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CRIMINALIZATION OF MARINERS: THE CASE OF CAPTAIN WOLFGANG SCHRODER

Mariners Disheartened By Verdict Against Master in Mobile Accident Case

[Source: *IOMM&P Wheelhouse Weekly*, Jan. 27, 2007.
Emphasis by underlining is ours.]

In the current issue of the Maritime Executive newsletter is a report on a case that has disheartened professional mariners. The Master of a container ship has been found to be criminally negligent of causing the death of Mobile, AL dock worker. The October verdict issued by a Mobile federal jury says that Captain Wolfgang Schroder, a German national, should be held liable for the errors in judgment that led to the March 2nd collision between the ZIM MEXICO III and the Alabama state docks last year.

In the wake of the verdict, the magazine reports that mariners from around the world are worried that the case may set a precedent and thereby widen the scope of what can be considered to be not just an error in judgment, but a criminal offense.

Schroder, who was in command of the 534-foot ZIM MEXICO III when it departed the port of Mobile last March, is scheduled to be sentenced on February 7. The sentencing hearing is being watched closely around the world, as it has been speculated that a stiff penalty here may influence the treatment of American mariners overseas in the future.

Support for Captain Schroder from other mariners has been slowly building here and overseas, led in the United States by the Council of American Master Mariners (CAMM).

Captain Tom Bradley, National President of CAMM, said that his organization was, partially in response to the issue, changing the focus of their annual general meeting to "Criminalization of Masters." CAMM's annual general meeting will take place in Ponce, PR in April.

The 59-year-old Schroder remains in prison in Alabama. When his vessel made contact with a gantry crane while maneuvering in the Port of Mobile, the crane collapsed, causing the death of an electrician in the port. The details of the case are many, but prosecutors reportedly centered on the condition of a bow thruster, which failed during the vessel's turning evolution. Evidence given to the jury

indicated that the thruster had also failed on other occasions and that the Master was fully aware of these circumstances. He now faces a possible sentence of up to 10 years in prison.

Before the incident, Captain Schroder was widely considered a more-than-competent seaman, with letters of commendation for acts of heroism in a 1987 incident, where he assisted and helped save numerous survivors from a capsized ferry. A German maritime company has since paid a \$375,000 fine to U.S. authorities under the terms of a plea agreement in the case.

Judge Sentences Captain to Time Served

[Source: *al.com*, Feb. 7, 2007. Posted by Brendan Kirby.]

Wolfgang Schroder, jailed for the last four months as a criminal after his conviction for a fatal collision between a cargo ship and a dockside crane at the state port in downtown Mobile, became a free man this afternoon.

Chief U.S. District Judge Ginny Grenade ignored both the prosecutor's request for a longer sentence and advisory guidelines and sentenced Schroder to time served. She gave the German native and longtime seaman 72 hours to leave the country or be deported.

The judge's decision elicited elation from the captain's daughter, representatives of the German government, and two rows of supporters in the maritime community who had gathered in the second-floor courtroom in Mobile.

ōMassive relief. I couldn't stop worrying said Schroder's daughter, Sharon Schroder, who lives in England. ōMy mum has been sick because of all the worry.ō

Advisory sentencing guidelines called for a prison term of 10 to 16 months, and Assistant U.S. Attorney Maria Murphy urged the judge to impose punishment at the top of that range. But Judge Grenade said she did not feel more time behind bars would serve any useful purpose. She noted that the law requires jurors to find that Schroder was guilty of simple negligence, a lower standard more commonly associated with civil disputes.

ōWhile I certainly do not discount the terrible consequences that have resulted from this negligence, what he has been convicted of is really a civil offense,ō Grenade said.

FATHER SINCLAIR OUBRE' LETTER & PETITION EXPRESSES VIEWS SHARED BY GCMA

February 3, 2007

Chief U.S. District Judge Callie Granade
U.S. District Court
Southern District of Alabama
113 St. Joseph Street
Mobile, Alabama 36602

Re: Capt. Wolfgang Schröder

Dear Judge Granade:

I am Fr. Sinclair Oubre, J.C.L., a Catholic priest of the Diocese of Beaumont, Texas, and the president of the Catholic maritime ministry organization the Apostleship of the Sea of the United States of America (AOS-USA).

We have followed the case of Capt. Wolfgang Schröder and the M/V Zim Mexico III. Our prayers and condolences

go out to the family of Mr. Shawn Jacobs.

In any industrial accident, the victims of the tragedy will need the support and prayers of their religious community and the larger social community for many years to come. The hope of AOS-USA is that temporal support pledged by the vessel's owner, Rickmers Reederei, will be able to financially support Mr. Jacobs' family as they struggle to recover.

Living in Port Arthur, Texas, I live 70 miles from Texas City, Texas. The recent explosion at the British Petroleum refinery, and the subsequent findings of negligence raises grave concerns on the part of the members of AOS-USA regarding equal justice.

As the Associated Press reported, "British oil company BP failed to emphasize safety at its U.S. refineries before the 2005 Texas City explosion that killed 15, according to a report released Tuesday by an independent panel led by former U.S. Secretary of State James A. Baker III."

The report notes that the BP explosion was caused by a corporate climate that intentionally circumvented safety policies. This is only the latest in a long history of U.S. industrial accidents that have killed workers, and left families devastated. However, in none of these cases, and no matter how many lives were lost, did either the plant manager, who has immediate oversight over the facility, or the corporate officers, who have final authority over investment, maintenance and safety, find themselves facing criminal charges and potential prison sentences. In addition, in the twenty-five years that I have been active in the maritime industry, as both a merchant mariner and as a Catholic priest, I have never before heard of a ship officer being charged under this section of the U.S. Code.

On February 21, 2004, the M/V Zim Mexico III was involved in another collision in the Mississippi with the workboat M/V Lee III. At that time, Capt. Schröder was not the master of the vessel. In the course of the collision, the workboat capsized, and all five crewmembers were killed including the mate, Mr. Daniel Lopez of my hometown of Port Arthur, Texas. In spite of the five deaths, no charges have ever been brought against the captain of the Zim Mexico III.

As the accompanying resolution of AOS-USA outlines, we are very concerned about the disturbing trend to criminalize maritime officers for incidents that on shore would be considered civil matters, and handled in that forum.

The actions of the country of Spain in regards to the breaking up and sinking of the M/V Prestige is a case in point. After refusing to offer the ship refuge, forcing it out to sea with the use of its navy, the Spanish government then arrested Capt. Apostolus Mangouras for the environmental devastation that was caused by their decisions.

Though we will be joining with the Council of American Master Mariners and other maritime organizations in asking Congress to amend Title 18, Part I, Chapter 51, Section 1115, we join our voices with others, and ask that you limit the sentence that you will impose on Capt. Schröder to the time that he has already served.

Sincerely yours in Christ,
Fr. Sinclair Oubre, J.C.L., President

A RESOLUTION ADDRESSING THE CRIMINALIZATION OF SEAFARERS

WHEREAS there is great concern of the trend by port state control authorities to unfairly treat seafarers by criminalizing masters and seafarers in the event of maritime accidents;

WHEREAS the Baltic and International Maritime Council (BIMCO) has conducted many investigations into the criminalization of seafarers and identified 44 cases between 1996 and 2006; nine involved the detainment of seafarers prior to them being found guilty of committing a deliberate act or act of negligence;

WHEREAS the Council of American Master Mariners and the International Federation of Shipmasters' Associations have adopted several resolutions concerning this worrisome trend of criminalization of seafarers by port state control authorities; and calling "upon the International Maritime Organization (IMO) and the International Labour Organization (ILO) and other maritime and regulatory interests to: use professional and civil sanctions, rather than criminal action, to penalize negligence; stop the criminalization of seafarers; ensure flag States protect their seafarers and abide by UNCLOS; ensure flag States carry out independent maritime accident investigations; facilitate greater mandatory use of Voyage Data Recorders; ensure IMO and ILO members States abide by the Guidelines on the Fair Treatment of Seafarers, adopted by the IMO Legal Committee in April 2006 and press for a mandatory Code; ensure flag States exercise effective control and jurisdiction over ships flying their flags";

WHEREAS the issue of criminalization of shipmasters has not substantially improved and the tendency by Port and Coastal States to arrest and detain Masters and officers without trial following maritime incidents including the PRESTIGE, ERIKA, and ZIM MEXICO III;

WHEREAS Captain Wolfgang Schroder was found guilty under the archaic Seaman's Manslaughter Act and after six months home confinement, has been in a U.S. prison in Mobile, Alabama for four months awaiting his February 7, 2007 sentencing; who up until this incident was widely considered a more-than-competent shipmaster with a letter of commendation from Prime Minister Margaret Thatcher and a medal from the King of Belgium for acts of heroism in the 1987 HERALD OF FREE ENTERPRISE disaster where he and his ship saved a large number of passengers of capsized ferry;

WHEREAS there is great concern that foreign port state control authorities will take retaliatory action against U.S. seafarers;

AND CALLING TO MIND the words of Cardinal Hamao, past president of the Pontifical Council for the Pastoral Care of Migrants and Itinerants, in his 2005 World Maritime Day address: "Evermore, recently, we have been witnesses of increasing and unjustified detention and criminalisation of seafarers." **THEREFORE BE IT**

RESOLVED, that the Apostleship of the Sea of the United States America (AOSUSA), during its 2007 Annual Conference at the RTM STAR Center in Dania, Florida supports the work of CAMM, IFSMA, Nautilus, ITF, BIMCO, ILO and IMO in their effort to fight the trend of port states to criminalize seafarers; **AND**

RESOLVED, that AOSUSA recommends a sentence of "time served" with probation; and supports the Fair Treatment of Seafarers by repealing the archaic Seaman's Manslaughter Act.

WHY ARE MARINERS BEING CRIMINALIZED?

[Source: *West Coast Sailor*, Nov. 24, 2006, p.9]

A German master jailed in the U.S. and awaiting sentence of up to 10 years after a waterfront worker was killed in an accident has become the focus of growing industry anger over the criminalization of seafarers.

Wolfgang Schroder was guiding the 1,150 TEU Zim Mexico III on March 2 this year out of the port of Mobile, Alabama, when the bow thruster failed. The vessel, which is owned by Hamburg's Rickmers Reederei and was chartered out to Zim at the time, hit a gantry crane onshore, causing it to collapse on an electrician who later died.

The master was arrested when the ship called at Houston. Captain Schroder was charged with criminal misconduct and denied release on bail. In October he was found guilty by a Alabama jury. The sentence, which could be up to 10 years, is expected to be handed down by February.

"We are shocked and furious," said Jurgen Stolle of the Hamburg Association of Masters and Officers. "Such cases are causing considerable anxiety, in particular among the young generation, which is unnerved." Although the issue of criminalization was not restricted to the U.S., the situation there was particular due to its special jurisdiction, he said.

In the latest case, the prosecutor said the master should have paid more attention to the fact that the bow thruster had already failed on two previous occasions. A pilot, who was on board at the time of the accident, told the court that he was not told about these earlier problems.

Members of the Council of American Master Mariners warned in an internet forum that the case was "a dangerous precedent to have on the law books." It could adversely affect our own people whenever an accident occurs due to a mechanical failure."

Although he would not comment on the order of events, Rickmers Reederei said "as to the question of guilt, we have a different opinion to the majority of the jury in Alabama". A spokesman said the company had offered all the support it could to the master. He said financial issues have been settled. Relatives of the dead worker agreed to compensation payments. "With regard to financial losses for the port, the usual P&I procedures have taken place."

Earlier demands by the port authority that the ship be arrested and sold in order to receive damages have thus not materialized. The ship, which was built in 1993 in Szczecin, has been handed back by Zim, as the charter ended.

THE CONSEQUENCES OF CRIMINALISATION VIEWPOINT MICHAEL GREY

[Source: *Lloyds' List*, Monday Nov. 20, 2006]

Think of Captain Wolfgang Schröder as the festive season approaches. He is the Master of the Rickmer containership Zim Mexico III who is banged up in a Mobile, Alabama, gaol awaiting sentence, which could be up to 10 years and is unlikely to be pronounced before February.

He is permitted, so U.S. master mariners tell me, two 30-minute visits a week, during which time he is handcuffed and in leg irons just to make sure he does not run off to sea.

Capt Schröder, it may be recalled, was involved in a most unfortunate accident last March when his ship, maneuvering in pilotage waters, clouted a container crane which collapsed, killing an electrician who happened to be working on it.

In the subsequent investigation it was alleged that Capt Schröder had neglected to tell the pilot the bow thruster had been playing up, and as a result of this oversight was judged by a jury to have been guilty of manslaughter. He is a criminal, and must suffer the consequences in a country which seems to have become something of a caricature for disproportionate sentencing of late.

It is always dangerous commenting on other people's trials at a distance, having not seen the evidence which caused the judge so to direct the Alabama jury. Nevertheless, my shipmaster informants tell me that Capt Schröder, if he was guilty of anything, was probably guilty only of forgetting some information which may, or may not, have been important.

If, for instance, the bow thruster on the ship had played up for the first, rather than the second or third, time as the ship was handled in the confined waters of Mobile, would the consequences have been any different?

With the ship being handled, as one assumes "to master's orders on pilot's advice," should not the pilot have been arraigned in the dock with Capt Schröder? Did his ability to avoid this fate rest on a technicality, as it were?

And, if we are considering the proper apportionment of guilt in our hugely risk-averse society, did not others bear some responsibility for the death of the poor electrician?

Someone, somewhere, will be able to tell us how many instances there have been of container cranes being damaged or destroyed by the flared bows or sterns of swinging containerships.

About 10 years ago, I counted up all the ones I knew of. It was at least 20 then, and I was sure that I was barely scratching the surface. Come to think of it, I was looking at the result of one of these expensive accidents just the other day, in a British port.

I actually recall that when container ships first appeared they used to roll the gantries clear of the berth when the ship approached, such was the risk deemed to be, with the waterside legs being a few feet from the water. Clearly this was judged impractical once the number of berths had multiplied, so it was left to the insurers to pick up the risk, as is often the case.

But the point I am making is that if the contact between ship and crane was a foreseeable risk ó as it manifestly was ó the poor electrician should not have been working in such a vulnerable position. So who was responsible for his instruction in this respect?

Were they not as culpable as Capt Schröder for the consequences? I would like to think that some of these things might be explored at an appeal, for they jolly well need to be looked at.

Should we not also look at the chain of responsibility here, as we are increasingly fond of discovering the indirect issues that influence causation? The role of the owners as to their repair policies? The attitude of the charterers over the hire of tugs? I do not have a clue about either, but suggest that it might conceivably have some sort of bearing on the outcome.

Many years ago a shipmate of mine was master of a North Atlantic containership, which traded regularly into Port Newark. Being a prudent sort of cove, he always made fast tugs for the final passage up Newark Bay from the Kill van Kull. It was a big ship at this time, with a lot of windage, and he was furious when the managers told him that he should dispense with one of his helpers as an unnecessary extravagance.

He knew they were wrong but they insisted, so it was no great surprise to anyone involved when, on a night passage, with one fewer tug than he wanted, there was a huge gust of wind which nearly wrapped them around the Newark railway bridge; and, while the bridge was unscathed, the ship was dented.

I have heard variations of this story over the years perhaps a couple of dozen times, but this incident with my shipmate was the first time I heard of òwillfulö and overt interference with the conduct of a shipmaster I knew well.

Nowadays it will be often more subtle, with hints, references to the huge unnecessary costs or even threats that if you, Captain, don't see it this way, there are plenty of other fish in the sea.

So how do we stop this creeping criminalization of accidents which is societal, and pretty well universal, as the world seems to revolt from the concept that there might be such an event that is òaccidental.ö? If the consequences of the natural and necessary risk taking that is ship operation ends up quite routinely with criminal proceedings and dire penalties for those involved in what in another age we would term accidents, might it be time to call a halt on risk taking per se?

It is worth keeping in mind that once those involved in maritime accidents were judged by their peers, who knew what it was like to have been in the same situation as the sad person who stood before them.

Today, it is the police who will be gathering the evidence subsequent to criminal charges, and they will not have a clue about such practical realities. Judges and juries, too, will not understand maritime pressures, not being òoperational risk takersö in any meaningful fashion, and will be reluctant to depart from the party line of total intolerance to any form of accident.

If this is the world in which ships are going to live, it is the operation of ships which must be adjusted to take account of this new dispensation. The calculation of òreasonableö risk needs to be reassessed to take into account the possible human consequences if it does not come off.

What does this mean? What it should mean is that it will

be quite unacceptable for anyone to second guess the master as to the conduct of his ship, and that the sole pressure on masters must be the delivery of absolute safety rather than schedule keeping or cost reduction.

The ship needs to sail with only a few inches of water under the keel. No, it doesn't! Either the lading is reduced , or the ship stays in deep water until the tide has made sufficiently.

The bow thruster, like the one on the Rickmers ship, is playing up. The ship will not move until it is fixed or, alternately, tugs of adequate horsepower will be made fast. There will similarly be absolutely no leeway on any other equipment that is found to be deficient.

There will be no taking a chance on the skill of the bridge team for saving the day. It is a fact that accidents occur during the hours of darkness. Easily done. Shiphandling should be confined to daylight hours only.

Additionally, the sea passage will be conducted in a manner that will obviate as much risk as is humanly possible. It was only a couple of years ago that we had some mad proposal from an environmentalist that would see ships only put to sea if it was deemed safe for them to do so. If it was too stormy they would stay snug alongside.

Perhaps this was not such a stupid idea after all. Under no circumstances will a container ship, or any other vessel for that matter, leave the berth until all the cargo has been secured. Indeed, the same sort of climate which applies in any country where a health and safety regime is out of control will henceforth be applied in the operational conduct of shipping.

And think of those risk-taking classification societies, recklessly òsamplingö the structure of a ship to see if it is safe. We cannot possibly have this, not if class societies are to be protected from unlimited liabilities and their surveyors from criminal sanctions.

A survey must henceforth be like the mid-life refit of a nuclear submarine, taking months in drydock and involving dozens of surveyors.

Could such a hard-line regime ever be implemented in the shipping industry, to protect both the individuals at the operating arm from criminal sanctions and their employers from liabilities? Surely this negates the very concept of òreasonableö behaviour on which this industry is founded?

Well, before answering this question, just consider who was unreasonable first.

We cannot keep throwing people who make mistakes into jail and using criminal sanctions willy-nilly without consequences. A highly undesirable consequence will be if people are turned off the whole idea of responsibility because it can land them in gaol. It is already happening, so I am told by those who know.

My view is that there should be a great deal of universal anger about criminalisation in general and this U.S. case in particular, in which the whole industry needs to sing from a single hymn sheet.

Unions, professional associations and industry bodies worldwide really do have to act in concert because there is a lot a stake, not least the human rights of people who make operational decisions.

It will be reprehensible and rather sad if, when people in the future are asked to name three famous shipmasters, the only ones that come to mind are Captains Mathur, Mangouras, and Schröder.

**SCHRÖDER COURT CASE SHAMES
U.S. JUSTICE AND MARITIME LAW**

[Source: By Robert Frump, Thurs. Dec. 07, 2006. *Robert R Frump, formerly an investigative reporter for The Philadelphia Inquirer, is the author of the book Until the Sea Shall Free Them, which tells the non-fiction story of the wreck of the SS Marine Electric and the struggle of merchant marine officers to reform a corrupted inspection system.*]

Madam Justice, I am a veteran maritime writer and investigative reporter who in my day has helped to send more than 21 men and women to hard prison time for committing fraud and other felonious crimes. In one case, I believe, it is generally conceded that my stories contributed significantly to a major shipping company pleading guilty to a felony charge. At least one ship officer of that company retired from service rather than lose his license or face prosecution, largely as a result of the articles I wrote. More than 70 old vessels were scrapped at a cost of many millions of dollars. I have lost not one wink of sleep over any of that. I have no sympathy for those who flagrantly break the laws of this country. I would very much like to put them in prison for long, long terms and see their licenses revoked.

You could say that I am not soft on the maritime industry. Why, then, will I lose sleep if you sentence Captain Wolfgang Schröder to 10 years in prison under the archaic Seaman's Manslaughter Act? The fact that he is in your dock, in fact, should cause any fair-minded citizen concern.

Under an ancient law, badly in need of reform, he has been found guilty of criminal manslaughter in a case where a piece of equipment - a bow thruster - failed. This occurred in the port of Mobile, Alabama. A crash occurred and Shawn Jacobs, an electrician working on a crane, was killed.

In anyone's book this was a tragedy. In only one book of the maritime criminal law books is that a felony. In any other book of justice or law, negligence would be probable, but not criminal charges.

Manslaughter requires a finding of gross negligence. The Seaman's Manslaughter Law requires only that simple negligence be found without the master clearly knowing of the negligence or danger. The record here is clear. The ship was not under the control of the captain but a pilot who decided to use the bow thruster instead of tugs. The ship was conned by the pilot at the time of the crash. The bow thruster manoeuvre was common in the waterway. The wind shifted, the bow thruster failed. There is a dispute as to how the bow thruster ought to have been powered, but it is by no means clear that the captain believed the bow thruster would fail. The method of powering the bow thruster is considered by many experts to be not just proper but optimum.

Should there be civil damages? Reparations to the family of the man who was killed? Of course. But why send Schröder to prison for a potential 10 years? Prosecuting the captain under ancient maritime felony charges serves no sane modern purpose. In olden days the captains were masters of their ship. They ruled all and were

held responsible for all. Perhaps such draconian measures as the Seaman's Manslaughter Act were once needed when ships ranged months, years at a time from port. But not now. Certainly not in this case. Ship masters are middle management, not ocean-going gods. By all testimony this was a good captain with a good record who had nothing but good intent. What can be said of a system that prosecutes such a man, persecutes such a man, when the maritime system itself is in such need of reform?

Why spend prosecutorial time on such a measure when the maritime system itself is so outmoded that transport experts have concluded that today's maritime system is the only transport system in the world that is designed to perpetuate mistakes? Norman Perrow, the Yale professor and author of Normal Accidents, theorizes that masters of ships are pressured by their owners to make use of such innovations as Global Positioning Systems, improved radar and bow thrusters to cut costs. This reliance on technology can actually increase accidents because the technology, while useful, is not perfect. Yet, for the capital investment in such technologies to pay, masters must assume they are near perfect or rely upon them as if they were. Well, they are not. Bow thrusters fail. Fog deceives radar. GPS systems malfunction. Why is such a system that perpetuates error perpetuated?

Perrow would say that maritime laws are not made to prevent future errors but to assess liability for insurance purposes. The late great U.S. Coast Guard Captain Dominic Callicchio, who reformed American maritime law after the wreck of the SS Marine Electric, theorized that so many maritime rules were created so that no rules were clear. This led to confusion in operation and policy but complete clarity in hindsight and prosecution. Something like the Seaman's Manslaughter Law comes in really handy for self-serving or shallow government officials. It is easy to hang the master. It is a slam dunk with no complexities of thought involved for prosecutors and it looks really good on the résumé. The family of the dead man feels good. They had a face and a villain to blame. The prosecutor feels good. They did not prosecute the local pilot, just the German captain, so the locals feel good. It is a wonderful victory - and a prosecution that a para-legal could have completed given the horribly low threshold of proof for the Seaman's Manslaughter Act. But it is senseless. Neither mariner should have been prosecuted. It is a tragedy for Capt Schröder and a tragedy for the maritime system that the government's energy is spent on some mis-scripted revenge movie rather than reform of the system. It is the greatest of ironies that the U.S. Coast Guard office in Houston devoted weeks to investigation of a tragic but one-off accident when headquartered in its own back yard sits the American Bureau of Shipping, an association that Captain Callicchio said has an inherent conflict in inspecting ships in that its customers are the ship owners. Madam Justice, you will not be able to reform the system. You have no doubt heard and conducted this case properly even though the law itself is in my opinion improper. You had no leeway in that. But in sentencing you do. You can see justice served in some small measure, by setting the Captain free on time served. His punishment already has been cruel and unnecessary. I only wish it were unusual.