

# SLATE

## Brand Maintenance

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For the No. 3 lawyer at the Department of Justice to quit after just nine months on the job is, to say the least, unusual. Under the Trump administration, where the downright bizarre is so commonplace that the merely unusual barely registers, this is nevertheless an aberration worth marking, because it says a lot about the state of a Justice Department locked in a surreal conflict with its own president and his party, none of it good.

When United States Associate Attorney General Rachel L. Brand last week announced she'd be stepping down to take a job as a vice president at Walmart, it made headlines primarily because it also meant passing on her role as heir apparent to embattled Deputy Attorney General Rod Rosenstein. Tasked with supervising Robert Mueller's investigation into Russian interference in the 2016 presidential election following Attorney General Jeff Sessions' recusal, Rosenstein has become an improbable target of invective from the very president who appointed him, from Republican legislators, and even from political action committees. It seems clear that Trump is laying groundwork for his eventual removal, in hopes that Rosenstein's successor—meaning, until her departure, Brand—might be more willing to carry out an order to fire Mueller. But her departure should be seen as a warning sign with implications not only for the Mueller inquiry but the future of the Trump Justice Department as a whole. To see why, it's helpful to appreciate two things about Rachel Brand.

The first is that Brand had a solid bipartisan reputation as a conservative lawyer of professionalism and integrity. When confirmed to her post last May, she won praise from Clinton administration veteran Jamie Gorelick as well as Barack Obama's former acting Solicitor General Neal Kaytal. When I first encountered Brand, in her previous role as a Republican member of the Privacy and Civil Liberties Oversight Board during the Obama administration, she was as consistent as she was vocal in her disagreement with those of us who believed government surveillance in the name of the war on terror had gone too far. Yet she also impressed me as a serious and fair-minded advocate for her positions, and many of my colleagues in civil society have expressed public disappointment at her impending departure.

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The second thing to understand is that if you squint at Rachel Brand's résumé, it resolves itself like a Magic Eye stereogram into a single boldfaced, all-caps sentence, which reads: "MY LIFE'S AMBITION IS A SENIOR POST AS A POLITICAL APPOINTEE AT THE JUSTICE DEPARTMENT." At Harvard Law School, she joined the conservative Federalist Society, and after graduating won a coveted Supreme Court clerkship under Justice Anthony Kennedy. When Elizabeth Dole was considering a run for the Republican presidential nomination, Brand served as general counsel to her exploratory committee and would later join the judicial advisory committee for Sen. John McCain's campaign. She was on the transition team for the George W. Bush administration, which she would later join, spending five years as assistant attorney general for the Office of Legal Policy. Decamping to the private sector, she spent a few years at the firm WilmerHale, returned to public service as a member of the PCLOB, worked at the U.S. Chamber of Commerce as chief counsel for regulatory litigation, and finally found herself back at Main Justice as one of the early appointees of the fledgling Trump administration. All of which is to say: This is not the profile of a person who arrives two rungs south of attorney general at the age of 44, then departs after less than a year on the job because she has suddenly realized the private sector pays better.

It should be no surprise, then, to find there's more to this story than a hidden passion for Walmart. As NBC News reported Monday, citing sources close to Brand, the associate attorney general "had been unhappy with her job for months," having grown both "frustrated by vacancies at the department" and afraid she would be forced to take up Rosenstein's burden of supervising—and so potentially being ordered to dismiss—Robert Mueller.

The most obvious and immediate inference to draw from this is that Brand, surely as well-positioned as anyone to read the writing on the wall, has not been reassured by the White House's repeated assertions that neither Mueller nor Rosenstein are on the chopping block. She regarded it as likely she'd be faced with the Hobson's choice of executing an order to sack Mueller, and in the process immolating her reputation for probity, or defying a Republican president and being sacked herself, which, however popular it might make her with MSNBC hosts, would play poorly in the conservative legal circles where she'd built her career.

Yet not everything in life, improbable as it sometimes seems, is about Russia and Bob Mueller. Brand's departure also suggests that the working environment at Justice—not only under regular assault from Trump as a handmaiden of a corrupt "Deep State," but facing unsubtle and unseemly pressure from White House chief of staff John Kelly—had become corrosive and demoralizing.

Whatever the relative weight of these factors, that Brand preferred to jump ship before the dilemma could present itself can only be an ill omen to those in line behind her. Imagine being seated for a long flight, then seeing the plane's co-pilot parachute out just as you reach cruising altitude. The clear message: If you've got options, now's the time to take them if you want to avoid damage to your career.

Who, with Brand's parachute deploying in full view, will be most inclined to stay at this Justice Department, let alone step in to fill one of those many frustrating vacancies? Those without more attractive private sector options, perhaps—but also those sufficiently free of professional qualms that carrying out a president's legally dubious order would present no dilemma at all.

Bad news for Robert Mueller? Perhaps. But also bad news for an independent Justice Department.

If one thing has become clear over the past year, it is this: Donald Trump entered the White House with little real grasp of how government works—of its rules and policies, of course, but also its institutional norms. He expected to operate like a corporate CEO, expressing his whims and watching his subordinates scurry to carry them out, whatever they were. It had not occurred to him that those subordinates—even bona fide conservative Republicans—might tell him no or insist that it was improper for him to issue direct orders at all. And he has expressed his profound surprise, frustration, and anger at discovering how the Justice Department works repeatedly and vehemently, not only in private conversations related to press, but in public interviews.

He has fumed at Sessions' decision—quite clearly required by the DOJ's own rules—to recuse himself from overseeing the Russia inquiry and openly professed the view that the attorney general's proper role is to “protect” the president. But more than that: Echoing his unsettling declaration during the campaign that Hillary Clinton would be bound for prison under a Trump administration, he has made it quite clear, in both fiery tweets and interviews, that he wants to the Justice Department and FBI to investigate his Democratic opponents. He is incensed that he is “not supposed to” simply order “his” law enforcement agencies to do so.

At the start of 2018, an editorial in the Wall Street Journal chided Trump critics for their dire predictions of looming autocracy. Not, mind you, because Trump lacked autocratic impulses, but because American institutions had proven robust enough to check those impulses. And there is, perhaps, something to that. Trump—according not to the paranoid fears of his opponents, but his own professed desires—would have the government's law enforcement institutions act as political weapons, aimed by his diktat. His anger and frustration testify that they have, as yet, failed to do so.

Brand's departure shines a spotlight on the flaw in the Journal's argument, however: Institutions are, in the end, made up of people. Their cultures and norms are sustained by individual human beings who treat them as binding. But people can be replaced. The primary check on who replaces them, at least at the highest levels, is the United States Senate, whose Republican majority has not demonstrated any very great will to block questionable appointees.

Imagine, then, a Justice Department where the Rachel Brands and the Rod Rosensteins have either sought greener pastures or been booted toward them. Imagine a Justice Department staffed by lawyers as compliant and loyal to the boss as Trump the CEO had assumed at the outset they all would be. Imagine, ultimately, a Justice Department that actually behaves in all the ways Trump constantly and openly insists that it should. Don't conjure worst-case scenarios dreamed up by Trump's critics: just assume that Trump's own words should be taken seriously.

Now realize that the chief practical obstacle to that bleak image being realized is people like Rachel Brand. They are starting to leave. There are three years left.

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