

JOHN KELLY'S LEGALLY FRAUGHT ROLE IN THE SESSIONS OUSTER

Much attention is now being focused on the suitability of Matt Whitaker to server as Acting AG without having been Senate approved. I think there's one more issue with it that I'll return to.

But there's another legally problematic part of the process of forcing Jeff Sessions to resign and appointing Whitaker as his replacement: John Kelly's role in it.

That's because Mueller asked John Kelly for an interview sometime around June. It was one of the first things the legally competent Emmet Flood did to assert a newly combative stance on the part of the White House.

Mr. Trump's lawyers are quietly more combative, too, contesting a request from the special counsel to interview John F. Kelly, the White House chief of staff. Emmet T. Flood, the lead White House lawyer in dealing with the investigation, has demanded to know what investigators want to ask Mr. Kelly and has tried to narrow the scope of their questions. A month after the request was made, Mr. Kelly has not been questioned, though a White House official said he was willing to be.

Significantly, this was not an Executive Privilege claim, but rather a demand that Mueller tell Flood what questions he would ask Kelly. It's entirely unclear what basis Flood invoked legally: the bullshit Executive Privilege without claiming it claims Trump has relied on thus far, an argument that he needed to know if the President would invoke Executive Privilege in response to a range of questions, or a stance that the White House can have some

kind of visibility into the workings of the grand jury investigating the President.

As I have said, I think John Kelly is a likely candidate to be the Mystery Appellant, challenging some kind of Mueller demand in the DC Circuit (significantly, before some of the same judges who yesterday heard Andrew Miller's subpoena challenge).

One way or another, Kelly is among the people about whom there is the most active dispute legal between the Special Counsel and the White House, a fight picked by the legally competent Emmet Flood.

And Kelly was the person who forced Jeff Sessions to resign on Wednesday. As far as is public (and there's surely a great deal that we have yet to learn about who was in the decision to force Sessions to resign and when that happened and who dictated the form it would take).

But Kelly had the key role of conveying the President's intent, in whatever form that intent was documented, to Sessions. If Trump's past firings are any precedent, Kelly had a very big role in deciding how it would happen.

So the guy whose testimony Mueller may be most actively pursuing (indeed, one who might even be in a legal dispute with), effectuated a plan to undercut Mueller's plans going forward.

That seems to create a whole slew of other potential legal problems no one has yet considered.