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(Credit: David F. Morrill, William & Mary)



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An Officer and a Dean

William & Mary's New Law Dean a JAGC Captain

Interview with Sean Lyons

Last spring, A. Benjamin Spencer, a judge advocate captain in the U.S. Army Reserve and a nationally-renowned civil procedure and federal courts expert, was appointed Dean of the William and Mary Law School, the nation's first—and one of the most prestigious—law schools. Born in Atlanta, Georgia, and raised in Hampton, Virginia, Captain Spencer graduated from Morehouse College, after which he attended the London School of Economics on a Marshall Scholarship, earning a master's degree in criminal justice policy. He completed his juris doctor at Harvard Law School and began his academic career at the University of Richmond School of Law. After a stint at Washington and Lee University, Spencer was named the Justice Thurgood Marshall Distinguished Professor of Law at the University of Virginia (U.Va.) School of Law. For his excellence in teaching, he was awarded the Virginia Outstanding Faculty Award, the highest honor for faculty working at the commonwealth's colleges and universities.

Spencer is an author of the iconic *Wright & Miller Federal Practice and Procedure* treatise, which is devoted to civil procedure. Last year, the treatise published its first volume under the name *Wright, Miller & Spencer*, in recognition of his contributions. He has authored numerous law review articles, book chapters, and books, including *Acing Civil Procedure* and *Civil Procedure: A Contemporary Approach*, used widely by professors and students throughout the country.

Spencer recently spoke to *The Army Lawyer* about his experiences as an academic, dean, and captain in the Judge Advocate General's (JAG) Corps.

You joined the JAG Corps in 2015 while a professor at U.Va. School of Law. What spurred that decision?

My dad's and my grandfather's service in the Army was the impetus. My grandfather, Adam Arnold, was in the infantry during World War II. He served in Italy and France. My father was in the JAG Corps full-time and as a reservist for a total of sixteen years. I had never given the JAG Corps much thought; I was focused on my academic career. But when I became a professor at U.Va., I could see the JAG school out my office window. I'd watch the run groups go in and out, and some of the formations out front, so that piqued my interest. I talked to my father about his experiences a little more, and I had a colleague at U.Va., Tom Nachbar, who was in the JAG Corps reserve, and I finally decided to apply. I thought I was too old—I was 41 at the time—but I was able to get an age waiver. And since the school was right there in Charlottesville, and the OBC was held there, I didn't have to leave my family, other than the six weeks at Fort Benning.

Where have you served?

I was first assigned to the 174th Legal Operations Detachment, where I had the opportunity to work at United States Central Command in Tampa. I got to do a lot of administrative and international law work there. It was a fantastic experience; I was lucky to learn a great deal about Army leadership, as well as just learning how the Army worked. During that time, I also edited

material for *The Army Lawyer* and *Military Law Review*. I then transferred to the 80th Training Command in Richmond, Virginia, where I was chief of legal assistance. Then I applied for a competitive position at the government appellate division, which is where I am now. I am one of three reservists attached there who assist with writing briefs on behalf of the Army in appeals of criminal cases. It's a great position and fits with some of my experience, as I've done appellate litigation before.

What has surprised you the most about the JAG Corps?

There are lots of things I could list. Before I joined, when I was talking to the recruiters, I didn't realize lawyers did so much soldiering. I didn't have any appreciation for that. I quickly learned about the physical fitness requirements, too, and I had to lose a ton of weight. I was 237 pounds at the time, and they showed me the height weight chart, and I realized I needed to get to work. So I lost 27 pounds before I joined. I didn't have any appreciation for it before, but I am thrilled it's a part of it. I'm much healthier now.

I'm also surprised how small the organization is, in the sense that almost everyone knows everyone else. There's only about one degree of separation. That means networking and communication are important for how the JAG Corps works. It's not uncommon to run into our generals—I don't think that's common in most parts of the Army—and I have found them to be very accessible. I've also been surprised at how much freedom and flexibility you have, on the reserve side at least, to follow your career path. I've been able to identify jobs that interest me and apply for them.

What about the military justice system versus what you've experienced in the civilian legal world?

From what I've learned, the system is, in many ways, designed to be used as a commander's tool, as part of good order and discipline. That's a foreign concept to civilian courts. In some respects, the military justice system is more stringent than civilian courts, but in some ways there's a broader perspective. The jurors,

for instance, are military people. They are not just making a legal judgement. They are making a legal judgement combined with a military judgement. When they are deciding a case, they are looking at what has been the person's contribution to the unit and mission, what would be the impact on good order and discipline—all the while keeping people safe and holding the accused accountable. So you can't come at it as just a lawyer, you have to have experience of being in a formation, being in a barracks, what happens in a room inspection, etcetera. I have had only a limited range of that experience—I have not been deployed, for instance—but I can see how important having even a small piece of that perspective is. There's a unique context and set of values within the system.

In my current role handling appeals, I've been surprised by the number of sexual assault cases. That's probably what I am dealing with most. I think that may speak to the Army not having any tolerance for that, at least from my sliver of experience. Those people are dealt with pretty swiftly. But I acknowledge I only see one piece of what happens, so people who question that certainly could have different perspectives.

What, if anything, has the JAG Corps given or taught you that you can bring to being a dean?

Some people, whether they are civilians or in the military, can make mountains out of molehills—it's human nature. But what the military side has reinforced for me is perspective, that there are often lots of bigger things happening than what you see within your own sphere, and lots of things you can't see from your perspective. There are leaders leading Soldiers down-range where they might not come back. Things of consequence. It helps me realize that not everything is going to be the end of the world. But you have to meet people where they are, and then try to lead them toward seeing the bigger picture. I've also learned from the Army the importance of humility as a leader, and the importance of teamwork. I have tried to incorporate those lessons here at William and Mary, although it's tougher in these days of Zoom. But I've been able to see how some of the best

leaders in the Army work and listen, and have tried to emulate that.

What does it feel like to be the first African-American dean at the alma mater of Thomas Jefferson, who, as we know, enslaved people?

From a historical perspective, it is a testament to the progress we've made in this country. We have a ways to go, but I think it's remarkable the first professor here was a slaveholder, and his students, including John Marshall, owned slaves. I'm the descendant of slaves. I know they never could have imagined that a person like me would become the leader of this institution. So that's remarkable. But on an everyday level, I have to be honest, it's not something that really crosses my mind. William and Mary has been fantastic about equity, inclusiveness, belonging—there's no sense I get differential treatment. So while I appreciate the historical nature to it all, I'm just doing the work of a law school dean, and doing it at a wonderful place.

You're not the only member of the family to have been the "first first" African-American within the legal and academic worlds.

That's right. As I mentioned, my father was in the JAG Corps, and he later became the first African-American federal judge in Virginia. My grandfather, the same one who was in World War II, was the first African-American professor at Notre Dame. He was a finance professor there for thirty years.

What's your job? What do you actually do?

There's a lot of meetings (laughs). Especially now that Zoom is the chief way to communicate. You can't just walk into someone's office. I have eight direct reports, whom I meet with one-on-one every week, then we meet as a team once a week. There is a weekly meeting with the president's cabinet, then with the provost, and then another one with the other deans here. There are meetings with alumni, which is chiefly about developing relationships. Then there are meetings with other law school deans, meetings with law firms to develop opportunities for students, and meetings with all

the faculty members to stay connected to what they need and what the school might need from them. Then there are meetings with students and different affinity groups within the law school. My schedule is not my own. But I have no regrets. I love the position, you get to do great stuff for people.

What's one the biggest challenges you face as dean?

Planning around COVID takes up an inordinate amount of time in how the school functions, so there's a lot of work on logistics, planning, and making sure we are meeting our mission, even if we are all apart. From an academic perspective, I don't think there's enough time now for everyone to think, and plan, and write, including myself. I still have publications and have to work on that front, as do the professors.

So between handling the administrative and academic work of a dean, being a reservist, making sure you pass the Army Combat Fitness Test . . .

Yeah, there's not a lot of time. I have to carve out time in my schedule for myself and my family.

Yes, family: Nine kids? Did we read that right in your bio?

Yes (laughs). And the only reason I am able to do all of these things is because of my wife, Marlette. She's the one who takes care of all those nine kids. And nowadays, I know most Americans are working from home and helping their kids with Zooms. I am not. I'm here in my office. She's doing it by herself. Only because she does that am I able to be here. And I have to be here. Not only because I'm the dean, but she's got seven kids on Zoom at home. There's no way I could be home, too. Just think of all the Wi-Fi bandwidth needed in our house.

What has having such a large family taught you about being in the Army or being a dean?

You have to have patience. It's also about recognizing that there are multiple perspectives, and you need to solicit people's views, especially that of your partner's. And you have to try to lead people, not just from the

top down. You have to empower them to manage some of the others. The older kids' chores are really about being a supervisor. One daughter is the kitchen supervisor. I go to her if the kitchen is not clean. I hold her accountable. I tell her to gather up her team. We have a laundry supervisor—that's a big operation. Same thing. But that's how we run it.

Does William and Mary have a JAG community at all that you've connected with?

Fred Lederer is here, he's sort of a legend in the JAG Corps. He served with my dad, and they know one another. There are some Funded Legal Education Program students here, some prior service students, and we have a veteran's clinic supported by retired vets. But other than that, there's no real culture that maybe under normal circumstances would exist, because everyone is remote. Once everyone is back, I hope we can cultivate that more.

How do you balance being the law dean at William and Mary—the leader of one of the most prestigious law schools in America—but then for one weekend a month and two weeks during the year, being a not-very-high-ranking Army captain?

I started as a mismatch from the outset. As I mentioned, I was forty-one years old when I joined, held a distinguished chair at U.Va., and then I was a first lieutenant in the Army. But the reason why it wasn't awkward is because inside the JAG Corps, none of it mattered. I didn't know about military law. I hadn't been doing anything as a Soldier. I am definitely glad I had that rank, and am glad being a captain now. It's easy to be humble when you see people who are so much more experienced than you. I am just looking to make a contribution. I am grateful for my assignments.

What are your goals as dean at William and Mary?

I want to continue to build on the strengths we have at William and Mary Law School, which means enrolling the very best students who, in turn, will learn from faculty who are at the top of their fields. We are in

pursuit of excellence, unparalleled excellence, every day.

Belonging is a core value here, and one of my main priorities as dean is a focus on diversity, equity, and inclusion. We've rolled out a plan called *Why We Can't Wait, An Agenda for Equity and Justice*. In addition, our students have always been good citizens, but I want to foster and develop them to become advocates for justice. Finally, I want to ensure that we are laying the foundation for a legal education that both honors the long-standing traditions of the institution while preparing our students for the future of law.

What do you think are the biggest challenges facing legal education today, and how do you see that applying to the JAG Corps, if at all?

One of the biggest challenges is the influx of partisan and ideological polarization. Personally, I think that lawyers and other interpreters of the law should remain independent thinkers who can give sound legal advice as lawyers and deliver true justice as judges. Another major challenge is reckoning with the impact of technology on the practice of law. Our students, our graduates, and members of the JAG Corps all need to be prepared for an experience that could be entirely different, from the subject matter to how and where we practice law. Both inside and outside the JAG Corps, legal professionals need to be prepared to confront the legal challenges of tomorrow, which might be quite different from those we have grown accustomed to addressing.