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August 28, 2017

# *Dean Yelnosky's Post*

## Chelsea Manning, Professor David Coombs, and the "Wikileaks Trial"

Posted by Michael Yelnosky on 08/28/2017 at 11:01 AM

*On Friday, President Trump signed a directive precluding transgender individuals from joining the military. The directive leaves to the Secretary of Defense the task of determining whether transgender individuals already in the military may continue to serve. We thought this an opportune time to share an interview granted to Edward Fitzpatrick of RWU Law by Chief Justice Joseph Weisberger Visiting Assistant Professor of Law David Coombs, the lawyer who represented Chelsea Manning in the so-called "Wikileaks trial." Professor Coombs teaches Criminal Procedure at RWU Law and coaches the trial team.*

By Edward Fitzpatrick



**BRISTOL, R.I.** – As Pfc. Bradley E. Manning's lead trial attorney, David E. Coombs kept telling his client: Trust the system, trust the system.

That rationale seemed sound. During the 2013 trial, Coombs planned to have Manning accept responsibility for disclosing hundreds of thousands of classified military and diplomatic files and reports to WikiLeaks.

He planned to emphasize that the former Army intelligence analyst never intended to harm the country or to aid the enemy. He planned to explain that Manning was troubled by a military video showing a helicopter attack killing two Reuters news staff and hoped to spark a public conversation about the loss of life in Iraq and Afghanistan.

While he doubted a jury could place Manning's case in context, Coombs had faith that an experienced military judge – who had sentenced rapists and murders – would make the punishment fit the crime. If all went as Coombs expected, Manning would complete a prison sentence sometime in 2017.

In the end, Manning did end up with a May 17, 2017, release date. But the journey to that destination took sharp, stunning turns, whipsawing between an unprecedented approach by federal prosecutors, the unmitigated severity of a military judge, the unexpected election of a new president and the unforeseen clemency of an outgoing commander-in-chief.

In addition, the defendant, who had entered prison known as Bradley Manning, emerged as a transgender woman named Chelsea Manning.

And Coombs, who grew up hoping to become a lawyer in Idaho, ended up at the center of an all-consuming, highly publicized case, involving the biggest breach of secret data in U.S. history, and then helping Manning secure medical care for gender dysphoria.

Today, Coombs is the Chief Justice Weisberger Visiting Professor of Law at the Roger Williams University School of Law. And as he sat in his office, retracing his path from Boise to Bristol, he was asked if he ever regrets taking on a sprawling, emotionally draining case that spanned more than two years, encompassed more than 532,000 pages of discovery and concluded with an eight-week trial.

“I don't,” Coombs said, “because I think it represented something larger than Manning. I think the case represented such a big and important issue – that if they were successful in getting a conviction on ‘aiding the enemy,’ it really would limit anyone’s desire to ever provide information to a journalist about government fraud, waste and abuse.”

Coombs, 47, was born in Boise, raised in nearby Nampa, Idaho, and went to the University of Idaho for undergraduate studies and law school. He looked forward to becoming an attorney in his home state. But then he took part in a law school clinic, doing legal work for the Nez Perce Indian tribe, and his supervising attorney, a former judge advocate, asked if he'd ever considered going into the military. Coombs said: No. The attorney

asked if he'd interview for the Judge Advocate General's Corps, the legal arm of the U.S. Army, and out of respect for his teacher, Coombs said: Yes.

When the package arrived, he figured it was a rejection. But the letter read: "Congratulations. We are offering you a commission in the United States Army." While his father had served in the Navy for four years, he had never given serious thought to joining the Army. But when he saw that letter, he said: "I need to do this."

Coombs set out on a path that took him to Fort Hood, Texas; Fort Carson, Colorado; Camp Doha, Kuwait. He served for more than 13 years in the Army JAG Corps, defending more than 130 cases, including the high-profile case against Army Sgt. Hasan K. Akbar, who was sentenced to death for killing two fellow soldiers during the opening days of the Iraq invasion.

While teaching evidence at the JAG school in Virginia, his supervisor asked him to attend a conference in Washington, D.C. He didn't want to go, but while there he met a law professor from Canada, Tanya Monestier. They started dating and often met at the halfway point between Kingston, Ontario, and Charlottesville, Va.

"Obviously, it was love, because we would meet in Scranton, Pa.," Coombs said. "I knew that she couldn't follow me in my military career, moving every three years. So we both agreed to do a sacrifice: She would find a job in the U.S., and I said I will leave active duty."

They married in 2009, and she became a professor at the RWU School of Law. In a struggling economy, it was tough for him to find a job nearby. So after a few months, he opened his own law firm in Fall River, Mass., aiming to handle cases involving state, federal and military law. "That was going to be the plan, and then within two, three months of doing that, the Manning case happened," he said.

Coombs said the case "fell in my lap" because Manning wanted a civilian lawyer, "without concern for making any enemies within the military," but also someone with a military background. On the news, Coombs had seen the video showing a U.S. Apache helicopter killing two Reuters news staff, and remembers thinking that whoever leaked it would be "in a world of hurt." The phone rang, and he heard a faint voice on the other end. It was Manning, calling from confinement in Kuwait.

After Wikileaks released "significant activities" reports from Iraq and Afghanistan, the chairman of the Joint Chiefs of Staff said those who disclosed the reports "might already have on their hands the blood of some young soldier or that of an Afghan family." Manning's aunt asked if Coombs still wanted to handle the case. He said: Yes.

At the outset, Coombs said, "I was convinced that I'd be able to resolve the case in a rather quick manner, with them being reasonable in how they charged it and my client accepting responsibility." But, he said, "The

government early on took the position of 'We are not going to take any prisoners.' Their early-on offer was he pleads to everything and gets 40 years.'"

Prosecutors not only charged Manning with violating the Espionage Act but also with "aiding the enemy," claiming Manning knew the documents would wind up in the hands of terrorist groups. First Amendment advocates said that reasoning could convert just about any leak of classified information to the media into an aiding-the-enemy case, since terrorist groups have access to most news reports through the Internet.

The judge ended up acquitting Manning of "aiding the enemy." But then came the sentencing. Coombs said prosecutors never presented evidence of anyone being killed because they were named in leaked documents. "Never did I hear about blood on anyone's hands," he said.

So Coombs was shocked when the judge imposed a 35-year prison sentence – the longest ever handed down in a case involving a leak of U.S. government information for the purpose of having the information reported to the public.

"They escort us into this small room, I am still in a state of shock, and I feel myself getting angry," he said. "If you have ever been so mad that tears actually start coming out of your eyes – that is the amount of anger."

As Manning's lawyers and family members reeled, Coombs told Manning, "I'm so sorry, I'm so sorry." But Manning told him, "I know you did everything you could possibly do – it's OK, it's going to be fine," he recalled. "We are on the verge of tears, if not crying, and Manning is the one person comforting us. "

Those tears of rage were replaced by tears of joy earlier this year when President Barack Obama delivered another shocking decision – commuting all but four months of Manning's remaining sentence. "Again, I was just overcome by such an unexpected event," Coombs said. "I did not expect 35 years, and I certainly didn't expect a commutation."

He noted Obama had pardoned far fewer people than his predecessors, and his administration had prosecuted more whistleblowers than all prior administrations combined. Plus, he said, there was no political upside to commuting Manning's sentence: Republicans were bound to blast the decision, and Democrats were unlikely to rally behind the president.

"So this really is one of those indicators that he was a person who did things because he thought it was the right thing to do," Coombs said of Obama. Still, Obama might not have pardoned Manning if Hillary Clinton had won the 2016 presidential election, he said. "That would have been a big slap to Hillary, especially because she was secretary of state at the time," he said, and it would have created a controversy just as Clinton would have been assembling her Cabinet.

While he's a Republican, Coombs did not vote for Trump. Still, he said, "I have never been so happy that Trump won because, if Hillary had won, I don't know if Obama would have necessarily granted the commutation." Certainly, Trump – who called Manning an "ungrateful TRAITOR" in a tweet – would not have commuted Manning's sentence, he said.

But on May 17, Manning walked out of the military prison in Fort Leavenworth, Kan.

"I think the right outcome ultimately happened," Coombs said. "The crazy thing is that, I don't know how much the government spent on the trial, but I would not at all be surprised if it's in the millions. And had you gone all the way back to when I had my naïve but optimistic view that we could resolved this relatively quickly, it would have ended probably in the same outcome: Manning walking out of a jail cell sometime in 2017."

The day after the sentencing, Coombs appeared on the "Today" show, announcing that Manning was female and would seek cross-sex hormone therapy. He helped her change her name and seek transgender care. And he contacted Chase Strangio, staff attorney for the LGBT & AIDS Project of the American Civil Liberties Union. Eventually, Manning received hormone therapy, but the military would not let her grow out her hair. After Obama commuted the sentence, Strangio set up a GoFundMe page, which has taken in more than \$154,000, and found a place for her to stay in the Maryland area, he said.

Coombs, meanwhile, was just named adjunct faculty member of the year for the second time. He teaches criminal procedure investigation and coaches the trial team. "I've never been more nervous in a courtroom than in a fake courtroom where my students are giving an opening or a cross-examination," he said. "And I've never been more proud."

Michael J. Yelnosky, dean of the RWU School of Law, said, "David Coombs brings a unique skill set to the faculty. He is an accomplished and still active criminal defense lawyer, he has extensive teaching experience, he is coaching our trial team, and he is very congenial and loves to work with students."

Yelnosky, who admits to being "a bit of a Manning trial junkie," said, "It is hard to overstate the importance of the case. The magnitude of the leaked information was unprecedented. The world was introduced to Wikileaks and Julian Assange. The United States government wildly overstated the impact of the leaks on national security. And Americans were required to begin to understand that transgender individuals were their co-workers, friends and neighbors."

Coombs said, "I absolutely love – love – working at Roger Williams and teaching. Looking back right now, if someone asked me what my highlights are, people might think, 'Oh, it's the Manning case.' But the reality is that being a military officer and teaching here have been the highlights of my professional career because both give me a sense of service. In the military obviously, it's serving the country, serving my fellow soldier. And here

at Roger Williams, it's serving the bar – the future attorneys and being able to see the progression in my students.”