

INTERVIEW WITH WARD M. HUSSEY

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Ward Hussey retired in 1989 as House Legislative Counsel and the principal specialist in drafting tax legislation. Sam Rayburn appointed him to work in the Counsel's office in 1946. His tax work before 1952 included the retroactive taxation of life insurance in 1947 and a new provision for appeals of Tax Court decisions. He was assigned to the House Ways and Means Committee from 1952 to 1989, during which time he worked on the revisions to the 1939 Code and the drafting of the 1954 and 1986 Codes.

Q You and Don Lubick wrote a "Basic World Tax Code." Tell us how that came about, what it is and what has happened to it?

A After I retired, I played golf for about six months and started to get bored. I got a call from somebody from the United Nations Development Program for the Dominican Republic and was asked how long would it take to draft new tax laws for the Dominican Republic. I asked him what kind of a job he wanted, a good job or a sloppy job? He said he wanted a good job but he wanted it in two weeks. I went down to the Dominican Republic 16 times and, over time, the working staff was greatly increased. They got the Harvard Institute of International Development aboard and they put a real group of experts down there. Don Lubick came down and Glenn Jenkins, who later became head of Harvard's International Tax Program, Bob Conrad, an economist who has been working in Russia quite a bit, also in Malawi, and Victor Thurony, who is now the Tax Counsel for the International Monetary Fund.

We all worked together and tried to work out some new laws for the Dominican Republic. In the process we drafted a code that was much more than an income tax. When we got through, Glenn Jenkins from Harvard said, we've got to write a report on this. I'd seen enough reports that I thought that would go nowhere, so I suggested instead that we draft a sample code for other countries. Don Lubick and I did that.

Our idea was that it would be good for countries in transition from Communism or other state-run economy to a market economy, and also developing countries, generally, to learn about what we did in the Dominican Republic, generalized. The original 1992 edition of the Basic World Tax Code had five parts. The first part was an income tax, which is sort of a streamlined Internal Revenue Code. The second part was a value-added tax, which is like nothing in the United States, but is based primarily on the Sixth Directive of the European Union. The third part is a simplified series of excise taxes. All of the Communist countries have 40 or 50 or 60 excise taxes and we were trying to tell these countries to simplify them and to go where the money is. We had some property taxes in the code, both real property and cars and things like that. And finally, we had a thing that we felt was very important, namely the administrative provisions, including appeals, penalties, interest and all that. Put all together, it became the "Basic World Tax Code."

Now what has happened to it? First of all, it was translated into Russian, and the Russian version is just about as good as the English version. And then the Treasury got it translated to a number of other lan-



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guages. I think it was translated into ten or twelve other languages, into Spanish most recently. It is on the Internet and has been used in a lot of countries since then. In addition to the Dominican Republic, it has been used in Estonia almost verbatim. That is unfortunate, because we think it should be tailored to the country rather than used wholesale. It has been used in Kyrgystan. I used it last year in Palau. Actually, I have worked in 23 different countries since I retired. Not all of them want codes, but all of them want amendments and when they want massive ones like Nepal, I took out the income tax and the value-added tax from the code and redrafted them for Nepal. So it has been quite useful.

Q Ward, you were a friend of the late Dr. Laurence N. Woodworth. In fact you helped sponsor a lectureship at his alma mater. Tell us about him and his work in Washington.

A Larry and I started working together in the late '40s when I started working on tax legislation, and we had a very firm friendship. I had great admiration for Larry. He was an economist but in the process of working on legislation he got training as a lawyer so he could think in legal terms too, and it made it so much easier to work with him.

The Ways and Means Committee would make overall decisions, but then their implementation would call for minor policy decisions and Larry would be given that job. Larry also had the job of writing the press releases and handling the press conferences, because these were pretty complicated provisions and sometimes they would just turn it over to Larry to explain what they had done. So Larry and I, in writing the '54 Code, sat at the same small table, very small—about four feet long at the most, and we would sit side-by-side and I would be drafting the decisions and he would be writing the press release. We would try to get them together so that there wouldn't be any gaps.

The common thread in the people that I admire most in the tax field is that they were the protectors of the public fisc—somebody who would be willing to protect the revenue. As I work in foreign countries and see what a terrible time they have just getting a basic structure together that raises revenue, I realize again how very important it is to have people who don't give away the store, either to special interest or just through inadvertence. Larry Woodworth had that quality in spades.

He kept in mind the national interest and the patriotic interest. And that's what I liked about him. Of course, he was a much broader man, too. He had these terrific work loads when the Committees were deciding major tax bills, but at the same time, every Sunday he would teach Sunday school and he was Mayor of Cheverly out in Maryland. He just had very broad interests and, as I say, he was a close personal friend.

At one point he got pretty tired out with the process in Congress and he decided that it was about time for us to retire. We were about the same age, this was in the '70s, and he asked me if I would be willing to go with him on retirement to become professors at some university and work together. He would outline a simple tax law and I would draft it.

That sounded pretty good at the time. Of course, it didn't come off because he went to the Treasury and he died there in his first year. He was Assistant Secretary for Tax Policy. The same job that Lubick had twice, under Carter and under Clinton. It is interesting to me that I carried out Larry's dream of writing a simplified tax law with his assistant, because Don Lubick was his assistant under Carter.

Q You were the man who put the pen to paper and wrote many of the words that we see in the Code today. Could you tell us a little bit about your approach to drafting.

A The main thing was that we applied general drafting principles to the drafting of tax legislation. I wrote a homily on drafting laws for my office, the House Legislative Counsel's Office, and it later became a manual.

First you have to find out what the policy is. Often times the policy is not at all what you think it is, particularly when you keep in mind the existing legislation and how it fits in. You establish this by asking question after question. Whoever the reader is, whether it is a legislator or the taxpayer or the tax administrator, you've got to know who your audience is and get the policy across. I think the best way is to use English and not Latin and to use simple sentences, to use all sorts of readability devices like headings and cut-ins. You will find them all through the code. It is a complicated area that we are dealing with but I think that we can help it by clarity of thought and by expressing ourselves simply. Those, to me, are more important than fancy rules of drafting such as horizontal drafting.

Q Can you describe to us what would actually happen in a drafting session? Let's say you start with a blank piece of paper or blank chalk board, I think you used at times, how would you proceed?

A Imagine a room, maybe 30 feet long and rather narrow, maybe 15 feet wide, and in the middle of the room is a long table and chairs all around it for the people attending. At one end of the room is a small oval table with a glass top on it and a drawer in it. And that is Middleton Beaman's table where he wrote the 1918 Revenue Act and all the Revenue Acts thereafter up to his retirement in 1949. In that drawer is history because when Treasury started working with him (and the Ways and Means insisted that Treasury deal with Beaman), they would come up with a draft of what they wanted in tax legislation and Beaman would say, "Um, okay," and put it in the drawer. I have seen him do that a number of times and it would stay there. And when I retired there were still Treasury drafts in the drawer that have never been looked at because he would want to know what is it all about and get to the heart of the matter.

He had a very brilliant mind. That's why I tried to follow in his footsteps trying to get to the heart of the matter. And so we would have this group around the table and there would be people from the Joint Committee on Internal Revenue, there would be people from the Treasury, there would be people from L&R. There would be people, back in the '50s and '60s, from Technical Planning. I don't know if you have ever heard of Technical Planning or not, Eddie Kahn started that. It was a rival of L&R and it had some very sharp people in it. And so we would have them there. And then gradually, Rob Leonard got permission for Ways and Means Committee to come too.

At first the Joint Committee was not too keen on having rival policy-makers there, but then it got so that there would be Committee Staff there from Ways and Means and if we were working on the Senate side, because we worked on both sides, there would be someone from Senate Finance there. But, all these people

would be sitting around the room and we would deal with one issue at a time.

Sometimes we would go days just asking questions. We had two blackboards on the wall and we would go up there and I would write a possible general rule. We always started with a general rule, something that would fit the problem. And the people would criticize the general rule and then we'd go back and forth and then when there seemed to be consensus on what the general rule should say, I would call somebody in and dictate it. Now, all these modern duplication devices are great because the draft would come back and everybody could read it. When I started working with Beaman, I was the low man on the totem pole so I got what we called flimsies (they were carbon copies). I got number six which was hard to read or almost impossible to read. Of course now we have duplicating machines and everybody can read the same thing.

So we would come back and we would hash over the general rule and then we would do the same thing with special rules. And then we would do the same thing with exceptions. And then we would do the same thing with definitions. Now in this drafting manual that I showed you, we talk about definitions. Oftentimes it is valuable to define a term and define it in sometimes odd-ball ways, but it saves you a lot of trouble and it gives you greater accuracy if you have a defined term. And then we would have to run down the various other places that would be affected by this change—in the code or in other laws. And we would come up with other amendments and I would dictate them.

Q You go all the way back to the '39 Code. You had to deal with that before the '54 Code, but, of course to us young guys, the '54 Code is sort of a landmark and pretty old. Can you tell us how did the '54 Code differ from the '39 Code; and

why was the codification needed at that time? And were there any particular principles that you used in drafting the '54 Code?

A The '54 Code, I think, was necessary. The '39 Code had sections, for example, section 23 for deductions, which were getting out of hand. You had 23 (a), (b) through (z). Well that was fine, but then when you get to (z) you had to go to (aa) and then keep on going. These provisions were just piled on top of each other and it was just impossible to find anything and we had run out of room.

The big area that they really rewrote was the administrative provisions in '54. They had all these provisions that had accumulated from early law. You know our earliest laws were Revenue Laws and they had all these penalties and interest and weird provisions from the Alcohol and Tobacco Laws. (We had to try to pull them together and make a comprehensive whole.) So Subtitle F of the '54 Code was a complete rewrite, a complete revision. There was a group of four people that did that: Joint Committee, Treasury, and Internal Revenue Service. Incidentally when I was telling about the attendees at drafting sessions, one of the important attendees would be Internal Revenue Service people when Treasury would let them attend. Sometimes Treasury wouldn't let them attend (I don't know why), but we thought it was valuable to have them there because they were the ones working on the regs.

Well, anyway, I digress, the Subtitle F revision, the administrative provisions, was one of the main things in the '54 Code, but in addition, there were all sort of new ideas. You had the Eisenhower Administration coming in there with new programs in the individual income tax. They had a program of coordinating the corporate tax with the individual income tax. They had a four percent dividend credit and a \$50 dividend

exclusion and so they were trying to encourage individuals to invest in corporations. They had pension reform, they had accounting reform and they had many other changes and, as a result, a massive revision, particularly of the individual income tax.

In the corporate area they also had vast revisions they wanted. In the House they started out with an idea of "basis over basis" (treating distributions as return of basis and not dividends). The people who were working on it were not trained draftsmen, and it came out in such a version that when it passed the House, Wall Street and the older heads in the Treasury were just aghast at what had been done. And so they pulled me off of what I was doing and assigned me in the Senate to redo the corporate reorganizations provisions.

When it got over there in the Senate they were so aghast that they adopted a policy to "Gemmillize" it. Ken Gemmill was a well-known tax lawyer from Philadelphia who was the counsel for the Assistant Secretary to the Treasury for Tax Reform. Gemmill came down from Philadelphia and his mission was clear—to get something that Wall Street and Treasury could live with—and so he would say, "We'll Gemmillize it," which meant go back closer to the '39 Code.

So we had to work their desired changes into the '39 Code and that was very exciting because we did all the Subchapter C provisions in six weeks. But the point I am trying to make is that they were doing some massive revisions of existing concepts.

Actually there is no difference between a code and a law. They both have the same standing as far as the courts go. But I like to think of the code as something more permanent and something more earth-shaking than a mere law and a code designation helps to get that idea across.

Q That work product lasted 32 years and then you were fortun-

nate enough to be there in 1986 to work on the draft of the '86 Code. Why was that recodification necessary and what big changes did you see and how, if any, did the drafting process differ in 1986 from 1954?

A The basic philosophy of the '86 Code, as I see it, is to broaden the base and lower the rates. And that is a message that we try to carry in the Basic World Tax Code. It has been quite successful in foreign countries.

If you get your lower rates, then you can attract capital from other countries and you are in much better shape. That was a real thing that I think the '86 Code did; to do that meant revising an awful lot of provisions, there was massive revision in 1986. I think that was tax reform at its high water mark in 1986 and there was some question then about whether there was enough revision to justify the use of the word Code. You couldn't just stick with the '54 Code. If you will go back to the Tax Reform Act of 1986, you will find out that we didn't rewrite the whole thing because we were very nervous that the Government Printing Office could not do that without making a lot of mistakes. So we used the technique of just redesignating the '54 Code as the '86 Code. So it was a slight of hand way of doing it. But I felt then, and I feel now, that the changes were so massive—just look at them, it seems endless. You look at the changes, I think now it is worthy of a designation of a new code.

Q Do you remember a little minor dispute over whether the numbering of the sections in Subchapter C should be changed for the '86 Code?

A Whether there should be an "A, B, C and D?" Yes, I do.

Q And you wound up sticking with the old numbers, I think.

A Yes. There were several articles from Columbia Law School about the dangers of redesignation. And they made quite an impression on me, so I thought it was probably a good idea to keep the old designations. It is also true that in 1954 we kept those designations in 368 from the '39 Code. People knew what an A Reorganization was and what a B and C was and we stuck with it.

As far as drafting principles go, the same basic principles that you will find in the House drafting manual applied in 1986. As far as my role goes, it was quite different in 1986 from 1954 and that was because in 1954 I was one of the actual drafters and I had the responsibility for Subchapter C and quite a few of the individual income tax changes. In 1986, while I did a lot of drafting, I was also a traffic cop and that is an important role you have to play, somebody has to play it. Assigning people to work on this or that. You had to delegate a lot to get a job that massive done. As I say, I was traffic cop in 1986. In 1954, Ed Craft and Steve Rice from the Senate Legislative Counsel's Office were the traffic cops and I was just one of the draftsmen.

Q Let's switch over to talking about some personalities and I wonder if you could tell us what legislator you consider to be the most knowledgeable about the tax laws and how did that person impact the tax laws?

A There is no question in my mind that Wilbur Mills was the one that was most knowledgeable.

I served with six different chairmen in my career, starting with Knutson and then Muley Doughton, Dan Reed, Jere Cooper, Wilbur Mills, Al Ullman, and then Rostenkowski. Mills, of all those, was far and away the most knowledgeable. He just had a tremendous knowledge of the code. He had an impressive mind. You would be sitting there at P15, the

room off the House floor where the Ways and Means Committee meets, you'd be sitting there and he would ask me to explain how we drafted a particular provision and I would explain it to him. He would be sitting there with a pen doing a crossword puzzle. That always impressed me, anybody that could do a crossword puzzle in ink. I would think he was paying no attention and then maybe later that day or maybe three days later he would get up on the House floor and he would just—bing, bing, bing—he would come down on all the important points of what the draft did. He was just amazing.

One of the most complicated provisions over the years has been the life insurance provisions. He just had a thorough knowledge backwards and forwards of life insurance. Of course, he, in addition to being knowledgeable, he was like Larry Woodworth, he was a protector of the fisc. In the 1962 Act and the 1969 Act there were pretty significant reforms of the tax laws and he kept the revenue together. But, curiously enough, he did it by a consensus technique.

He was not like Rostenkowski. Rostenkowski would get his Democratic side together and then he would plow ahead. Mills would always go for consensus and you would think he was just postponing things. But he was getting the Republicans aboard and he was helped out by another man who was a great protector of the fisc, Johnny Byrnes on the Republican side. And later, Barber Conable would take the same role. And together they made a great team. The Ways and Means Committee was operating as a unit then, a bipartisan unit and they got a lot done that way. No great innovations in the sense of massive reform, but just consensus legislation that really was for the good of the country.

Q Now, you say Mr. Mills was the most knowledgeable, was there another legislator who maybe did not

have his level of knowledge, but you would consider to have been the most influential in terms of affecting the laws? Or next most interesting?

A I don't know, but I would certainly put Danny Rostenkowski up there towards the top.

I don't know whether he or Mills had more influence on tax law; it depends on how you look at it. If you look at tax reform, I think, probably Rostenkowski had perhaps a little bit more influence on the tax laws themselves. Mills, of course, had Medicare and reciprocal trade—massive changes in those areas. But in the tax laws themselves, Rostenkowski in the '80s was really something to watch.

As I say, he operated differently. He operated through staff. He just trusted his staff. He knew how to pick a good staff. He started out in a sort of shaky way with the 1981 Act. The Reagan Administration came in and Rostenkowski had a competition with them as to who was going to get the most in the bill, so to get the votes on the floor. As a result, I think that from the standpoint of protecting the fisc the 1981 Act was a real disaster. It gave away way too much. And then, of course, in 1982 Dole and the others started to pull it back and right the revenue ship which was listing pretty badly. But then Rostenkowski went on and he, together with the Treasury, was instrumental in getting through the '86 Code.

Q Since your retirement there has been a lot of concern about the level of "special interest" lobbying on the tax area, but I've heard it said that it began before 1989 and maybe dramatically increased after when? Compared to the Eisenhower years, at what point did you see special interest tax lobbying really explode?

A Fortunately, in our office we were not affected by "special interest" pressure. We were off limits to lobbyists. But when I went over to the Committee, I would see lobbyists

standing outside and they were pretty hard to get through sometimes.

My first really rough encounter was in 1950 or 1951 when one of my initial jobs was to explain the wagering tax to the Ways and Means Committee. I had worked out that we levied a tax on gambling and the Committee wanted to know what it was all about. I started explaining it and one of the members of the Committee was interested in the thing, I think you might call a special interest right on the Committee, and so he started asking questions. He gave me so many questions that finally Bob Kean of New Jersey said, "Give the boy a chance." And that was true generally of "special interest representation" on the Committee.

Once in a while you had a member over the years, maybe I can think of four or five at the most, who would plead the case too hard for special interests and they would always be squelched by other members of the Committee. I suppose you are referring to the outside influence. But anyhow, every time, as I say, when there was major legislation (such as the '54 Code) we were deep in lobbyists when I would go over to the Committee. Certainly with the '86 Code they were all over the place.

What has happened, of course, is that among other things a lot of the people who worked on drafting these bills go over to the other side and become lobbyists and they are much more knowledgeable about the process and they are much more knowledgeable about where to apply the pressure. I think that I can safely say that I believe the lobbyists have become more effective than they were.

Q In 1984 you were asked the question as to whether complexity in the tax law was "over the edge" and could not be remedied. And you said, no. You said that you thought that it was not "over the edge" and complexity could be remedied. How do you feel today about that and do

you favor some sort of "fundamental tax reform?"

A I am a perpetual optimist. That's why Don Lubick and I wrote this book and we think that, yes, tax laws can be simplified and you can get rid of the complexity. The question is whether there would be political will to do it. It would require some sort of an unusual situation. Because to do it, you have to get rid of a lot of deductions, for instance, and special provisions, which is difficult to do. But if you do that, yes, it can be simplified.

I am not in favor of something like the flat tax. Teddy Roosevelt came up with the idea of progressive income tax in 1908 and I think he came up with a good idea and that is one I think should still be in our code—the progressive income tax. That is what we used in the Basic World Tax Code, a progressive tax with a 30 percent top rate.

Q Let's shift to one specific provision. The alternative minimum tax (the "AMT") was added while you were there. We are not going to make you responsible for it, but you saw it added to the code, I believe. Did it have a legitimate function, has it served that function and what do you think of recent calls for its repeal?

A I think that the main reason for enacting the minimum tax was the list of 100 multimillionaires who were paying no tax. The 100 or whatever the list is, you get that out in the public and the public sees that and they lose their confidence in the tax system. This is not a fair system. For that reason, I think, some way of getting rid of over-zealous use of the special interest provisions was desirable. Whether this is the best answer, I don't know. Certainly it has gotten awfully complicated and it is against the basic message that I am trying to say, that simplicity is desirable. Of course, the best solution would be to

repeal all the tax preferences that make an AMT necessary.

Q Do you have any thoughts on the current debate over the so called “marriage tax penalty,” and in that regard, have you ever tried to take your hand to drafting a “fix” of that problem?

A Larry Woodworth and I tried several times to work on that problem. The trouble is that to really get rid of it is very costly. And I am not sure that it is desirable.

In the Basic World Tax Code we treat each individual as a separate unit. We have no special provision for married couples. That is a simplification that is one of the things that would be very hard to sell in this country, just as some of our denial of deductions would be hard. But, I have heard many arguments on the marriage penalty. Actually, there are certain taxpayers that probably get too big a break out of the efforts to solve the marriage penalty. I can

remember back when we got into this joint return business. Back in 1948 I worked with another fellow on one of the first bills for Congressman Boggs of Delaware. States were starting to adopt the community property laws of Louisiana and other civil law states. And, so we tried to make the benefits of income splitting available in all states by providing a joint return rate one-half of the single rate. But there was a time when there were no joint returns. No marriage bonus and no marriage penalty.

Q What is the “pendulum theory” of tax legislation and can you give examples.

A That’s a fascinating one for me. I think it was Arnold Toynbee who used the pendulum theory of history. He thought that history would go one way and then go the other way. It seems to me that there have been times in my career when there was a pendulum swing. All along there have been efforts of

reform and when they are successful, when the tide of reform gets too strong there is sometimes a slow drawback, sometimes a hasty drawback.

After 1986 there was a hasty drawback in many areas. You take the ’54 Code, the corporate integration things I told you about, the dividend exclusion of \$50 for each individual and the four percent credit for each dividend. That was, I think, repealed in 1961. But the most interesting example to me was sections 452 and 462. Are you familiar with those? Back in 1954 one of the Eisenhower reforms was to give the accountants what they wanted. Section 452 was on prepaid income and 462 was on estimating expenses. The accountants went “hog wild” on those provisions. And the corporate tax just about disappeared, so 452 and 462 were repealed retroactively. That was a wham-bang illustration of the pendulum theory. ■

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