Jack was a beloved friend and mentor. He was a gifted teacher – always warm and supportive not only to me and the other lawyers in our legal department but to many others in our company.

In short, Jack was a wonderful human being.

We will miss him terribly.

When Did the Jones Act Become the "Jones Act"?

By Charlie Papavizas*

Everyone knows what the "Jones Act" is even though it has two distinct meanings, right? It is either the law about merchant mariner recoveries or the law restricting U.S. domestic maritime commerce to U.S. flagged vessels. That may be the case today, but that was not the case in 1920 or in the immediate years after 1920 when the "Jones Act" was the term applied to the whole of the Merchant Marine Act, 1920 and those two contemporary "Jones Acts" were relatively obscure sections in that Act. The evolution of the nomenclature is murky but plainly at some point it became possible to say, "the Jones Act is hurting Puerto Rico," and everyone knew which "Jones Act" was being referenced. Let's try and trace how the Jones Act became that "Jones Act."

The United States has reserved its domestic maritime trade to U.S. nationals since at least 1817 (and U.S. nationals were preferred since 1789). That reservation became a U.S. flagged vessel vs. U.S. ownership reservation in 1898. The 1817 law was also amended several times before 1920 largely to deal with U.S. domestic trade utilizing Canadian ports and Canadian conveyances and especially trade with the Alaskan territory. In fact, the main change to that 1817 law included in the Merchant Marine Act, 1920 was to close a loophole whereby cargoes could be shipped by land and water to Alaska from the continental United States through Canada.

The great bulk of the 1920 Act concerned what to do with the enormous fleet of vessels engaged in U.S. international trade which the United States had built and was still building to prosecute World War I. In fact, the very last vessel ordered by the United States for the war was delivered in May 1922.

The 1920 Act as a whole was called then and thereafter the "Jones Act" in honor of Senator Wesley Livsey Jones, a Republican Senator from the State of Washington and then the Chairman of the Senate Commerce Committee. Sen. Jones was chiefly responsible for getting the 1920 Act through Congress with a multitude of ideas that would have been too controversial to get the necessary support in prior years. For example, the 1920 Act contained a provision requiring the United States to discriminate in favor of U.S. flagged vessels in setting international tariff rates (a provision that was never implemented).

The 1920 Act immediately became known as the "Jones Act" even though there already was another well known "Jones Act" at the time, which was a 1917 law granting citizenship to Puerto Rico residents (different Jones). So, when President Harding, in his first annual message to Congress delivered in December 1921 referred to the "Jones Act" he meant it to be synonymous with the Merchant Marine Act, 1920. Neither section 33 of that Act dealing with merchant mariner injuries nor section 27 which amended the 1817 Act were treated as being significant in that message or generally in the 1920's or 1930's – with one notable exception.

That exception concerned Alaska. Senator Jones was persuaded in the 1920 Senate debate when closing the loophole to add a proviso permitting certain transportation via Canadian vessels and Canadian railways between two points in the United States – but Alaska was expressly excluded. So, cargoes could be shipped from U.S. Great Lakes ports to Canada by Canadian vessels, and then by Canadian rail across the continent to Seattle provided certain conditions were met – but not to Alaska either directly or indirectly.

Alaskans were outraged by the exclusion. Alaska had come to depend on Canadian carriers which offered cheaper rates than U.S. carriers. James Michener, in his novel *Alaska,* captured the Alaskan attitude when he quoted a fictional Anchorage grocer saying – "That damned Jones Act is strangling us." The Alaskan territorial government claimed the Alaska exclusion was "a vicious discrimination against and a great injustice and injury to our people."

The territorial government took it to the point of suing the United States claiming that the exclusion violated the U.S. Constitution's "Port Preference Clause." That clause guarantees equal treatment under law among U.S. ports. The U.S. Supreme Court dismissed the case in 1922 finding that the clause only protected states and not territories like Alaska. In its opinion, the Court did not refer to section 27 of the 1920 Act as the "Jones Act" but rather just as "section 27."

Nevertheless, the seeds were planted in Alaska for calling the U.S. domestic trade reservation the "Jones Act." Territory of Alaska newspapers have many references to the "Jones Act" particularly starting in the 1940's when Alaska boomed during the war and ocean rates increased substantially. "Council to Ask Repeal of Jones Act" and "Repeal of Jones Act is Wanted" were typical headlines. One enterprising painting company placed an advertisement in 1947 in the *Anchorage Daily Times* entitled "Amend the Jones Act, Or Shall We Have Another TEA PARTY." No one had to explain which "Jones Act" was being complained about.

The Alaskan terminology did not, however, immediately catch on with the rest of the country. President Franklin Roosevelt issued an executive order on December 12, 1941 permitting the waiver of any navigation law in furtherance of the war effort and section 27 of the 1920 Act was considered such a law. When waivers of the domestic trading law were then issued, however, they were called "coastwise law" or "navigation law" waivers in federal government documents – not "Jones Act" waivers as they were in Alaska.

Alaska's animus towards the "Jones Act" subsided somewhat when Alaska became a state in 1958. When that happened, the word "excluded" in the section 27 Canadian rail proviso was changed to "included." That proviso, by the way, remained largely obscure until relatively recently when U.S. Customs and Border Protection fined a service transporting frozen fish from Alaska to New England via foreign vessels and including a short Canadian railway to nowhere. CBP alleged that the service did not in fact fit within the proviso's parameters.

It was not until the 1960s that mentions of the domestic trading law as the "Jones Act" started to appear generally in publications like the *New York Times* and in federal government documents like the *Federal Register* and Congressional reports.

By the late 1970s, federal courts in the District of Columbia in the case of American Maritime Association v. Blumenthal concerning the shipment of Alaskan crude to the U.S. Virgin Islands were comfortable calling section 27 of the 1920 Act the "Jones Act" without further explanation. At some point between the 1940's and the 1970's, the transformation from "Jones Act equals Merchant Marine Act, 1920" to "Jones Act equals Section 27" of that Act had occurred.

There was also no doubt which "Jones Act" was being talked about when the "Jones Act Reform Coalition" was formed in the 1990's although its counter-part – the "Maritime Cabotage Task Force" – shied away from the term in its name. Even today, the MCTF is the "American Maritime Partnership" and does not include the "Jones Act" in its name.

For the last few decades, the terminology has reached the point where the 1920 Act as a whole has been almost wiped out of the collective memory. The provisions Senator Jones worked so hard to get into law have been forgotten. Instead, pundits now conflate the 1920 Act with the domestic trading restriction (or the merchant mariner injury recovery provision) including falsely stating that the United States started reserving its domestic trade to its citizens starting in 1920. The loss of the distinction between the "Jones Act" as it was in 1920 and the "Jones Act" of today is a shame for the legacy of Senator Jones. Perhaps the only saving grace is that everyone has also forgotten the Merchant Marine Act, 1928 which was, you guessed it, also called the "Jones Act" or "the Jones-White Act."

* Charlie Papavizas, a partner in the Washington, D.C. office of Winston & Strawn LLP, has written numerous articles regarding the Jones Act and his book, "Journey to the Jones Act-U.S. Merchant Marine Policy 1776-1920," was released in April 2024 and is widely available with on-line book sellers.