

Gays use adultery issue as military springboard

By Rowan Scarborough
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The gay rights movement is trying to capitalize on the military's awkward handling of high-profile adultery cases by renewing its push to lift the ban on open homosexuality in the military.

For weeks, homosexual activists have attempted to turn the adultery cases of Kelly Flinn and Gen. Joseph Ralston into a debate on the movement's terms: the right of consenting adults to have a private sexual relationship.

On Monday, the campaign took legislative form as Rep. Barney Frank, a homosexual, unveiled an

amendment that would decriminalize consensual sex in the military — including adultery — and repeal the military's sodomy ban.

"I do not think that adult members of the military ought to be criminally penalized for sexual activity of a private, consenting nature," said Mr. Frank, Massachusetts Democrat.

Critics see the Frank proposal — dubbed the "Anti-Hypocrisy Act of 1997" — as a thinly veiled attempt to override — or at least muddle — the military's existing law and regulation that prohibits homosexual conduct under any

circumstances.

His bill wouldn't repeal the ban on homosexuality. But if Congress approved all adult consensual sex, it would be difficult for the military to justify prosecuting or discharging personnel on those grounds, legal experts said.

"Two soldiers can engage in homosexual sodomy in the barracks as long as it's consensual" under Mr. Frank's bill, said William Woodruff, a professor at Campbell University School of Law near Raleigh, N.C. "The ban would say you could still discharge them, but as a practical matter this bill would move another step toward removing the homosexual exclusion policy. What's going on here is Barney Frank making the government, the military, take the moral position that consensual sexual conduct is acceptable."

Mr. Woodruff, a retired Army colonel, said Mr. Frank's bill would also decriminalize adultery by amending the Uniform Code of Military Justice. An adulterer could, however, be disciplined administratively.

The amendment would retain the prohibition against fraternization, which is generally defined as a superior maintaining a close personal relationship with a subordinate.

"The only thing that surprised me is that Barney Frank is so brazen about it," said Elaine Donnelly, who heads the conservative Center for Military Readiness. "Will Congress sit back and let the moral values of Barney Frank and Kelly Flinn become a standard moral code in the military?"

The well-chronicled cases of Miss Flinn and Gen. Ralston are spurring debate over whether the armed forces should punish personnel for adultery under the UCMJ.

Miss Flinn, an Air Force first lieutenant and the first woman to fly the B-52 bomber, resigned last month rather than face trial for adultery, disobeying a direct order and lying to investigators.

The Air Force faced a hailstorm of criticism for prosecuting Miss Flinn.

Later, the same critics complained of a double standard after the public learned that Gen. Ralston, Defense Secretary William S. Cohen's choice for chairman of the Joint Chiefs of Staff, committed adultery 13 years ago with a civil-

ian woman while separated from his wife. The criticism forced Gen. Ralston to withdraw as a candidate.

A decision on whether to prosecute someone for adultery depends on whether the affair harmed "good order and discipline," and whether the case is accompanied, as in the Flinn case, by other serious charges.

"I do believe the gay movement sees these adultery cases illuminating further the hypocrisy and double standard that exists with the military policies on private consensual sexual behavior between two adults," said David Smith, spokesman for the Human Rights Campaign, the nation's largest homosexual rights group.

"We've been watching the debate with frustration because certain similarities circulate around Flinn and Ralston, and the debate over whether gay service members can serve openly in the military," Mr. Smith said.

Said the Servicemembers Legal Defense Network, which defends personnel targeted under the homosexual ban, "The military should not be the pajama police. While curiosity about adult sexual activities is expected in adolescents, it is time for military leaders to grow up."

Republican leaders yesterday were mum on Mr. Frank's bill.

Rep. Floyd D. Spence, chairman of the House National Security Committee, declined comment through a spokesman.

Chris Cimko, spokeswoman for Sen. Strom Thurmond, chairman of the Senate Armed Services Committee, said the South Republican would have no comment.

"If the Department of Defense would like to ask us to change the UCMJ, they can send a request over and we will consider it," she said.

Mr. Frank's bill isn't likely to pass Congress, which heatedly debated the gay issue in 1993 before settling on a policy known as "don't ask, don't tell."

But Mrs. Donnelly said the bill serves to raise the issue at a time when Defense Secretary Cohen is appointing panels to study the military's rules and standards on sexual behavior.

"People who support Kelly Flinn are saying officers should be able to choose for sexual partners enlisted personnel or the spouses of enlisted personnel," she said. "It would be a severe blow to the morale of the people in the military."