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Bradley Manning Trial: A Mockery of Justice

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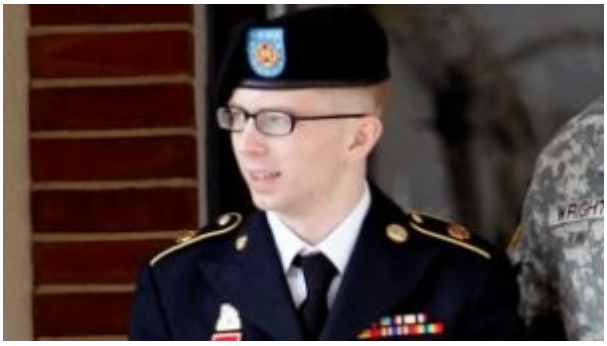
Bradley Manning's lawyer, David Coombs, has filed a 117-page motion calling for the dismissal of all charges with prejudice, for lack of a speedy trial. When he argues the motion at Ft. Meade, October 29 – November 2, Bradley will have been in pretrial confinement for nearly 900 days.

By Nathan Fuller

It's appropriate that David Coombs' longest motion of this trial yet, which argues for dismissal of all charges, details PFC Bradley Manning's extraordinarily and illegally long pretrial confinement. The prosecution's repeated and unjustifiable delays point "unmistakably to the conclusion that PFC Manning's statutory and constitutional speedy trial rights have been trampled upon with impunity."

Introducing the motion, which he posted to his blog on September 27, 2012, Coombs emphasizes the length of imprisonment thus far for the 24-year-old soldier accused of providing WikiLeaks with classified information:

> "As of the date of this motion, PFC Manning has been in pretrial confinement for 845 days. Eight hundred forty-five days.... With trial scheduled to commence on 4 February 2013, PFC Manning will have spent a grand total of 983 days in pretrial confinement before even a single piece of evidence is offered against him. To put this amount of time into perspective, the Empire State Building could have been constructed almost two-and-a-half times over in the amount of time it will have taken to bring PFC Manning to trial."



PFC Bradley Manning

The Rule for Court Martial (RCM) 707 affords 120 days from arrest to arraignment to constitute a speedy trial. However, Bradley was arraigned nearly two years after his arrest and will have been imprisoned for nearly 1,000 days if his court-martial begins as scheduled on February 4, 2013.

There is no reason for this delay, Coombs argues, other than mishandling throughout by members of the government and the prosecution:

> "The processing of this case has been marred with prosecutorial incompetence and a profound lack of Government diligence. The combination has led to an abject failure of the Government to honor PFC Manning's fundamental speedy trial rights… For these reasons, the Defense requests this Court to dismiss all charges and specifications with prejudice."

Pre-arraignment delays and the Convening Authority's role

The defense first formally filed a speedy trial protest on January 13, 2011, and has protested all delays since. But that hasn't impeded the prosecution from slowing the process to a crawl. Throughout 2011, the government requested seven delays of the pretrial Article 32 investigative hearing, arguing it was still working to obtain the permission to turn over documents to the defense. The Army's court-martial Convening Authority granted these delay requests so routinely that Coombs called them the government's "get-out-of-due-diligence-free" cards, because the Convening Authority failed to acknowledge the defense's objections and refused to credit these delays to the government, instead repeatedly deeming them "excludable delays," often without justification.

Coombs therefore holds the Convening Authority as much to blame for the lack of a speedy trial as the prosecution, writing, "The Convening Authority abandoned any attempt to make an independent determination of the reasonableness of any Government delay request. Instead, the Convening Authority operated as a mere rubber stamp by granting all delay requests."

For example, when the government finally turned over to the defense the reviews of the Apache video and other documents, it neglected to explain the delay between the time they were approved and the time they were turned over, which ranged from 3 months to over a year. Then, the prosecution asked for an *eighth* excludable delay, citing one more classification review, despite the others' completion several months prior. When that request was granted, the "Government unloaded a barrage of discovery and forensic evidence in the month or so before commencement of the Article 32 hearing, despite the fact the case had been ongoing for over a year and a half at that time," which made it impossible for the defense to use that evidence at the Article 32 hearing. Instead of compelling the government to explain these elongated delays, the Convening Authority simply issued another excludable delay memorandum that let the prosecution off the hook.

Finally, Bradley was arraigned on February 23, 2012, 635 days after he was placed into pretrial confinement.

Discovery failures, government inaction, and withholding evidence

Prior to that arraignment, however, the defense made several separate discovery requests. The government eventually responded to those requests, very late, and "wholly inadequate[ly]," utterly non-responsive to the items the defense specifically requested. One reason for these lengthy delays, Coombs proffers, is a substantial amount of government inactivity. It appears that throughout the two-and-a-half years of Bradley's confinement, there have been multiple periods in which the government did no work on his case for weeks at a time. These add up, Coombs tallies, to 323 total days of governmental inaction

prior to Bradley's arraignment – nearly half of the time that Manning was in jail.

Coombs proceeds to recount the prosecution's long and repeated discovery delays, including its most recent withholding of hundreds of emails. "To hold that the Government's discovery conduct has been reasonably diligent would make a complete mockery of that phrase," he says. Despite Judge Denise Lind ordering the prosecution to account for due diligence mistakes, Coombs says some documents are still in the air. In fact, "it will not be until November 2012 that the Defense has all relevant discovery in its possession (over 900 days after PFC Manning was placed in pretrial confinement)."

The prosecution's withholding of evidence has then forced the defense to request delays. Recall the government's production of 84 emails *the night before* Coombs was to file his Article 13 motion. The government then notified Coombs that they had nearly 1,300 more emails related to Bradley's confinement at Quantico, forcing Coombs to push back the Article 13 motion from August to November and to file a supplement motion. Had the government handed over the emails when it saw them, instead of waiting on them for six full months and producing them just hours before Coombs filed, no delay would have been needed.

Coombs predicted this very scenario would occur:

> "How the Government could have waited so long to look at these emails which should have been produced as part of its discovery obligations is beyond me. The fact that the Government is now trying to hold the Defense to a time line of today when the need for a delay is due to their lack of diligence is unbelievable. The Defense has repeated since referral its concern that information would be dumped on us on the eve of trial. This is [a] perfect example of the Defense's concerns coming to fruition."

The court-martial is currently scheduled for February 4, 2013. But what if the prosecution is hiding more documents, only to produce them on the eve of another motion? How much longer might this pretrial delay go on?

A speedy trial is a fundamental right

Explaining his legal reasoning for the motion, Coombs cites Article 10 of the Uniform Code of Military Justice (UCMJ) and the RCM 707 – the military equivalents of the 6th Amendment to the Constitution – each of which he explained back in January 2011 regarding Bradley's right to a speedy trial. Coombs delves deeply into the various ways in which the prosecution has violated both of these legal precepts, showing how the prosecution was granted several delays that the Convening Authority should not have excluded from the speedy trial clock.

RCM 707 affords 120 days from arrest to arraignment. The government cannot dispute that at least 103 of those days have passed without excludable delays. This means that if only one or two of the many government delays are found to be illegitimate, and if those delays add up to 17 or more days, this motion by law should be successful. By Coombs' count, up to Manning's arraignment,

> "532 days have been excluded by the Convening Authority and the Article 32 IO. This Motion does not challenge 205 days of those excluded days.... Subtracting those 205 unchallenged days from the 635 total days, the

> Convening Authority and the Article 32 IO excluded 327 days of the 430 remaining days. Those exclusions amount to a total of over 76% of the 430 days."

To emphasize how unprecedented this length of pretrial confinement is, Coombs says,

> "The 845 days PFC Manning has already spent in pretrial confinement dwarfs other periods of pretrial confinement that the Court of Appeals found to be facially unreasonable, and it is plainly sufficient to trigger the analysis into the remaining factors in the Article 10 framework. Indeed, the Defense has found no reported military case involving a period of delay even close to the 845 delay in this case."

Coombs concludes that given these rampant violations and "profound disregard" of Manning's due process rights, dismissal of charges with prejudice is the only acceptable remedy.

But Coombs knows how the government will try to oppose this motion. To excuse their delays and mishandling of evidence throughout this trial, the prosecution has often lamented this case's extraordinary size and scope. But the way the government has charged Bradley Manning is largely to blame for this very complexity. As the ACLU argued in April, the government has aggressively "overreached" in prosecuting Bradley, so much so that they've created unprecedented theories that they must later defend. As Coombs explains,

> "The Government cannot be given a free pass on the reasonable diligence inquiry simply by asserting the complexity of the case, especially when it has charged the case in such a complex manner that necessitated delay in the proceedings to allow the Government to mull over how it can make the proof fit its lofty and imaginative charging decision.... PFC Manning's speedy trial rights cannot hinge upon the unfortunate circumstance of having an imaginative prosecutor assigned to his case."

The government's new and dangerously broad interpretations of the law, mainly Article 104 or "aiding the enemy," have made it difficult for the prosecution to litigate and impossible for Manning to receive a fair and speedy trial.

Furthermore, the government has virtually unlimited resources in prosecuting Bradley Manning, compared with the defense's smaller team, dwindling resources, and grassroots-donation funding – so the idea that the government, and not the defense, needs more time, is preposterous:

> "PFC Manning is not being sued by some tired, overworked attorney in a shabby office; he is being prosecuted by the United States of America, which has full command of an arsenal of resources. Five full-time prosecutors are assigned to this case. Many more SJA attorneys [Staff Judge Advocates] and paralegals may be summoned for further assistance at a moment's notice."

Coombs has already made some of these arguments. But in this exhaustive motion, he lays out a strong case that Bradley Manning has been deprived of a speedy trial, explaining why

each of the government's justifications for delays obfuscate its own ineptitude and failure to abide by the law:

> "Every conceivable excuse offered by the Government is simply a red herring designed to detract this Court's attention from the ugly truth of this case: the Government was operating for almost two years under a profound misunderstanding of its bedrock discovery obligations and the Government was incredibly lethargic in processing this case on all fronts. All the excuses under the sun fail to justify why, after PFC Manning has spent 845 days in pretrial confinement, the Government is still not ready for trial."

Coombs couldn't be clearer: "A military accused's right to speedy trial is fundamental. The Government's process of this case makes an absolute mockery of that fundamental right." Judge Lind has already agreed that the government hasn't fully lived up to its due diligence obligations. With this motion, however, we can see that rather than a simple slip-up, or a forgetful occasion or two, this has been a systemic effort to neglect Manning's due process rights. Nearly 900 days after Manning's arrest, this trial has been anything but speedy. Coombs' motion to "dismiss all charges and specifications with prejudice" is comprehensive, detailed, and legally sound. He'll be back in the Fort Meade, Maryland, courtroom in front of Judge Lind October 17-18 to discuss witnesses in support of this motion, then again October 29-November 2 to make the case.

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