

relevance to the Appointments Clause or to the statutes authorizing the appointment of Special Counsel Smith.

The district court likewise attached undue weight to variations in the degree of independence granted to special counsels, emphasizing (Dkt. 672 at 39) that not all “have operated with the same degree of power and autonomy as Special Counsel Smith.” Congress has granted the Attorney General not only the power to appoint special counsels, but discretion to determine how much independence to give them. *See* 28 U.S.C. §§ 510, 515. In some cases, the Attorney General might direct a special counsel to play a relatively minor role. But in other cases, he might direct a special counsel to oversee an entire investigation and prosecution, subject to greater or lesser oversight by the Attorney General as his judgment dictates. Indeed, the latter model has been the norm for the half century since Watergate, and it goes back further still. For example, when Attorney General Knox appointed Francis Heney as a special assistant in 1909 to investigate the land fraud cases in Oregon, the local District Attorney initially “regarded [Heney] as an assistant,” but Knox clarified that Heney was “to be in full charge,” telling the District Attorney that Heney “was to be obeyed as the Attorney-General himself would be obeyed.” Steffens, *supra*, at 587. Likewise, in 1865, William Evarts and John Clifford were “hired to direct the [Jefferson] Davis prosecution,” Nicoletti, *supra*, at 126, not merely to