

NLWJC- Kagan

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Tanker Issue

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

30-May-1996 01:17pm

TO:            Martha Foley

FROM:          Elena Kagan  
                Office of the Counsel

CC:            Kathleen M. Wallman

SUBJECT:      tanker case

Here's the story, as reported to me by Jim Simon, a deputy in the environmental division:

A trade association for oil tankers has brought suit challenging certain safety regulations of Washington State; the complaint claims that federal law preempts these regulations. The suit is now at the trial court level in Washington State (Simon didn't know whether in federal or state court). There's a rumor floating around the environmental community that the Coast Guard wants to participate as an amicus on the side of the tankers. (NRDC, which is intervening on the side of the State, called Simon about this a couple of days ago.) So far, however, the Coast Guard has not communicated this wish to the Department of Justice, which the Coast Guard is obliged to do before taking any position in pending litigation. To ensure that the Coast Guard does nothing without DOJ's approval, Simon is going to call Nancy McFadden, the Counsel for the Department of the Transportation. I will do the same just to make sure. Meanwhile, Simon suggested to the NRDC that it submit a formal request to DOJ to enter the case on the side not of the tankers, but of the State. Such a request would trigger DOJ's formal process for deciding whether to file an amicus brief and, if so, on which side of the case.

Jim Simon - 5-30-96

trade assoc in oil tankers

challenging ST safety regs - WA state  
grounds of preemption - fed law.

NRDC - intervenor.

} early June - state or federal? trial CT

heard. us C.G. considering filing amicus for on side  
of tankers.

Our view - can't take pos in CT - directly  
or indirectly - what going thru DOT.

Env. Dir has amicus curiae.

↓  
(app brief - 86 office)  
(maybe brought in on  
d.c. level too)

formal process.

JS support -

NRDC write us (tr. asking to participate on its side.  
re Court Gd. Lubliner, NOAA

have not heard yet.

JS will call Nancy McFadden -  
try to find out whether  
anything backdoor is going  
on.

Nancy - I can call her too.  
gentle reminder.