

Assistant Attorney General for National Security at the Department of Justice Kenneth Wainstein
Reported by Stephen Landman

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On November 15th, 2006 the ABA Standing Committee on Law and National Security held its monthly breakfast meeting and featured newly appointed Assistant Attorney General for National Security, Kenneth Wainstein. Mr. Wainstein has built a distinguished career as Chief of Staff to FBI Director Robert Mueller, as well as General Counsel at the FBI and most recently as a U.S. Attorney for the District of Columbia, where was responsible for the prosecution of all federal and other serious criminal offenses. Mr. Wainstein assumed his current position on September 28th 2006. In his presentation, Mr. Wainstein focused his discussion on the establishment of the new National Security division at the Department of Justice, the role that the division will play in support of the War on Terrorism as well as the challenges the division may face.

Mr. Wainstein began by emphasizing that, prior to September 11th, there was “less emphasis on national security efforts” within the government, and that “we didn’t have the resource commitment, and hadn’t developed the emotional commitment to protecting ourselves from the threat.” Mr. Wainstein pointed to insufficient coordination in the national security effort between not only federal and state forces, but also within the government itself. Specifically, he noted the prevailing belief that, “law enforcement and intelligence operations were distinct undertakings,” and as a result should be treated as such.

However, after the attacks on September 11th, and subsequently, the government’s declaration of War on Terrorism, there was a “paradigm shift in how the government handles itself.” Mr. Wainstein stated that enhanced coordination among the government was central to that shift and “mobilizing all our assets, all our energy, all our dedication to focus on the threat and vanquishing the threat.” Mr. Wainstein spoke of a number of initial changes that were made, including Attorney General directives mandating information sharing as required by the Patriot Act, as well as reorganizing case numbers within the FBI so that criminal and intelligence investigations would be in a central location. Additionally, he pointed to the establishment of the Department of Homeland Security, the Terrorism Screening Center, and the Director of National Intelligence.

The National Security division at the Department of Justice was established as a result of the reauthorization of the USA Patriot Act and was created in response to one of the critical recommendations of the WMD commission. The new division’s focus is to bring together the Justice Department’s national security, counterterrorism, counterintelligence, and foreign intelligence operations under a single authority in order to “make full use of all criminal tools and intelligence tools.”

Turning to structure, Mr. Wainstein commented on his philosophy of personal responsibility and how this would guide him as the top man within the new division in charge of three deputy assistant attorneys general, each with a unique role. One will oversee all prosecutors

within the division, one will head the office of Intelligence Policy Review which represents the government in FISA courts, and one will oversee the Law and Policy for national security.

Among the many advantages of the National Security Division Mr. Wainstein enumerated during the breakfast, possibly most important, is the work the unit will conduct to break down the barriers and develop broader cooperation not only within the FBI, but also with other government agencies. To further this, Mr. Wainstein will act in his capacity as a liaison with the intelligence community, ensuring that necessary information makes its way to the appropriate analysts, policymakers, and law enforcement officers. Additionally, Mr. Wainstein noted the importance of having legal representatives from both the criminal and the intelligence sections working together in an effort to strengthen national security and prosecutions.

In conclusion, Mr. Wainstein addressed a few of the challenges his department will face. He emphasized the importance of continuing to erase the divisions that existed, as well as further integrate the law enforcement and intelligence agencies. In an effort to make national security investigations more efficient, Mr. Wainstein called for streamlining the FISA process and making it less cumbersome and time consuming. Finally, addressing concerns regarding civil liberties, assured that the gathered audience that “we can fight terrorists and protect civil liberties, and the new organization is only going to advance our ability to do that.”