

NATIONAL WHISTLEBLOWERS LEGAL DEFENSE & EDUCATION FUND

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April 25, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to you to strongly support the nomination and confirmation of Elaine Kaplan to the United States Court of Federal Claims. In my opinion, which is widely shared by others who know and have worked with Ms. Kaplan, she possesses the skills, temperament, and impartiality to make an excellent federal judge.

I have known Ms. Kaplan professionally since the mid 1990s, in both my capacity as a litigator on behalf of whistleblowers and as the President and Executive Director of the National Whistleblower Center. We worked together during that time on two very important whistleblower cases that I had filed in U.S. District Court and the United States Court of Appeals for the District of Columbia Circuit. *Weaver v. Wick*, F.2d (D.C. Cir. 1995)(in which Ms. Kaplan presented oral argument on behalf of an amicus supporting my client, a whistleblower at the Voice of America); and *Sanjour v. EPA*, 56 F.3d 85 (D.C. Cir. 1995)(en banc)(for which Ms. Kaplan provided assistance to me in preparing for my own oral argument).

These two cases are now the key precedent permitting federal employee whistleblowers access U.S. District Courts in order to assert their First Amendment right to expose wrongdoing in their agencies. These cases both remain good law, and have been cited favorably in a number of important whistleblower cases, including one written by Justice Samuel Alito while he served on the U.S. Court of Appeals for the Third Circuit. *See Swartzwelder v. McNeill*, 297 F.3d 228 (3rd Cir. 2002). In a current case that I am serving as lead counsel, *Hardy v. FDA*, 1:11-cv-01739-RBW, these two cases serve as the cornerstone for the federal court action filed on behalf of six current and former employees of the Food and Drug Administration who are challenging the constitutionality of the FDA's targeted surveillance of whistleblowers.

I also worked with Ms. Kaplan when she served as Special Counsel at U.S. Office of Special Counsel between 1998 and 2003. Ms. Kaplan's term began during the Clinton Administration and lasted through the first two years of the Bush Administration. She was a breath of fresh air in that office. Her team was highly competent and truly cared about federal employees. Although I did not agree with all her decisions as Special Counsel, she rightfully gained a reputation as a strong leader and impartial watchdog for the merit system.

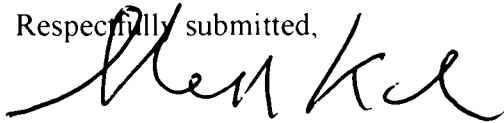
I directly witnessed Ms. Kaplan's competence, honesty and commitment to the rule of law. The *Weaver* and *Sanjour* cases were hard-fought, and set important precedent. Her assistance was invaluable and the precedent she helped set have helped all federal workers. I know of no other judicial nominee who has this record on supporting whistleblowers. I am unaware of any other nominee for a federal court judgeship who actually litigated on behalf of whistleblowers, and who actually prevailed in cases that were highly significant and which established real rights for federal employees.

Ms. Kaplan should be confirmed quickly and unanimously. I hope that the Judiciary Committee uses this nomination to send to the President that more attorney who have litigated on behalf of whistleblowers should be nominated to the federal bench, especially for open positions on the U.S. Court of Appeals for the Federal and District of Columbia Circuits.

In short, Ms. Kaplan's record of on behalf of whistleblowers, combined with her prior accomplishments, her fairness, and good judgment, make her an ideal candidate for a judicial appointment.

If there is any additional information I can provide regarding Ms. Kaplan, I would be happy to do so. I can be reached directly at (phone number) or smk@kkc.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen M. Kohn", written in a cursive style.

Stephen M. Kohn