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Colonel Benjamin Bowden

AFJAGS Podcast: Episode 45

A View From the Bench - Family Law Domestic Cases with Colonel Benjamin Bowden - Part 2

HOST: MAJOR RICK HANRAHAN

GUEST: COLONEL BENJAMIN BOWDEN

Part two of the interview with Colonel Benjamin Bowden, an Alabama circuit court judge and JAG reservist, on his view from the bench on domestic cases.

MAJOR RICK HANRAHAN:

This is part two of the two part interview with Colonel Ben Bowden, an Alabama Circuit Court judge and JAG reservist on his view from the bench on domestic cases. If you didn't listen to part one, consider going back to the previous episode to listen. Here are a few clips from part two of the interview.

[short intro background music]

SHOW EXCERPTS, COLONEL BENJAMIN BOWDEN:

It's about custody and visitation if you have children. It's about child support if they're children. It's about dividing up your property, and it's about whether or not you're eligible for spousal support.

In my mind, the best lawyers I know are the lawyers who never stop learning. They have a natural curiosity about learning.

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](#).

FACT PATTERN

MAJ HANRAHAN:

So let's kind of move into this fact pattern here. You know, this might be something you might see potentially and something that military, legal practitioners might also see. Let's just assume we've got an active duty military member married to a civilian dependent spouse. Let's assume they have two kids, and they've been married for a number of years. They also have assets, right? They have, let's say they have a house. They've got two vehicles and they've got some retirement accounts, bank accounts, some credit card debt there.

Let's assume that one of them walks into the legal office, whether, obviously it could be the military member, it could be the civilian dependent, but they walk into the legal office, and let's say they've tried to work some of this stuff out. Maybe they've even broached the idea of mediation and it doesn't seem that that's going to likely work.

Could you maybe walk our listeners through this process of kind of what would happen at this point and the kind of step by step process?

COL BOWDEN:

Yeah, I want to bring several things we've been talking about together. And so I'm probably going to talk for a little while. And then if I'm talking too much or too long, just let me know. But we've mentioned if not the rise, certainly the steady numbers of people needing assistance in separating their family or their family needs to move on. So we talked about that. We talked about the number of people who can't afford lawyers, who don't get lawyers And we talked about how that affects readiness in the Air Force. And so I want to bring all that together and speak right now to our colleagues out in the field who are providing legal assistance to people in the scenario that you just described.

So just for a little while, if we could just kind of put ourselves in the scenario of sitting there at the office when this person comes in to talk to us about their situation, the one you just described. Understanding that they might not be able to afford a lawyer and that their readiness is being affected by this, that's bothering them. And it's a unique opportunity for us as JAG Corps military practitioners to make a difference. I know that legal assistance can be a drag. It is not the same thing as helping someone with targeting or some other, you know, exciting part of being—but just keep in mind, if you're a military practitioner, you're having a real effect on somebody's life when they come to your office all of a bundle of nerves about not knowing what to do. And they leave there feeling a little more relaxed and

calm about what's going to happen next. So I just want to keep that in mind.

What happens in a divorce is that once it's a lawsuit, one side files a complaint for divorce. The other side files an answer to that complaint and maybe a counterclaim. And it sets up just like any kind of lawsuit, like a car wreck or anything else. And so off you go on the path of litigation. Now, in my court, I won't have anything to do with that case until somebody files a motion or wants to the case to be set for trial—until they ask, they're asking the judge for some help.

So that will operate between the parties, if, you know, for a while before I'm ever involved in it. So that's the process in court. If you have motions, if you need temporary support, if you need something like that, then you might be end up in court. But what we hope is going to happen is that after a period of exchanging information and cooling off a little bit, that the parties are able to settle their case.

So I would like to say some things to our military practitioners about what is it that you want to say to that person who came into your office? And remember this. I'm an Alabama lawyer and I'm talking about Alabama domestic law. Domestic law is very state specific. And one place that you can really earn your money as a military practitioner is wherever you're located, get into the law, the domestic law there in that state. If you can get to a quick CLE, if you know, if you can study up on your own, if there's a lawyer license in the state in your office, which is quite often there are, find out about what the nuances are to domestic law. That's real important.

And so the first thing I would say, I think to the person who came to ask me about their family being kind of ripped apart and the problems they're having is I would say, "Are you", I would first ask them, "Are you really there yet?" Are you really at the place where a divorce is necessary?

And obviously, I'm not talking about abuse. If it's an abusive situation, you know, it's time to do something about that. But sometimes people, after they've just gotten close to this will go back, reevaluate, get some counseling, and they're able to move on together as a family. And that's a win for everybody. If there's if the situation is not abusive.

So I always start by saying, "Are you sure you're there? Have you thought about counseling? Have you have you gone to counseling? Have you gone to a couples retreat?" You know what I'm talking about? Everyone listening knows what I'm talking about. But I don't think you start with telling them how their family can be broken up. You start with telling them how their family might could stay together.

MAJ HANRAHAN:

So you're talking more a little bit about counseling here a bit.

COL BOWDEN:

Yes, that's correct. As a lawyer, I always start out that way. And I think that's a good way to start out for you, the scenario we're talking about, if you're advising these folks.

And then I want to turn to hitting on a just a few things that your people need to be aware of. And this came from a CLE type presentation I did a few years called A View from the Bench. And I'm just going to reiterate those real quick. I know maybe we're getting close to the end of our time here. First of all, remind your client in the domestic law scenario where they're there because they need a divorce or something like that, is that if you go to court, you're going to be there with just a judge, not a jury and that the judge has a tremendous amount of discretion over what's going to happen. What I mean by that is when the judge makes his decision about your family and who gets what and who gets the children and those kinds of things, that judge will rarely ever be able to be overturned because of those decisions. In other words, the judge's say is kind of final in that situation.

So just remember, when you're advising your clients is that the judges in family law cases are operating at their maximum discretion. They can do, they have a wide range of power.

The next thing I would talk to a client in that situation is that fault matters. Don't be confused by something you hear on soap operas and other common pop media about no-fault divorce. No-fault divorce just means that you don't have to allege a grounds for divorce. You can just say, I don't want to be married to this person anymore, and that gets you in the gate as far as the divorce case is concerned. But fault very much matters. And if you've done something that you shouldn't have done in the context of your relationship, you know that that's okay.

Judges respond very well to contriteness and people realizing that they made a mistake. But what I'm trying to emphasize is that don't when someone says that there's no fault divorce, don't assume that fault doesn't matter. It matters in the custody of the children. It matters in the division of the property of the marriage. It matters in spousal support. So fault does matter. And you need if you're engaging in some sort of inappropriate relationship or inappropriate behavior, you need to tell that client to stop doing that, because that will affect what happens to them in the divorce.

How often Rick do you think something that's been put out there on social media comes up in a domestic case?

MAJ HANRAHAN:

Let me guess, every case?

COL BOWDEN:

That's right. I like to say that nothing happens in private anymore. Nothing. Everything has been either recorded or documented in some way. People will say things in a text that they never dreamed anybody else would see. And so you need to tell your client that every time you talk to the other side that you might be being recorded. You need to tell them not to destroy evidence, you know, if you can't delete everything.

I would say that every single case that I hear in the domestic relations world has some Facebook post, Instagram post, and see I don't even know all the other ones, but TikTok, whatever. I had a, I had a custody case this past year where one side brought in the mom's TikTok post and she was well, I don't want to say too much about it, but she was doing something inappropriate on the Internet in her TikTok video that had a bearing on whether or not she was the right person to have custody of the child. So all of these things are coming to us through social media. And just remember that nothing happens in private anymore.

The things that the judge needs to consider when the client starts telling you what's happened, you need to give them a few minutes to just vent. They need to talk about what's on their mind was worrying them, what they are worried about. Let it go for a little while, but at some point you got to direct them back to what is really going to happen in a divorce trial. And I say this because it helps them figure out how to settle a divorce trial.

First of all, what's not going to happen, is it's unlikely that the judge is going to turn to the one or the other and say, "You're a horrible person. You deserve every bad thing that could happen to you, and I am going to smite you now and leave you here shirtless, penniless and in disgrace." That is just not going to happen, and you can't use the divorce legal process as I get-back. It won't work. You'll be dissatisfied when it's over. There's never enough. You can never do enough.

So first off, make sure they understand what the divorce is about. And what the divorce is not about. And it's not about a public shaming of the person who's done them wrong. So what is it about, though? It's about custody and visitation if you have children. It's about child support, if they're children, it's about dividing up your property, and it's about whether or not you're eligible for spousal support. That's all. And for a busy judge, I don't want to hear a whole lot of other stuff. You got to put meat on those bones. But I really don't want to hear about a whole lot of other stuff. So I think it helps

calm them and also helps to you coin your phrase, Rick, "manage expectations" is really big here. And they need to understand what is this case going to be about if we have to step in front of the judge.

Couple of other quick points if they are going to have to get a lawyer, I always encourage folks to get a lawyer who's local to the jurisdiction where the case will be tried. We can jump into that issue about where is this case going to take place, because that might be on the minds of people who father lives in one state. The mom is from a different state and then they're in a third state with their children. So we can touch on that in just a second. But I always feel like the lawyers who live and practice in the jurisdiction with the judge are better choices for lawyers in domestic cases. Maybe that sounds a little bit like home cooking. That's not really what I want it to sound like. The judge has lawyers that he trusts their credibility when they come before he or she is in court. And you need one of those kinds of lawyers that the judge trusts when that lawyer stands up and says X, Y or Z, that judge has a relationship and trusts that lawyer to tell the judge the truth about something.

When I first became a circuit judge, I had a friend of mine who had been a circuit judge for 15 years in another county, and he told me about domestic relations cases. He said been the most important thing that you have to do, because of the volume of cases, the most important thing that you have to do is to get the parties in a position to settle. And that's kind of the last thing I wanted to talk about.

You know, we talked about mediation at the beginning, but mediation can be done all the way through. You can settle your case at any time, and a good judge works the parties into a situation where they can settle their case themselves. And you should be emphasizing to that legal assistance client—you need to think about settling. What is it that you must have in order to get on with your life? What do you have to have to feel like this went the way it needed to go? Draw a line there and be willing to settle the case there. Because listen, sometimes I'll have to try a divorce case in a day.

So that's probably 6 hours actual litigation, counting breaks and lunch. You know, judges take long lunches [laughing]. Not really, but people think we do. And so 6 hours for me to hear about ten, 15 year marriage with two kids, a house maybe rental properties, maybe 401k's, that is not a lot of time for me to understand the dynamics of what's going on. Well, who does—who best understands the dynamics of your marriage? The parties. If they can reach a settlement on their own, then they have done wildly better, wildly better than I could do. I think with all the humility that I can muster in a six hour glimpse of what your life is like.

So you really are trying, as a judge I am trying to get those folks in a position to where they can settle their case, and as a legal assistance attorney, that should be something that you are harping on with them, not to give away a good legal advantage or not to do anything that they think would be detrimental to their children or themselves, but they have to have a settlement sort of state of mind.

JURISDICTION

MAJ HANRAHAN:

Well Colonel Bowden so much value packed into that. Those comments there, that I think listeners, if they're actually practicing in this area, may want to go back and listen a few times to take notes on this because I think there's just great, great value in insights there. You touch upon a lot of things. One of the things you mentioned, and maybe we can just briefly mention this, is these cases can be very complicated, correct? I mean, especially from a jurisdictional standpoint when you have military members. Could you just briefly highlight some of those aspects there?

COL BOWDEN:

I'll start with one that's the easiest to understand, and that is a judge always has jurisdiction over children living in his or her jurisdiction, always. So if there's any kind of emergency related to the custody of those children, that can always be decided by where the children live, even

if they're living there temporarily because their parents are on military orders.

So a family that lives at Maxwell Air Force Base, where we are right now in Montgomery, Alabama, one could be from Oklahoma, one could be from Texas, and they could be on their third different assignment with children moving all over the states and the world. But if they're living in Alabama, then the circuit judge in that county has the jurisdiction over those children. So that's an easier one to start with.

In Alabama, in order to file for divorce here, you have to have been living here for six months. Residing. You can you can be a resident of another state. But if you are here on military orders, you have to have been here for six months before you can file for divorce here in Alabama.

Interestingly enough, you could file here or the state that your legal residence of, so that can get a little complicated, but it's an important thing to cover with a client and a legal assistance situation. Are you from a small town somewhere where you feel like you could have a good situation with the local lawyers and local judges, then maybe you would consider filing your divorce back where you came from, not where you currently are.

MAJ HANRAHAN:

Just to kind of loop back with that for our listeners, you're talking about physical presence versus legal domicile.

COL BOWDEN:

I'm talking about both, actually. So back to our scenario. You're stationed in Maxwell, but you're from Texas. You, if you've lived in Montgomery for more than six months and live presence here, then you can file here. You can also file in your state of legal residence back where you came from. Your home of record is sometimes something we've talked about. So you might want to make a decision about which one of those you want. If your family is breaking up and you're the dependent, quite likely you're going to end up back there at least to

get started again and you're back in your home town. So you may want to file your divorce back there.

Now, the court does have to have personal jurisdiction over the other party, and this could take another hour to explain. And it's complicated, but just remember this, a court's jurisdiction, they have to have power over the people and they have to have authority over the subject. Domestic law, no problem. We have authority over the subject, but we have to have court power over the people. And so if a person has never lived in Oklahoma, never gone there and don't have any contacts with Oklahoma, then they can't be brought into a divorce case in Oklahoma. So that's a factor to consider when you're talking to them about filing for divorce.

And I think that is something that they're worried about. Where do I even go to do something? You know, Rick we've talked about this, I don't feel like that we are doing them the best service that we can do for a service member or his dependent because they're both eligible and they both come into our office equal in terms of services, but I would ask this question, are we really doing the best that we can do for this program that we are obligated to do and that we should want to do by just simply saying, "Oh, sounds complicated. I think you're going to need a lawyer", and sending him away. For the non-military practitioners, our ability to—military lawyers are really not allowed to represent people in court. We just can give them advice. And so I think we develop sometimes a practice of listening to them for a few minutes and saying, "That sounds painful and complicated. You're going to need a lawyer", and you know, you just shuffle them on out the door.

I don't feel like that we've done our best in that situation. I feel like any military practitioner, any JAG or civilian employee in our department can spend the time to learn about what's going to happen in that jurisdiction or other jurisdictions in a divorce case and develop a plan to talk to that member who's in a tremendous amount of distress about all of this and help them get to the next place.

And that's what really I want—that's why I wanted to talk to you today.

MAJ HANRAHAN:

So I think it's safe to say that for military legal practitioners, especially if you've never done this area of the law that, you know, it behooves you to develop a certain level of competency in your local jurisdiction because you will have these cases. Is that a fair statement, sir?

COL BOWDEN:

I really couldn't say it any better. And it's also available. Again, you know, you mentioned earlier the perfect storm of the pro se litigation. Well, a lot of that same information is available to an industrious young JAG who wants to improve their craft in their trade and be helpful. So you can find a lot of information you can go to free CLEs, webinars. There are things that you can do to be better at this particular area of the law. And I think it's doable. It's something that you can you can do and make a difference.

RESOURCES

MAJ HANRAHAN:

Well, sir, I think we've just scratched the surface again. I feel on this area of the law, and there's a lot of things we didn't talk about, but I think we covered some of the main points, which is hopefully good for our listeners. As we kind of move into our last few questions, are there any, and you kind of alluded to this to some respect, but are there any resources where you would direct listeners to learn more about today's topic?

COL BOWDEN:

Well, would you do your own root canal? You need to talk to a lawyer who knows something about this. In Alabama, we have something that's kind of new to the practice of law here. It's been out about five years. It's the unbundling of services, so you can get a lawyer to just consult with you, you can get a lawyer to just file part of the case. They don't have to stay with you the whole case, and more importantly, you don't have to pay the lawyer to stay with you through the whole case.

So there's a way to get some legal services, you know, without having to plunk down \$5,000 right off the bat. So I would say that you should ask about that. If you're a JAG and you're working in the legal office, find out what lawyers are willing to do "a piece" of a case to help people get to where they need to get.

The next thing I would say about JAGs is, you know, is you need to lean on those people in your legal office who have either been there for a while or maybe permanent party civilian employees and they can help you. But here's an easy thing to do and it'll awaken in you the reason why you wanted to become a lawyer to begin with, go down—when the COVID restrictions are finally lifted—go down to the court system. Find out when they're going to have their domestic day. Find out when maybe there's going to be a trial. Go sit. The judges would love that. They'll talk to you during breaks. I think you could learn more in a day doing that than you could ever just clicking around and Googling.

So that would be my recommendation. Somebody in your office who's either a permanent party or been there a while and knows what they're talking about, look for local CLEs on domestic law. Go down to the courthouse and sit in and listen in you'll remember why you became a lawyer.

FINAL THOUGHTS

MAJ HANRAHAN:

Excellent tips there, sir. Hopefully some of our listeners will take you up on that. So with my final question, are there any final tips or parting words that you'd like to leave for our listeners, whether we've talked about them today or we didn't get a chance to discuss?

COL BOWDEN:

I think we've hit everything in such a way at least your listeners will come away with one, the scope of the problem they need, and I think that to fill that need, we need to be the best that we can be at this. And I've done it. I've been in your shoes before. I've grown

when I realize it's my day for legal assistance. But it's very satisfying to see somebody come in and you can tell they're so distraught and when they leave they feel at least like somebody to listened to them and help them get along to the next step so.

And the last thing I'll say, Rick, and it's, I hope no one takes this the wrong way, like, okay, we didn't need, you know, Colonel Bowden, Judge Bowden to tell us this. But in my mind, the best lawyers I know are the lawyers who never stop learning. They have a natural curiosity about learning. And I would just urge you, you know, to have that in this area of the law and learn how to be the very best that you can be to help our service members who definitely need you.

MAJ HANRAHAN:

Well, Colonel and Judge Bowden, thank you again for coming on today. Very appreciative for all your great points here. And I think this will add lot of value to our listeners.

COL BOWDEN:

Well, once again, I just want to say that this is a phenomenal program. I don't know if that's what you call a podcast or not, but I just think it's great. I think it's reaching a lot of people and appreciate the work that goes into it. And I'm glad The JAG School here is willing to sponsor this. And you certainly developed a talent for it, Rick. We hope to hear more from you.

TAKEAWAYS

MAJ HANRAHAN:

Thank you, sir. That concludes our interview with Colonel Bowden. Here are three of my takeaways from the interview.

NUMBER ONE, domestic cases continue to rank at the top of military legal assistance. As mentioned in this interview's introduction, 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 equates to over 36 clients per day on this topic. The obvious implication from this statistic is readiness of service members. There's hardly anything more distracting for service members when their family life is in turmoil, which in turn impacts their ability to concentrate, perform their jobs and ultimately the mission. So it's imperative that legal professionals become competent in domestic law to best help their clients navigate through its complexities. Which I'll discuss a bit more in the last takeaway.

NUMBER TWO, pro se litigants continue to increase. Colonel Bowden mentioned this numerous times and called it the perfect storm. As legal costs continue to increase and the Internet has more info and online forms, this often provides folks a false sense of security in representing themselves in court as pro se litigants. While the Internet has helped to democratize the legal process, it cannot teach one how to practice law. That takes a law license and years of experience to master. Being able to simply get in the door of court is often not enough and can be detrimental when litigants have little to no idea of what to do once in court. As Judge Bowden said, would you try to give yourself a root canal? Of course not. In the same way, a non-lawyer trying to represent himself is often not much different.

Coupled with this challenge, is another trend of growing unmarried couples with children and long term cohabitation. Many states, like Alabama, have scarce law on property issues with unmarried couples and or don't recognize civil unions. This leads to even more complication. And if you add on the common jurisdictional issues of many military members with children, the perfect storm grows even larger. So what is a military legal practitioner to do? This leads me to my final point.

AND NUMBER THREE, strive to achieve domestic law competence as a military legal practitioner. This is likely the most important takeaway. While Air Force military legal practitioners typically do not represent clients in court, they can become competent on domestic law within their jurisdiction in order to afford their clients the very best in legal assistance. Managing client expectations here is huge. Yes, this is a Catch-22 because the more knowledge and experience a military legal practitioner has, the better he or she can manage client expectations. But it can be learned with initiative and proper training.

So how can this be done? As discussed by Colonel Bowden, look to learn from local experts to teach your office, attend CLEs, self-study, and go to the local domestic court to watch a day of cases. Perhaps even look to collaborate with a local expert on domestic law training for your installation.

In time, competent military legal professionals will come to understand the local jurisdiction's law, process, alternative dispute resolution avenues and other nuances of the law. And once the military legal professional has provided sound, competent legal counsel and advice, look to refer clients to local counsel whenever warranted, especially for cases involving children and significant marital assets.

In conclusion, as Judge Bowden said, the best lawyers are the ones that never stop learning. They have a natural curiosity in learning. Be that legal professional in the pursuit of mastering your craft to assist your legal assistant clients and ultimately mission accomplishment.

Thank you for listening to another episode. If you like this episode, please let us know by leaving a review on Apple Podcasts, Spotify, or your favorite podcast platform and consider subscribing to the show. We'll see you on the next episode.

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GLOSSARY

- **AFJAGS:** Air Force Judge Advocate General's School
- **CLE:** continuing legal education
- **JAG:** judge advocate general