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## Military Judge's Arrest Warrant for Civilian Therapist Draws Flak

By Miles Moffeit, Denver Post Staff Writer, [DenverPost.com](http://DenverPost.com)

Legal experts say the arrest warrant issued by a Texas military judge last week for a civilian Colorado Springs therapist who refused to turn over treatment records of a former Air Force cadet is an unprecedented move by a military court.

Meanwhile, victim advocates decried the order as a serious threat to treating rape victims.

Randolph Air Force Base Judge David Brash issued a warrant Thursday commanding federal marshals "to apprehend Jennifer Bier wherever she may be found in the United States" and confiscate records of her sessions with former cadet Jessica Brakey for use in court-martial proceedings.

The warrant accompanied a sealed court order rejecting Bier's argument that she has an ethical and legal obligation to protect the privacy rights of Brakey, who has accused 2nd Lt. Joseph Harding, also a former cadet, of raping her.

His lawyers have sought the counseling records as part of his court-martial proceedings at the San Antonio installation.

"This is the first time I've ever been aware of an arrest warrant being issued for a medical provider who refused to give up records," said John Einwechter, a former Pentagon lawyer based in Washington, D.C. "It's very surprising."

As of Saturday, Bier had not been arrested. She said she was trying not to let the warrant distract her from celebrating her son's high school graduation this weekend. Her lawyer, Wendy Murphy, plans to challenge the warrant as soon as federal courthouse doors open Tuesday in San Antonio. Both women hope a higher court will resolve the murkiness of military law over the issue.



Civilian therapist Jennifer Bier has defied a military judge's order to turn over an ex-cadet's treatment records. (Post file)

“We need more clarity,” Bier said. “Right now, I can’t promise people confidentiality.

“What really troubles me is that other therapists need to stop complying with these things until we get better answers from the courts.”

Murphy praised her client’s courage and made a public plea for therapists and victims to join together and hold their ground amid growing threats by the military to seize private records.

Brakey, who said she was raped in 2000 and sought counseling, was among dozens of women who said they were ignored or punished when they reported sexual assaults to Air Force Academy officials. The scandal led to a change in leadership and new policies at the Colorado Springs school.

Victim-advocacy organizations voiced outrage at the arrest warrant.

“I’m bitterly appalled that it could even be possible that the military would even think about putting her in the brig for protecting her client,” said Rita Smith, director of the Denver-based National Coalition Against Domestic Violence.

Because Brash sealed the decision and ordered lawyers involved not to discuss it, his rationale remains a mystery. Randolph officials and Harding’s lawyers could not be reached for comment.

The military has created rules that are designed to shield patient-counselor communications, but they have not been rigorously tested in its appellate courts. They were implemented in 1999, after the Supreme Court recognized such a privilege, but exceptions are included that some experts believe dilute its protections.

In briefs submitted to the Randolph court fighting the subpoena of Bier’s documents, Murphy argued that Harding has no constitutional right to “pretrial discovery” and that civilian courts have largely settled the issue that victims have privilege rights. His lawyers contend his constitutional right to a fair trial justifies obtaining the records.

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