



INTERVIEW

Mark Prater

By Jasper L. Cummings, Jr. and Alan J.J. Swirski*

Mark Prater is the Deputy Staff Director and Minority Chief Tax Counsel on the Senate Finance Committee. He served as the Staff Director of the Joint Select Committee on Deficit Reduction.

Q Describe your role and tenure at the Senate Finance Committee. How has the day-to-day work changed, if at all, over your time with the Senate Finance Committee?

A I started as a tax counsel in January of 1990. As the most junior tax counsel, I handled everything from “sin” taxes on beer and wine and tobacco, to compliance, to other things that a junior person would usually handle. Since I was a member of the tax staff, I worked quite a bit on tax bills as we processed them, including the 1990 deal, two 1992 deals—the energy bill that got signed and HR-11 that did not get signed. President George H.W. Bush vetoed it on an airplane coming back from Houston. I was promoted to Chief Tax Counsel in October of 1993. Lindy Paull was my boss at the time. She was promoted to Staff Director. When the Republicans won the Senate and the House in 1995, I went into the majority staff from 1995 through 2000. I served under Chairman Packwood and Chairman Roth. I carried over to incoming Chairman Grassley and we worked with Senator Baucus, then the ranking Democratic member and, at other times, Chairman.

For most of that first part of the last decade, I was Majority Chief Tax Counsel. We produced a lot of bills, including the 2001 EGTRRA, 2003, and 2006 reconciliation bills. There were many pieces of legislation that came

through the Committee. In early 2007, Ted Totman, who was our Deputy Staff Director, retired. Senator Grassley promoted me to the deputy spot. So I wear two hats—Chief Tax Counsel and Deputy Staff Director. They are really different roles. As Chief Tax Counsel I manage a team of really solid people. I think the key to success as a manager is to make sure you recruit good people. If you recruit good people, that is 95% of the job, and then mentoring and counseling them is the key function. You also need to make sure work flow works well. So my job is really management in terms of the tax team, and then, as the Deputy, I serve with Chris Campbell who is our Staff Director, serving Ranking Member Hatch. I perform a variety of roles—everything from senior consultant in processing legislation to advising on different strategies and tactics on bills. My institutional policy background is also something that I use in that role. Chris and I work together as a senior management team. We are blessed with a really solid group of professionals. They include Everett Eissenstat the senior trade person, Jay Khosla our senior health person, Brendan Dunn the head of oversight, and Jeff Wrase our senior economist. Interestingly enough, a few minutes ago, at 2:00 pm, the Senate, through a consent agreement, provided a window to file our recently approved extenders bill. The Committee approved a bill right before we went out for the August recess. And so, the last few weeks, when I was not on vacation, I was involved as the Chief Tax Counsel in overseeing the filing of that legislative consent. It depends on the situation, which of the roles I fill.

Q So you have been here 22 years with Senate Finance in one capacity or another. Has the work day to day changed much in that time, or does it follow a fairly traditional deal with each bill as they come, in a similar way?

A I would say the process is still similar in terms of the formal steps. We have to go through hearings, noticing, mark-ups, committee business, etc. The rules are fairly similar except there is much more transparency. For instance, we have to put all the amendments out on the internet. We also have to put out filing lists, transcripts, press releases. Everything is now publicly distributed in electronic format. I would say the biggest change, and I think this would probably be true anywhere in public policy or maybe anywhere else, is the internet. It has changed the volume of information. Tax policy is something that really affects almost everything. The volume of tax policy information has grown dramatically. The contacts and the communication have grown dramatically. The role of the media is less print oriented and more electronic than it was when I arrived. The first half of the first decade I served here, we did not have the internet. It has really changed the way we do business. But again, that change is probably not particular to us. The Finance Committee is really a receptacle of a lot of information. Information comes from the private sector, from people affected on issues, from the ABA, from the AICPA, from Treasury, IRS, JCT, and from outsiders who have an interest in a particular piece of legislation. It comes from many different angles. It has really ballooned the amount of information with which we deal.

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Q You were chosen from among an elite group of candidates to be the Staff Director of last December's Deficit Commission (the Joint Select Committee on Deficit Reduction, "JSCDR"), which was created to come up with a plan to avert a potential fiscal crisis (now popularly called the "fiscal cliff"). What successes came out of the JSCDR or Super Committee? What, if anything, does the Super Committee's inability to reach an overall plan mean for taxes and the broader economy?

A The Super Committee, of course, was born out of debt limit increase legislation that the President signed a little over a year ago. It was conceived by the bipartisan leadership in the Senate and was also agreed to by the House. It was really a unique legislative animal having powers like none I have seen in my career. The powers were an up-or-down vote, limited debate, and other expedited procedures. But unlike fast track trade authority, the Super Committee itself held all the power. The administration did not send us the legislation that was privileged under fast track. This was a bottom up privileged product that was designed to come from the Super Committee. Also, even with respect to membership—House minority had as much say in terms of numbers of members as the House majority. The same principle applied for the Senate. That is a very unique situation. It was almost like a conference committee but without two bills.

I would say to the question of success, to a certain extent I am not really privileged to discuss specific items that the Super Committee debated or produced. I can tell you, however, that a lot of the Committee's offsets were used this year. I think I can say that without any worry because I think members from the Super Committee have indicated as much. There are tens of billions of dollars of policy that have been used as offsets for deficit reduction. If the offsets were not available, we would have probably added those numbers to the deficit. In that way, the Super Committee work product has already been used. I

would say also that, for almost three months, we were privileged to have our use of the Congressional Budget Office staff and the Joint Committee on Taxation staff, plus the resources of the GAO. Just as importantly, we had a really fine staff that Sarah Kuehl and I put together for the co-chairs—Mr. Hensarling and Senator Murray. We drew resources from CRS and GAO and a number of excellent people came to work for us.

When you look at the deficit reduction issues, on the revenue side, there is a political question and a policy question about whether that should be part of it. Republicans have an issue there. Then on the big entitlements, the same question from Democrats, whether there is a sufficient mix of savings in areas, that they feel is balanced. Each side has its own proclivities about where the stress should be in terms of the mix of revenues and spending restraints. But I will tell you that I think the options on the big picture items are not a surprise. The options are there. CBO has spent a lot of time on them and they have been debated in the various places. The Super Committee drew from Bowles-Simpson, Domenici-Rivlin, the House budget, and the gangs of six and twelve. All of these folks have been talking about the same types of options. The good thing is, again, I cannot really disclose specific items, but the Super Committee spent a lot of time. A lot of work was done on those options.

We have a very good inventory of staff work that was performed at the request of members and their co-chairs and others. We served each member of the Super Committee. We served leadership. We served the co-chairs. We had a lot of internal deliberations. We had some public deliberations. You saw some hearings that brought out a lot of issues on the revenue side and the spending side. To all who were involved, I am sure it was a disappointment that we did not produce a bill and use the unique powers that the leadership had given us. But I must say, however, that I think that the Super Committee's time was not wasted. There is a lot of work product—some that has been used and other work

product that inevitably will be used. The members had great debates and discussions in Super Committee. The Senators and the House members involved have all drawn on their service on the Super Committee. Was it a success? I think it was a success in the sense that we used our resources and the great ability to tap into data. Our work hopefully will not have been done in vain because we do need to address all these fiscal issues.

Q What, if any, effect did your experience on the Super Committee have on your work presently at the Senate Finance Committee?

A A lot of the fiscal issues that the Finance Committee grappled with are also Finance Committee jurisdiction items. First off, there was a lot of discussion about tax reform. All of the work that was done in the Super Committee on tax reform is very relevant to what the Finance Committee has been doing. In terms of hearings, in terms of some of the debate, I think you could argue that Super Committee work has been helpful. I know tax expenditures are kind of a controversial term with some folks, and I understand that. For that reason I am going to use the term tax preferences. That is relevant to what the Finance Committee is doing. The Super Committee examined Medicare, Medicaid, Social Security, and other Finance Committee policy areas. All of these things have fiscal consequences. All have big policy questions. They are a big part of the problem in the sense of where the baseline is on federal spending. Yet I know some would say revenues are not sufficient under the baseline. That being said, the Finance Committee is a revenue committee. To the extent you want to do tax reform and what you think is an appropriate structure for tax reform, the Super Committee work on that translates.

Q Members of both parties have spoken in favor of fundamental tax reform. In your opinion, what pieces must fall into place for tax reform to happen in 2013 or

later? What do you think from a practical perspective that we have to add?

A It seems to me that there has developed a pretty broad consensus that on the business side, corporate tax reform—we need to deal with the rate and do some base broadening, in a revenue neutral way, so as to bring the rate down. The United States is now an outlier with respect to the statutory rate. Some would argue when you look, on a comparative basis, at the U.S. with the effective rates, we are not that much of an outlier, but setting that aside, the statutory rate is a real problem for the U.S. system. It affects our competitiveness with our primary trading partners. I do not think there is much debate on that point. Base broadening is the other part of the equation. It is a really tough question. There are clear tradeoffs. Not every tax preference is the same in the business base in terms of the bang for the buck that you will get for reform. Business tax reform affects both the corporate and individual systems. On the individual side, you have the same kind of question. That is, whether a reformed system yields some decent rate reduction and base broadening. You have the separate issue of revenue neutrality. How you look at that is important—whether you look at a solely conventional revenue or macro-economic scoring. Those are all big questions.

The good news is that, on the business side, there does seem to be a pretty solid consensus. The President released an outline, and it is still just an outline, but it does show that the administration is for bringing the rate down somewhat. I think that Chairman Camp has put out a pretty workable framework for looking at how we would get there. Chairman Baucus has indicated a direction that he is thinking of going. It means you have all the Hill players pulling for reform.

The individual side I think is tougher because you have the baseline issue. The difference between the current policy baseline and current law is a considerable difference, although it is

really more of a policy difference than a fiscal difference. The parties differ on 20%-25% of the revenue loss. On the corporate side it is not much. That is a big policy and political question that we are going to fight about in the next few months here on the Hill. We have been fighting over it for several years and I expect that there is going to be too a fine point put on it in the debates and the campaign as it develops between Governor Romney and President Obama.

One function is the good data showing that tax reform on the individual side and the business side is not a zero sum game. You can get lower rates and a broader base. It definitely brings a more efficient system, allocates capital more efficiently, leads to growth, leads to employment gains, and makes the economic environment a much more favorable environment. I think the ball has moved pretty far down the field in terms of setting the table for a reform process and discussion in 2013. The tax writing committees have spent almost two years conducting almost two dozen hearings. The two chairmen have done something that has not been done much in the past. That is to do the joint hearings. That is a very good sign. Clearly, the election will affect how the playing field is set. Tax reform may bubble up as a big issue. How it is done is up to the candidates and the other players in that arena.

Q What do you think the toughest policy issue will be in tax reform—or if you want to pluralize that, what are the toughest issues?

A The toughest issue might be one that has not been well publicized. That is the issue of transition. It is not a sexy issue. If you go back and you look at the 1986 Act you will find that it was a key issue. I arrived here shortly after the '86 reform bill was in full effect. My boss was one of the main architects of it. For that reason, I became quite familiar with different mechanical features of it. I had not dealt much with those features in practice. With fundamental reform, there will be changes

to a lot of features in the tax system that businesses and individuals have come to rely on. When it is changed, and how quickly it is changed, may be as big an issue as what is changed. There were questions on base broadening and how it is done. Senator Hatch, my principal, circulated a lot of pieces on tax preferences last summer. Those materials, derived from the Joint Committee on Taxation's Tax Expenditure Pamphlet, show that tax expenditures are largely items that tend to reside where the bulk of taxes reside. The bulk of taxes are paid, by virtue of the filing population and income profiles, by the middle and upper middle income cohorts. Base broadening is a real issue in terms of the trade-off with rates. The treatment of capital income will be a big issue too. Congress has developed a lot of data since the 1986 Act on capital gains. The data involves induced realizations and elasticity on this subject. The Joint Committee on Taxation just released a study. That study is pretty informative. To reiterate, the issue in tax reform is transition.

Q You have worked for several Chairmen and Ranking Members over the years. Some observers claim that the Senate is more partisan than ever before. Do you think policymaking on the Finance Committee has been affected by what some say is a more elevated partisan atmosphere?

A That is a real tough question to answer because I think it always depends on which side of the fence you are on in terms of majority and minority. To be sure, there are forces that have been brought to bear on the legislative process that have raised the level of politicization. There is a deeper rhythm at work. Long-time institutional pressures are pretty long-lasting.

Let me expand a bit on this point. When you are in the majority, you are usually trying to "move product," as Chairman Bill Thomas used to say. The majority members and staff move through and accomplish an agenda that the leadership and others have laid out. That is really important because it reflects

the majority's policy and political identities. The minority may or may not share those interests. The Finance Committee has a bipartisan tradition and I think it continues in that way. There is always a willingness to try to find the bipartisan center of gravity unless there is just a fundamental difference on an issue. Many times there are fundamental differences on issues. The two parties do have different priorities. Those differences are pretty well spelled out, especially in the areas of health care, trade, tax and income security. All those policy issues come through the Finance Committee.

Being in the minority in 1993, with a new charismatic President Clinton coming in and a significant majority in both houses, Republicans were an isolated minority in the Senate. They may have felt like they were solely on the receiving end. Those on the receiving end feel like it is partisan because the campaign is done, the president has won, the president is going to do work on his agenda, and perhaps invite the minority to cooperate. Maybe the president will do so. Maybe it is a real invitation. Maybe it is an invitation in form. I have been on both sides.

When George W. Bush was elected in a narrow controversial election in 2000, the Republicans held the Senate by virtue of Vice President Cheney. President Bush was very set on an agenda. President Bush had run on an across-the-board tax reduction plan. He was going to push it and the Republicans were in sync with that. The difference from 1993 was the Republicans had a narrow majority. It was the narrowest majority you can have in the Senate. Senate Republicans lost that narrow majority in a few months' time. Republicans also had a narrow majority in the House. In that time, Republicans were fortunate because of Chairman Grassley's diligence and Ranking Member Baucus's cooperation. Other Democratic committee members were open to finding a way to accomplish an across-the-board tax reduction in a bipartisan way. Chairman Grassley was fortunate to produce a bill that was a very significant and simple tax

reduction. It included a series of tax rate cuts, pension reform, education incentives and estate and gift tax reform. That bill contained a fairly disciplined set of policy changes which were fairly clear. The alternative minimum tax patch came into effect in that bill because it included significant regular tax reduction. From my perspective, it still looks like regular good bipartisan legislating. If I were working for a member on the Committee who was on the other side who may have been more to the liberal side of the Democratic caucus, I probably would not have viewed it that way. I probably would have said "Oh, this is Bush's agenda and we Democrats are not going to accommodate that." I think it all depends on where you are at the time.

You can move forward to 2009 for another example. President Obama, another charismatic president came in, won a convincing victory, and came in with an agenda to produce health care reform, to produce a stimulus bill, and to produce a Dodd-Frank type of bill. Two of those things landed in the Finance Committee. From a Democratic perspective, you have 59 senators, I guess it was 58, but became 59 when Senator Specter switched. When Senator Franken was certified as the Junior Senator from Minnesota, Democrats had 60 votes. A member of the majority would probably feel a certain obligation and unity with the administration in carrying out the administration's agenda. A member of the minority would have a different perspective. Minority members are not in the position of controlling. They may only be in the position of being a loyal opposition. Again, I think it really depends on what side you are on.

The internet, the 24/7 news cycle, the rise of the blogs, of all the people that watch the Congress and watch the players in Congress and the administration on all sides, the revolution in think tank work product, have amped up the intensity of the policy and political arguments. Take a look at the work product of the Tax Policy Center, CATO, or Heritage, or any of these other groups.

There is a lot of scrutiny of whatever Hill activity is occurring. These groups review Hill activity almost immediately—sometimes faster than even Hill staff can develop policy details. I know when I was in the majority I used to see think tanks putting out analyses of our work product. I was bleary eyed and had been up all night reading them. They would be going to town, taking apart our work product piece-by-piece. I would be still trying to get the report filed and get ready for the floor. While Hill staff are preparing, the think tankers are firing away at it, right and left. That is a lot different environment. When I started here you did not have as much of that rapid response analysis. I think it really is contextual. I do not think the environment has dramatically changed.

I can see how many people think it is partisan in the sense that both sides are fighting. When I started here we had a knock-down, drag-out fight over capital gains—whether we should go to 20%—and the Joint Committee said it lost about \$12 billion or so and the Treasury said it gained \$12 billion or so. We had that big fight and both sides dug in. There was a lot going on. When you are in the majority you think, as I said previously, it is your obligation, your responsibility to move the agenda, and you do not think of that as partisan. If you are in the minority, especially if the other side is a super majority, then you know, at the end of the day, their agenda can be accomplished whether your side supports it or not. That does change your perspective. It is like the difference between using regular order and reconciliation. If regular order is used and you do not have a 60/40 Senate, the minority knows, one way or another, it has input into the product. If you use reconciliation, it is less likely. The 2001 legislation was a reconciliation bill and Republicans were fortunate to have over one-fourth of the Democratic caucus support the conference report. I do not think the change in partisanship is as cut and dried as some folks make it out to be. ■