



Oral History of Harvey Shulman

Interviewed by:
Jeffrey Yost

Recorded: March 30, 2007
Mountain View, California

CHM Reference number: X3938.2007

© 2007 Computer History Museum

Table of Contents

BACKGROUND AND EDUCATION.....	3
INITIAL LEGAL EXPERIENCE	4
COMPUTER CONTRACTING SERVICES	5
SECTION 1706.....	6
FORMING NACCB.....	8
LOBBYING AGAINST SECTION 1706	9
CONTINUING TO ADDRESS SECTION 1706	12
DIFFERENT BUSINESS MODELS.....	18
OVERTIME PAYMENTS.....	19
KNOWLEDGE WORKERS	21
EDUCATING CUSTOMERS AND CONTRACTORS.....	22
LOBBYING FOR OTHER LAWS	23
NACCB ORGANIZATION	26
NACCB HELPED DEFINE THE INDUSTRY	28
LEGAL DEFENSE FUND.....	29
MATURING OF THE INDUSTRY	31
PUBLIC RELATIONS.....	33
NACCB AS A COLLEGIAL ORGANIZATION	34

Harvey Shulman

Conducted by the Software Industry Special Interest Group —Oral History Project

Abstract: Harvey Shulman briefly describes his personal background, education and initial legal experience. He then discusses his involvement in providing legal services to the computer services companies that were using independent contractors when Section 1706 of the 1986 Tax Reform Act was passed that eliminated the employment tax safe harbor provisions for using independent contractors. He was instrumental in helping these companies form NACCB and served as NACCB's general counsel for its first 12 years. He reviews the extensive lobbying against Section 1706 that was done over many years. He assisted many of the NACCB companies who had to fight IRS audits related to the definition of independent contractors. Many of the companies changed their business models to avoid these issues. He then discusses many other issues where NACCB successfully lobbied to change the laws: overtime payments; foreign worker permits; use of leased employees. He describes the NACCB organization during the first 12 years, the collegiality of the members and its relationships with other associations.

Jeffrey Yost: I am Jeffrey Yost. I am here today with Harvey Shulman at the Computer History Museum and this oral history is being done for the Software Industry Special Interest Group. It is March 30, 2007. Harvey, I'd like to begin with a few biographical questions. Can you tell me where you were born and where you grew up?

Background and Education

Harvey Shulman: I was born in New York in the Bronx in 1949. For several years my family actually lived in public housing in New York. I went through high school in New York and graduated from Brooklyn Technical High School, which was a school with 6,000 students, in 1965.

Yost: At that time, did you have any special interests in certain subjects or have any idea what you wanted to do career-wise?

Shulman: The high school I went to was actually an engineering and science high school. I can't even tell you why I ended up there. I think it really had something to do with Sputnik; the Russians were doing things and so it seemed like this would be an interesting thing to do, but it's as vague as that. After high school my father worked for the government and had been told for many years that unless we moved to Washington D.C., he had gone as far as he could go regionally and so when I graduated high school, our family moved to the Washington D.C. area. I went to the University of Maryland and graduated in 1969 with a Bachelor of Science degree in physics. Again, I'm not sure why that happened, but at that time, I think the year that I graduated college, I decided I wanted to go to law school and so the following year I started at Michigan Law School and got my law degree in 1972 at the University of Michigan at Ann Arbor.

Initial Legal Experience

Yost: Can you briefly describe your early legal career and the range of experience you had before joining Ginsburg, Feldman and Bress law firm?

Shulman: Yes, those were exciting times, late 1960s, early 1970s. My first job after law school was working for a federal appeals judge in Maine by the name of Frank Coffin, who used to be a Congressman and an ambassador. It was a great job, but it only lasted a year. After that, I went back to Washington D.C. and I worked for a public interest law firm where we focused on media issues, radio and television, and we represented civil rights groups, environmental groups, children's organizations, gay rights organizations. We got our funding from places like the Rockefeller Family Fund. I was there for five years in the early to mid-1970s. Then I went to teach at the University of Oregon Law School in Eugene. My plan was to stay there several years, and I was on a tenure track position but in the middle of the first year, I got a call from someone I had worked for in D.C. in prior years asking me if I wanted to come back to the Nuclear Regulatory Commission; there had been the Three Mile Island accident, and so I got offered a position at the NRC. I got leave from the law school and my leave continued but I ended up resigning from the faculty at Oregon Law School and I spent three years in D.C. at the Nuclear Regulatory Commission really trying to do a lot of reforms in how nuclear power was regulated.

And then in 1982, I went into a private law firm called Ginsburg, Feldman and Bress, which had been around for about 40 something years at the time. David Ginsburg was one of the drafters of the Marshall Plan and went through Europe implementing that plan. Mike Feldman, another named partner, had been the White House counsel to President Kennedy. The firm had about 60 or 70 lawyers; it was an exciting place to be and my work there was in the telecommunications area. I did a lot of work for some radio and TV stations. I did work for Turner Broadcasting when it was just starting out, and for the largest broadcaster in the world, which at that time was NHK Broadcasting of Japan, and really sort of focused on telecom legal issues until about the early 1980s when I started helping my brother [Fred Shulman]. My brother

had been a computer programmer and eventually started his own computer staffing firm. I didn't get paid a lot, in fact I got paid nothing, but I looked at contracts and did some things like that for him. So I was still doing primarily telecom law but finding out a lot about the operation of computer contracting firms and their legal issues and their business issues. That would've been the early 1980s.

Computer Contracting Services

Yost: In the early 1980s, what was your initial impression of that industry, that business?

Shulman: I'd say until my brother started doing what he was doing, I never really knew that such an industry existed. He was a programmer and he worked for Raytheon and Amtrak and some other companies that used his services. Of course I knew that there were large computer consulting firms. IBM did some computer consulting, as did Computer Horizons, but all I knew about was that there were basically some very, very large companies that provided computer consulting services. And here my younger brother was going out on his own and deciding he was going to have his own business and provide his services. I couldn't imagine how he was going to do that. But as I quickly learned, in the Washington D.C. area there were hundreds, maybe thousands of people like him doing that, and a lot of people around the country doing that, so there was this whole subculture of technical people who were one or two-person business operations. And so my impression was that I didn't know they existed, I was surprised that they were thriving and it was exciting to see that such a cottage industry existed.

Yost: What types of legal issues were there to examine and give advice to your brother on prior to Section 1706?

Shulman: When my brother started, he was on his own and he was doing programming, and there really were no legal issues. He got a job, it was a handshake, he got paid a certain amount per hour--that was that. For a few months he was actually living in my house while a house of his was being built. He was living in the basement and at that time he was an employee of, I don't know if it was Raytheon or whoever, and started doing some consulting on the side. This was the summer of 1979. And he formed a company called COMSYS, but it did very little. It was really just Fred and a friend of his, Howard Stein, and they had one or two small, part-time projects. But there were no legal issues. Within a couple of years, what happened with Fred is that he was good at programming and some clients of his would say, "We want you to do more of this." So eventually he left his employer, wherever he was at the time, and became a full-time contractor, self-employed, and then clients would say, "Well, do you have any friends who could do this?" And all of a sudden he started finding other consultants for his clients and getting a fee for that, typically on an hourly basis because that's the way it was done, and then there started to be legal questions. "Well, I'm signing up Mary or

John as an independent consultant, I have this contract that I got somewhere. Would you take a look at it?" So they were pretty simple legal questions. The practice back then was everyone whom he found was self-employed, everyone knew and was told you pay your own taxes; you have your own benefits. In fact, the workers loved that because a lot of them were young, they weren't interested in benefits and they wanted as much cash as possible to save for a down payment for a house or whatever it was, so there was not a lot of paperwork. But still I would look at contracts. Occasionally you'd have a contract with a customer and I remember one in particular now, Fred was doing some consulting for a very large national company and they gave him their contract to sign and I looked at it and said, "This basically has nothing to do with what you're doing; it's to provide products or services and you're going to deliver the goods at the dock and who's going to pay the freight." And he said, "Well, this is the only thing they have and the important thing is it says I'm going to get, \$22.00 an hour." So really from 1979 until the mid 1980s there were not a lot of legal issues, sort of run-of-the-mill things came up. I still got to know a fair amount about the industry because I was interested in how he was building his company. From 1979 to 1981 or so, COMSYS didn't do very much, and then in 1981 or 1982, another business partner came in, Fred stopped doing the programming himself and really went into the recruiting and staffing business to the point that they were very successful and in 1986 they had 80 independent contractors working for them, working at some of the biggest private companies in the Washington D.C. area. So I started to see more contracts in 1986 but again, this was not a legally intensive business.

Section 1706

Yost: Can you tell me when you first heard about Section 1706 of the 1986 Tax Reform Act?

Shulman: I was going on a trip someplace and I was at Logan Airport and this was in December of 1986. We have to remember this was before cell phones and before e-mail, and so my usual mode was to call my office and see if anything had happened, and I called in and they said my brother had called and it was urgent, could I call him. And I called him and while I was waiting between flights at Logan, I happened to have the Wall Street Journal with me, and my brother said, "Did you see the article in today's Wall Street Journal?" And I said, "No, but I actually have it with me." "Well, turn to page so and so." It was an article about this law called Section 1706 which targeted the technical services industry. And even more specifically, it targeted three-party situations in that industry where there was a worker, a customer that the worker performed the services for, and then there was a so-called broker or staffing firm in the middle. This law said if you're a broker of technical workers, then certain protections that you have in the Internal Revenue Code to be able to use independent contractors we are now taking away from you. And so I looked at the article and I said, "This sounds pretty bad", and it turned out that the person, the Senator, who introduced this provision into the tax code was Senator Moynihan from New York. By coincidence, a good friend of mine at the time was on Senator Moynihan's staff and so I told my brother I would call this guy and at least try to find out what

was going on. So that's when I heard about it and then, I don't know, probably in the next day or so I talked to my friend who explained what this new law was, but by that time Fred had been in touch with or received calls from a significant number of people around the country, people in the D.C. area who were in the same business that he was in, people in Los Angeles and San Francisco, and everyone was up in arms about this new law that was going in effect January 1 and no one had known anything about it until these articles came out. And so when I got back to D.C. after my trip, Fred said there was a large number of people who talked about getting together and meeting in D.C. to discuss what this law meant and what they could do about it, but none of these companies really had offices to hold large meetings and so he asked me if we could do it in my law firm's conference room, and I said sure. And so a meeting was set for a date in January where a number of companies would come together and discuss Section 1706 and what to do about it. And of course in that four or five-week period between the call and the meetings, there were lots of phone conversations and faxes to sort of plan for the meeting.

Yost: And this level of communication within the industry was unprecedented with this issue, wasn't it?

Shulman: Yes. When you talk to the individual companies, I know what they tell you is that either they didn't talk to their competitors or they might run into a competitor while one was going into a customer building and one was walking out and maybe they'd say hello, but literally that was it. And so for people around the country to be talking about this and agreeing to meet and not only around the country but for people in the same geographic area to do that was certainly unprecedented on a national scale. As we later found out, because of some state legal issues that had arisen a year or two before, companies in California, in fact, were talking to one another and had formed some local California association of contract staffing firms and were working together on some state tax issues, but this had never happened at the national level before.

Yost: And was there also a New England group by that time?

Shulman: Yes, the New England group was formed in December of 1986 after news of 1706 came out and before they knew there was going to be a national organization. They decided as a group of competitors in New England to try to get together and see what they could do about this issue. So that chapter, or that association, existed before all the groups met in Washington in January.

Yost: What did you anticipate would happen or could be accomplished at this meeting, and then can you describe how the meeting transpired?

Shulman: I knew my brother's personality and with the typical entrepreneur, everything had to be done right away and everything was simple and so the expectations that a lot of these

company owners had were that they were going to come to D.C. and they were going to talk to people in Congress and explain why this law was terrible and how the assumptions that it was based on were so wrong. And that once the facts were presented and logic prevailed, that the law would be repealed. And in fact, even before we had the meeting in D.C., the people in New England had persuaded the Congressman from New Hampshire, Judd Gregg, to introduce a bill to put a moratorium, a one-year or a two-year moratorium, on the effective date of the law. And some other folks had persuaded Congressman Dick Gephardt to do the same thing, because Congressman Gephardt in some prior years had authored a law that protected companies against IRS audits in situations where independent contractors were used. So they knew that Gephardt was interested in the issue. It affected a lot of companies in New Hampshire, which is why they went to Judd Gregg, and so there was this bill introduced and people really were thinking they're going to come to D.C. and within a few months the bill was going to pass and that would be the end of it. So I would say that for that four or five week period, what I saw myself having to do was to get expectations in line with what was feasible. The last thing we needed was a bunch of angry people to come to Washington and have a meeting and think they were going to change anything and go home and then find out nothing had changed.

So I was staying in constant touch with people, sort of asking everybody to exercise some self-discipline, to write down what they wanted to accomplish, put together an agenda for discussion and at the same time that agenda was going to include some meetings with members of Congress, and so we had to set those meetings up. But you couldn't just meet with members of Congress unless you were going to hand something out because they meet with so many people each day, unless you give them a piece of paper that they can look at, your 10 minutes of meeting time is forgotten. So we had to put together some handout information. We also wanted to meet with the IRS because the IRS was going to have to issue some sort of rulings to implement the new law, and all of these things had to be ready to go just in a matter of a few weeks. And so the second half of December and the first half of January were spent in constant communication with a number of these companies, making sure that they saw the material that was being prepared, that it was accurate, that meetings were going to be set up and who would be going to what meeting. I would say that my role at that time was to try to coordinate everything from a logistics standpoint and also to bring some order and priority to what we were going to try to accomplish.

Yost: And do you feel that you were successful in doing that? How did people interact at this meeting?

Forming NACCB

Shulman: It was a great meeting, and you've probably heard some of the stories. Most people arrived on a Monday night or Monday afternoon, which in January of 1987 was Martin Luther King's birthday. A number of us had dinner. Most people had not met one another before

but it was a good group of people. The meeting started on Tuesday in my law firm's offices and it became apparent, not just at this meeting but in planning for the meeting, that besides dealing with this issue of 1706, people wanted to form a national organization. So time was spent at the meetings discussing what would the organization look like, would it have chapters, where would they be, what would the voting structure be. We spent a lot of time on organizational issues. We also spent time discussing the strategy for upcoming meetings with Congress and the IRS, who would say what, what were good arguments, what were bad arguments. Business owners would think they had a wonderful argument and I would have to explain to them that although it makes sense to a business owner, it's sort of irrelevant to the people in Congress who have to deal with this issue on tax grounds. So the meetings were very productive and, as it turned out, there was a blizzard in D.C. I forget what day it came. It might have been Tuesday or Wednesday. But everyone was stuck in town, there were no flights out. So a two-day meeting turned into a five-day meeting. I don't think anyone could leave before Friday and I don't think the people from California could leave until Saturday or Sunday. So we accomplished a lot. The main thing was that we formed NACCB, which was then called the National Association of Computer Consultant Brokers. It had certain chapters. It was an association of local associations so there was a Southern California chapter, a New England chapter, a Northern California chapter, and so on, and each chapter chose its own representative to the national board of NACCB, and then there were four officers of NACCB. The officers did not vote on the board, so the board was composed of voting representatives of each of the chapters, and that got off the ground very well. At the original meeting there were 12 business owners or officers, and I was there as a lawyer. There were a couple of other lawyers from my law firm, but it was really the 12 business representatives lobbying against Section 1706.

Lobbying Against Section 1706

Their goal, when they went back home, was to do a couple of things. One was to get more members for NACCB, which meant expanding their local chapters, because you had to join the local chapter to be a member of the national organization. And two, to carry out the next step of lobbying against 1706 which, because the bill had been introduced to have a one or two-year moratorium, that was our focus. It was in the House of Representatives and the goal was to sign up as many cosponsors as possible for the bill. And those were the immediate tasks that people left D.C. to do locally. After they left D.C., there was a lot of follow-up work to do in D.C. I myself and some other lawyers set up follow-up meetings with the IRS, with other Congressional staffers. For some of these meetings, we needed some business owners present, because we believed very strongly we didn't want to be just a mouthpiece for a client. We wanted the actual company owners there who could talk about how this law was hurting their business. And Tom O'Donohue, who was the president of NACCB in the first year, he was elected at the initial meeting, was from a company called Aardvark Systems and Programming in Boston. I would see Tom almost every week for awhile; he flew down to D.C. to meet with me, to go along to Congressional meetings, IRS meetings, and at some point we got into a coalition with other associations that would also go to those meetings. We were not the only group fighting this law.

And so I believe the initial meeting was a great success, but we all knew we had a lot of work ahead of us.

Yost: What were some of the other groups you formed a coalition with or worked with on this issue?

Shulman: Let's take a step back for a minute and just talk about the issue. The issue was: Could individuals who were programmers, analysts, software engineers and other technical workers, could they work as self-employed contractors through broker firms without fear that the IRS was going to come in and audit the broker firm or even audit the contractor and say, "You're not a legitimate independent contractor." And if that happened, that would mean that the broker firms that hired and paid these people would be called employers by the IRS, and even though the individual self-employed workers had paid all of their taxes in full -- that is, they paid their own income taxes and their Social Security taxes and their Medicare taxes, even though these individuals were not cheating on their taxes -- the law required that when the IRS reclassified a worker from an independent contract to an employee, that the new "deemed" employer had to pay some of those taxes all over again. So the IRS was actually collecting the taxes not quite twice but almost twice -- because the IRS got the full amount from the worker, but then the IRS would come after the broker firm and say, "Well, this person is really your employee. It doesn't matter that he or she paid their own taxes, we're collecting a chunk of that from you again." And when you had a lot of these people who were self-employed and the IRS says to a broker firm, "Well, you owe us half a million dollars in taxes because we're auditing you for two years or three years" or whatever the period was, it would put the broker companies out of business. So the companies had an interest in trying to undo the law, because if they were audited they could go out of business.

Also, on a going forward basis, if you take my brother's company as an example, they had 80 independent contractors, and now people were saying, "This new law means these contractors have to be your employees." That wasn't really what the new law meant, so we had to get that clarified, but you can't just go to these workers and say, "Yesterday you were an independent contractor but next month, we're withholding all your taxes." And the workers, they'd say, "We're paying all our taxes", and the brokers would say "Sorry, but we have to do this." So besides the risk of an IRS audit that could put you out of business, you had this tension between the firms and their contractors where the broker firms were saying, "Well, we think you have to be our employee" and the contractors were saying, "We're not going to be your employee, we're going to quit." And in the middle of all this is the customer, where the worker is actually doing the work. Let's just use MCI as an example because they used a lot of contractors back then, so MCI would call up the broker and say, "Your contractor is all upset; he or she is going to quit. Do you want to make them an employee?" The contractor would say, "I don't want to be an employee." MCI would say, "Well, hmm, this new law, we're now concerned that we shouldn't have any independent contractors working here." So the customer was upset.

So we had to deal not only with the potential of tax exposure but also with what do you do to keep business going forward? How do you stop people from leaving jobs and projects from getting interrupted? It was a nightmare. And in that whole process, what emerged was that this was a situation where the so-called employer or non-employer, the broker, really had the same interest as the worker. The broker wanted to be able to use that person as an independent contractor, and the worker wanted to work as an independent contractor. So as one example I would give, if today General Motors and United Automobile Workers got together and agreed on something, everybody would think, it must be the re-creation of the world, how could that happen; but in fact, from NACCB's initial days, there was a community of interest between the broker firms and the workers. And so as part of the coalition, NACCB worked very closely with IEEE, , i.e., the Institute of Electrical and Electronics Engineers, the Independent Computer Consultants Association, the Technical Consultants Association of New England, the National Society of Professional Engineers, American Consulting Engineers Council, etc.. It really was an amazing experience to see the workers and the brokers hiring them kind of going hand in hand to Congress as a coalition and saying, "This law is terrible, get rid of it." We did also have in the coalition some business groups, the Data Processing Management Association, National Association of Women Business Owners and ultimately Black Data Processing Association, so that's an idea of who was serving in the coalition.

Yost: How would you characterize Congress' response in 1987 to this lobbying effort?

Shulman: Congress was very sympathetic. In fact let's mention the way 1706 became law. To give you the very short version, the tax bill in 1986 was a thousand pages and part of what the tax bill did was raise taxes. So if a Senator didn't like something in the tax bill and wanted to take it out of the bill, then the Senator had to find a way to put something into the bill that brought those taxes back that would be lost by what came out of the bill. So IBM was very concerned about a provision in the 1986 bill that was going to affect its international operations and international taxes, and so IBM went to Senator Moynihan and said, "This is bad for IBM, it's bad for the U.S. IT industry. Can you get this out of the bill?" And Moynihan was willing to do that and he went to some staff people on some Congressional committees and said, "We're taking this thing out of the bill, and by taking out we're going to lose 12 million dollars in taxes a year. How can we raise 12 million a year?" And people on the tax committee staff said, "Oh, we've got this report or this claim that brokers of technical workers are tax cheats and they're using independent contractors and not employees and the workers aren't paying their taxes and the government's losing money, so if you put this Section 1706 in the tax bill and take away a so-called independent contractor safe haven from these brokers, you'll actually raise 12 million dollars a year." This was told to a friend of mine whom I know had no ulterior motive, but that's the information that he was given by the so-called professionals. So as a result, 1706 got put into the bill to raise 12 million per year. Nobody really knew it was there until after the bill became law. So the fact is that the issue had never really seen the light of day, it had never been debated and the allegations about people being tax cheats had never been tested.

When we went to Congress we actually told them the way we operated and that people were receiving IRS Forms 1099s and everyone knew they were supposed to pay their taxes and this was not a cash economy business. It wasn't like you were paying cash to a janitor or a landscaper. Congress was very sympathetic and we got a tremendous number of cosponsors to the bill to put a moratorium on 1706. In fact, the majority of the House Ways and Means Committee cosponsored this bill. But then what happened was the Congressional staffers that brought us this law in the first place -- which was the Joint Tax Committee staff -- they said, "We made a mistake when we said that 1706 becoming law would raise 12 million dollars a year in revenue. It's actually going to raise 100 million dollars a year in revenue. And so if you repeal or put a moratorium on 1706, over five years, it's not that the government's going to lose 60 million dollars, the government is going to lose half a billion dollars." And the way Congress worked back then, and it's gone back to this today, if you were going to put a moratorium on something that cost half a billion dollars, you had to find a way to raise that 500 million dollars from something else. And that put an immediate stop to trying to repeal or put a moratorium on 1706, because nobody knew how half a billion dollars was going to be raised. And the rules in Congress say even though it's a staff person on a committee who's come up with this estimate as part of their revenue estimating process, members of Congress have to accept that estimate. And when the Joint Tax Committee staff people said, "We did say 12 million but we underestimated, it's really 100 million a year", Senator Moynihan and other people could not say, "Well, we can't accept that." They had to accept the hundred million a year estimate. And so when we got that news, no matter how sympathetic members of Congress were, it really ground to a halt any effort to get some kind of immediate relief from the law.

Continuing to Address Section 1706

Shulman: So we now knew we were not going to get an immediate moratorium or repeal and we said, "What are we going to do?" And the focus shifted. We still wanted to build up Congressional support, but the focus shifted to recognizing that we really need to work on the IRS, and have meetings with the IRS because they're going to be interpreting this new law, and how they interpret it could be for the worst. And we had to focus on developing contracts and procedures so that broker companies that felt they could still continue using independent contractors had guidelines that would minimize their IRS risks. And then we had to focus on changing the revenue estimate. And so those were sort of the three immediate goals, living with the new law, meeting with the IRS about it, and finding out a way to have the revenue estimate changed yet again from 100 million per year back to 12 million.

Yost: And how might you go about having the revenue estimate changed? Who was involved in making these estimates? What was the process?

Shulman: This is another great thing about NACCB and about this industry. We're talking about an organization formed of entrepreneurs, so they all want to be personally involved to make sure it's done right. And they do not want to spend a lot of money out of their pockets. They would devote their time, but did not want to have to pay for a lot of things, and they were very creative. And there is a process in Washington, D.C. called Revenue Estimating, where there are companies that make a lot of money with sophisticated economic models telling you if you change the capital gains tax rate from 20% to 15%, what that is going to mean. Some number gets spit out. We were told that no revenue estimate we came up with on our own would be believed unless we sort of worked with one of these established companies. So we actually hired Deloitte Touche, and a guy named Emil Sunley, who used to work for the Treasury Department, I think as a Deputy Secretary Treasury. And we explained this whole issue to him and we sat down with him, Tom O'Donohue and myself, and Emil said, "I don't really know anything about your issue, but I do a lot of revenue estimating, and I am just going to tell you intuitively if we repeal 1706, if we let people work as independent contractors, I think the Joint Tax Committee people are right. The government is going to lose money." And we said, "We don't believe that. We will give you any piece of data you want from our companies."

And the deal with Emil was that he said, "You know, this is going to be expensive. Here is what it is going to cost. So I will give you guys a break, a price break, and it is still expensive." He said, "But I am going to come up with a result, and you are probably not going to like the result. And so you can throw my study away if you want. But you still have to pay me for it." And we said, "Deal." And Tom O'Donohue worked with Emil putting together an incredibly sophisticated model for estimating revenue. And in the end, it really was amazing. Deloitte Touche produced a report. Now remember, their reputation is on the line on this, and NACCB could be gone in three months, so they are not going to say something they do not believe in. Deloitte produced a report that said at worst for the government, 1706 is revenue neutral -- so it probably does not raise any money. And so if you get rid of it, it probably will not lose any money. At best for the government, it is probably true that 1706 loses the government money. And if you get rid of 1706 the government will gain money. And why is that? Because employers provide a lot of things to employees that are tax-free, not just pension and healthcare but flexible spending accounts, etc. There are all sorts of things that employers provide that are not counted in an employee's income, but the employer gets to deduct as a business expenses. And, in fact, the Tax Code is less favorable in that regard to self-employed people. They could not deduct any of their health insurance costs, or if so, only a small percentage of it. It turns out that self-employed people on average did not actually shelter as much money in retirement plans as employees were sheltering. So the government actually lost more money when people were employees.

And we gave this to the Joint Tax Committee staff and to the Senators and members of Congress. This story has sort of not been told but it is an example of the IT industry using its own resources to build an economic model of something that was totally at odds with the government model; and, of course, this led to a big dispute. And so to deal with the dispute

over the revenue estimate, what happened was that Congress passed a law in 1988 as part of a tax follow-up act, or technical corrections act. Instead of having the moratorium on 1706 in it, there was a section that said, "The U.S. Department of the Treasury is required to do a study of the impact of Section 1706 on the technical services industry and on tax revenues," etc. So now there was a law that said an official study had to be done. And we knew in that period that Congress was not going to repeal the law so, again, our efforts then went back to how do we deal with the IRS to make sure they do not make it worse for us. How do we put out model contracts and other things to help companies that are still using independent contractors? But now this third area is -- how do we start working with the Treasury Department to really show them what the impact of what this law was?

I think it was at least two years later, maybe longer, that the Treasury Department came out with a 70- or 80-page report on the impact of 1706. And it was amazing. It said basically that the IT industry was being hurt by this law, that it was interfering with relationships between workers and service recipients, that these were voluntary, non-exploitive relationships. It found, and this was a critical finding based on IRS data, it found that the tax compliance rate for technical services workers and for the firms that used their services as independent contractors was actually higher for this industry than most industries. It also said that 1706 did not make it illegal to be an independent contractor. Before 1706, for several years the law said that someone who is an independent contractor -- and the companies that use their services -- can show that they're an independent contractor in one of two ways. The first way, you can show that you passed a common law employment test, which originated in Medieval England in the 1400s, when there was no computer industry. So if you can show that you are a valid, independent contractor under this very vague common law employment test, then you are okay. But since almost nobody agreed on how that test could apply to any industry, Congress had another law, a second way, which said regardless of the outcome under the common law test, there is a safe harbor that companies can use. So if you can show that it was industry practice to use independent contractors, or you got advice from a tax expert, or you had a prior IRS audit, and the IRS did not challenge your use of the independent contractors, and if you relied on one of those grounds, and you were not inconsistent with people, you were not flipping people back and forth, then you had a safe harbor as a second way. So you could be an independent contractor, either common law or a safe harbor, but since common law was a real problem, safe harbor was sort of everybody's backup.

But 1706 removed the safe harbor only from technical services workers and only from brokers of those workers. So you could still be an independent contractor for a broker or a staffing firm, if you could prove to the IRS you passed the common law test. And what the proponents of 1706 said -- and it was not really Moynihan, it was a couple of organizations, the National Technical Services Association (NTSA), which was the genesis of the law, and subsequently ADAPSO/ITAA -- what they were telling Congress was "Once you get rid of the safe harbor for these brokers, they will never pass the common law test. And you will see, the IRS will find out

once and for all that under the common law test, all of these independent contractors are really employees”.

Yet the Treasury report said that the common law test was very confusing, and that it was very hard to decide whether an independent contractor who was a computer programmer was an employee or an independent contractor under the common law test. So it sort of undermined the claim that ADAPSO and NTSA were making that, of course, all of these people are going to be employees under the common law test. And, in fact, many companies in NACCB were audited by the IRS almost immediately starting in 1987. And over a number of years I handled 30 or so of those audits. And we basically won every single audit, meaning that in just about every audit, just about every worker was deemed by the IRS not to be an employee of the staffing firm per the common law.

So, all this stuff was going on at the same time. We had a Treasury study where we were coming up with our revenue estimates, and ultimately I think maybe it was 1991, Treasury came out with a report that 1706 does not raise revenue. We has these audits going on where we are actually succeeding in the audits -- although, when you tell a company that has spent a year of its life and a \$100,000 fighting the IRS that they succeeded, they do not really look at it that way.

And so we went back into Congress, I think in 1991, and said, “Hey, we are really getting screwed because here are all these IRS rulings in individual audits that are favorable to us. Here is a Treasury study saying our tax compliance is better than most people, saying that this is really hurting the diversity of the IT industry, saying that the common law test is very vague. Get rid of 1706.” But the problem was still the Joint Tax Committee staff. And when I say Joint Tax Committee staff I am not talking about the Senators or Representatives. I am talking about people like you and me who are paid staff members. Just like they rejected the Deloitte Touche model, and said, “No, we do not agree with that”, they also rejected the Treasury Department analysis -- a 100-page report compiled over two years by the Treasury Department, which I want to say had no axe to grind but the Treasury Department controls the IRS. And the Treasury Department is not in the business of revenue estimating just to say, “Oh yes, this does not lose any money”. But we still could not convince the Joint Tax Committee staff that the revenue loss was zero. And so for many years it was very hard to do anything about 1706, because where were we going to find that half a billion dollars?

Yost: And is the Joint Tax Committee’s word final? Is there any mechanism for appeal?

Shulman: No. It is final. It is final to the point that the chairmen of the Senate Finance Committee and the Ways and Means Committee have to accept that number.

Yost: Do you know if it is common for them to discount a Treasury report estimate?

Shulman: I would say that on issues that were politicized issues, where different assumptions were made, you might have the Treasury Department saying one thing about what happens in capital gains and the Joint Tax Committee saying another thing, and they have different models. But something as really relatively simple as this, I do not know of a disagreement, and certainly not a magnitude of 10, actually more than 10. But even taking the Joint Tax Committee original number of 12 million (and now a 100 million), and now Treasury saying basically zero but let us say the number is “one” instead of zero. I do not know of other situations where there was a disagreement that was a magnitude of a 100 or 50 or even 10. Ironically, in 1997 or 1998, the Joint Tax Committee did a revised revenue estimate. This was when I forget who had asked them to, maybe Mr. Archer, who chaired the Ways and Means Committee. You really do have to believe that there were no political shenanigans there. You could ask for revenue estimates, but sometimes you were not happy that you asked for it. But we really pushed him to ask for another revenue estimate, and we continued to submit data to Joint Tax. And in 1997 or 1998, we got a tax estimate that if 1706 was repealed, on the going forward basis only, not retroactively for past years, the government would lose two million dollars a year. So the original Joint Tax number was that the government would gain 12 million a year, or lose it if it were repealed. But, then Joint Tax said “no, we were wrong. It is really 100 million dollars a year.” And now in 1997 or 1998, Joint Tax said “no, it is really not 100 million dollars a year, it is only two million dollars a year.”

Yost: And the industry was, of course, much larger at that point.

Shulman: Yes. The industry was much larger. And, in fact, the number of independent contractors in the industry has actually increased because of the way certain practices were adopted over the years to minimize the IRS risks. So we are talking here a lot of legal mumbo jumbo and a lot of economics. The unfortunate thing is while all this stuff was going on, you had an industry that always had the government looking down at what it was doing. There were audits. There were threats of government liens. There were accusations that people who used independent contractors were law breakers. For the people running their companies day to day, and for the independent contractors who only wanted to be self-employed, they did not want to work on somebody else’s plantation; it was extremely difficult, extremely difficult.

Yost: In beating audits, and in developing these model contracts, how effective was that at different points in time after 1706 with getting customers to feel comfortable to use a broker for independent contractors?

Shulman: One thing that happened is we stopped using the word “brokers.” We learned a lot about what was going on was about perception, and broker sounded very unprofessional. So now we are the National Association of Computer Consultant Businesses.

Yost: And that was 1988?

Shulman: Yes. I think it was probably 1988. We were agencies or staffing firms or consulting firms. The contracts, the model contracts, were snapped up right away by member companies. No one knew what the results were going to be, but after the first several audits were successful, people started feeling comfortable using them. They were using them anyway, because that was the only thing there was available. But people felt even more comfortable and impelled to use the contracts. And then something funny happened. Companies actually would keep their IRS letters where they won an audit, and use these letters when a customer would say, "we do not want you to send us any independent contractors because somebody is going to get in trouble here. We think it is you, but it could be us. We understand 1706 creates all kinds of problems". And some of the staffing firms would say, "Look, we were audited by the IRS for using independent contractors. Here is the letter. No change in taxes owed." So in a bizarre way -- and it never was good enough payback -- but the companies that went through this process and got cleared were able to market those letters to their advantage. That helped customers feel more comfortable.

The other thing we cannot do is divorce what was happening legally from what was happening in the real world -- that is, at various points there were labor shortages. And if a worker wanted to be an independent contractor and followed certain procedures that NACCB recommended -- i.e., had a business name, maybe was incorporated, could show it had a business account, an employer ID number, a whole bunch of stuff, had its own workers' comp insurance, general liability insurance, etc. -- then the customers would feel comfortable. They would say, "we really need the skill set, and you have presented us with a great candidate. Before 1987 we only cared about the person skills and personality. Now we care about their legal status. But you have done great screening on all of this including their legal status. They signed a great contract. People are passing the audits. If we do not take this person as an independent, I do not know how we are going to find anybody to get the job done." So ultimately things turned around, and whereas in January, February, March of 1987 you had companies like Goldman Sachs, and a lot of financial services companies, and telecom companies, saying to staffing firms, "No independent contractors, period", a couple of years later, things really kind of changed.

Different Business Models

Yost: Can you characterize what was the level of impact of 1706 on the NACCB agenda in those first five years, and how the organization began to broaden out in interests and activities?

Shulman: Most of the companies who joined NACCB in the beginning were companies that had started out as all, or almost all, independent contractor based. Because of 1706, companies had different responses. Some were very risk averse. And they said, "We support changing the law but meanwhile we are going to change as many workers as we can to employees". Some companies said "We are not going to change to employees. We are going to use contracts and fight this". Others said "We will have a mixture of workers". Some companies said, "If we start using employees, are we going to pay them by the hour, the way we pay independent contractors? Or are we going to pay them the way a lot of ADAPSO companies pay their employees as a salary benefited person?"

Also, almost all the NACCB member companies were small and mid-sized, local or regional companies. At that time with the exception of maybe three or four large IT consulting companies that were national companies and public, and belonged to ADAPSO, the NACCB membership was the small and mid-sized companies. And the IRS was more active in some parts of the country as opposed to the other.

So in view of these things, the demographics of the NACCB companies started changing. Instead of every company using all independent contractors, we had some companies now that were all employees, some that were half and half, some that were independent contractor and hourly employee and salary employee. And the question was how could you keep the NACCB group together, because what caused it to come together was something that already had changed probably the way 80% of the companies operated, at least to some degree or another.

So if we at NACCB just were a one trick pony, we were not going to be around very long. And a couple of things happened. You need to keep in mind we were dealing with entrepreneurs who really believe in themselves, and I would say are very libertarian about things. What happened is that people took the attitude: "Why should I tell you how to do business? If you want to take the risk of using independent contractors, then I think you should have that right. I will support that. But I am going to use half employees and half incorporated independent contractors. But then I may have somebody say to me, why are you using half and half? You should be all employees. I do not want somebody saying that to me." So what about the company that used all employees then – were they free from criticism? No, because what we found happening is there would be other companies --and, again, they were ADAPSO type companies -- saying to companies using all employees: "These are all your employees, and you are withholding taxes. But you are not providing these people enough benefits". So it turns out there was never really

a dividing line of how to do business. Because once you went down that path of how you had to do business, you would have everybody looking the same way a large ADAPSO company looked. I don't know who said it or what book it was in, but the example was given, and I do not mean to compare these two at the same level at all, but the example was given when the Nazis were in Germany, first they took away the gypsies and nobody complained. And then they took away the gay people and nobody complained, or the Jews, or, in one order or another, the handicapped, and nobody complained each time. And, finally when they took the last person away, and that person said, "But I did not do anything wrong. Help me." There was nobody left to help him.

And this is very hard to understand. But what people really began to believe and respect was that there are a lot of different ways you can run your business, just like there are a lot of different ways you can live your life. And no one is to say that any one model is better than another. It is a choice you make, and each choice should be accorded respect. And so the guiding principle of NACCB really became the freedom to choose.

Yost: So, there was not a lot of tension with these different business models.

Shulman: There was tension, but the way it always got resolved is that if a person is saying, "Why should we support this?" We would respond, "How do you run your business?" And they would say, "I do this." And we might say, "But you do not match your pension plan. Don't you think an employer that does not match an employee's contribution is sort of different?" So people really got to understand that when the issue was discussed at a higher level, that the tension either disappeared or was minimized.

And, in fact, what happened, which really made that point, is that after 1706 was passed, a lot of companies converted their workers to hourly employees. So you had an independent contractor, let's just say making \$50 an hour as a programmer, and that person was paying all their own taxes, etc., etc. Now you put the person on your payroll and they are an hourly employee. You cannot pay them \$50 an hour because your client is paying you \$60 an hour. So if you pay \$50 an hour and you are paying all their taxes on top of that, and benefits, etc., you are losing money. So you go back to the workers and say, "Okay, now we are paying your taxes for you, and we are doing this for you. The client is paying us \$60 and we are going to be able to pay you only \$42." And a lot of workers were very understandable about that.

Overtime Payments

But what happened was the Labor Department, the federal Labor Department, came in and said, "We see these hundred or thousands, really tens of thousands, of hourly paid computer programmers and analysts. And under the federal overtime laws, which were passed in the FDR days, the 1940s, any worker who is paid by the hour, except for doctors, lawyers and teachers,

has to get time and a half for overtime". Well, we had finally gotten the IRS off our back by saying, "Okay, I am not using independent contractors anymore. I am making everybody employees. Phew, no more IRS to worry about, maybe." But then the Labor Department came in and said, "Oh, you got all these people paid by the hour. Instead of paying that person, let's say they were making \$40 an hour, you cannot pay just \$40 an hour if they work over 40 hours a week; you have to pay time and a half, which is \$60 an hour." Well, a firm cannot pay \$60 an hour, because, especially when it adds social security and other stuff to that, it is actually losing money.

Therefore, besides doing IRS audits, I was then doing Labor Department audits. I had a meeting in Boston with a really great guy at the Labor Department who was the regional solicitor, an older gentleman named Al Ross. And I was representing an NACCB company, and I said, "This is crazy. We are paying these people – this guy earned \$80,000 a year – remember this is 1988 or whatever. And you are telling us we have to pay them another \$15,000?" And Al looked at me and says, "Personally I agree with you, but you have to pay time and a half to people. That is the law. And if you guys do not like the law, you have to go to Congress and ask Congress to change the law."

I came back to NACCB and said, "We are not going to get anywhere on 1706 until the revenue estimate changes. Meanwhile, our companies are getting nailed by the Labor Department. Maybe we should try to change the overtime provisions of the Fair Labor Standards Act." This would have been 1988 and most of the Labor Department audits were happening in New England. Not all of them, but most of them in Massachusetts and New Hampshire. And so we went to the U.S. Congress. Now remember by this time NACCB, had an organization doing more than just 1706. We had local chapters. People were really growing excited that we were not just being passive about things. So we went to a fairly junior Senator in 1988 named John Kerry. And we said, "This is what the Labor Department is doing to people in your state. It is ridiculous. And there ought to be some point at which if a person is paid enough money, even if it is by the hour, they should not have to get time and a half." He met with our company members in New England. And then he actually met with a bunch of the workers, because the workers did not like what the Labor Department was doing either, because the workers now treated as employees were previously independent contractors. Some weeks they worked 19 hours, if that is what they wanted. Some weeks they worked 60 hours. But when they worked 60 hours, as independent contractors they got paid whatever their regular flat rate was. Now because what the Labor Department was doing, staffing firms were coming in and saying to these employees, "You cannot work over 40 hours a week." And employees said, "Well, I want to work over 40 because the extra 10 hours, that is an extra \$500 a week for me. That is an extra \$25,000 a year." And the firms said "Well, no, you cannot do that because the Labor Department says we would have to pay you time and a half and we cannot do that because the customer will not pay us." And the worker would say, "Well, that is crazy. I do not want time and a half." And we would say, "Well, it does not matter what you want, the law says we have to pay it to you." So a lot of the workers, not all of them, but most of them, did not like this new

crackdown either. John Kerry's office and Senator Judd Greg's office, from New Hampshire, they talked to some worker groups. And they said, "Yes, we do not like what the Labor Department is doing either."

So John Kerry and David Durenberger, a Republican Senator from Minnesota, and Judd Greg, supported a change in the Fair Labor Standards Act. And the reasoning was directly related to 1706. It said because of the change in the tax law, a lot of hourly paid independent contractors are now hourly paid employees, and the Labor Department is applying these overtime rules that have been around for 40 years. But at some point, if the worker is paid high enough, they should not have to be paid time and a half, because they are not being abused. They are educated. They are knowledgeable. And the short version of that story is that in about 18 months from when we started this process, and it was directly NACCB's effort, Congress amended the Fair Labor Standards Act and created an exemption from overtime for hourly paid computer professionals whose hourly rate was at a certain amount, at that point 6.5 times the minimum wage.

And it is sort of funny to me how it happened, because when I tell the story years later, I see my friends in D.C. who are lobbyists or lawyers or whatever, and they say, what things have you done? I say, "Well, one of the things I am really proud about is this overtime law change." And I say, "It took 18 months from the time we started the idea, literally, until it passed and in that 18-month period, I think the association paid my law firm \$70,000 or something like that." And my friends say to me, "Your folks, NACCB, amended the Fair Labor Standards Act in only 18 months? And it only cost them \$70,000?" I said, "Well, actually what the NACCB members say to me is why did it take as long as 18 months, and why did it cost so much money?"

Knowledge Workers

You were asking about the tensions in the organization, and I was explaining that there were a lot of tensions, but that everyone understood what the main goal was, and the need to notch up the discussion even a little higher.

My vision of this was we were at a time when technology was overtaking the laws in our industry. This was certainly the case in banking, where there were just a lot of crazy old laws on the books, and in another area I am used to, telecommunications. So the old laws have to change.

Everybody was thinking about a lot of these things, but nobody was thinking about the fact that we were having a larger knowledge workforce. When you think about it, before the computer industry, the knowledge workers were people like lawyers or doctors, folks who for the most part had been in professions that had been around for a long time. And now this whole new industry had been created which was open to anybody. You could be black or white, Hispanic, gay,

handicapped. It did not matter. If you wanted to do this stuff, and you were good, you could become a knowledge professional. And yet, we had these crazy old laws that were interfering, not only with the rights of the people who wanted to use the service of those knowledge professionals, but also with the ability of the knowledge professionals to be entrepreneurs. And it seemed very anti-democratic and very much an interference with how technology should enhance opportunities rather than narrow them.

When we started talking about the issues at these level, it was not anymore just 1706 and the IRS or time and a half; it was "Who can tell you how to run your business a certain way?". And then beyond that it was recognizing that this was a new era we were coming into. We were soon going to be in the 21st century. We were in an industry that did not exist 40 years ago. We have to look at the bigger picture and stop trying to control things by a bunch of laws that are totally outmoded. That is a very different way of looking at the world. And it is still very hard to get some members of Congress to understand that. It is hard to get some bureaucrats to understand that.

One of our greatest successes is one that you probably will never read about anywhere. In 1996, the IRS came out with a 100-page training manual for its auditors, telling them how to do employment tax independent contractor audits. And we had been given a draft of that manual, as had others, and asked to comment on it. And we made a lot of these arguments that it is a new age. The final IRS manual said to auditors, "When you apply the common law employment test, you have to apply it in a way that is appropriate for the industry and the era that we are in. And things that, maybe just 10 or 20 years ago, seemed like a sign of employment are not a sign of employment today."

The goal for NACCB was really to have this vision of our industry and our workforce and to bring that vision to others by educating them and, as a result, to create a legal environment that maximized opportunities rather than attempted to minimize and patronize and do things in a way that they were done 50 years ago.

Educating Customers and Contractors

Yost: Lobbying was one method of educating; were there other mechanisms that were prominent at the NACCB for educating about the changing world, the changing economy with IT?

Shulman: NACCB went on a customer education campaign to have customers understand more clearly the value that intermediary firms bring to the process of allocating labor and, in the private sector, dealing with customers. We actually worked a lot with some of the consultant community to have them understand that those that those who continued to be independent contractors have certain responsibilities and we continued to visit meetings of consultant groups

and of customer groups. And at a lot of the NACCB conferences there were panels of customers explaining their interaction with our industry and the information flowed back and forward at the conferences and between conferences.

There also came a point, it might have been 1995 or 1996, Grace Gentry would know for sure, when NACCB started a foundation to fund scholarships for high school students to go onto junior college or 4 year college to study computer science. The association gave out hundreds of thousands of dollars in scholarships to kids all around the country and we really promoted. It was called the Open Door Foundation and we promoted it partly in a way to encourage people to take up computer science so that we would all have more local resources. Partly because it was the right thing to do; it was another example of NACCB trying to give back. And I think that we wanted to go directly to kids and let them know that an industry existed that made it possible that if they wanted to be an IT worker, they didn't have to necessarily go some place and work there until they retired as an employee – that there was an organization around and a way of doing business that actually encouraged people to take risks and move from job to job and transfer their technology with them. That was another significant thing the organization did.

Yost: And the notion of lifetime employment that had once existed with certain IT firms such as IBM diminished with downturns to the economy.

Shulman: I think it's important to keep in mind that we were not anti these other things. I think our philosophy was: let there be choice. If people wanted to go that route and they felt that it was a secure route for them and that's where their head was at, we would try to tell them we had better opportunities; that this is a legitimate way of doing business. I think what we're going to find out is that no one knows how this is going to come out but I think 50 years from now, when people hear this interview, they will think we were either the dumbest people in the world or we were pretty prescient in terms of looking at technology as not only expanding opportunities but creating ways of working that we can't even think of now.

Yost: In email correspondence you mentioned how it was path breaking that the NACCB was leading the way in lobbying in IT firms, that that wasn't a tradition for IT firms. How difficult was it to break that new ground and what do you think the legacy of that was and why had IT not got involved in that area in your mind?

Shulman: Well for the last question you'll have to ask Bill Gates. But more seriously, people say ADAPSO existed and they lobbied.

Yost: And IBM certainly lobbied some.

Lobbying for Other Laws

Shulman: Well there's no doubt that some individual companies lobbied. Clearly we have 1706 because IBM persuaded Senator Moynihan to take something out of the tax bill. But as an association really there was nothing and the ADAPSO stuff was very limited. I would say it was not really proactive, a lot of it focused on some agencies more than Congress. I lived in DC a long time before I got involved with NACCB and there are some good things about living in DC and some bad things; one of the bad things is you run into lobbyists all the time and they all tell you what they did. But I'm comfortable in saying that for the size of the organization, for the resources put in and for the output, in its day, NACCB really was sort of unequaled and it was the most effective lobbying resource for the IT industry. It is true we have not repealed 1706, but I think the day is going to come, although we sort of learned to deal with it in a way. It still should be repealed for some esoteric reasons that only tax lawyers will understand. But remember we got the overtime laws amended in 1990, and they were amended again in 1996 -- because when the minimum wage was increased in 1996, 6½ times the minimum wage, which was \$27.63, would have gone to \$35 or so. This would have meant that in order to keep our hourly exemption, we'd have to give people something like a \$20,000 raise a year. So we actually had to get the overtime exemption passed again in 1996 with some changes.

And when the overtime law changes were passed in 1996, that bill also had a very significant provision that we really wrote dealing with "leased employees". The tax laws used to say that if I'm a third party employer and my employee works on your premises for more than a year and he or she is doing the kind of work that your own employees do, then after a year my employee is now deemed to be your "leased employee". Then a bunch of laws kicked in that said that when you test your own pension plans and do other things, you have to take my employee into account. It was a nightmare and the "leased employee" laws were changed in 1996 and we actually had written changes into the "leased employee" laws in 1996 in the Committee reports. A special rule for professionals, specifically mentioning IT professions, says that even if an IT professional works on your premises for more than a year, because that person is a professional and uses their own judgment, then even though they're on your premises and use your equipment and they report to you every day, that person is not a "leased employee". Before that law changed in 1996 many customers were throwing IT consultants off projects at the end of 12 months -- for some bizarre reason, some were using 18 months while some used 6 months. But this was a major, major change in the industry. You don't read about that in Newsweek Magazine but it made a big difference to I.T. staffing firms.

We also helped change the immigration laws. At the time there was a push by a lot of the business community to increase the number of foreign workers coming into the country. We took the position that if that happened, it had to come with safeguards and a company couldn't bring foreign workers in and allow some of the low pay practices to continue. We felt that this was unfair to the American worker and unfair to the foreign worker and we promoted a new concept in the early 1990's and I remember having some Congressional meetings on this. We said H1B visas should be "portable". It used to be that if you came in as a foreign worker and I hired you and I was your employer, no matter how poorly I would treat you, you couldn't change

jobs and work for another employer unless the visa got transferred and it took months to transfer the visa. Well a new employer who needs a worker may wait two weeks or even a month, but they're not going to wait 3 or 6 months to employ you. This meant that basically H1B workers were trapped where they were and could not get out on the free market. We proposed to Congress that these visas should become "portable" because the best protection against the worker being abused would be that they can get up and take another job just like an American worker. Some in Congress said, "We don't have that with H1B visas; that's not the way the program works." Well 2 or 3 years later, I think it was 1996 or 1998, H1B visas became "portable" and as soon as a worker finds a new job and files an application to transfer the visa or the new employer files an application, the person can start the new job. Originally some companies didn't like that; they said "we brought these people into the country so we should be able to make them stay with us". But I felt that if you brought them in and were paying a fair wage, they're not just going to leave you as soon as they get here. So that was another really radical success that NACCB accomplished.

Yost: Was that an issue that was supported by most or all of the membership or was it divisive at all?

Shulman: Again like all of these issues, there were some companies who said we need that and more, other companies saying that doesn't really affect me, and other companies saying we don't really like that. But when we would have Board discussions and the people who didn't like that were asked why they didn't like it, and then it would really be discussed on the merits and people would sort of come out and say "I guess you're right, if I'm doing everything right, I'm paying them fairly and they're not going to jump ship; if they do jump ship, there are certain costs I can legitimately recover from them, not all but certain costs." So because of the Board dialogue, people began to feel comfortable about it. In any organization -- I think at its height NACCB had over 500 member companies -- you're going to find some companies that don't like something. But the organization was behind all of these changes. When you look at that period, you need to consider that although we got started in 1987, a lot of these significant changes happened in 1996 and 1997. There were other things involving the Family and Medical Leave Act that we had to deal with -- because if a worker is hired on a 9 month assignment and that person has a health problem after 6 months, you have to go the customer and tell them the person's taking 12 weeks off for Family and Medical Leave. When the person comes back after that period and the job has another month to it, whatever it is, the customer's not going to say, "Yes, I'm going to bring that person back. I've just been waiting for him or her for the last 3 months." That is that's not the way it works. So we helped create some regulations on this in regard to the Family and Medical Leave Act.

All of these things were done in a 9 year period, which to me is incredible. We we're not the American Medical Association, we're not the National Association of Realtors, and yet I think the accomplishments we made were really significant.

Yost: You've characterized the NACCB as a really grassroots organization. Can you talk about how people banded together and a large number of people contributed to this lobbying effort over time and how organized was it or how much was it motivated people working on their own with their own senators and representatives?

NACCB Organization

Shulman: It was incredibly well organized. The first couple of years NACCB had no staff. I was the general counsel but I was still a partner in a law firm so I wore two hats. But there was no staff so anything that was done, ranging from meetings with members of Congress to sending out faxes -- remember there were no emails -- was done by member companies. I'd send a fax from DC to the president of each chapter; they in turn had to refax that to the companies in their chapter. We were very much a believer in "from the bottom up" as an organization, so we felt strong local chapters were essential. In fact we were sort of clever about it because we would look at the key Committees in Congress and realize we needed some members in Minnesota because one of the Minnesota Senators was the key on a particular issue; we'd really make a push to start a chapter in Minnesota, which we did. We were not as successful with a North Dakota chapter but everything was kind of planned and very focused on building the organization in a way that would meet our goals. But in that process we were without staff for the first two years. Tom O'Donohue, when he was president, Dave Cassell, Grace Gentry -- I don't know how their companies survived. They were spending almost 100% of their time on NACCB matters. Now in 1989, early 1989 we hired Peggy Smith who had been associated with an NACCB company called Data Masters in North Carolina, which is a very fine company. Peggy left them and knew the industry so she was hired as, quote, "the executive director", which meant Peggy was in charge of the newsletter, getting out the faxes, membership drives, collecting dues. I was doing the legal work and the lobbying and the internal organization stuff, internal papers, and Peggy was doing a lot of the other things that associations normally do.

Yost: And before that it was falling on the president or the president's staff within their company?

Shulman: Exactly. For two years, and even when Peggy was there, a lot fell on the officers of the organization or the chapter presidents. I think after a year or two, Peggy hired somebody to assist her. It was an interesting arrangement. I was in DC doing some things; Peggy was in Greensborough, North Carolina doing something else. This was before there was such a thing as, cyber offices or whatever it's called now; we were doing it and she didn't report to me, I didn't report to her. We coordinated with each other, we reported to the Board and the president. There was some overlap. For example, we had a Legal Defense Fund and I was involved the documentation and the audits and Peggy had to make sure the contracts went out and dues were collected. Eventually, it might have been in 1995, Peggy maybe had two people

then. But I left NACCB as general counsel and left my law firm in January of 1999. I had been general counsel for 12 years. Peggy left shortly thereafter and the organization actually reorganized and moved its operations to DC and, there's now a full time significant staff; Mark Roberts is the CEO now, he's a great guy, and they do a good job. But it's run in a very different way from the way it was run in the early years. People who become president of the organization don't put their businesses at risk and don't have to send out faxes.

Yost: It certainly sounds like there was incredible self sacrifice and a degree of risk that was taken in accepting a role.

Shulman: It is and it was a great group of people. I think everybody during their career or their personal life should be blessed to have an opportunity to work with a group of people like this over a period of time. Whenever you think that there are bad things in the world, and there are, and whenever you get down, when you have an experience like this among people like this and you see you're not just spinning wheels, you really accomplish something and you feel you've made an impact, it's a blessing.

Yost: Was it essentially a full time job for you to be general counsel or full time and then some?

Shulman: I don't think people could do this today. And if my former law partners hear this, they'll probably come back at me. But in a law firm you had to bill a certain number of hours. You have an hourly rate. And based on that, NACCB built up a receivable account with us of over two years or so of \$300,000. When you look in the big picture, that's about \$11,000 a month; that's actually not a lot but even then we never collected everything, we wrote off a significant percentage of fees. So in order to avoid more write offs, which are bad, I just wouldn't bill some of my time and I would record it as time that I worked but non billable time because NACCB didn't have \$150,000 a year for legal fees in its budget. This is the wrong number, but let's just say I was billing 1,000 hours a year at NACCB. I was really working 1,500 hours a year, but since I wasn't billing 500, I had to make up those 500 hours. So I would do some separate work for NACCB member companies; they understood it and it was of real value to them and helped their business. So I got paid and my firm got paid at whatever my rate was. But still, if I billed 2,000 hours a year, I was really working 2,500 hours a year and only 1,500 was NACCB of which they were being billed for a thousand. Then I also would do things like reduce the Xeroxing costs; I would charge it to my personal account at the firm, and the firm typically didn't make you pay personal Xerox use. They would ask: why did I have \$212 of Xeroxing this month? I would joke it was March Madness and I had to get my pool done. I have to say that the firm was very accommodating. They really did understand what was going on; there are good people in the firm and they knew we were doing a good deed.

People would say that you guys got so rich because you got all this business from these NACCB companies. But it didn't happen; these were entrepreneurs, they always thought they knew their own answers; they didn't need lawyers. Every annual conference I'd have at least 2 or 3 companies come up to me and say, "Oh, Harvey, remember we met at the last conference?" "Yes, we had a nice talk, yes." "Well, since that conference I've really had a question for you, I'm glad you're back this year and can you give me 15 minutes?" But, these companies wouldn't hire you during the year to do this. So I think, for me, like for all the officers in the early years, nobody was doing this for money; we did it because we loved what we were doing and, I think, all of our paths would have been somewhat different, probably economically, if we had done different things. But I think we're all very happy with what we did.

Yost: To what extent would you say the organization has defined the industry and allowed the industry to be recognized as an industry?

NACCB Helped Define the Industry

Shulman: The egotistical answer would be to say that NACCB has definitely defined the industry. But I do think that's true. I think that 1706 was really a blessing in disguise. We never would have dealt with all these other issues so proactively and so positively if we hadn't come together over this issue. The organization has a statement of business principles which is like an ethics code which defines a standard of ethics in the industry. And we have model contracts. All the things that I think bring a level of excellence to providing service weren't actually provided by NACCB, but I feel that NACCB was the vehicle that allowed the owners to jointly define the industry and its traditions, if something this young can have traditions. NACCB really helped bring all this together and then disseminate it in a way that I think the industry is respected. There will be people who say you folks are really not consulting firms and you're just selling bodies and workers who do this. You can say that about any way of doing business, but I think that the organization has contributed enormously to the positive image and financial success of the industry and as importantly to the workers who work in the industry, whether they're independent contractors or employees.

Yost: In the early years with 1706, and especially with NTSA and ADAPSO lobbying on the other side of issues, has that continued over time and how much was that responsible for people's ongoing negative perception, those that had an ongoing negative perception of independent contractors and brokerage businesses?

Shulman: Well, NTSA does not exist anymore, so maybe that speaks for itself.

Yost: When did it disband?

Shulman: I would say at least 5 years ago; it had been around awhile, probably over 20 years but it just doesn't exist anymore. I think that ADAPSO, which became ITAA, was poorly served by a few companies in their professional services division/ITS division who were able to convince the organization to take positions that I think were more in line with private business interests rather than the good of the industry as a whole. Maybe they thought what's good for General Motors is good for everybody, so maybe they felt what was good for them and how they did things should be good for everybody. But in NACCB we tried a number of times over the years to work with ADAPSO on some issues. It was very hard to do that because there was a lack of trust. When it came to the immigration issue, ADAPSO has different constituencies. So while they had a professional services/ITS section that was made up of what were called consulting firms, they also had divisions that are made up of the IBM's, the Digital Equipments back then and the Microsofts, and those companies have mixed feelings about contract labor. It's like, they need them but I don't know if they really want them. So when we got into the immigration issue, if a lot of these companies could hire foreign labor directly, they maybe had less need to use staffing firms to make matches. But, NACCB took on ADAPSO on that issue; we felt their immigration proposal was too broad, and I think they opposed portability.

But I think the outcome of that lobbying for the American worker and for the IT industry and for staffing firms in IT was a solution that was a lot more balanced in which everybody won something rather than what would have been the case had ADAPSO gotten its way. So yes there continued to be tensions between the organizations, there were differences in position. But I don't think that was inevitable; there's an organization, American Staffing Association that used to be called National Association of Temporary Staffing Services or something like that that was a large organization that Manpower and others belong to. In some ways you could say they're a competitor because they're staffing firms, although not a lot of IT staffing firms belong to them, relative to NACCB, and that's what we specialize in. But we've always gotten along very well with ASA; we like the people there and we've worked together with them on some issues, like "leased employees." On some issues where they wanted our help and it wasn't really our thing, but it didn't hurt us, we were willing to do that and vice versa. So when people have the will to work together and have mutual trust, the fact that you're competitors for members or not all your views coincide, that doesn't really stop you from working together but that just never happened with ADAPSO or NTSA.

Legal Defense Fund

Yost: One thing we haven't discussed that was important for the NACCB is the Legal Defense Fund; can you talk about that a bit?

Shulman: Well, we knew we weren't going to repeal 1706 immediately and we knew there were going to be IRS audits and we knew that using independent contractors was not illegal. When it got clarified that 1706 did not make it illegal, we just had to do things in a more formal

way to pass the common law test. We knew that there were companies that were going to be audited by the IRS and these companies could not defend themselves because they were using local lawyers or accountants who knew almost nothing about these issues. They couldn't afford to spend \$50,000 or \$100,000 in legal fees or if they had to go court, Lord forbid, spend half a million dollars to go to court over this, not even include paying any back taxes if any were due. So the NACCB companies in New England, through Steve Kenda, Tom O'Donohue and Bjorn Nordemo, had formed a Legal Defense Fund which basically said, if any of you gets audited by the IRS, we'll chip in to help you fight the IRS. They brought this concept to the national Board and asked about setting up a national Legal Defense Fund. Remember we had no staff, so a guy from Northern California, I think it was John Chamberlain, was appointed chairman of the Legal Defense Fund committee along with Tom Schellenberg, who owned a company in New England, and along with me. We agreed to put together a national Legal Defense Fund that would help member companies by contributing to the legal fees.

What happened was that we had developed model contracts and said that if you use an independent contractor and you use this contract, you won't eliminate your IRS risk but you'll minimize it. You can make some changes but there are certain things you can't change because it's tied into the common law factors. So if you use this contract, you are eligible to join the Legal Defense Fund. It was voluntary and if a company wanted to join, they would pay dues of \$200 or \$250 a year above their NACCB dues. For \$250 a year you also had to pledge either through a line of credit or a letter of credit, or I think at one time you had to come up with the money and put it in a NACCB account, you had to pledge up to \$10,000 a year. If any NACCB Legal Defense Fund member was audited by the IRS, the first \$5,000 in legal fees would be paid by the fund, then the next \$5,000 or \$10,000 was the deductible paid by the member and then after that I think 75% or 80% was paid by the fund if you followed the contracts. That meant that at one time, LDF had over 100 companies in it voluntarily, each pledging \$10,000. So we had a million dollars in pledges from members to contribute to the legal fees of companies fighting the IRS and I think there were probably 20 something NACCB companies. There were more than that audited by the IRS, maybe 40 or 50, but probably 20 or so were in the LDF and they got a chunk of their legal fees reimbursed by the organization. One company in New England spent, I think, over \$200,000 on legal fees. They had no choice because the IRS assessed them over a million dollars in taxes and through the contributions of the LDF over \$100,000 of those fees were reimbursed to the firm and the million dollar assessment that was made by the auditor at the exam level was reduced to \$10,000 in the IRS appeals office. I don't think that company would have been able to go through that process without not only a contribution from the LDF -- but also without knowing that if it had to go the next step, and if had to go into court, it could take that position because the money was there to do it. So it was really an incredible creation of some of the NACCB companies that saved the lives, literally saved the lives, of many businesses.

Yost: So roughly what percentage of the NACCB were members of the Legal Defense Fund? Was it most?

Shulman: No, not most. I would say maybe a quarter. And I think that was because the IRS was active in some parts of the country more than others. It was very active in California, in New York and Boston and DC. So you had two-thirds, three-quarters of the companies in those areas joining. The IRS was not doing very much, believe it or not, in Chicago, and not a lot in Dallas. So, in some chapters a very high percentage were LDF members. In other chapters it was very low percentage.

Yost: Do you have any sense why there was this geographic concentration of audits and IRS focus?

Shulman: Yes, absolutely. The IT industry, of course, is a predominant industry in some places more than others. So when an auditor would start going after an IT staffing firm, he could quickly knock one down and then two and then three. They'd know that in New York there were maybe 200, 300, 400 companies.

Yost: It would send a message?

Shulman: It would sort of go down the line. I know this because the auditors told me this. They read the *New York Times* and saw who was advertising. And they could keep busy for three or four years doing audits of these companies. But if you audited a company in Kentucky, which did happen, what are you going to get? Two or three companies? So that was one reason for the concentration. Secondly, the IRS had-- they called them Employment Tax Specialists-- and I would say that was a misnomer, but they had these employment tax task forces that were focused on independent contractor audits in certain parts of the country, LA, New York. And they were offices of multiple agents or examiners. And we have to remember that every other industry -- hairdressers, health services, janitorial services -- every other industry could beat the IRS, either by winning under the common law test, or the safe harbor provision. Only one or the other, you didn't need both. But the IT Services industry had no safe harbor. You had to win on the common law test, which was a very vague test. And so where these IRS task forces existed, and where they were told to go after independent contractor issues, and where there was an area of the country which had a lot of IT operations, and because of 1706 -- and I'm not into hunting, but it was a hunt and it was almost sad -- it was like shooting a three-legged animal. The way the IRS looked at it, why should they go after a four-legged animal that could actually run away or have some defense? So that's really why it happened.

Yost: One thing I'd like to get a sense of is at different times what percentage of the industry were members of the NACCB?

Maturing of the Industry

Shulman: That's a very, very hard question to answer. There are people who staff out IT workers, either as independent contractors, or employees, and their home is their office, and maybe they have six people on a contract. There are hundreds of those kinds of operations around. There are probably fewer today because of changes in the industry in the 1990s. So, do you count all of them and do you say, "Oh, each one of those is a firm?" Or do you say, "Well, there are 600,000 IT workers performing contract services, and our companies provide the services of a third of those, or a half?" But then there's no reliable number on who's doing IT contract services. The DOL, Bureau of Labor Statistics they try to improve things, but there're using standard industry codes, and how do you define what's even an industry. There is almost no definition of this. So how do you even know how many workers there are? You can look at some IRS data, but I think the best NACCB has done in the past is to say that its member companies represent X-billion dollars of business. And honestly in recent years, I don't know what that number is; for a while there were some companies in NACCB that had half a billion dollars of business each.

Yost: With it being almost exclusively in the early days, and predominantly later on private companies, this industry wasn't analyzed much by market research firms and analyst groups like Gartner Group and others, was it?

Shulman: Probably not in the way you're asking that question. I don't think there was a separate analysis of the IT staffing or contracting industry. There are studies of the staffing industry, there are studies of the IT industry, there are studies of IT consultant industries – which of course, includes Accenture and EDS which is not what this is. So, no, I don't think there really was that kind of study. There was a lot of M & A activity in the IT staffing industry in the early 1990s to the late 1990s. It was a huge transformation. Before 1993 or 1994, maybe you had two or three or four large staffing firms, and they were public, but by no means were they Behemoths and they didn't monopolize. It wasn't like they're being an AT&T. You had Computer Horizons and CTG [Computer Task Group] and some operations like that. But when mergers and acquisitions took place in the mid-1990s, a lot of the Wall Street analysts specifically analyzed the IT staffing industry. Robinson-Humphreys and Fleet Bank in Boston were funding some acquisitions, and so there actually was some pretty decent data, and you could read about profitability and growth and all those things, but it was kind in the context of things changing dramatically.

Yost: With this consolidation in the late 1990s, were a number of these firms becoming members of the NACCB, and was that changing the character of the organization?

Shulman: First of all, many were buying the NACCB members. And so, in some years, NACCB lost 15 companies, because they were all bought by two or three companies. In a number of those cases, the company doing the buying might have been a rollup or a combination of the others. So it stayed in NACCB. In other cases, after a while, some of the

companies that had been bought said, "You really should be in NACCB." Or they were using NACCB contracts, which you couldn't use unless you were a member. So there was a time when we had two, three hundred million dollar public IT staffing firms that were NACCB members. CoreStaff became COMSYS which became Metamor; Staffmark, which had a huge IT presence; AccuStaff, which became Modis; Cotelligent; PGA – I could go down the list and at some point or another, just about all of these were NACCB member companies.

It didn't really change the nature of NACCB, because in those days there was only one amount of dues. I think it's tiered now, but it's not way out of line. So it's not like a large company was paying \$50,000 in dues, and a small company \$1,000. And a large company would say, "Well, for \$50,000 I better control this organization." It was really a relatively small amount of money, and then a lot of the rules required officers of NACCB to be either company owners or attend meetings. I felt it was important for the large companies to join. We wanted them. And many did join, but by no means could they control the organization. Even if all of them got together, and let's say they represented, \$5 billion of business, and let's just say all the other business together was a high number-- but let's say \$5 billion. So these ten large companies represented half the revenues of association members. But they were only about five percent of NACCB revenues. So they couldn't make demands. And actually it was a good thing, because the large companies really got to understand that in a lot of ways, they had a lot more in common with the smaller and mid-sized companies than they believed. A lot of the large companies, because they were public, had rules for a while of not using any independent contractors. And they were starting to lose business to our members. And by joining NACCB, we educated them and they learned they could use independent contractors. Here are sample contracts and here's the way to do it. And most of these companies, probably all of them, started using independent contractors again, which helped legitimize the use of it. So suddenly it wasn't, that some small company in Ohio was doing it, it was a half-billion dollar public company. So I was one of the people who did whatever I could to encourage large companies to join. There was a lot of resistance to that within NACCB, but in the end, everybody realized it really was better for everyone.

Public Relations

Yost: The NACCB was very effective at public relations. Can you speak of your role, and the role of others in the achievements of the organization?

Shulman: Yes, I think maybe for one year we had a paid publicist – and I wouldn't even call it that, because it was a guy who used to be in the industry and then left and set up a PR firm, and we paid him a little amount of money. So we really never had hired a PR firm in that sense. And we never promoted NACCB in the national media. We didn't run ads in the *New York Times*, but when an issue came up we were very, very effective in getting publicity for it in a very newsworthy sense. So on the immigration issue, NACCB kind of helped blow up the

stories on foreign workers coming here on H-1B visas in the late 1980s, early 1990s and being paid only \$100 a week, living many to a house, and that resulted in a very effective “60-Minutes” story that had a real impact on what was going on in Congress.

On the independent contractor issue, we had members who were audited by the IRS, and whose lives and businesses were almost destroyed as a result, appear on “NBC Nightly News.” CNN ran stories about things we were doing on the overtime issue, and on the immigration issue. If you actually search the *New York Times*, and *Wall Street Journal* archives, not to mention Computerworld, you’ll find a number of stories; not just news stories that NACCB is lobbying on a bill, but we were very creative in emphasizing situations that were compelling. The media covered those stories, and it became a human interest story to show how something the government was doing was dysfunctional, and the coverage was terrific! And we were more interested in winning that issue than trying to use that to get members. It wasn’t the goal of the story to puff ourselves. The group was very focused on achieving results. For example, the immigration thing, I think it started with a chapter in DC or California contacting “60 Minutes,” and Leslie Stahl did the story, and I got called by “60 Minutes” to provide some background information, but a lot of it was generated by the membership, with the assistance of the National.

I was NACCB General Counsel for 12 years. I probably testified a dozen times before Congressional Committees, but above and beyond my testimony, Grace Gentry testified and Steve Kenda testified. So we had a number of members testifying like George Enochs from Dallas. It’s not easy to be a Congressional witness. You don’t volunteer, you have to get chosen. We really didn’t have a PAC. We weren’t distributing money on Capitol Hill, but again, our stories were so compelling, and since they represented the best of American business and entrepreneurship, we consistently got invited to tell about how this law or this agency or some other government action was really hurting the technology industry. We’re all very proud that the issues got that kind of exposure.

NACCB as a Collegial Organization

Yost: One thing that really struck me this morning was, I believe, it was Grace Gentry who mentioned that from the very first conference, there was a great openness to the organization. Can you talk about that openness and learning within the organization how firms helped one another, and how it helped grow an industry? And how did new firms learn to grow, expand, and how that changed over time with the organization? Was it typical of the organization throughout the time you were there?

Shulman: The last question is easiest. All the years I was there, there was a tremendous amount of sharing. The annual conferences which started in 1988 included seminars or panel discussions of issues that were important to the industry. Especially in the early years, the

panelists were all company owners, or officers of companies, and the topics were the things that concerned them. And by no means were they all legal issues. That was sort of a small part of it. There were things on how you grow your business. How do you get from being a small company over the hump to be a mid-sized company? How do you build a back office infrastructure, and a front office infrastructure to pay people, do invoicing, recruit candidates, what sort of software is out there. What are the sorts of things that increase the profitability of the company? People wouldn't exchange confidential data, "This is what I charge; this is what you charge," but they did share how you can become more profitable. And we'd have these panel discussions, and someone would get up and say, "Well, this is the software I use in my back office; it's great in this, but it has this other thing that I really don't like, and we had to put a customized fix in," and someone would say, "Well, we tried that software, but we found something better." And these were all things that were making companies operate more efficiently as competitors, so people were telling their competitors, how to be more efficient! That was pretty amazing!

Yost: Were you surprised by that?

Shulman: If you ask in the abstract, yes, but I got to know these people first. So was I surprised? No! I These are people who are by nature giving people; but also, I think a lot of their attitudes were, "I can tell you everything, but no one can ever implement the way I can implement it. So I'm really not that worried, because I'm smarter than you in carrying this out." Or, what kind of people do you hire? Who makes a good salesperson or a good recruiter? And people would say what they go through, and what tests they do, but they never thought that anybody else was really going to use that information and be able to be smarter than the person who was revealing it. And if they were, by the way, they thought, "Gosh, I guess I better get smarter, because I'm missing something." So there was always a challenge. And so, no, I wasn't really surprised. I would say it's unusual, but it wasn't surprising.

Yost: Are there topics you feel are important that I haven't covered?

Shulman: I think at the plenary session earlier today, I said this and it's probably a good thing to close on. You're studying this industry, and you're archiving this industry, and NACCB happens to be a player in the industry. And this conversation's about NACCB, because that's the entity I did most of my work for, although in 1999 when I left law practice, I actually joined a staffing firm for a couple years, and was in-house and a part owner, and sort of did all this stuff as a business person. But I think when the story of the industry is told, and when people look back on it, I would like to believe that whatever shape the industry ultimately takes, people will say, to some degree, "That was as a result, in a positive way, of the things that NACCB did." I said earlier today that NACCB was really not about creating an organization. It was a movement, and it was a cause. And people ultimately understood that the cause was not 1706, the cause was the ability to choose, to be nimble, to give opportunity, not just to company

owners but to workers, to students. And because it was a cause for so many of us in the first several years, there was tremendous passion about it.

Will the organization be around 20 years from now? I don't know. It's around today, it's doing well, it's been through all sorts of downturns in the IT economy, and I think it'll be around a long time. But even if it isn't, I hope that when you study how the industry got shaped, even if you left out the name of NACCB and you left out the name of any of the people involved, that people will understand that there was some organization there, and some group of people that actually made a difference. Long after we're gone and the organization is gone – if that happens – I think there will be those differences. And that's something that, I guess, historians will figure out.

I read a lot of American history; I read a lot of books about Washington, Jefferson and Adams. I'm reading a book now about President Buchanan. You look at things today, and you look at why is the State of Virginia the way it is today? And why is it different from Pennsylvania? They're so close together. Or a better example, why is Virginia today different from Massachusetts? They're both on the East Coast and they're not too far apart. But Thomas Jefferson had totally different views of things than John Adams. And you say, "Well, does that have anything to do with what's going on today in Virginia and Massachusetts?" And I'm not a historian, but my view is, "It has to!" I can't quantify it, I can't track it, but I'm just convinced that's the way it is. And so I think that this is what this is all about. I don't know if anyone will ever be able to explain why or how or whatever, but I do believe the IT staffing, or the IT services, or whatever you want to call it – the IT industry, and people's lives and how they work, their lives are going to be different because this group of people existed. You guys can maybe tell us why!

Yost: Well, it's been a great pleasure to conduct this interview and to meet you, and I thank you for your time.

Shulman: Thank you. I'm really very honored that you asked me to do this, and I appreciate it.