of vulnerable populations or minority ethnic groups effectively.²¹¹

Although the traditional Afghan justice system would have been unsuitable as a CT partner in the manner the MCTF-A was looked to fight the corrupt practices fueling the Taliban,²¹² creating a solution that completely ignores the traditional system's popularity and cultural significance for resolving minor criminal offenses and civil disputes is not a sustainable solution. Using the state system to augment the traditional system in serious criminal cases and to ensure the rights of minorities and underrepresented ethnicities would be a more sustainable model than attempting to supplant the traditional system.²¹³ Instituting and enforcing the use of the state-run justice system effectively diminished the credibility and pervasiveness of the traditional justice model. This error enabled the Taliban to exploit the opportunity and create its own system to fill the void, thereby increasing its popularity and acceptance by local Afghans. Again, this type of action, although well intentioned by U.S. and international sponsors, only creates a culturally unsustainable system that can actually undermine achievement of strategic goals in the area.

²¹⁰ Wardak, "Building a Post-War Justice System in Afghanistan."

²¹¹ Wardak, "Building a Post-War Justice System in Afghanistan."

²¹² Boone, "NATO Task Force to Form Afghan FBI."

²¹³ *Ibid.*

b. Start Small and Build on Successes

While the tactics to fight an insurgency head-on and efforts to strengthen ROL are two very different activities, the ultimate objective of both is the same, persuading a population to accept the authority and legitimacy of its government to secure the country.²¹⁴ As such, many of the principles of counterinsurgency apply to ROL capacity building. One especially important component of sustainability in this regard is “small is beautiful.”²¹⁵

General Petraeus asked the FBI to create the MCTF-A based on his experience in Iraq with the MCTF-I, another FBI-led capacity-building program designed to help build a professional cadre of investigators within the Iraqi MOI. The MCTF-I was created in 2005 in a joint effort between the FBI and the DoS. The FBI stayed involved with the MCTF-I until 2011.

The MCTF-I was a relatively small effort, and the total number of Iraqi investigators assigned to the task force remained between 30 and 35.²¹⁶ The ratio of investigators to mentors was approximately two Iraqis for every U.S. mentor from the FBI or another federal law enforcement partner. Both the task force size and ratio of trainers to learners are in stark contrast to the Afghan version. The MCTF-A peaked at roughly 250 MOI investigators in 2010 with a dedicated international training cadre of roughly 30, which resulted in an investigator-to-mentor ratio of more than 8 to 1.²¹⁷ Moreover, the Iraqi investigators brought with them previous experience in investigating cases for trial in the state justice system, a background lacking in nearly all the MCTF-A investigators.

²¹⁴ Department of the Army, *U.S. Army Field Manual 3-24*.

²¹⁵ Department of the Army, *U.S. Army Field Manual 3-24*.

²¹⁶ Department of Justice, *Factsheet: Department of Justice Efforts in Iraq* (Washington, DC: Department of Justice, 2008).

²¹⁷ “Mission Afghanistan: Major Crimes Task Force.”

The MCTF-I made significant progress in attacking the type of violent and organized crimes fueling the Iraqi insurgency in the mid-2000s.²¹⁸ The DoS, DOD, DOJ, and the Iraqi MOI all publicly recognized its work. General Petraeus's experience with the MCTF-I, and his desire to recreate the success in Kabul, led to the creation of the MCTF-A, but in a much larger and more broadly defined manner. The large and broad endeavor, although fully in synch with the other DOD and DoS efforts, was in contrast to and out of line with the established and successful template used to build the MCTF-I.²¹⁹

Whether a smaller version of the MCTF-A would have succeeded is unknown; as long as the MCTF-A targeted high-level governmental corruption, it would have faced stiff opposition. However, applying the "small is beautiful" principle to other ROL efforts in Kabul and then disseminating what worked in that city to win the hearts and minds of the population in each valley, instead of trying to impose an ROL doctrine from a central behemoth on outlying areas, would undoubtedly have been a strategy more in line with counterinsurgency's goal of making government more acceptable to its citizens. This "small is beautiful" approach is especially relevant to building ROL programs in countries geographically vast or in ethnically diverse areas with semi-autonomous population clusters.

c. Three-Part Solution

As noted throughout this thesis, the need for a justice system in which the policing, prosecutorial, and judicial sectors are all relatively equally capable cannot be overstated. Adaptability must also be written into any plan to address each of the three functions of ROL. In Afghan shuras (i.e., local consultations to resolve disputes) the attending elder often acts as investigator, prosecutor, and judge. Creating a program that provides uniformity of training to people serving in these three capacities would be one way to ensure that ROL is delivered in as independent manner as possible while not significantly changing the culturally accepted model. Similarly, adaptive measures were

²¹⁸ Dina Temple-Raston, "Elite Iraqi Task Force Probes Sensitive Crimes," National Public Radio, March 28, 2008.

²¹⁹ Ibid.

introduced to account for the differences in Iraq's legal system, which is based on the French Napoleonic Civil Code. In the Iraqi system, investigative judges (IJs) act as both lead investigators and prosecutors. To insure that these IJs were well versed in both of their duties, FBI agents and DOJ attorneys shared the mentoring role.

Along with capability, institutional procedures must be in place to protect the independence of each sector against influence from the other two, political interference, or intimidation. As in Afghanistan, intimidation of the few prosecutors and judges willing to address corruption or terrorism issues is a common theme in many countries. Therefore, efforts, such as the USMS' judicial security program in Kabul are essential within the comprehensive planning process.

d. Legislative, Legal, and Governmental Support for Reforms

It may be necessary or advisable to create entirely new agencies or departments within an HN's justice system. If creating these new entities is a part of the plan for ROL development, the laws or legislation needed to ensure that these new entities are created according to the HN's own legal guidelines must be in place first. A new policing or justice-sector agency may, as in the case of the MCTF-A, face opposition or reluctance to fully codify its right to exist and operate freely if political leaders view the new agency as a potential threat to their survival.²²⁰

Also, if new or previously unused investigative techniques are to be introduced to improve investigative capabilities, the legal basis using the information developed through these new techniques must be established.²²¹ For example, Afghan judges were unable (and unwilling) to allow evidence collected via technical intercepts to be used in corruption cases because the law that allowed the creation of the wiretap system authorized its use only in narcotics-related investigations. Similarly, in Iraq, U.S. efforts to use biometric evidence collected through the exploitation of recovered IEDs was

²²⁰ Bueno De Mesquita and Smith, *The Dictator's Handbook*.

²²¹ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

rendered useless by many Iraqi judges' unwillingness to accept this new type of scientific evidence.²²²

While it is not possible to claim that if the correct legal authorities were created to legally support the MCTF-A and its investigations the MCTF-A would have succeeded, the lack of these authorities severely hindered the U.S. defense of the MCTF-A's efforts and made hemming in its anti-corruption efforts easier for Afghan politicians.²²³ It is apparent that the lack of legal authorities did create a fundamental weakness in the MCTF-A that its sister unit in Kabul, the SIU,²²⁴ nor the previous MCTF in Baghdad experienced,²²⁵ and this weakness became increasingly apparent as pressure by Afghan leaders mounted.²²⁶

Once an assessment of the potential HN is complete and the data collected was analyzed and used to devise and design a program that keeps in mind the key principles stated previously, sustainability, a three-part solution, and considers the required legal authorities, creating an effective implementation plan is possible. As with all the FBI's efforts abroad, the FBI will need an effective team of U.S. government partners to achieve success.

3. Step 3: Implementation and Building a Winning Coalition

While the FBI's experiences in running the MCTF-A and other smaller scale capacity-building efforts around the world is valuable to build HN law enforcement capabilities, the FBI should not lead any comprehensive ROL capacity-building plan. The FBI is not adequately funded or staffed to administer capacity building on the scale or of the scope required to improve an entire HN's ROL system, and as evidenced by the political nature of the issue, these large endeavors must be led from the highest levels of the U.S. government and be coordinated with all logical governmental partners.

²²² Brian O'Neill, "Baby Steps in Policing Iraq," *Pittsburgh Post-Gazette*, May 1, 2008.

²²³ Rosenberg and Ali-Habib, "Afghanistan Blunts Anticorruption Efforts."

²²⁴ Huffman, "How the U.S. Lost the Corruption Battle in Afghanistan."

²²⁵ Temple-Raston, "Elite Iraqi Task Force Probes Sensitive Crimes."

²²⁶ Stroebel and Taylor, "U.S. Won't Pursue Karzai Allies in Anti-Corruption Campaign."

However, the FBI should take the lead in conducting strategic assessments of countries that have terrorist enterprises operating within their borders. This role should be assigned to the FBI for two main reasons. First, the FBI has great awareness of the terrorist groups currently posing a threat to U.S. interests at home and abroad, as well as groups that could pose such a threat in the near future. Second, the FBI, as the MCTF-A and many recent programs have demonstrated, is frequently called upon to train and mentor foreign law enforcement agencies. To help countries from which terrorist threats currently or may soon emanate, the FBI should execute the assessment of whether the legal, cultural, and political factors in that country present a reasonable chance of success.

The FBI can begin this assessment process by engaging with other U.S. departments and agencies tasked with capacity building or establishing CT resilience. These key partners are noted in the following sections, along with a discussion of the potential role of each partner.

a. Necessary External Partners

(1) Department of Defense.

The DOD has a long history of assisting HNs with foreign internal defense (FID). FID has traditionally been oriented toward assisting military and paramilitary forces in tactical and operational activities directed against forces threatening the stability of the HN. However, in the post-9/11 world, the role of the military, specifically Special Operations Forces (SOF), has gradually expanded and the DOD, partly through choice and partly through necessity, is taking a larger role in police and legal system training.²²⁷

Due to mission requirements and the desire to advance its CT and counterinsurgency policies, the DOD attempted to create large-scale policing and legal training programs in Iraq and Afghanistan.²²⁸ Although the long-term evaluation of the success of these programs is still incomplete, their short-term success was limited. While the success of the DOD's recent efforts in law enforcement and ROL capacity building

²²⁷ McChrystal, "COMISAF'S Initial Assessment."

²²⁸ The White House, *White Paper of the Interagency Policy Group Report on U.S. Policy Towards Afghanistan and Pakistan*.

are debatable,²²⁹ the DOD has a keen interest in building law enforcement and legal capacity in countries around the world, and it has a sizable funding stream for this type of foreign assistance.²³⁰ Additionally, as evidenced by the amount of money billions of dollars expended by the DOD in Afghanistan for reconstruction, and the myriad of ROL capacity-building efforts, bringing the DOD into any endeavor is necessary for a coordinated effort and not creating multiple programs with competing agendas.²³¹

The FBI must be willing to partner actively with the DOD because the primary objectives of both entities, whether during or immediately after conflict, are very similar, to shrink the size of the ungoverned or under-governed spaces that terrorist groups need as their bases for operations, and to build the legitimacy of governments and their ability to secure their own country effectively.

(2) Department of State.

The DoS, the U.S. government's voice in foreign and diplomatic affairs, is the traditional U.S. supplier, sponsor, and funder of ROL capacity-building programs throughout the world.²³² The DoS has a long history of unilaterally providing training via its INL Bureau and of providing grant assistance through the U.S. Agency for International Development (USAID), which has conducted programs, such as Anti-Terrorism Assistance (ATA), as well as funding training and aid provided by other U.S. DOJ and Department of Homeland Security (DHS) agencies.²³³

Like the DOD, the DoS was very active in both Iraq and Afghanistan in attempting to build investigative, prosecutorial, and judicial capacity.²³⁴ In both countries, many of the DoS-sponsored efforts focused on large-scale investigative

²²⁹ Boone, "NATO Task Force to Form Afghan FBI."

²³⁰ Rebecca Williams, Stephen Abott, and Gordon Adams, *DOD Security Assistance Authorities* (Stimson: Budgeting for Foreign Affairs and Defense, 2009).

²³¹ Broadwell and Loeb, *All In*.

²³² "Programs and Initiatives," accessed September 24, 2014. <http://www.state.gov/j/ct/programs/>.

²³³ *Ibid*.

²³⁴ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

programs, some of which duplicated similar DOD-sponsored programs.²³⁵ The FBI also worked with the DoS on MCTFs in both Iraq and Afghanistan. In Iraq, the DoS fully funded the MCTF-I, and in Afghanistan, the DoS was responsible for assisting the FBI in creating the MCTF-A base of operations at Camp Falcon.

The DoS will likely be a willing partner with the FBI because, unlike the DOD, the DoS does not have a large supply of personnel available for large-scale training endeavors. Therefore, the DoS often relies on contractors, who may be inadequately qualified, and can cost \$200,000 to \$300,000 per year or more.²³⁶ DoS reliance on contractors and the quality of training and mentorship provided by these contractors have drawn fire from Congress and government watchdogs.²³⁷ Therefore, the DoS would likely be very willing to partner with U.S. law enforcement agencies that can provide highly trained personnel, and possibly, at a much lower cost than contractors.

As with the DOD, the DoS often sponsored numerous uncoordinated ROL programs. Additionally, the DoS was responsible for allocating billions of dollars in humanitarian, economic, and social aid to Afghan recipients. This aid was often diverted from the intended aid projects and was the source of much of the corruption that the MCTF-A was fighting. Without creating a strong partnership with the DoS to control the flow of funding into a HN's government and economy, any ROL programs will be at a severe disadvantage when trying to augment ROL reforms; if the DoS was willing to use the billions of aid as a bargaining tool for helping build ROL reforms instead of continuing to fund reform or reconstruction efforts that the Karzai government was using to fund its cronies.²³⁸

(3) Department of Justice.

The DOJ maintains two internal training and capacity building programs, the office of overseas prosecutorial development, assistance, and training (OPDAT) and the

²³⁵ Ibid.

²³⁶ David Isenberg, "Are Private Contractors Really Cheaper?" *Time*, July 23, 2013.

²³⁷ Office of the Special Inspector General for Afghan Reconstruction, *U.S. Agencies Have Provided Training and Support*.

²³⁸ Brinkley, "The Money Pit: The Monstrous Failure of U.S. Aid to Afghanistan."

international criminal investigative training and assistance program (ICITAP). OPDAT maintains regional legal advisors (RLAs) in 37 countries around the world and concentrates on helping countries develop judicial and prosecutorial capacity.²³⁹ ICITAP provides and funds police and investigative training for partner countries, but the program's scale is small, and like INL, it often relies on other agencies or contractors to provide training.²⁴⁰ In both Iraq and Afghanistan, the DOJ attempted to carve out a more prominent role within U.S. government ROL capacity-building programs.²⁴¹ The DOJ was integral in helping to train Iraqi IJs assigned to the MCTF-I, and these IJs were a primary reason for the success the MCTF-I enjoyed. The DOJ has also sought to use the FBI and its other law enforcement agencies to build clout and gain a more active role within U.S. government ROL efforts around the world.

Both ICITAP and OPDAT have a history of working with international partners in building criminal and prosecutorial expertise.²⁴² However, their small size, limited budget, and frequent reliance on others to conduct their training severely limit their ability to play a major role in large programs.²⁴³ OPDAT could play an important role in comprehensive CT capacity building in countries with similar legal systems.

(4) Central Intelligence Agency.

While the CIA does not have an explicit law enforcement or ROL mandate, it is the primary arm for U.S. CT efforts overseas.²⁴⁴ The CIA has a station in nearly every U.S. diplomatic establishment, whether embassy or consulate, and it often has considerable influence on U.S. policies within foreign countries and with HNs' LE and intelligence agencies. The CIA has worked diligently to maintain its independence and

²³⁹ "Assistance, and Training Description," accessed 22 September 2014, <http://www.justice.gov/criminal/opdat/>.

²⁴⁰ Ibid.

²⁴¹ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

²⁴² "Office of Overseas Prosecutorial Development, Assistance, and Training Description," accessed September 22, 2014, <http://www.justice.gov/criminal/opdat/>.

²⁴³ Ibid.

²⁴⁴ The White House, *National Counterterrorism Strategy* (Washington, DC: The White House, 2003).

influence in U.S. CT strategy and programs since 9/11. During the surges in both Iraq and Afghanistan, the CIA was at risk of being outspent and overrun by DOD's activities in developing relations and building capacity within these countries' LE and intelligence agencies.²⁴⁵ However, the CIA remains the preeminent CT partner for nearly every HN intelligence service and for many law enforcement services as well.

Based on its sizable budget and its willingness to work with HN powerbrokers from whom law enforcement officials or diplomats would shy away, the CIA will continue to hold tremendous sway with both U.S. and HN officials in all countries in which the United States has a CT concern. As was demonstrated in Afghanistan, the CIA will be unwilling to support ROL efforts that may diminish its influence with senior HN officials or the political sway of prominent HN officials on its payroll. Of all the U.S. partners in capacity-building efforts, the CIA is the most important for coordination. Unless the proposed ROL program is fully endorsed by the CIA and the potential effects of the improved ROL may have on the CIA's agenda, it is highly likely for conflict to occur, or for the ROL programs to run counter to CIA efforts, as was witnessed in Kabul.

b. Necessary FBI Internal Partners

(1) International Operations Division.

The IOD owns all FBI personnel assigned overseas in the FBI's legal attaché (Legat) offices. These Legats are the senior FBI agents in each HN and the lead law enforcement officials within U.S. embassies. They are best positioned to determine what type of LE training will be most beneficial and have the best relationships with HN law enforcement agency heads. While other FBI divisions may supply short-term personnel to build ROL programs, the Legat offices will be the enduring face of the FBI in the HN. Therefore, IOP personnel must first coordinate and approve any ROL programs before entering the design phase. A sustainable program must be able to be maintained by the few Legat personnel in each HN.

²⁴⁵ Wyler and Katzman, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*.

(2) Counterterrorism Division.

CTD is responsible for all FBI terrorist investigations and all FBI CT policies and operations around the world. The CTD provides the FBI's subject matter expertise on the management of domestic and worldwide CT investigations and operations. It is one of the FBI's best-funded divisions but does not have sufficient personnel or agent-level investigative expertise to provide trainers for large-scale capacity-building programs. Although the MCTF-A was ostensibly a tool designed to assist in the fight against the growing insurgency in Afghanistan, the CTD had little involvement and interest in the task force mainly due to the FBI focusing on CT issues and not counterinsurgency problems, even though a link may exist between the two efforts. Within the FBI, any capacity-building program must have the full support of the substantive division or the FBI resources, and personnel needed to support the endeavor may be limited.

(3) Criminal Investigative Division.

The CID carries responsibility for all FBI criminal programs and is the FBI division with the longest history of running long-term enterprise investigations. The CID may have the capacity to undertake short-term training programs, but like CTD, would rely on field office personnel to staff long-term training endeavors.

Although the CID does not seem like a natural partner for CT-focused capacity-building programs, the FBI's experience in training MCTF-A investigators clearly demonstrated that many of the necessary investigative skills are best taught by criminal investigators. Additionally, teaching new investigators to focus on basic criminal investigative methods allows them to build cases and not become reliant upon U.S. or internationally supplied advanced technology that they likely will not be able to keep operating in the long term.

(4) Critical Incident Response Group.

Known as the "FBI's toolbox," the CIRG is responsible for responding to, managing, and resolving critical incidents within the United States and around the world. The CIRG owns many of the programs from which HN law enforcement and intelligence

agencies frequently request training, such as tactical training, negotiations, crisis management, and behavioral sciences.

One of the most successful aspects of the FBI's involvement in both Iraq and Afghanistan was the development of biometric collection and analysis centers. Although the CIRG does not control the technology used to collect and match fingerprints of known and suspected terrorists or to match known prints to those recovered during the exploitation of evidence, such as IEDs, CIRG personnel were integrally involved in the large enrollment campaigns and have much of the historical and operational knowledge of how to manage these efforts effectively.

(5) FBI Academy.

The FBI academy, through new agent training and national academy classes, trains hundreds of U.S. and international students in modern LE techniques. While the FBI academy does not possess the subject matter expertise or local knowledge to provide in-country training to HN LE agencies, it does have significant experience and expertise in building training programs and in administering large, long-term training programs.

(6) Subject Matter Experts.

The FBI has developed a large cadre of SMEs on a plethora of basic and advanced investigative and forensic techniques. Much of the FBI's expertise in biometric collection, forensic examination, and explosive identification, would greatly improve many of the potential partner countries' LE and CT capabilities.

Building a cadre of experienced trainers and SMEs prepared to deploy was a challenge in building the MCTF-A. Accomplishing this task and being able to tap into this resource for assessments will be necessary to assess HN levels of expertise adequately and accurately in basic and highly specialized LE techniques.

B. SUMMARY

Effectively conducting even a small-scale program to improve LE or ROL capacity requires a myriad of partners to ensure the endeavor is appropriately designed, effectively operated, sustainable, and is in line with the U.S.'s overarching strategy

within the country and region. Building a coalition of all these external and internal partners will not be easy, but it is not necessary to have all these partners on board during each phase of the process. If the FBI seeks to conduct assessments of HNs that could benefit from ROL capacity building, it should include all relevant internal and external stakeholders. Leaving out stakeholders will only create miscommunications that lead to interagency friction or will leave out necessary expertise in creating a workable solution.

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IV. THE ARGUMENT FOR FBI CAPACITY BUILDING

The experience of the MCTF-A, the struggles of the entire ROL capacity-building program enterprise in Afghanistan, the mixed record of success that the United States and its international partners have achieved in ROL capacity building around the world, and the level of effort and coordination required to design and implement a successful capacity-building program, all raise the question, why should the FBI ever consider building law enforcement or justice-system capacity and capability at all? It would be easy to conclude from the FBI's experience in the MCTF-A that the FBI should stay away from capacity-building programs completely and that the potential downsides and political fallout from these programs, especially if not well aligned with U.S. government strategy, can outweigh the potential upsides of creating a more robust justice system in a developing country. However, that argument would be shortsighted and would ignore the long-term, and possibly, widespread benefits of strengthening HNs' ROL infrastructure, as well as the benefits for U.S. national security interests.

The author presents three arguments why the U.S. government, and specifically the FBI, should continue to pursue opportunities actively to conduct ROL and justice-system capacity-building programs with current and future U.S. international CT partners.

A. THE MILITARY IS NOT THE ANSWER TO EVERY QUESTION

The military instrument of power is actually more effective dealing with strength-on-strength situations than it is dealing with strength-on-weakness scenarios.

—General Martin Dempsey, chairman, Joint Chiefs of Staff

Well-administered civilian policing before, during, and after efforts by terrorist groups to gain legitimacy with a local population, is the most effective way to counter the rise or spread of terrorist groups.²⁴⁶ In the first decade since 9/11, the United States relied heavily on direct military action in the form of large-scale invasions, SOF raids, or

²⁴⁶ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

kinetic attacks as the primary weapon in CT efforts abroad. This military-centric approach has brought the United States several major and high profile tactical victories. However, none of the terrorist groups targeted by the United States through either large-scale military action or pinpointed special operations have stopped targeting U.S. interests in the homeland or abroad; on the contrary, some have actually grown stronger and more capable. The growth and resilience of the Taliban and the other groups comprising the Afghan insurgency in the face of the United States and its international partners' most concerted military efforts demonstrate the limits of military power on affecting or influencing public support for terrorist groups or their ability to operate.

A need will always exist for a directed, short-term military action to respond to imminent threats to U.S. national security, rescue U.S. hostages, or counter tactical gains made by insurgent groups, such as those currently achieved by the Islamic State in Iraq. However, direct military action has not proved to be an effective tool for eliminating terrorist groups or as a long-term strategy for stopping their spread.²⁴⁷ Additionally, even though U.S. Army leadership now stresses post-conflict stability operations as a core mission of U.S. soldiers,²⁴⁸ the typical U.S. soldier is not adequately prepared to carry out policing operations in a foreign country, nor would these soldiers ever gain public acceptance to the same extent as local or even international law enforcement officers.²⁴⁹

Historically, the use of military forces exclusively to combat terror and insurgent groups operating within a civilian population has proven very difficult and problematic, because the skill set needed to fight these groups or conduct policing operations is inherently different from the skills used in traditional warfare.²⁵⁰ Since the second wave of modern terrorism, involving the growth of nationalist terror groups, started in the early

²⁴⁷ Seth Jones and Martin Libicki, *How Terror Groups End: Lessons for Countering al Qaeda* (Washington, DC: RAND, 2008).

²⁴⁸ Undersecretary of Defense for Policy, *DOD Capabilities* (Washington, DC: Department of Defense), accessed October 10, 2014, <http://policy.defense.gov/OU.S.DPOffices/ASDforSpecialOperationsLowIntensityConflict/PartnershipStrategyandStabilityOperations/DoDCapabilities.aspx>.

²⁴⁹ Jones et al., *Establishing Law and Order after Conflict*.

²⁵⁰ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

20th century,²⁵¹ one of the key tactics of terror groups has been to target and overwhelm the police's capacity to respond to or protect the population from terrorist attacks.²⁵² These early terror groups believed that if they could take out the local police, the eyes and ears of the government would be effectively removed. Additionally, they hoped to prompt a military overreaction by the domestic government or an outside nation by creating a crisis situation due to the breakdown of civil policing, as well as of basic law and order. Strategy plans recovered from early nationalist terror groups, such as the Irish Republican Army and modern AQ manuals, both note the aim of first attacking the police in an area in which they were trying to gain acceptance, in the hope of spurring a clumsy or overzealous military response that would further alienate a disaffected population.²⁵³

This strategy of attacking the civilian police to create a military reaction was evident in the early days of the Afghanistan rebuilding effort and one of the most worrisome main tactics to U.S. commanders. The Taliban and the insurgency had a clear plan to direct many of their attacks against the nascent Afghan police force. See Table 2.

Table 2. Afghan Military and Police Personnel Killed by Insurgent Attacks

Period	Military killed or wounded	Police killed or wounded
21 March 2002–20 March 2003	9	39
20 March 2003–20 March 2004	92	75
21 March 2004–21 March 2005	138	183
21 March 2005–20 October 2005	226	266 ²⁵⁴

As stated within the U.S. Army's counterinsurgency manual, one goal of counterinsurgency operations is to build a legitimate government capable of policing its citizens through cooperation rather than coercion.²⁵⁵ Thus, it should also be the FBI's

²⁵¹ David C. Rapoport, *Terrorism: Critical Concepts in Political Science* (New York: Routledge, 2006).

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Tonita Murray, "Police Building in Afghanistan, A Case Study on Civil Security Reform," *International Peacekeeping* 14, 1 (February 2007).

²⁵⁵ Department of the Army, *U.S. Army Field Manual 3-24*.

goal in its assistance to partner countries. Enabling a country to build a respected, legitimate, competent, and capable LE and internal intelligence service will reduce the likelihood that a terror group will be able to tear down the government's legitimacy to the extent that military action by the U.S. or international partners will be necessary. Also, in post-conflict nations, only creating a nation capable of policing its own borders, providing security to its citizens, and possessing a functional ROL process, will allow the U.S. military to withdraw with the knowledge that it has established the best possible conditions for legitimacy.

The MCTF-A was designed to be part of the stated civilian-military partnership for countering the Afghan insurgency and for bringing a whole-of-government approach to solving the issue of Afghan governmental legitimacy. One of the key take aways from this effort should not be that the effort was wasted or should not be attempted again, but that the partnership between the civilian and military efforts must be earlier and more robust if it is going to have a better chance of success.

B. BUILDING A CAPABLE JUSTICE SYSTEM IS A KEY PART OF THE LONG-TERM SOLUTION

The resultant over-emphasis on short-term military dimensions of the global war on terrorism—as opposed to a more comprehensive strategy to addressing the long-term root causes of poor governance, instability and extremism in countries at risk—could have unintended consequences similar to those that arose during the Cold War, when the United States often purchased short-term acquiescence at the expense of long-term stability and sustained development.

—Stewart Patrick and Kaysie Brown, “The Pentagon and Global Development: Making Sense of the DOD’s Expanding Role”

The long-term solution to this so-called fourth wave of modern terrorism is to create an atmosphere that does not allow Jihadist terrorist groups to exploit an incompetent or unjust law enforcement and justice system to gain acceptance with their targeted in-group, or to take advantage of a government's inability of a nation to provide security to its citizens.²⁵⁶ Military intervention has proven to be a potent short-term

²⁵⁶ Jones and Libicki, *How Terror Groups End*.

method to attack the physical attributes of terror groups, but in response, most terror groups have avoided setting themselves up as readily identifiable, easy targets for a conventional military strategy.²⁵⁷ Few terror groups try to mount military-style campaigns against nation-states, and even fewer have succeeded.²⁵⁸ In contrast, the Taliban and other terror and insurgent groups have been very successful in using real or perceived injustices within a society to gain a safe haven for training or operations, or in undermining the legitimacy of a nation's government through small-scale criminal attacks.²⁵⁹

The U.S. public and political leaders, as demonstrated in both Iraq and Afghanistan, will not have the long-term patience required to keep sizable numbers of U.S. forces deployed in an active role in post-conflict nations. Also, even if the United States does seek to maintain troops in a post-conflict nation, it is not guaranteed, as seen most recently in Iraq, that the government of that nation will agree to accept them. However, providing ROL capacity building and police training feels much less like an invasion and does not undermine the legitimacy of the government that welcomes these forms of assistance. Therefore, countries are much more likely to accept these types of aid than to permit outside military forces to remain on their territory.²⁶⁰

Building or rebuilding a government that can secure its own country, produce a workable ROL framework, and gain popular legitimacy is a slow and methodical process and one that must begin as soon as possible after a conflict or sweeping governmental reform. Maintaining the institutional patience to keep large numbers of U.S. forces deployed in a country well after the perceived completion of active combat is not a politically viable solution. However, capacity-building efforts, even large-scale ones, require very little resources when compared to the financial and personnel needed to maintain U.S. forces in support of operations to stabilize a foreign government.

²⁵⁷ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

²⁵⁸ Jones and Libicki, *How Terror Groups End*.

²⁵⁹ Rapoport, *Terrorism: Critical Concepts in Political Science*.

²⁶⁰ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

Lastly, to degrade the capabilities and attractiveness of Jihadist terror groups permanently, the focus on operational successes must be replaced with a focus on significantly changing the cultural environment that allows these groups to attract recruits and win popular support. The cultivation of terrorists willing to give up their own life in support of an extremist cause is a psychological process that can be envisioned as a staircase.²⁶¹ As individuals move up to each floor, their worldview and sense of what are acceptable actions become narrower and rigidly defined.²⁶² The FBI, like all U.S. agencies tasked with CT duties, has focused exclusively on the upper floors of this staircase, by which point a person has already developed a worldview that motivates taking violent action to support the self-identified in-group. Just like reliance on direct military action to counter international CT threats, this reliance on operational success does not get to the root causes of the problem. Many of these root causes relate to HNs' ongoing creation of political and judicial environments that drive these potential terrorists to higher floors of the staircase.

The FBI must always be willing to cooperate with partner countries on operational matters, and to monitor and mitigate threats posed by those on the highest floors of the terrorism staircase. However, it must also work on ROL and police capacity-building programs that may not have direct and immediate impact on CT cases in these same countries but that will stem or slow down the flow of persons moving up the staircase to increasing radicalization due to the absence of basic justice solutions or security protections. Without a significant and deliberate effort to build ROL capacity in countries in which terror groups seek a safe haven, the FBI will have to continue relying on operational-level successes to mitigate threats and safeguard the security of both the U.S. homeland and U.S. interests abroad.

²⁶¹ Moghaddam, "The Staircase to Terrorism."

²⁶² Ibid.

C. COOPERATION IS IMPORTANT, BUT COMPETENCE IS THE TRUE FORCE MULTIPLIER

The most effective weapon against crime is cooperation.

—J. Edgar Hoover

The U.S. national CT strategy and the FBI's own strategy for combating international-based terror groups (and others inspired by these groups) that seek to execute attacks on the United States, call for increased international cooperation and building security partnerships with foreign police and intelligence services.²⁶³ The advantages of cooperation, intelligence, and information sharing, and joint operations are obvious in a world in which terrorist threats, such as the one the MCTF-A was designed to counter, are all transnational and often intermixed with organized and equally transnational criminal enterprises. Also, effective cooperation between the United States and other national police and intelligence services acts as a force multiplier for U.S. CT and security efforts in the region. However, to obtain the maximum benefit from this cooperation, the most competent partners possible must be utilized.

Providing threat reports to an HN police force incapable of mounting any challenge to the ensconced terror group is not productive; providing intelligence to corrupt law enforcement or investigative services is even worse. Having capable, competent, and professional justice-sector partners is the best way to capture the synergy needed to combat terrorism effectively on the operational, tactical, and strategic levels. Cooperation is a great buzzword, but it rests on the premise that the party with which - people cooperating can pull its own weight; otherwise, the cooperation is one-sided. Successfully fighting terrorism has always required a team effort, and the best way to maximize any team's potential is to raise the skill level of each team member.

The FBI, possibly more than any other U.S. agency with a CT mandate, depends on competent international partnerships in conducting its mission. Most terror groups operate outside the United States. The FBI has only about 300 employees permanently stationed overseas, and the FBI's budget for combating international terrorism is a

²⁶³ White House, *National Counterterrorism Strategy*.

fraction of that of the DOD, the DoS, or the CIA.²⁶⁴ However, three points work in the FBI's favor. It has a highly trained and competent workforce able and willing to train and mentor U.S. international partners, a long history of building effective LE networks through training programs, such as the National Academy, and a reputation for investigative excellence that causes foreign LE and intelligence agencies and U.S. departments alike to seek out the FBI's capacity-building expertise. The FBI should fully capitalize on other countries' desire to increase their own competence through FBI training, and on the willingness of other U.S. government agencies to pay for this training.²⁶⁵

While the FBI will likely not reap many direct rewards from its involvement with and efforts to build the MCTF-A, had the task force been designed differently or targeted insurgency in a more politically and culturally accepted manner with lasting positive effects, a productive relationship may have been possible that would have surely increased the FBI's operational capacity within the region. A good example of the FBI raising the competence and capacity of HN law enforcement agencies throughout East Africa is notably Kenya's Anti-Terrorist Police Unit, which had a positive effect on the FBI's ability to execute its mandate to counter threats around the globe. Each partner the FBI helps become better at its job and makes the job of a terrorist harder.

D. SUMMARY

Stopping or even slowing down the spread of terrorist groups throughout the developing world is a daunting and challenging task. However, it is a task that the FBI must be prepared to accomplish because neither the FBI nor any U.S. government agency has the resources or ability to fight international terrorism unilaterally. U.S. and international efforts in Afghanistan demonstrate that even bringing all the resources of the U.S. government together to fight a common threat cannot be expected to rid a country of a terrorist group operating within its borders if that group has the popular support of the population. The FBI must seek to counter the appeal of these terrorist

²⁶⁴ Fuentes, Assistant Director, Office of International Operations, Federal Bureau of Investigation.

²⁶⁵ Department of Justice, *Factsheet: Department of Justice Efforts in Iraq*.

groups, degrade their safe havens, and create capable and legitimate LE partners, and not simply rely on singular operational successes to counter threats to U.S. interests at home and abroad.

By conducting a thorough assessment of potential CT partner nations and their current political, legal, and justice sectors and ROL structure, designing a sustainable, culturally, and politically viable capacity-building plan; and building a winning coalition of FBI and other U.S. government entities, the FBI can better confront the terror threats currently menacing the United States and the world. Furthermore, it can build a more robust ROL framework that will have positive and broad societal impacts on these partner countries. Well-designed and implemented capacity-building programs will not only help the FBI counter imminent threats but will also help the United States address the underlying political, social, and cultural issues and deficiencies that allow terror groups to grow. Such programs are a crucial component of the long-term battle to defeat terrorism.

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V. CONCLUSION AND RECOMMENDATIONS

The MCTF-A was established in an effort to disrupt and dismantle the funding and support streams fueling the Taliban and other insurgent groups attempting to tear down the legitimacy of the Afghan government and its international supporters. While the Afghan insurgency is a unique problem in terms of size, scope, and complexities involved with so many international military and political players in the mix, the goal of the insurgency is the same as other terrorist groups operating in un- or -undergoverned spaces around the world, win the support of the local population and turn this population against the terrorist group's adversaries. A key tenet of the Afghan insurgency, as with virtually all terrorist groups, is the concept of the exploiting the perceived injustices against the population either by the HN government, the occupation force, or simply "America" writ large. The MCTF-A was an attempt to counter that message and demonstrate to the Afghans, particularly those supporting the insurgency, either through corrupt political practices or by violent opposition to the coalition, that the rule of law would be applied uniformly regardless of political position, power, or ethnicity. In the end, national leaders decided that short-term tactical gains were more advantageous to U.S. security interests in the region than was the further establishment of a robust ROL system in Afghanistan.²⁶⁶

While, as was thoroughly discussed in Chapter II, the ultimate decision to back away from the MCTF-A's mission of attacking high-level corruption to stem the flow of resources and support to the insurgency was out of the FBI's hands. The FBI and other MCTF-A supporters do bear some of the onus for backing the United States into the corner it found itself with the Karzai administration in 2010. The FBI's shortcomings in the design and operation of the MCTF-A fall into three broad categories.

²⁶⁶ Chayes, "The Afghan Bag Man."

A. SOCIAL

The MCTF-A, and much of the entire ROL capacity building effort of the U.S. government during the so-called “civilian uplift,” was not built to fit into the unique cultural and social constraints of the Afghan society. The solution envisioned by the MCTF-A to fight insurgency did not account for the deep seated personality-based Afghan culture and the long-standing and culturally accepted criminal patronage networks used to build political and military power for generations.²⁶⁷

B. LEGAL

The necessary legal framework to support the MCTF-A was not created prior to the MCTF-A starting to operate. By not having the laws in place to support the type of evidence MCTF-A investigators and their FBI mentors would seek to use to prosecute cases, and not even having a law in place legally to establish the legitimacy of the MCTF-A, the task force investigators and officials were left vulnerable to the corrupt judiciary and political officials seeking to reign in the MCTF-A’s corruption investigations.

C. POLITICAL

The creators of the MCTF-A faced a two-sided political opposition. The MCTF-A was designed and stood up without the participation or concurrence of the highest levels of the Karzai administration. This lack of coordination with senior Afghan officials led to the MCTF-A, again, being vulnerable to attacks from these political figures who could claim that the task force was an American creation designed to attack U.S. adversaries and not to advance ROL principles. Also, the MCTF-A faced unseen U.S. political opposition that eventually was the death-blow for the task force. By not ensuring a solidarity of political effort prior to creating the MCTF-A, the MCTF-A investigators and officials attempting to ferret out Afghan corruption were forced not only to overcome Afghan opposition but obstruction from other U.S. agencies and senior government

²⁶⁷ Hooker, A Cross-Cultural View of Corruption.

officials who saw the LE goals of the task force running counter to their covert and intelligence-driven objectives.

In the end, the MCTF-A failed due to the lack of political support from either the U.S. or Afghan governments for the ROL goals the MCTF-A and the other Afghan ROL capacity-building programs built in the late 2000s. The social and legal hurdles that should have been negotiated prior to the MCTF-A's design could likely have been overcome if political leaders from both sides had agreed the objectives of the task force were in the best interest of both countries' national security goals for Afghanistan and the region. However, because the political support of the goals of the MCTF-A was not solidified with both sides prior to the MCTF-A beginning the operation, the eventual stalemate between the United States and the Karzai administration was likely inevitable.

It is unlikely the FBI will face a situation identical to the one the MCTF-A was created to help solve. However, the CT problem the MCTF-A, and similar ROL capacity programs, are asked to address is becoming more prevalent throughout the world. Jihadist and religious-based terror groups have multiplied in areas throughout the Middle East and Africa, due to the social, political and legal conditions required to allow these groups to take root being present in many post-conflict and developing countries.²⁶⁸ As in Afghanistan, the FBI is being asked to help design and implement ROL capacity-building programs that will increase the HN's CT capabilities while strengthening the country's ROL and justice system to build the government's legitimacy with the population the terrorist group is attempting to attract.

Before the FBI undertakes capacity-building programs similar to the MCTF-A or any large-scale endeavor designed to strengthen a HN's ROL capacity or capability, the FBI should carefully examine the lessons detailed in Chapter II, but also adhere to the following principles thoroughly explained in Chapter III.

²⁶⁸ Jones et al., *Establishing Law and Order after Conflict*.

D. CONDUCT A STRATEGIC ASSESSMENT

to fully understand the environment in which a capacity-building program will be required to operate and succeed, the FBI must partner with other U.S. government agencies and conduct a thorough strategic assessment of the potential partner country. This assessment must include an examination of the HN's distant and recent history, social/cultural framework, and the current status of the legitimacy of the government with which the program is designed to work. Additionally, a thorough study of the country's justice system is required. This study must include views on justice-social relations (how does the population view the justice system), political involvement in the justice system, and past training of law enforcement or other ROL components, and the outcome of that training.²⁶⁹

E. DESIGN AND END-BASED CAPACITY BUILDING PROGRAM²⁷⁰

Any large-scale effort to boost ROL capacity or capability must be rooted in a culturally acceptable and sustainable solution.²⁷¹ As shown in Afghanistan, the emphasis on a central government justice solution devalued the more culturally accepted tribal justice system for resolving minor criminal offences and civil disputes. In turn, an opportunity was created for the Taliban to create a parallel system of justice more in line with Afghan social norms.²⁷²

Along with being culturally sustainable, any ROL program must be politically sustainable. High-minded and rules-based ideals of how to create a western style justice system often look good in the design phase but often fall apart when hit with the political realities of two countries that may have differing views on the ultimate goals of the ROL program or on what is in their respective best national security interests.²⁷³

²⁶⁹ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Wardak, "Building a Post-War Justice System in Afghanistan," 319–41.

²⁷³ Ibid.

F. BUILD A COALITION

As referenced in the previous point and detailed in Chapter III, building a coalition of U.S. supporters is necessary to ensure all relevant partners have a voice in designing and implementing the ROL program. As the MCTF-A demonstrated, good intentions and cooperation by only a portion of the U.S. inter-agency can lead to actions by other U.S. agencies that are not only not supportive but can be solidly counterproductive to both the ROL program, as well as the legitimacy of the HN government.

G. THE WAY AHEAD

Foreign partners are essential to the success of our CT efforts; these states are often themselves the target of—and on the front lines in countering—terrorist threats. The United States will continue to rely on and leverage the capabilities of its foreign partners even as it looks to contribute to their capacity and bolster their will.

—National Strategy for Counterterrorism, White House, June 2011

Due to all the reasons documented in Chapter IV, the FBI simply walking away from capacity-building endeavors because the experience of the MCTF-A is not a desirable or realistic course of action. Building more capable international partners who can effectively secure their own borders and police their countries, while at the same time strengthening their legitimacy in the eyes of their citizens by enhancing ROL and building effective justice systems, is not a goal that only benefits the HN but it improves the security of the United States by shrinking the areas in which terrorist groups can operate. The principle of enabling U.S. CT partners to team more effectively with the United States to fight terrorism is a key tenet of the U.S.'s *National Strategy for Counterterrorism*, “[t]he United States alone cannot eliminate every terrorist or terrorist organization that threatens our safety, security, or interests. Therefore, we must join with key partners and allies to share the burdens of common security.”²⁷⁴ The FBI should not shy away from these capacity-building endeavors due to its experience with the MCTF-A; however, it must be smarter and more deliberative in how and with whom ROL and

²⁷⁴ The White House, *National Strategy for Counterterrorism*.

law enforcement capacity building endeavors are built. Along with adhering to the principles laid out previously, and in Chapter III to build ends-based and sustainable ROL capacity-building programs, the FBI and its U.S. government partners should keep in mind two other important lessons learned.²⁷⁵

1. Start Now

The task laid out before the MCTF-A, and so thoroughly described in Chapter II, to counter the political corruption fueling the growing insurgency in 2009, was made even more challenging due to the fact the U.S. and international donors had been pouring billions of aid into the Afghan political and economic system on an annual basis for nearly eight years by the time the MCTF-A was formed.²⁷⁶ It is impossible to say definitively what the outcome would have been if the FBI and the U.S. government had earnestly strengthened ROL capacity building from the very beginning of the international occupation. However, it can be shown that the tens of billions of largely uncoordinated and untracked aid that had been flowing into Afghanistan in the eight years prior made the task harder by codifying and institutionalizing the corrupt practices of the Afghan government.

The United States had and continues to have a national security interest in beating the insurgent and terrorist groups operating in Afghanistan, partly due to a weak central government viewed by many in the country as illegitimate and not representative or equally protective of its citizens. The exact same statement can be made about numerous countries throughout Africa and the Middle East in which AQ affiliates or Jihadist terror groups have found safe haven. The FBI should be looking at these countries now and assessing if these countries are suitable partner nations for the U.S. government to help build its capabilities and strengthen its legitimacy through ROL capacity-building programs. If the FBI or other U.S. agencies can move in early to sponsor ROL programs

²⁷⁵ Stromseth, Wippman, and Brooks, *Can Might Make Rights?*

²⁷⁶ Office of the Special Inspector General for Afghan Reconstruction, *The U.S. Civilian Uplift in Afghanistan has Cost Nearly \$2 Billion, and State Should Continue to Strengthen Its Management and Oversight of the Funds Transferred to Other Agencies.*

at the earliest stages of U.S. involvement, or support these partner countries, it is possible that a fate similar to that of the MCTF-A can be avoided.

By starting as early as possible in engagement with CT partner countries, it is also helpful to craft a truly “whole of government” approach. Although this approach was called for in Afghanistan, again, it was not until 2009 that this idea was actively pressed. By then, each major U.S. department had already built its lines of engagement and strategy, and it was much more difficult to convince these agencies to abandon their unilateral approach in favor of a more inclusive and coordinated policy.

2. Keep it Low Key and Out of the Press

As previously stated and thoroughly documented in Chapter II, it was likely inevitable that the MCTF-A would lead the U.S. and the international community to an impasse with the Karzai administration over the investigation of high-level corruption within the Afghan government. Reasons for this conflict were thoroughly detailed previously, and possible remedies to avoid similar confrontations over ROL programs were also documented. However, a key point that should not be overlooked is that the impasse did not need to be as public as it was, and it can be seen that as the publicity over the conflict grew, Karzai became even more intransigent in his unwillingness to cooperate with the United States, and in his view, look to give in to international demands.²⁷⁷

From the very beginning, great fanfare occurred over the creation of the MCTF-A.²⁷⁸ As the number of cases mounted and arrests were made, the DOD, the DoS and the FBI all tried to capture good press and publicize the success of the “Afghan FBI.” Again, speeches and statements by high-ranking U.S. officials about how the MCTF investigators and their FBI mentors were aggressively pursuing corruption cases were thrown in the face of Karzai, and he was asked to comment. Invariably, Karzai’s public denials and counteraccusations would only serve to start a new round of stories when they were taken back to U.S. senior leaders in Kabul and Washington.

²⁷⁷ Nordland and Filkins, “Antigrift Units, Backed by U.S.”

²⁷⁸ “Major Crimes Task Force: A Key Element of the Road Map.”

As with many of the recommendations offered in this document, simply not enough data is available to say which strategies and tactics will undoubtedly work, but the case study of the MCTF-A does help indicate which ones did not work effectively. Making the FBI's efforts to build capacity and strengthen ROL public is one such strategy that should not be repeated. While the MCTF-A and the FBI did gain some goodwill and support from powerful U.S. supporters by publicizing their efforts to build the "Afghan FBI," it must be understood that political support can be short-lived and fickle. The same senior White House leaders who publicly spoke on behalf of the MCTF-A and its efforts were quick to abandon the task force when it was determined its goals no longer were inline with the overarching national security goals for Afghanistan. While some publicity in the HN is necessary to ensure the public is aware of the positive steps being taken by their government to improve ROL for all citizens, this publicity should be strongly coordinated with the HN government and not presented in a manner that creates an oppositional relationship as was the case with the United States and President Karzai.

H. SUMMARY

In particular, law enforcement helps us in at least three ways—it disrupts terrorist plots through arrests, incapacitates terrorists through incarceration after prosecution, and it can be used to obtain intelligence from terrorists or their supporters through interrogation, and through recruiting them as cooperating assets.

—David Kris, former assistant attorney general for national security,
Law Enforcement as a Counterterrorism Tool, June 15, 2011

Building strong capable partners to help protect the U.S. homeland and U.S. interests abroad from terrorism, along with reducing and denying access to ungoverned spaces from which terrorist groups can operate, must be a top priority of the FBI. As the lead agency for protecting the homeland from terrorism, the FBI must continually seek out opportunities to push CT efforts beyond U.S. borders and into the areas terror groups are now operating or where the conditions are right for these groups to try to expand. The MCTF-A was the FBI's first attempt to build a large-scale program to accomplish this mission, but it must not be the last attempt of the FBI to strengthen law enforcement and ROL capacity with countries post-conflict and developing countries.

Law enforcement as a tool against terrorism is not the panacea and will not be the right tool for all circumstances. However, working with HN LE and justice sector agencies to improve their capacity, capabilities, and ROL can have positive and long-lasting societal and cultural effects that other tools, such as military or covert action, cannot. The FBI should fully examine the lessons learned from the MCTF-A and begin working with other U.S. agencies to examine what countries are most suitable for future law enforcement and justice sector capacity-building programs. The FBI should not only be relying on continued operational successes to counter terrorist threats but should also be building international partners capable of effectively executing the CT fight and also addressing many of the underlying societal and justice system issues present in these countries that are creating terrorist safe havens.

The threat of international terrorism is not diminishing, and terrorist groups are continuing to search for or attempting to create space within post-conflict, weak, or developing nations to operate and launch attacks against the U.S. homeland or U.S. interests abroad. Also, the preeminence of the FBI in the international LE community and the number of countries that continue to seek out training from the United States to strengthen their justice and LE capabilities, or expand their capacities point to programs like the MCTF-A, is not ending anytime soon. American philosopher and behaviorist B. F. Skinner stated, “(a) failure is not always a mistake, it may simply be the best one can do under the circumstances. The real mistake is to stop trying.”²⁷⁹ The FBI must not stop trying to build better CT partners and improve ROL standards around the world, but unless the FBI learns from the lessons taught by the MCTF-A, it is highly likely future capacity-building endeavors will not be as successful or effective as possible, and possibly will be detrimental to the U.S.’s overarching national security strategies.

²⁷⁹ Kendra Cherry, “Quotes by American Psychologist B. F Skinner,” accessed November 30, 2014, <http://psychology.about.com/od/psychologyquotes/a/bf-skinner-quotes.htm>.

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