

FOR IMMEDIATE RELEASE

The following statement was released on Sunday, June 5, 2005, at 6:40 PM by counsel for the victim and counselor associated with a court-martial proceeding within the US Air Force.

**THREATENED ARREST OF CIVILIAN RAPE
VICTIM COUNSELOR IN AIR FORCE COURT
MARTIAL PROCEEDING**

Much misinformation has been disseminated and continues to be disseminated about the victim, Jessica Brakey, and her counselor, Jennifer Bier.

This statement is issued to correct and clarify the public record.

Jessica Brakey objected at all times to the release of her counseling records and never agreed to the release of Ms. Bier's file for any purpose. Ms. Brakey filed an affidavit to this effect with the military judge on May 16, 2005, prior to the judge's ruling that Ms. Brakey's entire file should be disclosed. Both before and after May 16, 2005, the military judge concluded that Military Rule of Evidence 513 (the military's psychotherapist/patient privilege) applies to protect Ms. Bier's files.

Under Colorado law, a therapist may not disclose privileged information in the absence of a signed release by the patient and there is no such signed release in this case.

Ms. Brakey fully supports and has always supported Ms. Bier's efforts to protect her privacy rights and the integrity of her therapeutic relationship with Ms. Bier. Ms. Bier is a mother of six and a very busy therapist. Her life and the lives of her family members and patients will be greatly affected by incarceration. Neither Ms. Brakey nor Ms. Bier take this matter lightly yet the only appropriate action is for Ms. Bier to persist in her refusal to obey an unlawful court order as to do so would violate Ms. Brakey's privilege of confidentiality without justification.

The military's extremely aggressive steps against Ms. Brakey and Ms. Bier are unprecedented. It appears the military has not previously issued an arrest warrant for a civilian witness, let alone a seizure warrant for the constitutionally protected privileged counseling records in the exclusive custody of a civilian therapist whose records are absolutely protected from disclosure under Colorado law.

The dissemination of rumors and false information about Ms. Brakey and Ms. Bier has caused even more harm to an innocent rape victim who has suffered enough. Any attempt to violate the therapist/patient privilege necessarily drives a wedge between

patient and caregiver thus threatening to undermine the integrity of the privileged counseling relationship.

After many years of mishandling rape allegations, military officials have claimed publicly that they want to encourage rape victims to come forward. To be sure, victim will not report rape in the military if by doing so, they must endure an assault on their personal and privileged private life. Victims of sexual violence have a fundamental right to heal in peace and safety in the aftermath of such deeply personal and debilitating trauma. The military's handling of Ms. Brakey's case demonstrates a profound lack of respect for the nature of harm suffered by rape victims and the transcendent importance of truly confidential therapy as an essential component of survival.

Women are serving their country in Iraq and around the world. More than 40 women have died in service to their country since 9/11. That a woman might be vulnerable to rape in the military is bad enough. That the military would subject women to even more harm by forcing them to choose between healing and justice is unconscionable.

The judge ruled that forced disclosure is necessary to protect the constitutional fair trial rights of the accused. But as Ms. Bier's brief amply demonstrates and as the United States Supreme Court has repeatedly held, the accused has no constitutional right to seek pretrial discovery of any information, let alone privileged counseling records, from a private citizen.

The unprecedented nature of the judge's ruling raises important questions about the military's commitment to the well-being of female soldiers. It also shines an antiseptic light on a disturbing statistic: not a single Air Force cadet has ever been convicted of raping a female cadet in a court martial proceeding.