

Center for Military Readiness CMR Notes - June/July 2002

Will Military Women be Informed of the Risks?

CONGRESS MEDDLES IN SAUDI ARABIA ABAYA CONTROVERSY

Imagine this. A law has just passed Congress that prevents Air Force commanders stationed at Prince Sultan AFB, Riyadh, from giving advice to military women about the culture and laws of Saudi Arabia. An enlisted woman is told that she has the right not to wear the abaya, a long black garment customarily worn by Muslim women, but she is given no information about the risks she faces if she does not.

The servicewoman drives a vehicle off-base, not wearing the abaya, and is hassled by religious police known as the mutawa. The hapless woman resists and is thrown into a miserable jail for trumped up reasons, and belatedly discovers that she has no rights whatsoever. This is because there is no Status of Forces Agreement with Saudi Arabia. SOFAs are common in other countries stationing American troops.

The American enlisted woman would be trapped behind a Medieval Misogynist Wall—the same barrier that prevents other adult American citizens from leaving the Kingdom of Saud without the permission of male family members. Just ask Patricia Roush, an American woman whose California-born daughters were kidnapped in 1986 by her estranged Saudi husband. The State Department keeps telling Mrs. Roush, and other families torn apart by Saudi law, that nothing can be done.

So it is in this benighted land, homeland of Osama bin Laden and other September 11 terrorists, which is headed by royal autocrats who bow to religious extremists. Saudi Arabia praises and subsidizes suicide bombers, propagates virulent Wahhabism in radical madrassas, imprisons Christians for praying in their own homes, and allows its men to kidnap American children. If respect for women is a hallmark of civilization, Saudi Arabia qualifies as a pariah state.

You would think that Congress would press the Bush Administration to reassess its relationship with this controversial “ally.” Instead, the members have trivialized the real issue by focusing on Air Force Lt. Col. Martha McSally, a senior A-10 “Warthog” pilot who used to be stationed in Riyadh. Lt. Col. McSally made international news by protesting a requirement that American military women stationed there must wear the head-covering abaya, (which does not cover the face) and must be accompanied by men and in the back seat of a vehicle when traveling off-base.

Spokesmen for the U.S. Central Command (CENTCOM) have done a poor job of explaining reasons why force protection is a genuine issue in the volatile Middle East. Local commanders consider the rules necessary because of real threats from the radical religious police, also known as the Middle Eastern Committee for the Preservation of Virtue and the Prevention of Vice. The religious police are especially dominant near Prince Sultan AFB, which is located near Mecca and other places revered by the Muslim faith. In that repressive region, the mutawa enforce a regime of religious extremism that is unlike anything in the United States.

Nevertheless, conservative members of Congress have joined with feminist colleagues in pushing for legislation that would force commanders in Riyadh to repeal the abaya dress code, and to keep women in the dark about the risks involved. No one spoke on the floor against the bills, which passed unanimously in both houses.

One hour after the Senate vote was taken, a letter arrived from the General Counsel of the Department of Defense, William J. Haynes II, recommending defeat of the legislation. It would, he said, “unreasonably limit commanders’ ability and authority to act in their best judgment to protect the men and women under their command.” This letter could play a key role when the dissimilar bills are taken up in Conference Committee later this summer.

The abaya amendment may have seemed to be an easy, no cost vote that might appeal to women voters. A high price could be paid, however, not by the politicians casting their votes from a safe distance, but by military commanders and servicewomen trying to hold the fort in the land of Khobar Towers.

Feminism vs. Force Protection

On March 17 in Mecca, fourteen Saudi girls were suffocated, trampled upon, or killed when they fell or jumped from a four-story school building fire. The head of Mecca’s police who was there told Associated Press that extremist mutawa had interfered with rescue attempts because some of the girls were not covered up in mandatory Islamic dress. (*Washington Times*, Mar. 18. A spokesman for the mutawa denied the report.)

Recent incidents involving western women have been rare, but some who have defied the religious police in the past have been questioned, physically harassed, or taken into custody. For their own comfort and safety, many civilian women employed by the U.S. State Department voluntarily wear the abaya when traveling outside the diplomatic compound.

Even before she was assigned to Riyadh, Lt. Col. McSally began protesting the Saudi dress and conduct codes in 1995. Speaking with permission from her superiors, she talked to or met with former Defense Secretaries William Perry, William S. Cohen, Air Force Secretary Whit Peters, and the Pentagon’s Defense Advisory Committee on Women in the Services (DACOWITS), but to no avail.

As the heroine of feature stories in USA Today and CBS 60 Minutes, McSally made some compelling points. Wearing long-sleeved western clothing would not be a problem, she said, but Christian women should not have to wear a garment associated with the Muslim religion. State Department women are not similarly restricted. The abaya rule also constitutes sex discrimination, she said, since men are exempt and even forbidden to wear Muslim garb.

Actually, military men also keep a low profile by wearing loose, western-style clothing over their uniforms. Some years ago the mutawa reportedly shot a man in the buttocks because he was running in shorts. Young western schoolgirls do not wear abayas, but they are transported in buses with curtained windows.

Women and Western Sensibilities

Many observers hoped that the situation could be resolved informally, but the resistance of local commanders—who would bear the responsibility if they acted alone and an international incident ensued—suggested that there was more to the story. (*Air Force Times*, Feb. 4)

CENTCOM Commander Gen. Tommy Franks intervened in February, announcing that mandatory abaya rules would be rescinded, but the wearing of the garment would still be “strongly encouraged.” He also left intact local rules against women driving off-base without the presence of male personnel.

Lt. Col. McSally expressed satisfaction with Gen. Frank’s announcement, but nevertheless maintained that the phrase “strongly encouraged” was tantamount to an order. She is continuing to pursue a lawsuit against Defense Secretary Donald Rumsfeld, which she filed in December 2001 with the assistance of the Virginia-based Rutherford Institute, headed by attorney John Whitehead.

Religion and Civil Rights in the Military

Among other things, McSally complains that restrictive dress codes and conduct rules in Saudi Arabia violate her constitutional rights as an officer, a woman, and as a Christian. But McSally is not the only one to complain of religious-based discrimination in military dress codes. In the past devout Sikhs have petitioned for the right to wear turbans with their uniforms. Hindus want to wear beards, and a female Muslim soldier currently is petitioning the Army for the right to wear her khimar headscarf with her uniform. (*Army Times*, Dec. 3, 2001) (Jews, Christians, and soldiers of other faiths may wear yarmulkes and discreet religious symbols, but only if they are not visible when worn with a uniform.)

A courtroom victory for McSally might inspire others to pursue similar lawsuits charging religious discrimination. That could weaken the legal tradition of “deference” to the military, and undermine commanders’ right to standardize military dress. Uniform dress policies should be made not by federal judges, but by military officials.

Congress Gets in the Act

Now come members of Congress, whose meddling and micromanagement could worsen an already dangerous situation. In May Reps. Jim Longevin (D-RI) and John Hostettler (R-IN) announced that they would sponsor an amendment to the 2003 Defense Authorization Bill that would prohibit the military from “requiring or strongly encouraging servicewomen to wear the abaya...because the government of Saudi Arabia does not require non-Muslim women to wear them.” In a May 8 letter addressed to Reps. Bob Stump (R-AZ) and David Dreier (R-CA), respective Chairmen of the House Armed Services and Rules Committees, Elaine Donnelly took issue with the latter part of that language, which unfairly implied that American military commanders are more “anti-woman” than the mutawa.

It is true that the rules were imposed by our own military and not by the religious police, but according to the *Washington Post*, the Saudis do not sign written documents on anything, including defense agreements. (Jan. 18)

To their credit, the House Rules and Armed Services Committees rejected the abaya amendment to the Defense Authorization Bill, recognizing that it would be an affront to CENTCOM Commander Gen. Franks and a challenge to his authority. But that did not deter Rep. Heather Wilson (R-AZ), an Air Force Academy graduate who is emerging as a leader for feminism in the military. Rep. Wilson joined with liberal Rep. Caroline Maloney (D-NY) in sponsoring a free-standing abaya bill, which was passed on the floor of the House with a voice vote and no opposition on May 15. Similar legislation spearheaded by Sen. Bob Smith (R-NH) was co-sponsored by Charles Grassley (R-IA) Maria Cantwell (D-WA), Barbara Boxer (D-CA), and Barbara Mikulski (D-MD). Unlike the House bill, Smith's amendment was attached to the defense bill on June 24 with a 93-0 vote.

Should Women be Kept in the Dark?

The amendments sponsored by Rep. Wilson and Sen. Smith omitted the disparaging words quoted above, but Wilson's bill added ill-advised "compromise" language that could put American women in even greater jeopardy. The House amendment would forbid abaya dress codes and funds to pay for them, but allows local commanders to require the wearing of the garment "if it constitute[s] an operational requirement essential for the conduct of the military mission."

The problem is that in Saudi Arabia military men are forbidden to wear Muslim garb because the mutawa would assume they are spies. If the House-passed bill is approved in Conference and becomes law, the religious police would have reason to consider any western woman wearing an abaya, including those who work for the State Department, to be a spy or a military commando.

With or without the "operational requirement" language, both versions of the abaya legislation would force local commanders to ignore their own best judgment regarding protection of their troops. What's worse, an anti-abaya policy inscribed in law would force local commanders to withhold information from servicewomen on what they are up against.

The Risk of Having No Rights

When senior officer Martha McSally first questioned the policy, she was, in effect, telling the Air Force that she was willing to assume the risk of leaving the base and driving a vehicle without the offensive abaya. Her right to do so is debatable, especially since there is no Status of Forces Agreement with Saudi Arabia. But what about other military women who (unlike McSally) will be stationed in Riyadh in the future? Both versions of the legislation mandate that women be informed of the anti-abaya law. There is no requirement, however, that they be informed of the risks they face if they make that choice.

In his letter, General Counsel Haynes explained why implementation of the abaya law would be problematic:

“The proscription that a member ‘may not be formally or informally compelled to wear the abaya garment’ could be construed to prevent even a casual comment by a noncommissioned or commissioned officer that it might be a good idea to wear the garment....This proposed legislation would undermine that officer’s position and authority because it could be interpreted to forbid an officer from expressing an opinion, on the ground that doing so may be viewed as a form of compulsion.” (Emphasis added)

In other words, if an officer or NCO gives common sense advice to a servicewoman under his command, he could be charged with law-breaking, career-killing sex discrimination. This is not fair to the men, or to the women who will be denied information they need to know; such as:

- State Department women have diplomatic immunity, but military women do not. Nor can they count on minimal protections under a Status of Forces of Agreement.
- Under Saudi law all women, including American citizens, have virtually no rights at all.

Mandatory Ignorance Can Be Dangerous

Congressionally mandated ignorance of Saudi law and culture almost guarantees that an international incident will occur. Surely military women deserve to hear the complete, unvarnished truth about life on the mean streets of Riyadh. In that world, American freedoms do not exist, women have no rights, and an Act of Congress will not keep the mutawa at bay. Politicians living far from that medieval world like the idea of “standing up” for American values on this issue. The truth is, however, that they are asking young military women to pay the price for their own all-too-casual, politically correct votes.

Realism And Military Requirements

Since CENTCOM public affairs spokesmen have allowed the Martha McSally story to be portrayed as nothing more than a “women’s rights” issue, certain facts have been missing from the debate. For example:

- Repressive Saudi customs offend western sensibilities, but Americans are guests in that country. An Air Force spokeswoman for U.S. forces in the Middle East told *Army Times* that the policy allows military women to show at least a modicum of respect for Islamic law and Arabic customs. (April 30, 2001)
- There have been many occasions in history when military men serving in other parts of the world were ordered to conform to local dress rules for reasons of safety or diplomacy.
- The religious significance of the abaya is troublesome but somewhat overstated. In other Islamic countries and elsewhere in Saudi Arabia, observant Muslim women wear modest clothes or light-colored robes that are not as restrictive as abayas worn in or near the

Muslim shrines of Mecca. On many websites popular with Arabic women, various styles of abayas are displayed as fashion statements rather than religious symbols.

- It is not likely that Lt. Col. Martha McSally will suffer career reprisals for raising the issue. She was previously promoted four years early and—despite her lawsuit—was invited to witness the president’s 2002 State of the Union speech. Her performance should be judged purely on its merits, without special treatment due to her celebrity.
- If Lt. Col. McSally refuses to drop her lawsuit against Secretary Rumsfeld, the first question the judge should ask is, “Are you a conscript, or a volunteer?” Willing volunteers in the military have civil rights, but they are not free to choose their own clothing. All are subject to rules that should be established by military commanders, not federal judges.
- *National Review Online* recently highlighted a State Department “advisory” to American women considering marriage to Saudi men, warning them of the complete loss of legal and social rights that they could expect in the medieval Arab Kingdom. The sobering advisory is no longer posted on the State Department website, however, because someone complained that it was unfair to the Saudis.
- Political correctness and posturing will not eliminate misogynist attitudes and repressive laws in the Kingdom of Saud. Instead of focusing only on a single aviator, Congress should help all Americans whose rights are violated by Saudi law. Posing for pictures with Martha McSally is no substitute for taking this issue seriously. Members of Congress should trust the judgment of military commanders. There are other, more constructive ways to help military women and American citizens living in Saudi Arabia. See suggestions below.

NOTE: This article was prepared with the help of an Air Force/State Department couple who were stationed in Saudi Arabia in the late 1980s.

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What Congress Should Do For Military Women in Saudi Arabia

Since Congress has passed two dissimilar versions of anti-abaya legislation, only one of which is attached to the Defense Authorization Bill, the matter will be taken up this summer in a House/Senate Conference Committee. There is still time for members to take the following constructive steps, which would address the real problem without making it worse:

- Seek more information from CENTCOM Commander General Franks, local commanders, and General Counsel William Haynes II, whose June 24 letter explained why the Defense Department opposes the legislation: “Depending on the circumstances in a particular area in Saudi Arabia or based upon the evaluation of intelligence threats, commanders must be able to take actions to protect the personnel under their command.”

- Add legislative language mandating full and candid information about women's complete lack of social and legal rights under Saudi law.
- Press the Bush Administration to negotiate a Status of Forces Agreement (SOFA), which would provide at least some protection to military women and men.
- If the Bush Administration is unable or the Saudis unwilling to negotiate such an agreement, no abaya amendment should be passed.
- Respect Gen. Franks' reasonable directive to local commanders, and call on the Administration to reconsider our relationship with a nation that refuses to respect the rights of American citizens, both military and civilian.

Bill Text
107th Congress (2001-2002)
H.R.4546.ENR

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GO TO</i>
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

H.R.4546

**Bob Stump National Defense Authorization Act for Fiscal Year 2003
(Enrolled Bill [Final as Passed Both House and Senate] - ENR)**

**SEC. 563. WEAR OF ABAYAS BY FEMALE MEMBERS OF THE
ARMED FORCES IN SAUDI ARABIA.**

(a) PROHIBITION RELATING TO WEAR OF ABAYAS- No member of the Armed Forces having authority over a member of the Armed Forces and no officer or employee of the United States having authority over a member of the Armed Forces may require or encourage that member to wear the **abaya** garment or any part of the **abaya** garment while the member is in the Kingdom of Saudi Arabia pursuant to a permanent change of station or orders for temporary duty.

(b) INSTRUCTION- (1) The Secretary of Defense shall provide each female member of the Armed Forces ordered to a permanent change of station or temporary duty in the Kingdom of Saudi Arabia with instruction regarding the prohibition in subsection (a). Such instruction shall be provided

immediately upon or not more than 48 hours prior to the arrival of the member at a United States **military** installation within the Kingdom of Saudi Arabia. The instruction shall be presented orally and in writing. The written instruction shall include the full text of this section.

(2) In carrying out paragraph (1), the Secretary shall act through the Commander in Chief, United States Central Command and Joint Task Force Southwest Asia, and the commanders of the Army, Navy, Air Force, and Marine Corps components of the United States Central Command and Joint Task Force Southwest Asia.

(c) PROHIBITION ON USE OF FUNDS FOR PROCUREMENT OF ABAYAS-

Funds appropriated or otherwise made available to the Department of Defense may not be used to procure abayas for regular or routine issuance to members of the Armed Forces serving in the Kingdom of Saudi Arabia or for any personnel of contractors accompanying the Armed Forces in the Kingdom of Saudi Arabia in the performance of contracts entered into by the United States with such contractors.