

I am going to begin with a line that is usually reserved for the other side of the aisle – this case is about ACCOUNTABILITY. The charges against LtCol Scheller began with a call for accountability by the senior military leadership and end here, with LtCol Scheller standing tall, leading by example, and showing the nation that he is willing to accept responsibility and accountability for his actions.

Notwithstanding all the posturing, the initial detention, and the legal wrangling by attorneys, the reality is that this case was never going to go to a jury trial. Because for LtCol Scheller to do anything other than take full responsibility for his actions would make him a hypocrite. He admits that, under the Uniform Code of Military Justice, a commissioned officer, like him, are not allowed to question why senior leaders took actions that he believed led to the needless loss of 13 American servicemembers lives.

Our purpose here is to present matters in extenuation and mitigation, that is, matters about the offense of LtCol Scheller, which we want you to consider in deciding his sentence. In order to properly consider his conduct, you must first consider the context – namely the effects of two decades of war.

Right now, we are at an interesting historical inflection point for our military leadership. It is the exact opposite of the Navy/Marine Corps team

that I joined in 1998, pre-9/11. Back then, the General Officers and many of the Colonels wore Vietnam service ribbons, while the O5 and below officer corps had very little, if any, practical combat experience. General Krulak was Commandant and we relied heavily on the mentorship and experience of the Vietnam generation. Of course, all of that changed after 9/11 when an entirely new generation of military officers faced long-term sustained ground combat. Stu Scheller joined in 2005 when General Michael Hagee was Commandant, the last Vietnam veteran to serve in that post. The last enlisted Vietnam veteran Marine, Master Sgt. Randall Arnold, retired on June 30, 2005, five and a half months after Stu Scheller began OCS.

Our post-9/11 platoon commanders, like LtCol Scheller, have endured two decades of constant combat and have grown into Lieutenant Colonels and some Colonels. In contrast, our general officer corps has relatively little combat experience. That is through no fault of their own, it is simply a matter of the year of their birth, but it doesn't change the undeniable fact that our O-5s, like LtCol Scheller are largely the most senior officers who have significant experience carrying a rifle on patrol in a combat zone while our general officer corps does not. This creates an understandable, if ordinarily unspoken, generational tension, as the wars in Afghanistan and Iraq were

primarily led by generals who rely on their academic knowledge and theory rather than experience.

For two decades, warriors like Stu Scheller have given their youth, their health, their limbs, and sometimes their lives to the cause of freedom. They did so willingly, believing that they were fighting for a righteous cause and that senior leadership would have their backs. Yet, there has been a persistent, growing feeling that the focus is not on the wellbeing of the individual Marines and servicemembers, or even mission success, but rather the continuation of an endless war that feeds the military industrial complex, where retired generals and admirals could go to make their millions. Thus, the war continued, rather than progressed, and the Generals got ribbons on their chests while mothers got folded flags from coffins

Seven years ago, veterans of the Iraq war watched in horror as ISIS swept through and evil reclaimed the cities where our servicemembers sacrificed so much. Although veteran suicide rates had been slowly decreasing from 2008 through 2013, there was a sharp reversal of this trend in 2014, as we saw all that we fought for thrown away and the ISIS flag raised. I imagine that each one of us in this room felt it like a punch in the gut each time the news reported another city, where our friends made the ultimate sacrifice, fell.

The failure of the Iraq withdrawal and the rapid spread of ISIS should have been a wakeup call to all of us. Over 100,000 Iraqi civilians and partner forces were killed by ISIS and we had to redeploy back to Iraq and push ISIS out, sacrificing more American lives. But to those like LtCol Scheller who fought in Iraq, the rapid fall to ISIS was not a surprise. While this may have been obvious to those who had slugged it out on the streets of Iraq, our leadership failed to see or acknowledge it and certainly nobody was held accountable for it. But, as we retook the country, at a toll of 57 more U.S. Servicemembers killed, warriors like Stu Scheller expected our leadership to learn this lesson and not to repeat the same mistake.

While the UCMJ and the enlistment or officer oaths do mandate respect to superiors, this is not a one-way street. The American people entrust our family members to the U.S. military and expect that the officers appointed over them will take care not to waste their lives.

It is only in the context of this background that we can properly consider the actions of LtCol Stu Scheller over the past couple of months.

Over the past 20 years, 245 Marines have been killed in action in Afghanistan. Another 133 later died of their wounds. But there was something different about the last 11. Casualties are an unfortunate reality of combat. In battle, people are wounded and sometimes die. Sometimes it

is because of an intelligence failure, sometimes a tactical error, and sometimes it is just bad luck. The only way to completely avoid casualties in ground combat operations is to not engage in ground combat operations. This is why all Marines learn from early on that they are expendable. But just because ground combat troops are expendable does not mean they are disposable.

These last 11 Marines, one Navy Corpsman and one soldier did not die because of an intelligence failure or tactical error. They died because senior leadership made a conscious decision to abandon Bagram airbase in favor of an indefensible commercial airport in an urban setting. It was widely reported that an ISIS-K attack was imminent. These deaths were entirely predictable and avoidable and the decision to treat them as disposable was made at the highest levels. The Commander-in-Chief said “They concluded — the military — that Bagram was not much value added, that it was much wiser to focus on Kabul. And so, I followed that recommendation.”

After hearing the Commander in Chief say that the decision that led to the deaths of these Marines, sailor and soldier, and the abandonment of an unknown number of American citizens and partners behind Taliban lines was more than Stu Scheller could take quietly. He decided to make a video asking the question that all of us had. Why?

It wasn't long thereafter that members of both houses of congress, and both political parties began asking the Secretary of Defense and the Chairman of the Joint Chiefs the same questions. Personally, I didn't watch the hearings, but I did listen to them on audio. Without the benefit of the labels at the bottom of the screen, it was, at times, difficult for me to tell who was even asking the questions. Unlike the normal congressional hearings where there is a tennis match between one party aggressively questioning the witness and then the other putting up a defense, the hearings on the Afghan withdrawal brought a sense of unity and bipartisanship to DC that we haven't seen in years. Unity in our outrage over our exit from Afghanistan.

Even General Berger later agreed with LtCol Scheller that "we need the honest, open critique, or a commission ... that cracks open: What were the options that were available, who made what decisions at what time?" Interestingly, this change of tone came at the same time that Communications Directorate at HQMC had analyzed the media coverage of this case and found:

Public sentiment is 45% negative, 50% neutral, and 5% positive. The main themes of public commentary are criticisms of the Marine Corps and military as a whole relieving a Marine who spoke up on what others are

thinking, claiming senior military staff act more as politicians than general officers, calling for LtCol Scheller's reinstatement, reiterating LtCol Scheller's call for demanding accountability, and negatively comparing this to how Army LtCol Alexander Vindman was able to retire after speaking out against leadership.”

While there may be near universal anger at the situation in Afghanistan, to veterans like Stu, who fought against the Taliban, there is a deeper level of outrage and pain watching the Taliban retake the country, the military equipment we left there, and even demanding that we send them financial aid. To the public and politicians, the Taliban are a group of fundamentalists that we see on TV. To the generals, they are the small moving dots on a drone feed. To veterans like Stu, the Taliban are fighters who shot at him, tried to kill him, wounded Americans that he had to evacuate and killed Americans who he had to watch die.

There is no question that there is an emotional and a mental health aspect to this case. Emotional and mental health doesn't have to mean that we're parading experts in here citing to the Diagnostic and Statistical Manual of Mental Disorders, commonly known as the DSM, either. Through each one of these videos, we saw that extreme emotional distress that LtCol Scheller

felt, after two decades of unrelenting combat ultimately wasted, along with the completely avoidable death of more Marines.

I say emotional and mental health here because the issue is not as simple or black-and-white as many wish to believe. In the active duty, we tend to think of Marines as either mentally fit for duty, or discharged and into the VA system for severe PTSD, TBI, and suicide prevention. Stu Scheller was a good, sane and compliant Marine until he wasn't and therefore everyone jumped to the conclusion that he was suicidal or bipolar.

Colonel Hobbs, LtCol Scheller's former mentor, who broke his spirit by making the public comment on social media that "IF Stuart Scheller were honorable, he would resign," rather than call up his mentee to have a private conversation after the first video, did leave him a voicemail after the second video. In a voicemail, he told Stu:

You're in deep shit, you can get out of it though is to beg for fucking mercy from the Marine Corps and admit that you made a mistake by getting on social media and saying what you did. And I know you have PTSD and I think the Marine Corps will give you some grace...Please please, don't do anything stupid, don't hurt yourself.



There is a simplicity to trying to paint LtCol Scheller as damaged and suicidal or even homicidal, as the Marine Corps public affairs office did when they made the gratuitous statement that “The Marine Corps is taking appropriate action to ensure the safety and well-being of Lt. Col. Scheller and his family.” Yet, this was hours after LtCol Scheller had already spoken with his superiors, assured them that he was not suicidal and that his family had left. I say simplicity because it is easier to think of him as crazy than to consider the content of his message.

Notwithstanding my clients’ obvious opinions of senior leadership, in 2014, then-recently retired General Mattis gave a speech where he said, “I would just say there is one misperception of our veterans and that is they are somehow damaged goods. I don't buy it. If we tell our veterans enough that this is what is wrong with them they may actually start believing it.” In this case, LtCol Scheller has been told consistently that he is suicidal by his chain of command, by the Marine Corps public affairs office, by leaders like Colonel Hobbs, who he used to trust.

When it comes to mental health, or emotional health, this case has come to represent a lot more than just Stu Scheller. I only recently joined LtCol Scheller’s legal team, but I have watched this case unfold on the national stage for the past month and a half. I saw what many in the veteran

community saw – emotional turmoil. The pain of watching all that we fought for evaporate. The anger at watching the Taliban return to power, a force that Stu Scheller fought against. He has fought and personally killed Taliban, just as he has watched his fellow Americans and Afghan partner forces be killed by the Taliban before his own eyes. The frustration of believing that it was avoidable, that the lessons learned in 2014 Iraq should have dictated a different direction. The helplessness of watching 11 Marines, 1 sailor, and 1 soldier die unnecessarily while hundreds of American citizens are left stranded in Taliban territory.

Veterans are in pain, they are angry. Each reacts differently, but none are untouched. Many of us banded together through groups like Task Force Pineapple and Digital Dunkirk to create underground railroads to honor the promise and accomplish the mission that our leaders failed to do. Others are understandably in crisis. I heard some suicide hotlines are receiving up to a 90% increase in calls and veteran suicide is up 15% since the fall of Kabul. Yesterday, as I was driving down here, I spoke on the phone with a close friend and Marine officer. He told me about six different Marines that he served with, all of whom committed suicide in the past two months. Stu Scheller made a video, asking the questions that each and every one of us have, but didn't vocalize.

Since that first video aired, Stu Scheller went through what he just described to you as emotional rollercoaster. The truth is that he went through a mental process of pain, anger, and despair that countless veterans have gone through and are going through right now. The difference is that while they do it behind closed doors, often with a bottle, sometimes with harder substances and all too frequently, a pistol, Stu Scheller went through that process very publicly. Stu Scheller ripped back the curtain and allowed the American public to see what this process looks like, in real time. No longer is veteran mental health and emotional health just a statistic, but it now has a face.

There are many organizations out there that are trying to combat veteran suicide, but they are limited in impact because they rely on a model of providing help to the individual veterans and servicemembers who reach out and ask. I have yet to see a single organization that is focused on addressing the root causes. The epidemic of veteran suicide will not change until we have the courage to address the causes. Stu Scheller poked one of those root causes in the eye.

As a lawyer, I am often stunned at how some commands take actions that seem designed to increase veteran suicide all in the name of good order and discipline. Part of the problem is that, for the commander, it is a

phenomenon of “out of sight, out of mind.” Crush any servicemember who steps out of line and then fling the booger. Once the servicemember is transferred or separated, the commander never hears from them again. They never really appreciate the long-term effects of their decisions. As private lawyers, we do. We keep in touch with our clients, so we hear about how they become homeless, we hear about how they are shunned from all veterans services and fraternal groups because of their discharge status, we hear about when they decide to become one of the 22-a-day and sometimes, we get to hear about how they overcome. I wish that military commanders could learn to fully appreciate the long-term effects of their decisions. This is especially true where severe punishments are meted out, nominally in the name of “good order and discipline,” but in reality because the commander is angry at the servicemember. Punishments must be proportional to the offenses and based on the factors of deterrence and rehabilitation, not anger.

In that range of outcomes, Stu Scheller will demonstrate resilience. He went into this process with his eyes open that there would be repercussions for his demand for accountability. Although he certainly did not anticipate the emotional rollercoaster he was about to go on or the vindictive retaliatory actions that he would endure, he knew that to demand accountability means that he must also be willing to accept accountability for himself. That is why

there was never any choice to LtCol Scheller other than to accept responsibility for his actions and plead guilty before this Court.

The decision that you must now undertake is how to sentence LtCol Scheller. As you know, there are five principal reasons for the sentence of those who violate the law:

1. Rehabilitation of the wrongdoer,
2. Punishment of the wrongdoer,
3. Protection of society from the wrongdoer,
4. Preservation of good order and discipline, and
5. Deterrence of the wrongdoer and those who know of his crimes and his sentence from committing the same or similar offenses.

So, what is an appropriate punishment for LtCol Scheller for saying the quiet part out loud? What does it mean for our military when the truth is prejudicial to good order and discipline? How much more does LtCol Scheller have to suffer for his speech. He has already suffered in many ways:

1. Marine Corps leadership illegally leaked his private medical records, including mental health records, to the media;
2. The Public Affairs Office made public statements trying to paint him as suicidal and homicidal, falsely implying that he may do physical harm to his family;

3. He has been repeatedly told, publicly and privately, that he is suicidal, psychological torture;
4. As a result, he has traveled the public emotional rollercoaster;
5. As he told you a few minutes ago, his wife left him and took the kids;
6. Of course, he also spent a week in the brig, held on the false pretense that he was a flight risk.

We submit to you that LtCol Scheller has suffered more than enough. The message has been sent to the force – criticize leadership and we will illegally leak your medical records and publicly paint you falsely as a suicidal, homicidal, insurrectionist.

Perhaps a better message to send to the force through this sentencing is that we appreciate his decision to accept accountability for his own actions and wish him well in his post-service career, acknowledging that he has suffered enough. At the same time, those who committed criminal acts to retaliate against LtCol Scheller must also be investigated, identified, and held accountable.

Whether anyone will ever be held accountable for the failures in Afghanistan and the decisions which led to the avoidable deaths of 13 brave young men and women is obviously unlikely. But here's the thing. Both the current crop of generals, as well as those who will put on stars in the next few

years should pay attention to what LtCol Scheller had to say. Under the UCMJ, he shouldn't have said it out loud and he shouldn't have said it on social media, but that doesn't change the truth and validity of his words.

Nowhere in the charge sheet or the stipulation of fact is there a single claim that any of LtCol Scheller's statements were false because they weren't. He is not charged with making any false statements. At one point, he was threatened with a 107 for preferring charges against General McKenzie, but that threat never materialized because there wasn't anything false in that statement. Many Marines have privately expressed to LtCol Scheller and members of his team their agreement with what he said. Even members of his own chain of command acknowledged that what he said was true, when they admonished him for saying it out loud.

No matter what happens to LtCol Scheller today, those Marines who wear the stars should be under no illusions that the rank-and-file respects them or their actions. LtCol Scheller gave them the unvarnished opinion that many of them hold. While the UCMJ requires Marines to publicly respect the office, we hope that LtCol Scheller's transgression can be used for positive change. Our Marines deserve to be led by leaders who are held accountable and who hold themselves accountable.