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Colonel Benjamin Bowden

AFJAGS Podcast: Episode 44

A View From the Bench - Family Law Domestic Cases with Colonel Benjamin Bowden - Part 1

HOST: MAJOR RICK HANRAHAN

GUEST: COLONEL BENJAMIN BOWDEN

In this two part interview, we speak with Colonel Benjamin Bowden, an Alabama circuit court judge and JAG reservist on his view from the bench on domestic cases.

MAJOR RICK HANRAHAN:

In this two part interview, we speak with Colonel Ben Bowden, an Alabama circuit court judge and JAG reservist on his view from the bench on domestic cases. An area of the law that consistently ranks at the top of military legal assistance. Judge Bowden offers his perspective on how military legal practitioners can best assist legal assistant clients on domestic cases, including how to best manage client expectations, improving their understanding on local domestic law and the general process on how a case is handled from start to finish.

Here are a few clips from part one of the interview.

[short intro background music]

SHOW EXCERPTS, COLONEL BENJAMIN BOWDEN:

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We have an increasingly number of people whose relationship resembles a marriage, but the law of marriage is not applying to them when they separate. That can be a challenge.

ANNOUNCER:

Welcome to The Air Force Judge Advocate General's Reporter Podcast, where we interview leaders, innovators, and influencers on the law, leadership, and best practices of the day. And now to your host from [The Air Force Judge Advocate General's School](#).

MAJ HANRAHAN:

Welcome to another episode from The Air Force Judge Advocate General's School at Maxwell Air Force Base. I'm your host, Major Rick Hanrahan. Remember, if you like the show, please consider subscribing on Apple Podcasts, Spotify, or your favorite podcast platform and leaving a review. This helps us to grow in outreach to the JAG Corps and beyond.

Well, today we're going to talk about a highly relevant and pertinent topic for legal professionals, and especially for those who provide legal assistance at military base legal offices. We're going to discuss family law, domestic cases. We obviously have many civilian lawyers who specialize and spend their entire careers in this area of the law due to the continuous volume of cases. And from a military perspective, domestic cases regularly constitute one of the largest portions of Air Force legal assistance. For example, according to a recent release from the Air Force Legal Assistance Policy Division Chief, in 2020 Air Force legal professionals assisted 13,280 clients on domestic relations and child custody issues.

If one worked every day of the year, that would equal over 36 clients per day on this single topic. So it's definitely an area of law that military professionals who provide legal assistance should become accustomed to. And we have the pleasure to speak with an expert today on this topic, sitting judge in Colonel Ben Bowden on a view from the bench on domestic cases where he'll be able to offer his perspective and expertise on this important area law.

Colonel Bowden, thank you for coming on the show today.

COL BOWDEN:

Rick, thanks for having me. It's an outstanding thing you got going here with this podcast, and I've listened to some of them. And it's an incredible service that The Air Force Judge Advocate General's School is offering. And I'm really excited to be a part of it today.

GUEST INTRODUCTION**MAJ HANRAHAN:**

Well, great, sir. I know we've been planning to do this for a while, so I'm excited to dive into this discussion.

Colonel and Judge Ben Bowden sits as one of two circuit judges in Covington County, Alabama, since he was elected in 2016. As county circuit judge, his jurisdiction includes, among other things, felony criminal cases, domestic relations and civil actions exceeding \$10,000 in all jury trials.

Prior to assuming his duties as circuit judge, Judge Bowden served as Covington County's probate judge from November of 2008 until March of 2016. And prior to his services, Judge Colonel Bowden was partner in a law firm in Andalusia, Alabama, for 11 years, where he maintained a general practice with a focus on civil and criminal litigation. He also maintained a part-time position with the Covington County District Attorney's Office prosecuting felony offenses including two litigated capital murder trials.

Colonel Bowden began his military career as an ROTC cadet and graduate from the University of Alabama. He then went on to earn his J.D. from Alabama School of Law and subsequently joined the Air Force as an active duty JAG, where he served in Bitburg Air Base, Germany, and Aviano Air Base, Italy. He then transitioned into the Air Reserve Component, during which he deployed to Balad Air Base Iraq in support of operation IRAQI FREEDOM and operation ENDURING FREEDOM.

And he currently sits as the individual mobilization augmented to the commandant of The Air Force Judge Advocate General's School here at Maxwell Air Force Base.

So, sir, if we could maybe could you start off by just providing a little bit more background on your position as a county judge and here at The JAG School?

COL BOWDEN:

Well, sounds like you covered it pretty well. You know, at this point in my career, military career, I'm at the point where I do a little more looking back than look forward, looking forward. And so hearing, what you talked about as far as my career, I would say that I really don't know anybody who's had a better Air Force experience than I have. It's been a privilege and I've had a lot of different and good experiences. And right now I'm the Senior Reservist at The Air Force JAG School, and I work to help out the commandant of the JAG school whenever he needs some assistance. So that's also a great position to be in, to teach others and to work in sort of the training education department of our JAG department.

In my civilian capacity, I like to just describe it as I'm kind of an old country judge. The jurisdiction is, is broad. As you know, I don't know if your listeners call it that, but we have, I have a pretty broad area of practice. And, you know, it involves civil cases and criminal cases. But I would say, Rick, you know, this is not scientific or, or data driven, just anecdotal. But I'd say half of what I do is family law or domestic relations. And it can be a sobering sort of thing to face when you realize how much of that work is out there. But I've learned quite a bit about it over the last several years and I'm eager to share a few things with your listeners today.

DOMESTIC CASES

MAJ HANRAHAN:

Well, thank you for sharing, sir. Definitely excited to talk about this because it is an area of the law that I think we need to learn more about, especially as military legal practitioners. So if we could can we just dive into today's topic, in your opinion or in your own kind of definition of the term, what constitutes a quote unquote "domestic case"?

COL BOWDEN:

Well, I want to I'll talk about that in just a second, but I want to go back to the numbers that you mentioned earlier from the department on how many service members and their dependents are being seen. As you

said, you break it down, 36 a day if you did it every day. That's sounds like a lot, but I'm really not surprised by that. Just given what I've seen in the civilian society, and our military society is a reflection of that or is made up of that, so the numbers don't surprise me at all. But I think your listeners should know that is a lot of legal work going on out there. And we ought to be prepared to deliver the very best service we can in that department. It affects readiness. Nothing is more distracting for our service members when their family life is in turmoil. And we have a unique opportunity—we can't fix it, but we can certainly give them the kind of information they need so they know what to expect. And that will create some calmness about the situation and in my opinion, looking back after almost 30 years of doing this, is that it is a significant readiness issue for the force.

Okay. Anyway, back to your question. You know, what is a domestic case? Well, any time you're talking about families and children, you're talking about domestic cases. Typically it's a divorce situation, a married couple with children, but often and more often, frankly in today's society, you might have an unmarried couple with children, but they've reached a point where they're going to lead separate lives. And we in the judiciary at least, I try to view it this way, we're trying to help them get to that next stage in their lives. And a lot of problems to sort out a lot of knots that are tied tight that we have to try to help them untangle.

But any time you have a family in court, that's what a domestic case is now. I don't do juvenile cases. That's when you have juveniles who've been abandoned or juveniles who are involved in, you know, misconduct and things like that, mines is, more families who have come to the court with a problem. And typically they are planning to lead separate lives and they need some help sorting that out.

MAJ HANRAHAN:

Well, thank you for sharing that, sir. To kind of loop back to what you said about the, the volume of cases that we have here in the military, and I presume that this is also

equivalent in the civilian world. Would you say, in your experience as a practicing lawyer here now for many, many years, would you say that there is a crisis in our country when it comes to domestic cases?

COL BOWDEN:

Well, I do think that there are some significant problems going on right now. I feel like the numbers are up. The number of people who are needing to turn to the court system for assistance seem to be rising. At the same time that more people are looking for help from the court system, there seems to be less involvement by lawyers in that process.

We'll talk about that, I guess, a little more later. But, you know, a crisis I don't want to, I don't want to be too dramatic. But I will say that there are a lot of legal problems affecting people's personal lives, their financial situation, that are not being resolved in a timely way. And they're not being often resolved correctly, so that people are leaving the court system with lingering problems, and they're not able to get it all resolved.

I personally think that has something to do with the number of what we call pro se litigants or people trying to do it themselves. And I know you wanted to talk about that. So I'm going to let you kind of prompt us on what you want to talk about next.

CHALLENGES

MAJ HANRAHAN:

Well, before we jump in the pro se, just kind of curious on what are some in your opinion, maybe some of the contributing factors or issues from a legal services perspective that are challenging many folks to try to get these legal services when it comes to domestic cases?

COL BOWDEN:

Well, you know the most obvious is cost. People are just, and usually when they get to a situation where their families are breaking apart they, they don't have the necessary resources to both go out and hire lawyers.

And so I think financial is a big issue with folks who are facing domestic problems.

We haven't scheduled to talk about this really today, I don't think, Rick, but domestic violence is quite often a part of this problem. And people need counseling, and sometimes people are being prosecuted at the same time that their families coming apart because of domestic violence.

So, I mean, it's just a very challenging environment to work in. And and I think maybe the lack of good legal counsel, of having that available to them is a problem, a lack of resources for other things that folks need when they're going through this or really creating a disruption and people, people are in crisis for sure when they hit this point.

TRENDS

MAJ HANRAHAN:

And kind of focusing maybe still broadly kind of from a macro standpoint, are you seeing any, I don't know, trends or typical issues within domestic cases?

COL BOWDEN:

Well, I think I would say that one of the trends that we continue to see is unmarried couples with children. I want to be careful that no one thinks I'm judging that situation. I'm not saying that at all. I'm just stating a fact.

We also see a lot of long term cohabitation between unmarried couples. And again, I'm not casting a moral judgment here. What I am saying is that the law, there's very little law on how to deal with property issues with people who aren't married. I have had unmarried couples who own homes, cars, all the things in their house that's not titled—TVs, computers, furniture. They've bought all that stuff together. And marriage law, if I could use that term has a very developed way of dealing with how to untangle all of that. But you have an increasingly number of people whose relationship resembles a marriage, but the law of marriage is not applying to them when they separate. That can be a challenge.

CIVIL UNIONS

MAJ HANRAHAN:

And speaking of the law of marriage, maybe you could talk briefly on civil unions and how that might also apply within the domestic case context.

COL BOWDEN:

Well, unfortunately, I'm not going to be able to say much about that because we don't have civil unions in Alabama, and I'm in Alabama. Like I said, I'm just a little old country Alabama judge. But you know that would help, because a civil union, as I understand that, has some law goes along with that. And that would help folks untangle some of their property issues and other problems.

But we don't have that in Alabama. And so we're left with some people actually having to go to a different kind of court to get the return of property or to decide who's going to, what they're going to do about a jointly held property. So, you know, you almost want to tell people that if they're going to move in together, they need to have some type of contractual relationship, which isn't very romantic for folks who want to you know, join their lives together short of marriage. But I would say that it can get difficult when those relationships break down.

But, you know, the thing that we spend a lot of time on in circuit court, in the domestic relations division, the thing that weighs the heaviest on me and my colleagues is those situations involving children. I don't know if that is increasing or decreasing, but there's certainly a lot of broken families and parents fighting over the future of their children that we're thrust into to try to help them resolve.

MEDIATION

MAJ HANRAHAN:

And I definitely want to talk about the children. And I think we're going to kind of walk through a typical maybe fact pattern that you often see here shortly. But before we kind of jump into that, let's just assume now that we've got a couple that has some domestic troubles

going on, right, and they're working through this. How are domestic cases typically adjudicated? And when I when I asked that question, I guess I'm asking obviously many people are maybe thinking of litigation, but there's other ways to handle these, right? Like through mediation as well.

COL BOWDEN:

Of course. And maybe some of your listeners might not know what mediation is, but that is when a third party who is neutral, but they're not a judge—and most of the time the mediator is a lawyer, but they don't have to be a lawyer. And the couple meets with this third party neutral mediator. And the mediator attempts to reconcile their differences or help them manage their breakup, usually the property part, but also involving children. And that is a very effective tool.

And I want to, I'll come back and talk about that some more when we get to kind of our fact scenario. But mediation, particularly in the family law area, is extremely valuable. And the mediators go through training. The domestic relations, mediation, training in the state of Alabama before you can get a certificate for that is a 40-hour training. So they have the training to help folks get through this difficult time by helping them decide on what they're going to do with all the issues that you're facing when your family is splitting up.

PRO SE

MAJ HANRAHAN:

So let's assume maybe mediation doesn't work, right? And we have to move into the litigation context. Unfortunately, which is sometimes where these cases just have to go. Obviously, there's different ways to litigate as well. And you mentioned one term earlier, pro se. Maybe you can discuss for our listeners what is pro se and how is that different than being represented by an attorney?

COL BOWDEN:

Well, Rick, you're a smart guy and you probably know the answer to this question. I actually don't know what

the Latin phrase *pro se* means—I don't know what the translation is. Do you know?

MAJ HANRAHAN:

Off the top of my head, I don't sir.

COL BOWDEN:

That's disappointing, but *pro se* means the people don't have lawyers. This is a topic I talk about a lot when anybody will listen, because it's growing. People coming to court without lawyers in numbers far greater than in the past. And it's okay. I'm not suggesting that there's anything particularly wrong with people representing themselves, but I would suggest that in a complicated case, a person who comes to court without a lawyer has no idea what to do. And the judge is not allowed to help them with their case. I have to—I am the ultimate referee, not a social worker, and I can't help either side.

So a good example of that is somebody comes to court representing themselves and they want to prove that their significant other we'll say their spouse was committing adultery or was unfaithful. And we can explain why that's important later, but for the sake of this part of our discussion, this person wants to prove that. And they have from the their spouses phone or other you know, device a series of texts between the spouse and their girlfriend or boyfriend. And they want to prove in court that that text shows that they were having an affair. Well, if they don't know the law of evidence and the law of authentication and things like that, that a lawyer would presumably know, that very valuable piece of evidence may never get to me as the judge to be able to consider to prove what they're trying to prove.

So that's just a small example of how trying to represent yourself, the truth may not get out, because there are rules about how evidence is presented. So, you know, *pro se* or people representing themselves is really kind of exploded lately. I call it the perfect storm of the a movement that kind of swept the nation on people being equipped to represent themselves in court because of the cost.

And then at the same time, this seems quaint right now to talk about it like this. But the Internet came along and provided people with access to lots of information that the litigants don't really understand. And lots of forms that they can just sign and file. And so the end result of all of that is that they get the form; they fill it out; they file it; their case gets docketed; they show up; and then they have absolutely no idea what to do at that point.

And there's an exponential rise in those kinds of cases where they're able to get in the door of the courthouse, but then they don't know what to do when they get there. And the outcomes in those situations are very varied about whether or not they are really getting the outcome that they might have gotten if they had a trained legal professional to help them.

So I would say, Rick, that it is all just use the word "common" when I call a docket for one or both of the litigants not have a lawyer. I always say when people ask me if they should get a lawyer and I said, I always respond with this silly example. I said, "Well, would you give yourself a root canal?"

And most people say, "No, I would never do that."

And I say, "Well, then why would you, you know, put all these important things on the line and try to figure it out yourself?"

So I hope that people can get a lawyer when they come to my court. I also know that it's expensive and they might not be able to do that.

MAJ HANRAHAN:

So obviously, this is the perfect storm, as you mentioned. How, just curious, how you and your judiciary colleagues, how do you handle this? I mean, how do you approach these very challenging types of cases where you have *pro se* litigants coming in; filing forms, right, they find on the Internet, and walk in your courtroom with very little knowledge on actually what to do from that point?

COL BOWDEN:

Well, as I mentioned earlier, a judge is not allowed to help either side because then you lose your impartiality if you're trying to help one side who doesn't know what to do. So I give the parties a brief explanation about the phase of the trial that they're in. So at the beginning, I'll say, "Do you want to tell me kind of what the case is about?"

Then when it's time to testify or put on their case, I'll tell them the different ways that they can put on a case. You can testify under oath, you can present witnesses, you can present documents and other records and things of that nature. So I explain to them, both sides, what they are allowed to do when they get ready to put on their case.

And then the hardest thing, is just terrible is how to help them understand how to question a witness or cross-examine a witness. And and listen, Rick, you know this, most lawyers can't do a good cross-examination. It takes it takes years to just be effective. And so a person who has no training, really stumbles there, and they don't know what to ask. And then objections are also very difficult. Pro se litigants will always want to object when they think the other side is lying. And you're not allowed to lie in court, but that's also not really the basis of an objection. You just have to prove that they're lying through your own evidence.

So I guess the short answer to your question is how do I help pro se litigants? I tell them about the process and I try to be very patient with them when they're doing that.

CONTESTED VS. UNCONTESTED

MAJ HANRAHAN:

Well, I am sure that is a very challenging situation Judge Bowden handles. So appreciate some of your insights on that. One other just kind of general question I have before we jump into our hypo is if you could for our listeners, just talk a little bit about the differences between a contested case and an uncontested case.

COL BOWDEN:

An uncontested divorce is what it sounds like. It's when the parties are able to reach an agreement on all the issues that need to be solved by the court. And they present those issues in writing already solved. And the judge just simply has to sign an order incorporating what they've agreed upon. I don't think I have to say that that's the best way to go. You save a lot of money that way and you can move on. That's that's what we're trying to do. We're trying to get you past this conflict to a better place. And uncontested means that you've either met with your significant other or spouse and talked it out and got it in writing, or you've met with a mediator and got it all done. And then you file that with all the paperwork already done and the judge just reviews it to make sure the big parts are done correctly and then signs off on it. And you have your divorce or your separation or whatever you're trying to accomplish.

So contested is also what it sounds like. A contested divorce is when both parties come to court without being able to agree on the issues before the court. And they must have a trial, a case in which the judge listens to evidence and rules on those issues.

MAJ HANRAHAN:

And for maybe for our military, our legal practitioners, obviously, there's maybe, I don't know, a sliding scale for lack of a better term here, on what cases could constitute or be better warranted to work through the judiciary process, whether they're uncontested, or contested when you have maybe young airmen without assets, without children, maybe they've only been married a year or so, that might be a little easier to work through the process than someone that has been married a long time, has assets and has children. Would that be a fair general statement?

COL BOWDEN:

Right on. I mean, the more you are in, the longer you've been married or with the other person, including children into the equation, significant assets, all of those

would trend towards more complicated cases, and more options that need to be resolved in a settlement. So, yeah, you typically if you've got a first term airman who doesn't have much, and the whatever the situation is with their spouse didn't work out, then you're able to resolve those almost always in an uncontested manner.

And a lot of states have good forms. I mean, I know I'm, you know, I'm not for it so much, but a lot of states have good forms for uncontested divorces when there's nothing to do but just get the divorce.

MAJ HANRAHAN:

That concludes part one of our interview with Colonel Bowden. Please stay tuned for part two in the next episode for the remainder of this interview. Thank you for listening.

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GLOSSARY

- **AFJAGS:** Air Force Judge Advocate General's School
- **JAG:** judge advocate general
- **ROTC:** Reserve Officer Training Corps