

# The Tennessee Journal

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## Kelsey indictment features familiar GOP figures Durham, Miller

It sounds like a setup for a joke: Brian Kelsey and Jeremy Durham walk into a bar. They hand the owner a check for \$106,341. The punchline has been five years in the making.

Kelsey, a Republican state senator from Germantown, and Josh Smith, the owner of The Standard social club in Nashville, were indicted this week on federal conspiracy and campaign finance charges. Durham, the Franklin Republican who was drummed out of the state House in 2016, is listed as an (unnamed but easily identifiable) unindicted co-conspirator. So is Andy Miller Jr., who once sought to boost the GOP fringe by spending hundreds of thousands of dollars to support candidates for state and federal offices.

The charges stem from Kelsey's failed run for the open 8th Congressional District seat in 2016. According to the indictment, Kelsey funneled money from his state campaign account through political action committees controlled by Smith and Miller to the American Conservative Union (ACU), which then spent \$80,000 on radio ads supporting his bid for federal office. It was all for naught, as Kelsey finished a distant fourth in the Republican primary.

The money trail was first spotted by reporters Dave Boucher and Joel Ebert, both then of *The Tennessean*. Their 2017 account led to a Federal Election Commission complaint filed by the Campaign Legal Center, a nonpartisan group founded by a former FEC chairman appointed by Republican President George H.W. Bush.

Various publications, including this one, have reported about periodic spurts of investigative activity by federal agents and grand jury hearings regarding the allegations, but the probe appeared to go cold toward the end of President Donald Trump's time in office. Some speculated Trump's ties to ACU head Matt Schlapp (whose wife, Mercedes, worked in the White House) may have discouraged the Justice Department from pursuing the matter.

But matters heated up again in recent weeks when a conservative news site, *The Dispatch*, reported current and former ACU staffers had been interviewed about the circumstances surrounding Schlapp's endorsement of Kelsey five years earlier. When the indictment was made public on Monday, the ACU, Schlapp, and the organization's then-political director weren't mentioned by name.

Campaign finance records confirm, however, the \$80,000 was spent by the ACU, and the filing says the director in question later married Kelsey, i.e., Amanda Bunning, a former aide U.S. Senate Republican leader Mitch McConnell of Kentucky and daughter of former baseball hall of famer and senator Jim Bunning. It also speaks of a member of the group's senior management team who oversaw "day-to-day operations, including managing its budget and finances." While that might describe Schlapp, it also could apply to several other people among the outfit's leadership.

**The response.** In a hastily called Zoom meeting, Kelsey angrily denounced the indictment as "nothing but a political witch hunt," saying President Joe Biden's administration is "trying to take me out" because Tennessee Democrats think he's vulnerable due to his narrow reelection to the Senate in 2018. Kelsey's attorney declared it would be his only public comment on the matter out of respect for the legal process.

But two days later, Kelsey was back for more extensive commentary, this time in announcing on the Senate floor he would step aside as Education Committee chair while the case was pending (as required by the chamber's rules unless a hearing before the Ethics Committee determines otherwise). This time, Kelsey was far more measured though just as adamant about his innocence. He again called the federal investigation "questionable" because it lasted five years and spanned a change in presidents.

Kelsey then switched to a why-can't-we-all-just-get-along theme, wishing everyone could "move past this divisive time," cease the political attacks, and "come together again in the peace, strength, and unity that defines our great state and nation." It was a remarkable change in attitudes for a lawmaker who earned the nickname "Stuntbaby of Germantown" for his penchant for attention-seeking behavior over his years in the state House and Senate.

**BFFs no more?** Most curiously of all, Kelsey referred in his floor comments to a purported story in *The Tennessee Journal* that the attorney for the lead witness in the case against the senator had said his client secured immunity from prosecution. No such development has been reported by this publication. The item most closely matching Kelsey's description appears to be a comment made by Durham's at-

torney, Peter Strianse, during a recent hearing over efforts to challenge a record \$465,000 civil penalty issued against him by the Tennessee Registry of Election Finance. Strianse argued Durham hadn't been able to testify on his own behalf during the campaign finance proceedings for fear of incriminating himself while he was the subject of a federal probe.

Strianse said in the chancery court hearing last month that federal prosecutors informed him this spring they had decided not to bring charges against Durham. The lawyer didn't say anything about immunity or any pending charges against Kelsey. The U.S. attorney's office at the time declined to confirm or deny its stance on Durham's charges.

If it's true Durham is cooperating with investigators in the case against Kelsey, it would signify a major break between the longtime friends. Kelsey served as best man in Durham's marriage to his wife, Jessica, and stood by him even after he became only the second sitting lawmaker expelled from the General Assembly since Reconstruction. Shortly after the ouster in September 2016, Kelsey attended a UT football game with Durham, who later got booted for getting into a scuffle with a fan of the opposing team. Kelsey claimed not to have seen the altercation.

**The charges.** According to the indictment, Kelsey, Smith, and the Durhams met at The Standard for dinner on July 11, 2016, about three weeks before the congressional primary — and three days before Jeremy Durham would suspend his reelection campaign upon the release of the attorney general's report detailing allegations of inappropriate sexual contact with at least 22 women.

Kelsey allegedly handed the \$106,341 check over to Smith in the Durhams' presence. Prosecutors say Smith was acting at Kelsey's and Jeremy Durham's direction when he had his PAC give \$37,000 of the money to Miller's PAC, Citizens 4 Ethics in Government. Around the same time, Bunning was allegedly emailing Smith to coordinate contributions to the ACU. Meanwhile, Kelsey sent Bunning an email touting his legislative accomplishments so he would score better in the organization's ratings.

In total, the named conspirators are alleged to have orchestrated "the concealed movement of \$91,000" to the ACU with the purpose of funding ads to help Kelsey. On July 20, 2016, the ACU started buying the \$80,000 worth of radio ads it disclosed as independent expenditures. But prosecutors deem them "coordinated expenditures" aimed at circumventing campaign finance laws by directing them through a "straw donor or conduit."

**Miller time.** Miller is the son of the late Andrew "Woody" Miller Sr., a healthcare investor who once donated \$10 million to Middle Tennessee State University. Amid the Tea Party surge and concerns about what he saw as the spread of radical Islam, the younger Miller began donating heavily to politicians. And he promptly got into hot water.

A complaint filed with the Registry in 2012 alleged his state PAC, Truth Matters, was being used as a conduit for circumventing individual contribution limits. The PAC's pre-primary filing that year had shown all of its \$71,000 in contributions had come from Miller himself, while it donated to eight candidates who had already received money from him as an individual donor. Miller's attorney, James

Weaver of the Waller Lansden law firm, noted four other donors had earlier pledged to give money to the PAC but that the contributions hadn't been received and disclosed until the subsequent filing period.

Taking a longer-term view presented a different picture about whether the PAC operated as a conduit, Weaver argued. The Registry agreed on a 4-2 vote. Member Hank Fincher was among the dissenters, arguing that no matter what happened later, all the PAC contributions to candidates in July were tantamount to contributions from Miller himself as the committee's lone donor to that point.

Miller and his brother, Tracy, agreed in October 2016 to settle a federal probe into one of their companies for allegedly violating the federal Anti-Kickback Statute in its dealings with the military healthcare program. The brothers agreed to pay \$7.8 million but didn't admit any guilt.

Following news accounts about the fraud case, the Associated Press reported at least seven Republican state lawmakers had financial ties to Miller's companies, including Durham and fellow former Reps. Judd Matheny of Tullahoma and Joe Carr of Lascassas, along with then-Sens. Ron Ramsey of Blountville, Mae Beavers of Mt. Juliet, Bill Ketron of Murfreesboro, and Mark Green of Ashland City. Ketron is now Rutherford County mayor, while Green is serving in the U.S. House.

Carr in 2015 paid \$2,250 to settle an FEC probe into a \$200,000 loan his U.S. Senate campaign made to Miller-owned Life Watch Pharmacy. Carr had failed to report the loan (for which he received \$9,564 in interest) when he was mounting his Republican primary challenge of Lamar Alexander in 2014. Meanwhile, Miller's federal Citizens 4 Ethics in Government PAC spent more than \$250,000 on ads attacking Alexander.

A Registry audit in 2017 found Durham had loaned \$120,000 from his campaign account to Life Watch Pharmacy at a 5% interest rate. Recognizing the deal wasn't against existing laws, the General Assembly later passed new rules limiting campaigns to earning interest from FDIC-insured accounts and requiring proceeds to be reported.

**Legal team.** Kelsey has hired Ty Howard of the Bradley law firm as his attorney, while Smith has secured the services of Hal Hardin, a former U.S. attorney best remembered for his role in bringing about the early swearing in of Gov.-elect Lamar Alexander. The move occurred after Hardin in 1979 informed state officials of allegations that departing Gov. Ray Blanton planned to grant last-minute executive clemency to felons who had put up cash for their release.

Hardin was hired in 2003 to represent John Stamps, a friend of then-Gov. Don Sundquist who later pleaded guilty to a tax charge and making false statements to secure a federally funded contract.

Kelsey attorney Howard is no stranger to federal probes in the General Assembly. Earlier this year he was hired to represent Holt Whitt, who had been a top aide to former Speaker Glen Casada of Franklin. Federal agents interviewed Whitt after raiding the homes and offices of Casada and fellow Republican Reps. Robin Smith of Hixson and Todd Warner of Chapel Hill in January. No charges have yet been filed following the raids.

# Tennessee News Digest

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- The University of Tennessee plans to increase the household income cutoff to qualify for last-dollar UT Promise scholarships by \$10,000, to \$60,000.
- Cast-iron cookware maker Lodge Manufacturing announced plans for a \$56 million expansion of its operations in South Pittsburg, adding 239 jobs.
- Nashville International Airport awarded a \$27 million contract to fill a 95-foot depres-

sion with 75,000 truckloads of fill material to prepare a nearly 30-acre area to be paved in anticipation of increased airplane traffic.

- Following community feedback, Arkansas-based Simmons Bank has made a slight change of plans in renaming the Liberty Bowl Memorial Stadium in Memphis. Instead of calling the facility the Simmons Bank Memorial Stadium, it will now be known as the Simmons Bank Liberty Stadium.

- Automotive supplier Faurecia is expanding its Spring Hill facility, creating 171 jobs.
  - The Haslam family announced it will donate \$35 million to Lakeshore Park in Knoxville to improve sports fields and amenities.
  - A statue of a soldier from U.S. Colored Troops was unveiled on the Franklin town square, joining five historical markers describing the African-American experience before, during, and after the Civil War.
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Whitt was placed on leave but later obtained a letter from prosecutors saying he was considered a witness in the case. He now works in Gov. Bill Lee's administration.

Howard also represents one of four men charged last year with conspiring to purchase Iranian petroleum and sell it to a Chinese refinery in violation of U.S. sanctions. And he was on the legal team for the Brentwood-based nursing home chain Vanguard Healthcare in a lawsuit over false Medicare and Medicare claims for what federal and state prosecutors called "grossly substandard or worthless" care. Vanguard agreed to settle the case for \$18 million in 2019, and CEO William Orand and former operations director Mark Miller each paid \$250,000. The former was represented by Howard and the latter by Hardin.

Howard's law firm has a lobbying arm, which raises questions about potential conflicts of interest when the same entity represents a lawmaker in court while also trying to influence outcomes in the General Assembly. Bradley state government lobbyists Nathan Ridley and Mike Krause have a roster of clients that include Facebook, Equifax, Tennessee Tech, and educational software developer Instructure.

**Kelsey's greatest hits.** In 2007, Kelsey theatrically placed bacon into an envelope on the House floor in protest of what he called a pork-barrel spending scheme by Democrats, unmoved by the fact that many GOP colleagues were eager participants. Two years later, Kelsey filed a sexual harassment complaint on behalf of an unwitting colleague against newly elected House Speaker Kent Williams, but was later left scrambling after reporters caught wind of a texted offer to the Elizabethton Republican to dial back his attacks in return for a committee chairmanship.

Kelsey has long been a school voucher supporter, going so far as to torpedo a 2013 bill sponsored by then-Gov. Bill Haslam because it didn't go far enough. By the time he was running for re-election in 2018, Kelsey backed off the politically volatile issue, saying there wasn't enough parental support to pursue vouchers.

Once back in office, Kelsey became a full-throated backer of Lee's "education savings account" bill in 2019. The law has been tied up in court ever since, with Kelsey arguing in favor of the measure in court hearings in an awkward hybrid role as a lawmaker and legal representative for parents and school leaders supporting ESAs.

**Outlook.** Kelsey has announced plans to vigorously fight the charges, but federal prosecutors will be just as determined to make the unusual charges stick.

## Still special after all these sessions

### Republicans at odds with business community over COVID-19 mandate

The state's business community had been warily awaiting this week's special session seeking to dial back federal COVID-19 mandates, and it appears its fears were well founded. A hodgepodge of hastily assembled bills was dropped into the hopper on Wednesday, leaving lobbyists scrambling to try to figure out what they all mean.

The contrast to the previous week's session to seal the incentive deal for the new Ford plant at the Memphis Regional Megasite couldn't have been more stark. In the earlier session, Gov. Bill Lee and legislative leaders worked in concert to approve the \$884 million package with little serious dissent. But the governor declined to get involved in this week's gathering, saying disputes about masks and vaccines were better left for the courts to address.

Apparently driven by demands from constituents to do something — anything — about federal court decisions and President Joe Biden's announced (but not yet implemented) vaccine mandate for people working at companies with more than 100 employees, House Speaker Cameron Sexton (R-Crossville) and Senate counterpart Randy McNally (R-Oak Ridge) threw open the floodgates for legislative proposals. A collection of mostly backbenchers answered the call, introducing a series of bills ranging from the impractical to the outrageous.

The speakers coalesced around a package of eight measures that included a proposal to ban businesses from requiring vaccines for customers or workers, a move that could put employers in direct violation of federal rules. While businesses prefer for neither the state nor the feds to intervene in their operations, they opposed any state laws that could open them up to more litigation, as proposals pending Friday morning would do.

**Other stuff.** Not willing to let a good opportunity go to waste, Republican lawmakers also were pursuing measures that appeared to be only tangibly related (if at all) to the pandemic. One would allow the state attorney to request an outside local prosecutor to step in should a district attorney general "categorically" refuse to enforce state laws. Another called for school board elections to become partisan contests. Should the latter come to pass, lawmakers might have to start looking over their shoulders at a new farm team of potential primary challengers.

## Tennessee Notes & Quotes

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■ “To my friends in the business community — and they’re friends of all of ours — we certainly understand and recognize this bill is contrary to some of the tenets that we’ve held very sacred in this committee. But I would submit for your consideration that these are unprecedented times.” — *Senate Majority Leader Jack Johnson (R-Franklin) in a Commerce Committee hearing on a bill seeking to ban vaccine mandates for employees and customers and create causes of action for employees fired for refusing shots.*

■ “Don’t let liberals turn Knoxville into Portland!” — *A text message sent out in support of conservative City Council candidates by a group called Enlight Tennessee. But as former Knoxville Mayor Victor Ashe noted in his Shopper column, the group got two of the candidates’ names wrong, listing Elizabeth Murphy as Stephanie Murphy and Kim Smith as Kim Young. The election is Tuesday.*

■ Gov. **Bill Lee** named Transportation Commissioner **Clay Bright** as CEO of the new Megasite Authority of West Tennessee. The panel was created as part of last week’s special session to approve economic incentives and infrastructure projects to seal the state’s deal with Ford and SK Innovation to build a \$5.6 billion electric vehicle and battery plant in Haywood County. Bright is a former vice president of general contracting firm Brasfield & Gorrie, where he managed several construction projects including Nashville’s AT&T Building, known to locals as the Batman Building because its twin spires resemble the caped crusader’s cowl.

■ “His proven success in managing complex projects, successful tenure at the Department of Transportation, and dedication to serving Tennesseans make him the perfect fit.” — *Lee about Bright. No word yet on a successor as transportation commissioner.*

■ *The Tennessean* has hired **Melissa Brown** of the *Montgomery Advertiser* in Alabama to cover state government in Nashville. Brown, who reported on criminal justice and public health matters in her four years with the fellow Gannett newspaper, succeeds **Natalie Allison**, who now covers national politics for *Politico*.

■ “I’m not ready to say I’m running for re-election.” — *Nashville Mayor John Cooper to Axios.*

■ **Brad Smith**, who was director of innovation at the Centers for Medicare and Medicaid Services in the **Trump** administration, has been named executive chairman of CareBridge Health, a company cofounded by former U.S. Senate Republican Leader **Bill Frist** of Nashville. Smith was part of the COVID-19 response team led by **Jared Kushner**, the ex-president’s son-in-law, that critics derided as an ill-prepared “Slim Suit Crowd.”

■ “I have been surprised by the lack of enthusiasm for what is really a massive workforce development concept that also provides a path to the middle class. You’d think that would hold some appeal for Republicans and Democrats.” — *Former Tennessee Higher Education Commission head Mike Krause to The Wall Street Journal about flagging efforts to replicate the state’s free community college tuition program on the national level.*

■ Gov. **Bill Lee**’s press secretary **Casey Black** got married to **Douglas Sellers**, formerly of the Overseas Private Investment Corp., in Nashville. The couple met as staffers for then-U.S. Sen. **Bob Corker** (R-Chattanooga).

■ Rutherford Mayor **Bill Ketron** has submitted a check for \$135,000 to cover his civil penalties for a series of campaign finance violations stemming from his time as a state senator. The payment clears the way for Ketron to seek another term as mayor.

■ A portrait of former U.S. Rep. **Phil Roe** (R-Johnson City) has been unveiled at the House Committee on Veterans Affairs. Roe served on the panel for 12 years.

■ Knox County Mayor **Glenn Jacobs** once contributed to the Oath Keepers, a right-wing group that played a prominent role in the Jan. 6 incursion into the U.S. Capitol, *Buzzfeed* reported. Jacobs gave \$50 in 2013.

■ “Mayor **Jacobs** was never a member of the organization. He donated because of the group’s support for the Constitution, particularly the Second Amendment. Since the donation, the mayor grew concerned when the organization began taking a more confrontational approach to moments of civil strife.” — *Spokesman Mike Donila to the Compass.*

■ **Jacobs**’ former Parks and Recreation director **Paul White** has filed a federal lawsuit against the county over his termination. White was fired following revelations he had approved payment to buy a golf cart that ended up being used by the mayor’s chief of staff, **Bryan Hair**, a former Jacobs campaign manager who resigned amid the scandal. White claims Jacobs and other senior staffers tried to prevent him from becoming a whistleblower and instead made him a “scapegoat for the illegal and unethical conduct.” Jacobs’ office called White’s complaint “a work of fiction.”

■ **White**’s federal case has been assigned to U.S. District Judge **Curtis Collier** in Chattanooga. It remains to be seen whether Knox County Law Director **David Buuck**, who isn’t seen as having a particularly warm relationship with **Jacobs**, handles the lawsuit or hires outside counsel.

■ The Tennessee Ethics Commission voted 4-1 to revise a 2008 opinion allowing lawmakers to take away bottles of alcohol and glassware from receptions sponsored by employers of lobbyists. **Bill Young**, the panel’s executive director, stressed that distiller Brown-Forman had fallen under the old rules when it handed out full-sized bottles of Jack Daniel’s whiskey as part of a gift bag for a virtual reception held in February. But going forward, take-home booze will be banned at lawmaker receptions.

■ “If a member of the legislature thinks he can drink a fifth of liquor at an event, is that OK?” — *Ethics Commission member Jim Stranch, who voted against the change.*

■ “If you could actually consume it based on what’s been given out there, I’d say that’s appropriate. I’m not saying it’s a good idea.” — *Young in response.*

■ So, not prohibited, but a bad idea. A familiar theme for the General Assembly. It may not be a particularly high standard, but it will probably keep you from being indicted.