

U.S. at 660. Where, as here, Congress does so, it fully satisfies the Appointments Clause.

**C. The Long History of Appointments of Special Counsels Reflects the Attorney General’s Authority to Make the Appointment Here**

For more than 150 years, Attorneys General have appointed special counsels to investigate and prosecute some of the nation’s most consequential cases. This “deeply rooted tradition of appointing an outside prosecutor to run particular federal investigations,” Brett M. Kavanaugh, *The President and the Independent Counsel*, 86 Geo. L.J. 2133, 2142-43 (1998), further confirms the lawfulness of the Special Counsel’s appointment.

1. Attorneys General appointed special counsels even before the creation of the Department of Justice. In 1857, the Attorney General appointed Edwin Stanton as special counsel to prosecute a land-fraud claim in California. *See* Homer Cummings & Carl McFarland, *Federal Justice* 134-36 (1937); *United States v. Limantour*, 26 F. Cas. 947 (N.D. Cal. 1858). And in the wake of the Civil War, Attorneys General appointed outside attorneys to prosecute some of the most significant cases of the day, including the prosecution of Jefferson Davis for treason<sup>14</sup> and the prosecution of John Surratt for aiding and abetting

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<sup>14</sup> *See* Cynthia Nicoletti, *Secession on Trial: The Treason Prosecution of Jefferson Davis* 39, 47 (Cambridge Univ. Press 2017).