At Harvard, Kagan Aimed Sights Higher

By SHERYL GAY STOLBERG

WASHINGTON — One Saturday afternoon in March 2003, Lawrence H. Summers invited Elena Kagan for a private chat in the library of Elmwood, the stately clapboard mansion he occupied as the president of Harvard. The two had been close colleagues, if not close friends, as top aides working for President Bill Clinton. But this was no social call.

Mr. Summers, a brilliant but impatient economist with a bull-in-the-china-shop management style, was looking for a new law school dean. Ms. Kagan, a newly tenured professor, was thin on management experience, and her academic writings were relatively scant.

But she was a faculty favorite — her colleagues viewed her as a leader and consensus builder who held sway with the strong-willed university president. Mr. Summers, aware that she had her sights set even higher, accompanied his job offer with a hint of a warning.

“I would say Elena’s colleagues chose her as much as I did,” he said in a recent interview, adding, “I said to her: ‘Elena, if you accept this job and then you are offered a position like Supreme Court justice or attorney general, I will congratulate you with all my heart and wish you well. But we need you to make a commitment to the law school for a few years before taking any other position.’ ”

Now Mr. Summers is President Obama’s top economic adviser, and Ms. Kagan is the president’s Supreme Court nominee. Her dealings with Mr. Summers — she persuaded him to abandon an unpopular plan to move the law school, kept her distance when he faltered and made no bones about trying to succeed him when he was forced to resign as Harvard’s president — reveal a woman of intense ambition and deft political skills. Their relationship
hints as well at Ms. Kagan’s persuasiveness, and how she might operate on a divided Supreme Court, where persuasion often seems in short supply.

“He is not someone you can cajole in any way,” Martha L. Minow, the current Harvard Law dean, said of Mr. Summers. “It’s the merits, evidence, substance. It’s not about charm, it’s not about small talk, it’s ‘Just the facts ma’am,’ and build your case and be unbelievably fair-minded about the other case, because he is going to ask you about the other side.”

In the days since Mr. Obama nominated her, much has been made of Ms. Kagan’s tenure as dean, and her top-to-bottom transformation of Harvard Law School. Far less attention has been paid to how she climbed from visiting professor to possible successor to Mr. Summers, the result of relentless networking and a remarkable ability to navigate the treacherous waters of Harvard’s internal politics.

“She is a strategic and deliberative thinker on all issues — there was always a sense of ‘Let me do my homework,’ ” said one colleague, Prof. Charles J. Ogletree Jr. He recalled how, as dean, Ms. Kagan met with every member of the faculty. “She was willing to work seven days a week, it wasn’t just Monday through Friday, 10 to 5, it was whenever people were available — a baseball game, a student reception, a breakfast, a lunch, a coffee.”

Ms. Kagan had been a close ally of Mr. Summers, but she was noticeably silent when he ran into a public relations buzz saw over his impolitic remarks about women’s aptitude for science — remarks that helped cost him his job. Privately, Ms. Kagan told friends and colleagues that she thought the fracas was overblown. But she also resisted entreaties by allies of Mr. Summers to publicly defend him, according to two people familiar with the situation, speaking on condition of anonymity.

One said friends of Mr. Summers viewed her silence as an act of disloyalty, the other said Ms. Kagan simply did not want to drag the law school into the fray. Her style was one of careful balance, said Dennis F. Thompson, a professor of political philosophy.

“She doesn’t avoid getting engaged in issues that are controversial,” he said. “But she doesn’t herself want to be the object of controversy.”

As a Harvard law graduate, Ms. Kagan was no stranger when she arrived in Cambridge, Mass.,
as a visiting professor in 1999, the year Mr. Summers became Mr. Clinton’s Treasury secretary. The job was “clearly a look-see” said Carol Steiker, a Harvard law professor and close friend of Ms. Kagan’s, with the understanding that she would get tenure if it worked out.

Professor Kagan was an instant hit with students, demanding and energetic, with a self-deprecating wit. She threw herself into the rhythms of faculty life, attending workshops to comment on colleagues’ writings, advising the law review board, having frequent dinners with colleagues.

Among the most contentious issues then facing Harvard was how to expand beyond the confines of Cambridge. The university had been buying up property across the Charles River in the Boston neighborhood of Allston. When Mr. Summers’s predecessor, Neil L. Rudenstine, suggested that the law school move, the law faculty responded by voting against it, 37 to 1.

“It’s rare that anyone here agrees about anything,” Professor Steiker said, “but everyone agreed we didn’t want our campus moved across the river.”

But when Mr. Summers was installed as president in 2001, he put the Allston move back on the table. With the faculty up in arms, the longtime law school dean, Robert C. Clark, asked Ms. Kagan to head a study committee; he thought she had the potential to succeed him as dean and wanted to give her a leadership role. Ms. Kagan, who had just been granted tenure, would be wading into perhaps the most fractious issue at the university.

She seemed to have an instinctive feel for how to build a case that would work with Mr. Summers. “Her approach was to give a rational basis, instead of just an emotional one, for the faculty’s reaction,” Professor Clark said.

She hired a consultant, and persuaded the university to foot the bill, producing a 101-page strategic plan that considered everything from future growth to dormitory space to the intellectual benefits of remaining near the arts and sciences buildings. She made no explicit recommendation, but the study strongly suggested that Allston was far better suited to the biomedical sciences than the law school. The plan was soon dead, and Ms. Kagan gained folk hero status.

“I didn’t think we had a snowball’s chance,” said Prof. J. Mark Ramseyer, a member of the
committee. “Her stock went way up on the reputational grapevine on the strength of that report,” said another law professor, Randall L. Kennedy.

The report came out in November 2002, the same month that Mr. Clark announced he was stepping down as dean. Mr. Summers appointed a search committee to advise him on a replacement. Ms. Kagan had already written an award-winning article in her area of scholarship, administrative law. While Mr. Summers had “real respect” for her, he also had reservations, one person familiar with the search said.

“He wasn’t entirely sure he could trust her to make the right kind of scholarly judgments,” said the person, speaking on condition of anonymity to discuss internal matters.

While Mr. Summers interviewed other candidates, including Robert C. Post, the dean of the Yale Law School, Ms. Kagan, flew off to the University of Texas at Austin to interview for a dean’s position. When Harvard law professors met in small groups for lunch and dinner to discuss the qualities they would like to see in a dean, Professor Ogletree said, she never said that she was interested in the job. “Not once,” he said. “Not even a hint.”

But in the end, Ms. Kagan became Mr. Summers’s choice. He said she had impressed her colleagues — and him — “by the way in which she had reached out and solicited many views, and her consensus-building style.”

In an interview with The New York Times last year, Ms. Kagan sounded grateful to Mr. Summers.

“Quite a number of us who are women and relished working with Larry, and who felt that he had, in some sense, recognized our talents, even when others wouldn’t have, felt that he was given a bum rap and were not shy about telling people so,” she said.

They got on well: their one seeming disagreement — over her decision to briefly bar military recruiters from law school facilities — was really “a set piece,” one colleague said, with Mr. Summers, who did not want to jeopardize Harvard’s federal funding, working with Ms. Kagan to balance the university’s interests against the law faculty’s opposition to the military’s “don’t ask, don’t tell” policy.

Ms. Kagan did something unusual for a law dean: she forged relationships elsewhere at
Harvard, especially with the Faculty of Arts and Sciences, the traditional seat of power. “She made an effort to reach out and build intellectual bridges,” said Thomas M. Scanlon Jr., a philosophy professor who attended a luncheon Ms. Kagan hosted for the arts and sciences faculty.

Those bridges would have been essential for anyone seeking higher office at Harvard. By 2007, with Mr. Summers gone, it was clear that Ms. Kagan aspired to the university presidency, though colleagues say she was careful not to appear to be openly campaigning for the job.

At the law school, professors and students believed she was a finalist for the president’s job. “We all thought she would get it, and we were scared that she would leave and that all the changes she had implemented would no longer be kept up,” said Sarah Isgur, a 2008 graduate, who ran the Harvard Law chapter of the Federalist Society, a conservative legal group.

But the search committee had heard reports that Ms. Kagan had been harsh with her administrative staff, and its members felt her scholarly interests were “too narrow gauge,” said one person familiar with the search, speaking on condition of anonymity to discuss private deliberations. And it might have been difficult for a law dean to ascend to the presidency; Derek Bok had done so, but Harvard tended to choose humanists or scientists for the job.

When the historian Drew Gilpin Faust got the nod, law school students threw Ms. Kagan a party. Several hundred of them turned up in “I ♥ EK” T-shirts; The Harvard Crimson reported that Ms. Kagan teared up at the sight.

“Sometimes, you win by losing,” the newspaper quoted her as saying, with her voice breaking slightly as she addressed the crowd. “All of you have made me feel like a real winner today.”

It was February 2007 — the same month that a freshman Democratic senator from Illinois named Barack Obama announced plans to run for the White House. Professor Steiker tried to console her friend by telling her that there was a good chance a Democrat would win in 2008, and there might be bigger things in store.

“I think she was disappointed not to be selected, as anyone would be,” Professor Steiker said. “I remember saying to her, ‘I can understand why you would want this, but what if a Democrat wins the White House? You could be on the Supreme Court.’ She nodded, but it wasn’t like she
said, ‘Yeah, I’m really glad I didn’t get that.’”