

intended Section 515(b) (and its predecessors) to vest the Attorney General with the power to appoint special counsels.

Section 515(b)'s history confirms that it is, and always has been, a statute granting the power to appoint. Section 17 of the 1870 Act establishing the Department of Justice was a direct precursor to Section 515(b). *See* An Act to Establish the Department of Justice, ch. 150, § 17, 16 Stat. 162, 164-65 (1870) (“DOJ Act”). It provided that “every attorney . . . who shall be specially retained, under the authority of the Department of Justice, . . . shall receive a commission from the head of said Department, as a special assistant to the Attorney-General, or to some one of the district attorneys, *as the nature of the appointment* may require, and shall take the oath required by law.” *Id.* (emphasis added). As the statute made clear, all attorneys who were “specially retained” and “commission[ed]” by the Attorney General were thereby *appointed* by him; the precise role they would play affected only “the *nature* of the appointment.” *Id.* (emphasis added).

In 1875, Congress carried over the operative language from Section 17 of the DOJ Act into Section 366 of the Revised Statutes with a marginal note describing the special-retention provision as the “Appointment and oath of special attorneys or counsel.” 1 Rev. Stat. 61, tit. VIII, § 366 (1875) (“1875 Act”). That marginal note became the title of the provision when it was added