

We all know that in other areas, such as automobiles, liability is based on fault. When a driver crashes into a properly parked automobile, that driver, and not the owner of the parked car, is responsible for damages. Similarly, a tanker that is properly moored might be rammed by another vessel under circumstances clearly demonstrating that the other vessel and it alone was responsible for the collision and subsequent discharge of oil from the moored tanker. Nevertheless, section 19(e) would hold the innocent vessel liable for cleaning up the spill.

Similarly, a vessel striking an unmarked or uncharted wreck or shoal would be liable, and the party truly at fault—perhaps a Government agency that failed to mark the wreck or shoal—would not be liable under this bill even though the spill was generated by its negligence.

There are innumerable other possibilities of injustice—including that of a torpedoed vessel, which under section 19(e) would still be liable for cleanup.

These injustices can be corrected by amending the bill to stipulate that, in all cases, the party actually at fault alone is liable. In other words, section 19(e) should hold the negligent party, whom it might now excuse, and release the innocent party, whom it might now hold.

PERMIT SHIPOWNERS TO RECOVER COSTS FROM THIRD PARTY

We recognize that action to remove a spill must be taken promptly and cannot await a decision as to which party is at fault in causing the pollution. Therefore, while recommending that liability for the cost of removing a spill under section 19(e) should be predicated on fault, we suggest further changes which would be fair and would, at the same time, encourage a shipowner to promptly remove a spill, irrespective of fault.

To encourage such action on the part of shipowners the bill should provide that the party who caused the vessel to effect pollution is liable to the vessel, or the Federal Government, as appropriate, for the cost of removal. If so amended, S. 2760 would permit a shipowner who incurred expenses in voluntarily removing an oil spill to recover his costs or a proportion of the costs from a third party, including Government, whose negligence caused or contributed to the spill. This suggestion is in accordance with traditional principles of admiralty law.

PRESUMPTION OF FAULT

Furthermore, while urging that legal liability be predicated on fault, we suggest a further change that would encourage a shipowner or operator to remove a spill promptly. This change would shift the burden of proof as to fault from the Secretary to the vessel owner or operator.

This would mean that if, for example, the Secretary found it necessary to institute an action to recover the costs of cleaning up a spill, the shipowner or operator would have to establish lack of negligence to escape liability.

Such an amendment would give the Secretary an advantage he does not now enjoy. Under present law he must have evidence of willfulness or gross negligence before he can proceed against a vessel.