

Government Accountability Project

National Office

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May 16, 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, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

This letter is to offer unqualified support for the nomination of Ms. Elaine Kaplan to the U.S. Court of Claims. Both inside and outside government, she has made a difference promoting justice, whether as an advocate or as a public servant who must responsibly balance competing interests. Her record off the bench reflects the commitment, skills and objectivity to make an equally significant or greater contribution as a judge.

This praise is rare from an activist in government accountability during the last 34 years who represents whistleblowers, which has been my career. As a rule, my relationship with government officials is adversarial, and my work with Ms. Kaplan has nearly all involved either her duties as the Special Counsel leading the U.S. Office of Special Counsel ("OSC"), or as General Counsel of the U.S. Office of Personnel Management. ("OPM") While the two institutions often represent adversarial interests to each other, her approach to public service has been comparable at each. Consistently she has been accessible, listens, and is trustworthy with her word. Perhaps most significant, whichever perspective she represents, the primary criterion for her decisions has been the strength of the merit system -- the common public policy mission for which she has leading stewardship duties. That is why I believe she has handled herself as an outstanding public servant. I maintain that belief despite often not getting results I sought from advocacy with her.

Ms. Kaplan also has compiled the track record of a public servant who makes a difference. I first began working with her in 1998 when she became Special Counsel. Until that point, the Office's record was so poor that at the Government Accountability Project ("GAP")

we routinely warned whistleblowers not to file complaints if there were any alternative, because the OSC likely would undermine their rights. Under her leadership, the OSC became our first option whenever there was jurisdiction. When Ms. Kaplan left, there was widespread consensus that she had been the best Special Counsel since the Office's creation in 1978. Her accomplishments included – sharply reducing backlogs while sharply increasing the record of obtaining relief for victims of merit system violations; effectively screening and ordering agency investigations on whistleblowing disclosures of national significance for, *inter alia*, homeland security, food safety, international anti-corruption campaigns and the environment, while holding agencies accountability to address the issues in good faith; and establishing unprecedented communications and responsiveness to all stakeholders affected by the merit system through town meetings, an effective ombudsman, and personal interventions so that affected whistleblowers were heard and knew their rights had been taken seriously.

At the U.S. Office of Personnel Management, Ms. Kaplan has been an effective voice to responsibly balance national security concerns with merit system rights. She played a welcome role in helping to achieve a legitimate balance for administration proposals that eventually became law as the Whistleblower Protection Enhancement Act, and Presidential Policy Directive 19.

In short, Ms. Kaplan personifies the qualities serving justice that not only taxpayers, but citizens of a free country expect, but normally do not believe they receive from judges. She has proved herself in all contexts. Hopefully her nomination will be confirmed expeditiously.

Respectfully submitted,



Thomas Devine
Legal Director