

**FOR IMMEDIATE RELEASE:**  
**OCTOBER 5, 2019 AT LOS ANGELES, CALIFORNIA**

**CHOICES HAVE CONSEQUENCES: CHANEL MILLER AND BROCK TURNER**

“A young woman and a young man meet at a party, then proceed to tragically misunderstand each other’s intentions – *and they’re drunk.*”

Malcolm Gladwell, *Talking to Strangers* (2019), page 193

By Tom Lallas<sup>1</sup>

**A. The Ultimate Question**

What really happened between Brock Turner and Chanel Miller during and after a fraternity party at the Kappa Alpha fraternity house on the Stanford University campus the weekend of January 17-18, 2015? Anyone who has children in college or destined for college, whether sons or daughters, should be terrified of the contradictions on college campuses and in the legal system. This analysis begins with the thoughtful, fair and balanced discussion of the Miller/Turner matter contained in author in Malcolm Gladwell’s recently published book, *Talking to Strangers*.

**“[Miller] has no memory of meeting Brock Turner, no memory of whether she did or didn’t dance with him, no memory of whether she did or didn’t kiss him, did or didn’t agree to go back to his dorm, and no memory of whether she was a willing or unwilling participant in their sexual activity.** Did she resist when they left the party? Did she struggle? Did she flirt with him? Did she just stumble, blindly, after him? We’ll never know. After the fact, when she was sober, Doe was adamant that she would never have willingly left the party with another man. She was in a committed relationship. But it wasn’t the real [Miller] who met Brock Turner. **It was drunk and blacked-out [Miller], and our drunken, blacked-out selves are not the same as our sober selves.**” [*Talking to Strangers*, page 227, emphasis added].

The catastrophic outcome of the evening for Miller and Turner was agonizingly predictable considering the circumstances and context:

**“Brock Turner was asked to do something of crucial importance that night – to make sense of a stranger’s desires and motivations.** That is a hard task for all of us under the best

---

<sup>1</sup> Mr. Lallas is a 1972 graduate of Stanford University, a 1975 graduate of Stanford Law School, a resident of Southern California for 44 years, and the father of three sons, 40, 36, and 22, and a daughter, 21. Mr. Lallas does not represent, and has not been engaged as the attorney for, and has not spoken or communicated with, Brock Turner or his family.

circumstances, because the assumption of transparency we rely on in those encounters is so flawed. Asking a drunk and immature nineteen-year-old to do that, in the hypersexualized chaos of a frat party, is an invitation to disaster.” [*Talking to Strangers*, pages 231-232, emphasis added].

## B. Choices and Consequences

A responsible, proactive parent teaches her or his children that choices have consequences. A necessary corollary is that all of us are accountable for our decisions. When my then three-year-old daughter made a behavior choice knowing that I would disapprove, I told her I needed to speak with her privately, and she replied, “OK Dad – but I don’t want any consequences.” The subject matter of this essay is an analysis of the consequences for the choices made by Miller and Turner the evening the two of them voluntarily got together at the KA party and afterward.

## C. One Stranger Conceals the Truth from the Other

Miller was then a 22-year-old adult woman and a graduate of UC Santa Barbara in June 2014. Miller knew, but did not disclose to Turner at the KA party or afterward, that Miller: (i) had prior serious problems with alcohol abuse; (ii) had a **history of blacking out after drinking at parties**, and elsewhere; (iii) **had blacked out** after drinking at parties prior to the KA party **on four or five or more occasions**; (iv) **consumed four shots of whiskey and a glass of champagne** at the Miller residence between 10:00 p.m. and 10:45 p.m. before going to the KA party while Miller also **drank straight vodka** at the KA party and **shotgunned beers**.

In a prior essay regarding Miller, Turner, and what occurred between them at and after the KA party<sup>2</sup>, I wrote:

**“Miller’s blackout history was critical information that Miller wrongfully concealed from Turner. Toxicology evidence confirms that Miller’s blood alcohol content, at the time of the incident, was between .24 and .25. Expert testimony established at the Trial that a drinker in a blackout does not know she is in the blackout at that moment, and that a third party, Turner, with the drinker, would have no idea that the drinker is having a blackout. Dr. Kim Fromme is a nationally recognized expert on the effects of alcohol intoxication related to alcohol-induced blackouts, sexual risk taking, and driving under the influence. 8 RT 707 [AOB 56]. Dr. Fromme described a blackout as a ‘period of amnesia during drinking in which the person is fully conscious and aware to be able to engage in all kinds of activities – walking, talking, driving a car, dancing, having sex, etc., they’re simply not just forming memories for those events.’ 8 RT 721. [AOB 56]. One of the alcohol experts testified to a self-evident truth, that excessive**

---

<sup>2</sup> Lallas, Tom, “Know The Truth: Chanel Miller”, September 23, 2019.

alcohol consumption ‘can lead people to engage in behaviors when they are drinking that they might not otherwise engage in when sober and they might even later regret.’ **Most importantly, when a drinker is in an alcohol blackout, an acquaintance of the drinker observing the drinker cannot tell that the drinker is in the midst of a blackout.** Furthermore, empirically, females are more likely to blackout than males and are also likely to blackout at lower amounts of alcohol consumption than males. Miller was in a blackout during the time she was dancing with Turner, while they were making out, and thereafter.”

#### **D. Gladwell’s Analysis of the Miller/Turner Incident**

In his book *Talking to Strangers*, Gladwell devotes an entire chapter to Turner, Miller, and what happened at and after the KA fraternity party at Stanford.<sup>3</sup> *Talking to Strangers* confirms that because (i) Miller and Turner were intoxicated, (ii) Miller did not disclose her blackout history to Turner, and (iii) Miller was mired in a blackout during the party and afterwards, Miller and Turner were unable to understand the significance of what they said to one another and the decisions they made.

Taking into consideration the testimony reflected by the transcripts, applicable evidence, governing law, verdict, felony convictions, and jail sentence, Gladwell asked:

**“How did an apparently harmless encounter on a dance floor end in a crime? We know that our mistaken belief that people are transparent leads to all manner of problems between strangers. It leads us to confuse the innocent with the guilty and the guilty with the innocent.”** [*Talking to Strangers*, page 201, emphasis added].

#### **E. Alcohol Creates Dangerous Myopia**

After reviewing literature studying remote and (arguably) somewhat primitive tribal cultures, and the effects of alcohol on individual and group behavior patterns, Gladwell writes that alcohol is “an agent of myopia”.

“The **myopia theory** was first suggested by psychologists **Claude Steele** and **Robert Josephs**, and what they meant by *myopia* is that alcohol’s principal effect is to narrow our emotional and mental fields of vision. It creates, in their words, ‘**a state or shortsightedness** in which superficially understood, immediate aspects of experience have a disproportionate influence on behavior and emotion.’ Alcohol makes the thing in the foreground even more salient and the thing in the background less significant. **It makes**

---

<sup>3</sup> Chapter 8, pages 187-232.

**short-term considerations loom large**, and more cognitively demanding, **longer-term considerations fade away.**” [*Talking to Strangers*, page 207, emphasis added].

In Gladwell’s view, the inherent conflict between two sets of considerations, near and far, disappears because:

**“When you are drunk, your understanding of your true self changes.”** [*Talking to Strangers*, page 209, emphasis added].

According to Gladwell, alcohol is insidious precisely because:

**“It is an agent of transformation.”** [*Talking to Strangers*, page 210, emphasis added].

#### **F. History Repeats Itself: The Tragedy of Bree**

Gladwell cites a case in England in 2006 involving a 25-year-old software designer, Benjamin Bree, and a woman identified by the Court as “M”, as a catastrophic example of alcohol myopia [*Talking to Strangers*, pages 210-211].

**“They had sex. Bree thought it was consensual.** M said it wasn’t. He was convicted of rape and sentenced to five years in prison – only to have the verdict thrown out on appeal. If you have read any other accounts of these kinds of cases, the details will be depressingly familiar: **pain, regret, misunderstanding, and anger.**” [*Talking to Strangers*, page 211, emphasis added].

Gladwell analyzed the Appeals Court Decision as follows:

“After several months in prison, **Bree was freed when an appeals court concluded that it was impossible to figure out what the two of them did or did not consent to** in M’s bedroom that night. ‘Both were adults,’ the judge wrote:

“Neither acted unlawfully in drinking to excess. They **were both free to choose how much to drink**, and with whom. **Both were free, if they wished, to have intercourse with each other.** There is nothing abnormal, surprising, or even unusual about men and women having consensual intercourse when one, or the other, or both have voluntarily consumed a great deal of alcohol. . . . **The practical reality is that there are some areas of human behavior which are inapt for detailed legislative structures.**” [*Talking to Strangers*, page 213, emphasis added].

On the core question of what constitutes consent, the Appellate Court in *Bree* stated:

**“What if one of the parties is really drunk? Well, how on earth can we decide what ‘really drunk’ means? We don’t really want**

**our lawmakers to create some kind of elaborate, multivariable algorithm governing when we can or can't have sex in the privacy of our bedrooms.** The judge concludes: **“The problems do not arise from the legal principles. They lie with infinite circumstances of human behavior, usually taking place in private without independent evidence, and the consequent difficulties of proving this very serious offence.”** [*Talking to Strangers*, footnote, page 213, emphasis added]

## **G. The Black Hole of Blackouts**

According to Aaron White, one of the world's leading experts on blackouts, from the National Institute of Health outside Washington, D.C. [*Talking to Strangers*, page 216, emphasis added]: **“In the true, pure blackout,” White said, “there's just nothing. Nothing to recall.”**

Blackouts have been the subject of significant social science research:

“In one of the **earliest studies of blackouts**, an alcohol researcher named **Donald Goodwin** gathered ten men from an unemployment line in St. Louis, gave them each the better part of a bottle of bourbon over a four-hour period, and had them perform a series of memory tests. Goodwin writes:

““One such event was to show the person a **frying pan** with a lid on it, suggest that he might be hungry, take off the lid, and there in the pan are **three dead mice**. It can be said with confidence that sober individuals will remember this experience, probably for the rest of their lives.’

**“But the bourbon drinkers? Nothing. Not thirty minutes later, and not the next morning. The three dead mice never got recorded at all.**

**“In a blackout state – in that window of extreme drunkenness before their hippocampus comes back online – drunks are like ciphers, moving through the world without retaining anything.”** [*Talking to Strangers*, page 217, emphasis added].

Gladwell explained “that it's really hard to tell, just by looking at someone, whether they're blacked out.” [*Talking to Strangers*, page 219]. White went even further, stating that:

**“Even wives of hardcore alcoholics say they can't really tell when their spouse is or is not in a blackout.”** [*Talking to Strangers*, page 219, emphasis added].

## **H. Life Lessons for Women**

Even worse, “the consumption gap between men and women, so pronounced a generation ago, has narrowed considerably” [*Talking to Strangers*, pages 221-222] and one of the foremost

experts on alcohol abuse, intoxication, and blackouts, Dr. Kim Fromme, expresses the opinion “I think it’s an empowerment issue.” [*Talking to Strangers*, page 222].

Women are generally smaller than men, retain less water, are more likely to skip meals when they drink, and experience a significantly higher blood alcohol concentration than men from drinking the same quantities of alcohol. As Gladwell observes, the “empowerment issue” has had the effect of putting “women at greatly increased risk of blackouts” than men [*Talking to Strangers*, page 222].

Even prominent journalist and author Emily Yoffe writes in Slate:

“But we are failing to **let women know that when they render themselves defenseless, terrible things can be done to them. Young women are getting a distorted message that their right to match men drink for drink is a feminist issue.** The real feminist message should be that when you lose the ability to be responsible for yourself, you drastically increase the chances that you will attract the kinds of people who, shall we say, don’t have your best interest at heart. That’s not blaming the victim; that’s trying to prevent more victims.” [*Talking to Strangers*, page 223-224, emphasis added].

In Gladwell’s view, the message is clear:

“**The lesson of myopia is really very simple.** If you want people to be themselves in social encounter with a stranger – to represent their own desires honestly and clearly – **they cannot be blind drunk.** And if they *are* blind drunk, and therefore at the mercy of their environment, the worse possible place to be in an environment where men and women are grinding on the dance floor and jumping on the tables. **A Kappa Alpha fraternity party is not a Camban drinking circle.**” [*Talking to Strangers*, page 226, emphasis added].

## I. Miller’s Voluntary and Deliberate Choices

Miller knowingly concealed from Turner the undisputed facts that she: (i) had a history of blacking out after drinking at parties, (ii) had blacked out after drinking at parties prior to the KA party on four or five or more occasions, and (iii) drank four shots of whiskey and a glass of champagne at the Miller residence between 10:00 p.m. and 10:45 p.m. **before** going to the KA party where she then also drank straight vodka and shotgunned beers.

Miller not only knew that she would become severely intoxicated, but even worse, that her excessive and abusive (by any objective standard) consumption of alcohol would cause her to suffer an inevitable blackout during which she would remember nothing, retain nothing, and after which, she would recall nothing. Most significantly, Miller knew that Turner would have no idea that Miller had unwittingly or deliberately walked into the unforgiving, unapologetic, and remorseless quicksand of a blackout.

## J. The Imperative of Consequences

After the jury verdict, Miller expressed concern to the Probation Department for the well-being of Turner, telling the Probation Department before Turner was sentenced that:

“... I don’t want him to feel like his life is over and I don’t want him to rot in jail. He does not need to be behind bars.”

And here are Turner’s own words at the sentencing hearing:

“...Not only have I altered my life, but I’ve also changed [Miller’s] and her family’s life. I am the sole proprietor of what happened on the night these people’s lives were changed forever. I would give anything to change what happened that night. I can never forgive myself for imposing trauma and pain on [Miller]. It debilitates me to think that my actions have caused her emotional and physical stress that is completely unwarranted and unfair. The thought of this is in my head every second of every day since this event has occurred. . . .”

Ironically, Miller is now making money for her irresponsible choices by writing a book, *Know My Name*, and obtaining a payment from a publisher of perhaps a million dollars or more. As of this writing, Miller has appeared both on 60 Minutes [September 22, 2019] and the CBS Morning Show [September 24, 2019] and is poised to utilize her book as a platform to launch a future career.<sup>4</sup>

At the other end of the spectrum, Brock Turner’s life has been destroyed. He was convicted of three felonies for sexual assault, spent three months in jail, must register for life as a sex offender, forfeited his Stanford scholarship and education, and had his dream of competing as an Olympic swimmer destroyed.

Based on the facts and analysis set forth above, a plausible argument could be made that Miller was unjustly enriched, to the detriment of Turner, by everything that occurred at and after the KA party. The doctrine of unjust enrichment is an equitable principle recognized in California law:

“The phrase ‘unjust enrichment’ is used in law to characterize the result or effect of a failure to make restitution of or for property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor.

“It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or

---

<sup>4</sup> Some believe there may now be a movie in the works.

appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. As expressed by some authorities, the obligation to do justice rests upon all persons, natural and artificial; if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation.” (46 Am.Jur., Restitution and Unjust Enrichment, p. 99. See also 77 C.J.S. Restitution, p. 322; 91 C.J.S. Unjust Enrichment, p. 490; 42 Cal.Jur.2d, Restitution and Unjust Enrichment, s 1, p. 795.)<sup>5</sup>

Tragically, even if a civil action resulted in an unjust enrichment remedy and the payment of money by Miller to Turner, no remedy exists that could ever alleviate the suffering that Turner has endured as a result of the extraordinary and wrongful actions that have been taken against Turner. The tragedy is that Miller knowingly made many bad choices, but left the consequences for others.

---

<sup>5</sup> Lucky Auto Supply v. Turner, 244 Cal.App.2d 872, 885 (1966); see also Dinosaur Development Inc. v. White, 216 Cal.App.3d 1310, 1315 (1989); California Emergency Physicians Medical Group v. Pacific Care of California, 111 Cal.App.4<sup>th</sup> 1127, 1136 (2002).