

constitutes the more “general advocacy” of *jihad*, political speech the Supreme Court says the First Amendment protects, like it or not.

“There has to be an imminent likelihood that there will be violence. Where is the evidence that anyone acted on this video to go out and kill an American?” asks Fein, who suggests the government is hurting its ability to fight terrorism through such prosecutions. “Our greatest strength is the rule of law. Applying the rule of law even-handedly will dry up the recruits [or terrorism].”

Not surprisingly, the prosecution is unimpressed with this line of reasoning. After oral arguments in early February, Navy Capt. Edward White said, “Our position was that, as an enemy combatant waging war against the United States from abroad, [al-Bahlul] does not have First Amendment rights. He crossed the line into criminality, soliciting other people—inducing, enticing, encouraging, persuading them—to commit war crimes.” Calls to the Office of Military Commission for further comment went unreturned.

Scott Silliman, professor and director of the Center on Law, Ethics, and National Security at Duke University, told *TAC* that he, too, considers the First Amendment argument weak. “[The Constitution] does not protect everyone in the world,” he says. He points out that members of the U.S. military are limited in speech everyday. In fact, soldier Marc Hall was jailed in December for recording a rap song criticizing stop-loss. The military deemed his song a “communications threat.”

Silliman doesn’t agree that if al-Bahlul’s conviction stands, the military could begin targeting foreign journalists or anyone picked up on the global battlefield espousing offensive speech: “I would argue that the First Amendment does not extend to a nonresident alien, period.”

But this wouldn’t be the first time constitutional rights were afforded to nonresidents. In 2008, the Supreme Court ruled 5-4 that in creating the MCA in 2006, Congress had illegally suspended habeas corpus for noncitizen detainees. Writing for the majority, Justice Anthony Kennedy said that the president and Congress do not have “the power to switch the constitution on or off at will.”

Meanwhile, critics like British writer Andy Worthington, who wrote “The Guantanamo Files” and, if you believe the defense’s admonitions, could be detained someday for his sustained written and verbal attacks on U.S. detention policies, say there is growing evidence that the government is already considering a certain kind of speech “militant activity.”

“What’s kind of been submerged here is these recidivism charges coming out,” Worthington tells *TAC*. “It’s worth examining.” As early as 2007, the Pentagon was not only counting ex-prisoners

caught with guns and IEDs in its running total of so-called recidivists, but those with pens and video cameras, too. According to one of its own press releases listing “former Guantanamo detainees who have returned to the fight,” the government cited among those taking part in “anti-coalition activities” three UK-based Muslims who produced a film about their experiences in prison at Gitmo and another former detainee who wrote a critical op-ed for the *New York Times* from his new home in Albania.

Worthington commends the free-speech challenge as laudable, but acknowledges it will be a difficult case to make in a military court. “I have to say it is an ingenious argument, but I’m not entirely sure they will get anywhere with it. It remains to be seen.” ■

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## Mindless Missiles

The Pentagon’s drone budget is on autopilot.

**By Winslow T. Wheeler and Pierre M. Sprey**

TODAY’S PENTAGON is led by its most widely respected secretary of defense in decades, one more in control and feared by the generals than any since the much-hated Robert McNamara. One would hope that with this stature, Robert Gates is nurturing a plan to reverse the decay afflicting our military forces. Think again. The only plan will make things worse.

It was revealed in early February in an obscure, mostly ignored document that accompanied Secretary Gates’s new defense budget—the “Aircraft Invest-

ment Plan, Fiscal Years (FY) 2011-2040.” Though the Pentagon has never been able to stick to even the second year of any of its innumerable future year plans, it is confidently laying out a roadmap for the next three decades for all aircraft in the Air Force, Navy, and Marine Corps.

Contrary to the invective that politicians and their think-tank cronies hurl against the Obama administration, this new plan does not ruin America’s air power with less money, but with more. It promotes some of the most gold-plated, mindlessly ineffective weapons

seen since the Imperial Japanese Navy's mega-battleships were dispatched to the bottom of the Pacific.

Year one of the new plan starts with the smallest and oldest aircraft inventory we have had since the end of World War II. The cause is certainly not that our air arms are being starved of money. Even after adjusting for inflation, current spending is significantly higher than Cold War outlays were for far larger aircraft inventories. The planes our services are now buying are inexcusably more expensive than the ones they're replacing—deliberately so. Moreover, they come with no commensurate increase in effectiveness. Just the opposite.

In 1970, our fighter and attack aircraft supply stood at roughly 8,000 aircraft. Today, we have just 3,300. The new plan continues that trend, down to 2,900 by 2020, a 10 percent reduction. To get there, the fighter/attack budget will swell by 40 percent, from about \$12 billion to roughly \$17 billion.

Gazing into their crystal ball, the planners also recommend shrinking the forces for other missions, again while sharply increasing costs. The command, control, and intelligence aircraft fleet will drop 10 percent in only five years—from 580 down to 527—but the bill will soar from \$5 billion up to almost \$8 billion. Cargo, tanker, and bomber inventories stay roughly level, though their spending increases, dramatically in the case of tankers and bombers. No doubt fearing further embarrassment, the 30-year plan offers no force shrinkage or budget bloat details beyond the year 2020.

The plan's other unmentioned problem is the aging of our already geriatric aircraft inventory, which the Pentagon propels apace. Quite remarkable are the numbers of F-15s, F-16s, F-18s, and A-10s, all originally designed in the late 1960s, that will be hanging around until

2040 because their replacement, the vulnerable and sluggish F-35, costs an outrageous three to ten times more. Ditto for the bomber, cargo, and tanker fleets, many of which are due to grow even longer in the tooth than the fighters. This shriveling force will cost an extra \$9 billion at the end of the decade—on top of the \$22 billion we're spending now.

## **JUST TWO PRE-PROTOTYPES OF THE SO-CALLED "STEALTHY" (THEY NEVER ARE) DRONES ARE COSTING AT LEAST \$635 MILLION. THE FLIGHT PLAN IS ALREADY MONTHS BEHIND SCHEDULE.**

To make it all worse, this scheme assumes flawless implementation; not a penny of new cost overrun is anticipated—an appalling irresponsibility in the face of Government Accountability Office reports of major weapons overruns of \$295 billion since 2001.

Not everyone, however, is swooning. Quite notable is a chart in the plan that reveals a Navy gambit to reach deep into the Air Force's wallet. With only about 30 percent of the aircraft, the Navy ends up with at least 50 percent of the funding. We have not heard the last of this. Budget share is the most prized jewel in the Pentagon's cut-throat bureaucratic wars. The Navy's bullion raid is sure to be met with drawn Air Force knives. The jostling between pro-Navy and pro-Air Force factions in Congress, defined by the location of contractor plants, will be fodder for the Washington press for months to come.

But the real fight to watch will be the brawl over funding for drones—or, as the authors like to spin them, "Unmanned Multirole Surveillance and Strike Aircraft." In just ten years, this court favorite is slated to grow from 72 units today to 476, a more than 600 percent increase. The money will increase—only proportionally, the plan-

ners blithely predict—from about \$1 billion today to almost \$7 billion in 2020, a 700 percent increase. A virtual declaration of budget war, the plan assigns all that drone spending increase to the Navy. Air Force drone spending will actually decline.

Two assumptions in the drone plan stretch credulity to the breaking point:

first, future drones will not experience the ongoing geometric increase in cost of manned aircraft; second, Air Force generals will stand by idly with nothing for themselves while the admirals walk off with an extra \$6 billion per year. In reality, total drone spending will be far higher, and the Air Force will never permit itself to fall so shamefully behind.

Also beyond belief is the schedule and performance that technology-fantacists on Gates's staff and in the Navy think they will acquire. Unlike today's relatively simple, slow, and light Predator drone, the X-47B drone the Navy wants is 20 times larger, weighs 22 tons, and flies at Mach .7. Just two pre-prototypes of the so-called "stealthy" (they never are) drones are costing at least \$635 million. The flight plan is already months behind schedule.

No mere vehicle for video cameras, radars, and infrared gizmos to peep on the enemy, the X-47B will not only pretend to find all targets on a hypothetically fogless battlefield, but, replacing manned strike aircraft, will then attack those targets with two tons of guided bombs. Our clumsy attacks in Afghanistan, Pakistan, and Yemen, using drones carrying much the same sensors

as the X-47B, make news with embarrassing regularity. Our Predators and Reapers are tasked with decapitating the al-Qaeda and Taliban leadership, but they prove much more successful at killing civilians, infuriating the previously uncommitted local population into supporting the enemy, and deluding Americans into thinking remote-control bombing of other peoples' homelands is a freebie spectator sport with no U.S.

## OUR PREDATORS AND REAPERS ARE TASKED WITH DECAPITATING THE AL-QAEDA AND TALIBAN LEADERSHIP, BUT THEY PROVE MUCH MORE SUCCESSFUL AT KILLING CIVILIANS.

casualties and no consequences—a truly dangerous fallacy, as the renewed attacks from al-Qaeda's growing confederacy so vividly demonstrate.

The Navy, however, tops the Air Force's drone delusions with a vision that it will land its tailless 22-ton beast by remote control on rolling, pitching carrier decks at sea. That will be difficult, perhaps impossible, given the nearly crippling rate of drone crashes we continue to experience while landing on *terra firma*. Grappling with that task will certainly create the occasion for lots of overruns and schedule slippages. Even without those overruns, the Navy approach appears to offer nothing that can't be achieved from land with current Predators at about one twenty-fifth the cost.

In any case, capitalizing on Gates's blessing for these drone projects, the USAF is already forging ahead with secret work on an intercontinental nuclear/conventional bomber drone, a breathtakingly useless concept. Their newly revised Long Range Strike Platform project costs \$1.9 billion just for the start-up demonstrator phase. One candidate, the innocently dubbed X-47C,

apparently already under a "black" contract at Northrop Grumman, would carry a modest five-ton payload despite a projected total heft upward of 110 tons.

On the face of it, this latest 30-year plan just rubberstamps what the Air Force and Navy have been doing ever since the Cold War started: shrinking our air forces and increasing their age while steadily increasing costs and inef-

fectiveness. That's bad enough for American taxpayers, but this new budget has new wrinkles.

Gates has unchained a new aerospace spending monster. It hatched unobtrusively in 2001 with the \$4 million Predator to become a \$100 million Navy carrier drone that will, in a decade, lead to a literally mindless Air Force intercontinental bomber drone, assuredly nuclear capable, with an unknown sticker price in the billions.

This cost explosion in the drone budget will devour money required for the two necessary and effective forms of air support we owe our troops, capabilities that the aviation bureaucracies in the Air Force, Navy, and Marine Corps have systematically deprived them of: round-the-clock, immediately available, single-purpose close-air support and on-call emergency aerial resupply straight to the battlefield.

Worse, the huge expansion of the drone fleet deepens the U.S. commitment to a future of worldwide aerial assassinations and bombing foreign lands—and will increase the propensity of our politicians to open these fronts because of the illusion that such aggress-

sion will be cost- and casualty-free. The resulting damage to real American security will be incalculable.

But worst of all, the Gates-approved plan for shrinking buys of unconscionably expensive and ineffective weapons is hardly limited to airplanes. The same disease infuses a new naval shipbuilding plan and the Army's future combat vehicles. These forces, contracting and aging at inflating cost, cry out for meaningful reform. Instead, the decay is being used as the pretext to funnel more and more taxpayer dollars to fewer and fewer defense mega-corporations. They, in turn, recycle increasing amounts of that money into our politics, where it is eating away at our governance, our democracy, and our security. ■

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# BARACK'S BROKEN PROMISES

## WINDING DOWN THE WAR ON TERROR

“It is time to bring our troops home because it has made us less safe.”  
—Barack Obama, *New York Times*, Aug. 12, 2007

“President Barack Obama has approved a significant troop increase for Afghanistan. ... The increased troop levels are expected to last three to four years, the military official said. However, the administration official said there was no clear timeline.”  
—CNN, Feb. 18, 2009

## CUTTING SPENDING

“There is no doubt that we’ve been living beyond our means and we’re going to have to make some adjustments. Now, what I’ve done throughout this campaign is to propose a net spending cut.”  
—Barack Obama, Oct. 15, 2008

“Mr. Obama plans to increase the debt by at least \$9.1 trillion over the next decade. In that period of time, Mr. Obama’s programs will increase federal spending by \$400 billion to \$500 billion per year ... the largest peacetime increase ever in government spending.”  
—*Washington Times*, Jan. 19, 2010

## CLOSING GITMO

“I don’t want to be ambiguous about this. We are going to close Guantanamo.”  
—Barack Obama, “This Week,” Jan. 12, 2009

“As one of his very first acts as president, Obama signed an executive order to close the military prison for terror suspects within a year. The one-year mark arrives Friday, and he will miss it by a wide margin, likely a year or more. He has not offered a new deadline.”  
—*The Canadian Press*, Jan. 21, 2010

## LIMITING EXECUTIVE POWER

“I will not use signing statements to nullify or undermine congressional instructions as enacted into law.”  
—Barack Obama, *Boston Globe*, Dec. 20, 2007

“We were surprised to read your signing statement in which you expressed the view that you are constitutionally free to ignore the conditions duly adopted in the legislative process...”  
—Reps. Barney Frank and David Obey, letter to President Obama, July 21, 2009

## BROKERING MIDEAST PEACE

“My goal is to make sure that we work, starting from the minute I’m sworn into office, to try to find some breakthroughs.”  
—Barack Obama, Amman, Jordan, July 22, 2008

“I think it is absolutely true that what we did this year didn’t produce the kind of breakthrough that we wanted, and if we had anticipated some of these political problems on both sides earlier, we might not have raised expectations as high.”  
—Barack Obama, *Time*, Jan. 21, 2010

## ELIMINATING EARMARKS

“We are going to ban all earmarks—the process by which individual members insert pet projects without review.”  
—Barack Obama, Jan. 6, 2008

“President Obama will sign the \$410 billion omnibus spending bill recently passed by the Democratic controlled Congress. The bill contains some 9,000 earmarks, spending items inserted by individual Congressmen for pet projects in their districts.”  
—*Politics Daily*, March 2, 2009

## EXCLUDING LOBBYISTS

“I have done more to take on lobbyists than any other candidate in this race—and I’ve won. I don’t take a dime of their money, and when I am president, they won’t find a job in my White House.”  
—Barack Obama, Spartanburg, S.C., Nov. 3, 2007

“A *National Journal* look at 267 Obama nominees and appointees found that at least 30—or about 11 percent—have been registered lobbyists at some point during the past five years.”  
—*National Journal*, March 21, 2009

## INCREASING TRANSPARENCY

“All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.”  
—Barack Obama, Jan. 21, 2009

“President Obama has embraced Bush administration justifications for denying public access to White House visitor logs ...”  
—*Washington Post*, June 17, 2009