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Elena Kagan's White House Years

A bit of the fog is beginning to lift on the work and thinking of Elena Kagan, President Obama's nominee to the Supreme Court. An initial perusal of thousands of pages of documents from her years in the Clinton White House show her to be an adept centrist — much like her old boss — who tried to remain thoughtful while shielding President Bill Clinton from ideological extremes.

It is hard to find anything in the 90,000-odd pages of papers released so far that shows whether Ms. Kagan will be an effective restraint on the Roberts Court's aggressive march to the right. She was, after all, a mid- to senior-level bureaucrat in the 1990s, working for a White House that could twist itself into knots trying to find the midpoint on every issue. Her job often required her to become a contortionist, searching for principled positions that would not inflame a newly Republican Congress or a generally conservative Supreme Court.

In a [1997 memo](#) on an affirmative action case, written when she was a presidential assistant for domestic policy, she could have backed a New Jersey school district that cited diversity in dismissing a white teacher instead of an equally qualified black one. Some in the administration wanted to do just that. But she sided with Walter Dellinger, then the solicitor general, who said the administration should back the white teacher to prevent the case from going to the Supreme Court, which could have used it to strike down a series of affirmative action programs. "I think this is exactly the right position — as a legal matter, as a policy matter, and as a political matter," Ms. Kagan wrote.

She supported [reducing the disparity](#) between lighter criminal sentences for dealing cocaine powder and heavier ones for crack cocaine, a difference generally seen as favoring white defendants over black ones. The Congressional Black Caucus wanted to eliminate the disparity entirely, but Ms. Kagan and her supervisor, Bruce Reed, the domestic policy director, said that approach would never work with Congressional Republicans.

Some of the positions she took involved unfortunate concessions. When a California landlady refused to rent to unmarried couples for religious reasons, Ms. Kagan objected to a State

Supreme Court decision that said the woman had violated antidiscrimination laws. She also dismissed New York City's objections to a provision in the welfare reform law that allowed city employees to turn in illegal immigrants, which violated a longstanding and exemplary city policy.

If nothing else, the papers should mute the Republican outcries that Ms. Kagan is a dangerous leftist, since they show she is nothing of the kind. But she will have to become much more than a conciliator to fill the shoes of the retiring Justice John Paul Stevens, in many ways the conscience of the current court. We hope that other documents to emerge in the weeks to come, and her confirmation hearings starting this month, will help fill in the many blanks about the nature of a future Justice Kagan.