



NACCB Plenary: Impact of Section 1706

Moderator:
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NACCB Plenary: Impact of Section 1706

Conducted by Software Industry SIG – Oral History Project

Abstract: In a Plenary session, all of the participants discussed how Section 1706 triggered the formation of NACCB, how the law came to be passed and what impact it had on the various broker businesses. The participants explained the IRS rules for independent contractors and how the Safe Harbor provision avoided any concern for these rules by the broker firms prior to Section 1706 becoming the law in 1986. The NACCB came into existence as an owner driven organization after the advent of Section 1706. It continued to operate with little paid staff for a number of years, but broadened its activities into other areas to support its members.

Participants:

<u>Name</u>	<u>Affiliation</u>
Burton Grad, moderator	Heights Information Technology Services
Glenn Bugos, historian	Moment LLC
Dave Cassell	Pro-Access
John Chamberlain	Chamberlain Associates
Jane Cronister-Ross	JM Ross & Associates
Randal Evans	The ProVisio Group
Grace Gentry	Gentry Associates
Richard Gentry	Gentry Associates
Dan Greenburg	TSR Consulting
Jon Hahn	Independent Contractor
Luanne Johnson	Heights Information Technology Services
David Hicks	Hicks Consulting
Steve Kenda	Kenda Systems
Phyliss Murphy	P. Murphy & Associates
Bjorn Einar Nordemo	Data Arts & Sciences
Mark Roberts	NACCB
James Ross	JM Ross & Associates
Fred Shulman	Comsys, AETEA
Harvey Shulman	NACCB
Peggy Smith	Data Masters
Jeff Yost, historian	Charles Babbage Institute

Burton Grad: This is the second Plenary Session of the NACCB meeting. We're going to start this session by talking about Section 1706 and how the various broker-type professional services companies and local groups coalesced around that issue and then about the evolution and development of NACCB.

IRS Rules and Safe Harbor Provision

Let's start with 1706. One preliminary question: It was mentioned that there were two state organizations in California. But in none of the other states were there any state activities. Were any of you concerned about the IRS rules that were out there prior to 1706, the 20 questions that were there from long before that?

Phyllis Murphy: There was a firm in Southern California that had been audited by the IRS; and they had a very unique contract arrangement with their people. If the person went to work for a corporation and they were there for, I believe it was 24 months, then the person could go directly to work for the corporation and no longer have to go through the broker. This was a very, very unique business model for a broker. He got audited by the IRS; and all these people were found to be his employees. The only reason I know this is because I got called as an expert witness to go and speak. The broker firm was down in southern California,

Grad: Yes this was an IRS issue. Any of the others of you had an IRS issue or concerned about it prior to 1706?-

Steve Kenda: Prior to 1706, we all had safe harbor protection under 530. That was common industry practice, so it was a non-issue.

Grad: I have a question, Luanne. When you and I started Heights Information Technology Services, this was a thing we were very concerned about. We took the 20 checkpoints, and we wrote our agreement with our independent contractors, with our non-employee staff people that we were going to use, around those 20 points. They had to effectively swear to all the things that were there to give us protection under that. We felt we had to record that as part of what they signed. Apparently, to the rest of you, this wasn't a big issue.

Richard Gentry: Well, what would you do-- I'm just curious, what did you do if they would not swear to all those? Suppose they swore to 18 of the 20. What would you do?

Grad: We made a judgment call as to how much. We used the words that were directly out of the 20 points. When I've talked to some of you privately about that, it just didn't seem to be a focal point [for you].

Dan Greenburg: Well, as Steve said, the ones that knew about the law, we knew we were protected by what was called the Safe Harbor Law. What 1706 did was take us out of the Safe Harbor Law. It just created this new law so that the 20 questions applied to us. Before that, we knew we were being consistent about our practices and our practices in the industry; and we were confident about that point. So it wasn't an issue. We didn't have to satisfy the 20 questions. That's exactly how I interpreted it.

Harvey Shulman: I don't think that people even knew of these questions.

Grad: That's my question, Harvey. Were you aware of these things?

Grace Gentry: When we started our business, we were small enough and ignorant enough that we didn't know anything about it until we joined NACCB. As soon as we did that and learned about it, that's when we became concerned about those sorts of things.

Fred Shulman: In Washington, I would say we had no clue. It was just a way of doing business that a number of our companies used. We used independent contractors. We had no ideas of 20 questions, Safe Harbor was our answer.

H. Shulman: Maybe California was different, but nobody knew there was a Safe Harbor, for the most part, until it was taken away. Then, not only did they find about the Safe Harbor, they found out about the 20 questions.

Grad: That was my point. Whereas I took this for granted, that everyone was aware of those 20 questions. When we started our little company in 1979, I just took this for granted, that everybody was doing the same thing; and we went through this every elaborate process.

David Hicks: The Safe Harbor didn't come in until 1979 because your cousin [here he is referring to Dave Cassell's cousin, Congressman Dick Gephardt] was responsible for passing it. And after that thing was passed was when the IRS decided that it was going to go after other industries that weren't "named," not the accountants, doctors, lawyers, and Indian chief-type people who were sort of specifically statutorily exempt. That's when the IRS and the local state body started trying to go after people, after 1979.

Just for some quick background, I went into business in 1979; and I learned about it from my father, of all people. It was an article in the December 21st, 1979, issue of National Review, which I have a copy of. It tells the story of the buildup to the public pressure being created to do something about stopping the IRS arbitrarily reclassifying employees, and how on the Senate side, Bob Dole carried the bill and on the House side, as you said, Dave's cousin, Dick Gephardt, was a big part of it. This sort of tells the whole story.

Section 1706

Grad: Let's move ahead to the 1706 issue. Where's the trigger point? Was it California? Was it Washington? Where was the trigger point?

Hicks: I first became aware of it when somebody from NTSA, the National Technical Services Association, came to a hearing in Sacramento; he testified before assembly and senate committees about the independent contractor issue, and handed out the fact that this thing had been passed in the dark of night, sponsored by Senator Moynihan.

They specifically targeted me because I was the point person for SCBA [Software Contracting Businesses Association] on these testifying situations in Sacramento. I'm sitting there with a smug look on my face because we just won over the legislators; and I get handed this thing by this clown. That ruined my afternoon.

Grad: Let me stop you for a minute. What were the primary provisions of 1706? Who's the best one to tell me that? Harvey, what were the primary provisions of 1706?

H. Shulman: Well, it had only one provision, which was to say that in a three-party arrangement in the technical services industry, which it defined as programming, analysis, engineering, drafting, and designing, involving -- it didn't use these words, but it meant a customer, a worker, and a broker - that the Safe Harbor for using independent contractors would no longer apply to the broker. And that, in judging whether the broker's workers were employees or independent contractors, instead of the Safe Harbor being an alternative way out, the broker had to prove its case under the common law factors.

Grad: And the common law factors are what we're talking about, these IRS rules, or is it something else?

H. Shulman: Yes, they're referred to as 20 factors. They're really not exactly 20 factors; but it's a very, very old test that actually originated in Medieval England. And you look at a number of factors, and there's no formula for how many you have to pass. In fact, historically, before 1706 and later in all industries, the IRS has taken situations where a company passed 16 of the factors and failed four and said those four are so important that the worker is not an independent contractor.

Grad: Let me make one point. Safe Harbor, do you want to define that also to us technically or legally?

H. Shulman: Safe Harbor said that, regardless of whether you pass or fail the common law, you were safe if you can show that you hired independent contractors on some reasonable basis - and the reasonable bases were said to be you were previously audited by the IRS and the IRS never challenged your use of independent contractors, or you could show it was industry practice to use independent contractors, or you could show that you were relying on some old IRS revenue ruling or court case that was analogous to your facts.

If you could show you had some reasonable basis - and it didn't have to be only those three, it could turn out that you met with your accountant and lawyer and they reviewed it with you - but if you had a reasonable basis, then you could continue using the workers as independent contractors if-- and this is the big if-- if you were consistent in the treatment of workers. So you couldn't have a situation where you treated two workers identically but one was an independent contractor who paid his own taxes and one was an employee who did not. So even though it was industry practice to be inconsistent, if you were inconsistent, you lost the Safe Harbor.

Grad: And the drive for having the rules on these things was because of tax reasons? What was the driving force behind this? Randal, are you familiar with this?

Randal Evans: It was driven by ADAPSO, by the big companies who were tired of having us as competitors. It had nothing to do with the IRS.

Grad: The original sentiments, both of them where the Safe Harbor was applied, were there long before 1706. So my question is why did the government care about collecting money on taxes? That was the original purpose of these set of rules, weren't they?

Evans: Well, the Safe Harbor. First of all, the intent was to re-write the definition of an independent contractor; and that was supposed to happen, I think, within 12 months, in 1979?

H. Shulman: In the 1970s, the IRS audited lots of industries, but probably not this industry. So many small businesses in particular were going out of business. So Congress responded by saying this common law test is too confusing. We're going to come up with a new test; but until we do that, we'll put a safe harbor in. So actually, this Safe Harbor, which became permanent in 1978, it had been adopted for a year at a time. It was a year, then another year and then, finally, in 1978, they adopted it for the last temporary time. But it hasn't been changed since 1978.

Grad: David, is that your view as to what happened?

Hicks: I think what happened is that we got toward the end of the 1980s, more and more of the broker type companies were coming into play; and they were creating severe competition for what you referred to as the professional services firms, the "employee-driven professional

services firms”, to be politically correct. This was really driven - and I think Luanne Johnson (then James) was there at the time. Jack Courtney from Computer Task Group was one of the leaders and I understand was directly involved in the passage of that bill.

How Section 1706 became a Law

H. Shulman: Actually, this is the time to separate myth from urban legend. This really does need to be clarified because we know exactly how 1706 originated; and it was not ADAPSO. There was a lobbyist for NTSA, National Technical Services Association, who was basically being paid by NTSA/CDI in Philadelphia. CDI was a very large employee-based professional services company; and CDI in particular was very upset that a lot of its workers -- as was happening in ADAPSO companies -- were saying, “We don’t want to be employed anymore. There are other people working as independent contractors who are making more money, so convert us to independent contractors.” These companies said, “No, we don’t want to do that for a whole bunch of reasons.”

So NTSA, primarily with the backing of CDI, wrote a letter - which we actually have a copy of - from the NTSA lobbyist to a guy named Kent Mason, who at that time worked at the Treasury Department. And he said to Kent Mason a number of what we think were false things, “These companies, these brokers that use independent contractors, are cheating on the tax laws. The government is losing revenue. It is unfair to the industry that operates within industry guidelines and is employee-based, so you should remove the protection of the Safe Harbor.”

Well, Kent Mason was just a career civil servant in the Treasury Department. However, some months or a year later, very fortuitously, Kent Mason moved from the Treasury Department to the Joint Tax Committee staff. And anything that gets passed in Congress as tax legislation has to be reviewed by the Joint Tax Committee staff, where they analyze it on policy grounds, but they also talk about the financial consequences, the tax consequences.

So what happened is there was nobody pushing this in Congress; but Senator Moynihan, in the big tax bill of 1986, at the request of IBM, wanted to take a provision out of the tax bill that hurt IBM in its international operations. By taking it out of the tax bill, the tax bill would’ve lost 12 million dollars a year. So under the rules back then, he had to find a way to make 12 million dollars back.

So, Moynihan’s office went to the Joint Tax staff and said, “Well, do you folks know any way we can make 12 million dollars back?” So this guy, Kent Mason said, “Well, there’s this industry out there called brokers; and the government’s losing lots of money because they use independent contractors. So what Senator Moynihan should do is repeal the Safe Haven for the technical services industry in three-party situations. That will raise the 12 million dollars a year that would be lost if the IBM provision is taken out of the law.”

And, in fact, at 2:00 in the morning, it got put into the tax bill as a very non-controversial item that had never seen the light of day. The only reason that we know about this is because after 1706 was passed, we filled a Freedom of Information request. You can't get stuff from Congress; but we happened to file it with the Treasury Department and the IRS. And, lo and behold, in this stack of papers we got we see the genesis of 1706 and the NTSA letter. So, that's really how it started; and it was a very effective and clever way to basically put a bunch of people out of business.

Grad: Tell me who NTSA is. Who were they? Were these people putting engineers into jobs and things like that?

H. Shulman: Rather than being IT-based, they primarily grew out of the engineering industry. They really came out of a lot of manufacturing industries. They weren't very politically active; but what folks here were doing to them as they were trying to move from engineering into IT - and they were trying to duplicate their engineering model and, as most people know, engineers are very different than IT - they were having problems hiring IT people, using their engineering model, as employees. So the way to kind of win that battle was to pass a law that basically said, in their view, everybody had to be an employee. They believed when 1706 was passed that the effect of it was going to be to outlaw independent contracting in the IT services industry. Of course, that's not what happened; but that's really the genesis of 1706. ADAPSO jumped on the bandwagon afterwards because they saw a great thing.

Grad: My recollection is that it was not an issue with ADAPSO prior to 1706 being passed. Does anyone have a different story or a different understanding as to how that came about? You all think he's right?

H. Shulman: I have a lot of opinions, as people know; but on this thing, I will say I am right.

Evans: Did we not come to learn that Jack Courtney's daughter was actually on the staff of Senator Moynihan?

H. Shulman: Yes, I think that was true. But a lot of things happen by coincidence; and it turns out that Senator Moynihan's chief tax aide - who by the way is now a federal judge on the tax court - Senator Moynihan's aide, the guy who literally took this thing from the Joint Tax Staff and gave it to Moynihan, happened to be a good friend of mine. I did not know this until I read the article in the Wall Street Journal in December of 1986, which mentioned his name. I thought, "Oh my god, the guy who did this is someone whom I've known for a number of years."

Grad: Harvey, did Senator Moynihan ever come to express regret about the passage of 1706?

H. Shulman: Yes. Senator Moynihan ultimately supported the repeal of 1706. And the unfortunate part about it, I can now say with all due respect to ADAPSO, is that NACCB, particularly Dave Cassell, was lusting to debate ADAPSO on this issue in any public forum we could get. We knew that when the facts were really out, that the basis behind the law - these things that were in the letter that got sent from NTSA to Kent Mason - were thoroughly false. If only people could see a debate on the issue, the law would crumble and would be immediately overturned.

Becoming Aware of Section 1706

Grad: Here's what I want to do now. Since all of you agree that that's an accurate story on the thing, I'd like to now talk about how did you hear about it, what did you do about it, and how did that lead to NACCB being founded.

Hicks: I had it handed to me in a document in November or December of 1986 while we were all testifying at the State of California, as I mentioned before. I read it and I looked at it, and I said, "I don't get this." I read it, and I had a couple of the other people look at it. There was this independent contractor who was there and he read it, and it took a while for us to exactly figure out what this was. I took it to Chris Shaeffer (an attorney) and had him read it; and he said, "Oh my god. They're trying to put you out of business!" That's when we got on the bandwagon. I went immediately to the SCBA people and said, "We've got a problem."

Johnson: You said that you went to the men's room and almost threw up. You thought you'd lost everything.

Hicks: We had had such success with the State of California; and now, all of a sudden, we've got the Feds on our back.

Murphy: I went for SCBA. I was sitting in a California Chamber of Commerce meeting, trying to convince the California Chamber of Commerce to back our position against the EDD to get the EDD to change. And EDD was sitting here and I was sitting next to them; and they said, "Who do you want to start?" And we went, "Let them start." They go, "Oh, no, you go ahead." So I said, "All we want you to do is to mirror the federal law." The EDD said, "You remember, Reagan signed a new tax law?", and I said, "Yes." They said "Have you looked at page seven hundred and something, at this provision 1706?", and I said, "No." They handed it over; and I read it and I went - right in front of all these high-level people - I went, "Oh, shit!"

I went to my accountant. My accountant had been fighting the entertainment industry - I had an independent contractor specialist as an accountant - and I called him up and said, "I am hand

carrying this new provision over to you. I want you to tell me what it really means to our industry." And he looked at it, and he said, "Sweetheart, you are out of business."

Grad: How about the other locations? Fred, how did you hear about that?

F. Shulman: Well, we were, up until that point, much like Dan in New York. Our competitors were our arch enemies. We said greetings to them in the lobbies of our clients, but that was about it. I remember getting a call from Rick Philips, another local company, and I was surprised that he would even call my office. He called and he said "Have you heard about this new tax law?" And it was, I think, only a couple of days after [it was passed]; and I said, "No." And he said, "Well, we can't use independent contractors anymore." I said, "What are you talking about?" And he said, "There's this Section 1706," and that's when I first heard of it.

Then, simultaneously, I got a call from Judy Goldberg who had heard about it from another competitor in the area. I said, "Well, my brother's a lawyer in a downtown law firm and maybe he knows something about it." I remember calling Harvey and telling him that something happened with Moynihan. And he said, "Well, I think I know somebody in Moynihan's office. I don't know whether he's still there or not. I'll try to contact him and find out about it." That's how I first heard about it.

Grad: Harvey, did you contact your friend there at Moynihan's office?

H. Shulman: Yes. In fact, I was at Logan Airport in Boston going up to Maine, I think, for some strange reason in December--

Grad: We've got another test on his judgment. <laughter>

H. Shulman: And I got-- again, this was before the days of cell phones and email - I got a call from my office, saying, "Your brother's trying to reach you. It's urgent." I never read the Wall Street Journal, but being stuck at the airport that day, I was buying anything I could. So I had the Wall Street Journal, and that was the day there was a story in the December whatever Wall Street Journal reporting on 1706. So by the time I returned Fred's call, it was clear that this was what it was about.

Grad: Very quickly. How did the rest of you hear about it?

Greenburg: Coincidentally, the guy who hired me, Howard, called me and said, "Dan, did you hear about this new law?" And he told me, and I had the same reaction Phyliss had and started making phone calls. One thing led to another. I think I finally got a hold of David [Hicks] or he got a hold of me; and I was making phone calls and the meeting was set up in Washington.

Grad: How would you have known each other, you and David Hicks?

Greenburg: We didn't know each other. It was just through networking and calling people, starting to call competitors. Now we had something to deal with as a united front. Then one thing led to another. Then I got David's name or David got my name or somehow we connected; and he said, "There's going to be a meeting in Washington." And we went to the meeting.

Murphy: I went to an editor at the Wall Street Journal, and his brother or cousin or something was an independent contractor in L.A. and that's how I got a hold of him. I said, "We need to stop this. We've got to get something out." So he wrote an article, and I couldn't believe it. It appeared on the front page of the Wall Street Journal; and our phone just started ringing like mad. We also sent out-- at the time, our database was huge, 10,000 people-- and we sent out a chain letter because, of course, there was no email, no faxes. And we said to everybody in our database, "Make 10 copies of this and give it to 10 other independent contractors." We had four people on the phone in our office fielding calls from clear across the country. We had so many that I referred a lot of them up to Northern California. It was just like, "Why don't you talk to David Hicks?" I've got everybody on the lines here. We became like a hub.

Bjorn Einar Nordemo: We heard it through Dave. Dave called-- I don't remember if you called me or Tom O'Donohue first.

Hicks: It was Tom O'Donohue. I definitely remember that conversation.

Nordemo: So, Tom was the first one who called me and you called me. It became a spider web of conversations.

Kenda: Shortly after Tom or Bjorn, I got a call from one of them and said, "We need to start formalizing our association." We'd been in a very loose set of discussions through most of 1986; and now, all of a sudden, at the end of 1986, it became urgent that we spend more time together.

Evans: As I recall, I got a call from Dave, talking about it.

Murphy: And I called Dan Williams to get that Chicago group riled up., because he wasn't going to go.

James Ross: I was working as an independent contractor at the time for Libby Owens in Toledo, Ohio - and it was about November; and the guy says to me, "Starting the first of next year, I'm going to have to start withholding taxes from you." I said, "Why is this?" He said, "Well,

because independent contractors are no longer allowed out there.” I said, basically, “Over my dead body.”

The Washington Meeting

Hicks: It spider webs into a series of conversations; and somehow or another, I found my way to Harvey. It might have been through Fred. I kept jumping up and down. I said, “We’ve got to get together. We’ve got to get a national thing going here.” Phyliss had contacted Dave [Cassell], and you ended up getting him to go. You and I leaned on Williams to go. John and Grace and I were voted by the SCBA [in northern California] to go.

G. Gentry: I was President of the SCBA - Northern California Chapter, so that’s one of the reasons I went.

Hicks: We all were ready to go from Northern California and then you guys in Washington roped up all those other people at the meeting. O’Donohue and Bjorn decided to come down from Boston. Then the meeting was called for the 21st of January of 1987.

Johnson: Excuse me. What was the time lapse there between the time you found out about this and the time you met?

Hicks: We found out about it in mid to late December and the meeting was set up in Harvey Shulman’s office within a month. It all happened within five to six weeks, max.

Grad: Harvey has given us a written chronology of things that occurred.

H. Shulman: This is really Tom O’Donohue’s [write-up and chronology which will be posted on the CHM Oral History website]. Tom did something that I have the markup of, but it starts from January of 1987 going through July of 1987, highlighting every single thing on this timeline that the association did. Actually, it says here that December 9th, 1986, was the Wall Street Journal article. I know for a fact we had the meeting in DC on Martin Luther King evening, and we were there for a number of days. Martin Luther King Day was about the 20th or so of January, so it was five weeks; but a lot went on. I think there is this urgency when you’re dealing with entrepreneurs. They all want to meet, but unless you had an agenda beforehand and had some idea of where you wanted to go, the idea of people coming across the country just to vent wasn’t acceptable.

Grad: Who called the meeting?

Hicks: I was the agitator to get it going. And Harvey set a tone for what he just said about we have to have some sort of framework here other than just getting a bunch of wild-eyed characters from around the country to come in and wave their arms around. He got me calmed down because he has this very calming way of talking, which was great. So I think that it was just sort of a consensus that we would do this, He created an open door for us to have a forum, to actually get something done other than just yell.

G. Gentry: He provided a meeting place and time.

Grad: Was there actually a letter sent out to the various people? I'm sure everybody you invited didn't come.

G. Gentry: No.

Grad: It was just all by phone?

G. Gentry: Yes. And we all paid our own way.

Nordemo: How many people were there?

H. Shulman: There were 12 company owners and myself and a couple of other people from the law firm that I was at.

F. Shulman: I remember before the meeting, we were amazed that the people in California actually had an association formed; and they were fighting the stuff there. And some of our discussion before the meeting was, "Wow, what a great basis to get together. Maybe we can form something locally." Not knowing that we were going to have all these other participants from all over the country.

Grad: So 12 companies were represented there at that meeting all together because of phone calls. Except for the area group in California, did many of you know each other?

Nordemo: Tom O'Donohue and I were the only ones from New England. What had happened was - after Dave had spoken to us, Tom and I got together and called all the owners that we could think of, of competing businesses; and we had a big meeting in a hotel room. I forgot exactly how it ended up. I remember standing at a podium talking to my competitors -, which I'd never done before; and I'm standing and I'm pounding on a damned podium that they can't do this to us! This country's built on entrepreneurship! How can they do this to us? And by the time it was done, everybody voted that Tom and I should be the ones going to represent New England. So that's how we ended up down there.

Grad: Washington was local. Fred, there was you and who else from Washington?

F. Shulman: It was myself and Judy Goldberg. I had spoken with Rick Philips; and there was Tiger Keasley. And Ray Dasher, who had worked for us, I think at that time that was it. There might be one other gentleman, a guy from Essex.

Grad: Now you've got the 12 people together. You're there with a couple of other lawyers. What was the result of that meeting? Harvey, are you the best one to tell it?

Forming NACCB

H. Shulman: First of all, I think it's important to understand the serendipity of all of this because Fred somehow got contacted by people, and it turned out he had a brother who actually knew the industry, having worked all these years for free for Fred, right? And then it turned out, by coincidence, that I knew Senator Moynihan's guy. And it turned out that some people in the law firm were connected politically. So a lot of pieces fell together.

When everyone got together - I had done lobbying on other issues in past years- to me what was important for the group to understand was that if it was going to be a group fighting this one issue and that was it, we probably weren't going to succeed. It probably would be a waste of time. So the goal really - and David Hicks had a lot to do with this - is we need an association that people agreed would be proactive. It was one thing to fight this issue - and this is what lawyers get blamed for, but there's some value to it - lawyers say, "Well, but if you respond to this by making everyone an employee and by doing all these other things, you're creating a whole bunch of other problems. How are you going to deal with those problems?"

So the idea was sort of three-fold. It was to fight against this law-- Well, four-fold. It was our intent to sort of live with the law. Was there some way people could continue using independent contractors despite the passage of the new law? The third thing was let's form an organization that will always be there as a mechanism to be proactive for the industry. And the fourth thing was really to look at what problems companies would now start having when they were using some employees, which was going to happen. They'd now have to think about overtime and benefits and a whole bunch of stuff. I think there was consensus among the group that those were four important goals to look at and that fighting 1706 was only one of the things that we needed to do.

Murphy: There was one other thing that I remember hearing and that was when you get audited, that the group knowledge would help protect us during these audits. I got audited four times for 1706; and indeed, in every one of my audits, it did protect me. At the time, I heard it and I thought, "That's really a non-issue," but it became a really big issue.

H. Shulman: Burt, I think it may be hard for others to understand this; but at the time, the fear of audits was so strong that NACCB never gave out its membership list, never published the membership list. Again, I know this for a fact, several of the audits that took place, particularly in New England and in the DC area, were the result of the IRS auditing a company and that company turning over a list of names of several competing companies to the IRS agent. And all of those competing companies were audited by the IRS. So people were terrified of being associated with NACCB.

Murphy: In fact, my second audit, when I went in, after I postponed the audit because I was going to DC to an NACCB meeting, when the auditor met with us, he said to me, "I understand that you postponed this audit because you were going to meet with a group," and named the group who was lobbying against this law. I looked at my accountant, and later I asked him, "Did you tell him that?" He said, "No, he told me that when he came in here."

Grad: Interesting. Okay. You have the 12 people. What's the result of that meeting?
Grace?

G. Gentry: Well, we had a consensus that, among other things, we needed to hire an attorney as legal counsel, and probably a lobbyist. California had brought our bylaws for our chapter membership and held them up as a model that the other people attending the meeting could take back and use to form a local or regional association. We agreed we needed to recruit new members to help pay the bills that were about to be generated by our legal counsel and lobbyist.

In fact, while we were in DC as a group, we made up a task list of things we needed to do and then assigned them. Two or more people would go out and investigate, or research, or attempt to collect all the information they could about this matter. I recall that John Chamberlain and I were supposed to go out; and we interviewed three lobbying firms to find out how lobbyists work and if one of them would be appropriate for us to use.

Grad: This all happened while you were still in Washington? How long were you there?

G. Gentry: A big snowstorm came in, and kept us there a little longer than we had intended.

Nordemo: We very quickly learned to use the metro, the underground.

Grad: How long did that meeting last? Five days?

Hicks: The time there was five days. At least for us it was.

H. Shulman: People came on Monday. Several people had dinner on Monday, and the last official meeting was Friday.

Grad: Which of you were not at that original meeting? Okay, Jane. Looking around -- Randal, Peggy. So about half of you who are here were not at that original 12 person meeting. Is that about the right ratio? Okay. Now, David and Grace, how did you reach out to these other people? How did you get in contact with them?

Building Regional NACCB Chapters

G. Gentry: Dave Cassell went back and started attempting to recruit, to create an association in his community; and I believe that's what every individual did.

Grad: So the initial goal was let's create a bunch of regional associations?

G. Gentry: This was so we can raise some money to pay the attorney. Our goal was to get 25 "members"; and I think it took us almost two years, because a "member" was a member company. So it took us almost two years to achieve that goal, and ten of them were in California.

F. Shulman: I think part of the discussion was how we were going to model the association - because you in California had two separate associations - and we were trying to figure out whether it was going to be one association with every member company or whether there was going to be an association of associations.

Grad: That was the point I was getting at, as against members of a national association, at least you sound like the original thrust was toward local associations that could help pay the bill to do what you all wanted to do collectively. Do I misunderstand that?

G. Gentry: No, you are correct; and part of it was the independent nature of the attendees. Everybody thought that California had some interesting bylaws but didn't want to live by all of them, particularly the ethics section that we were enforcing in California.

Grad: James, you have a comment?

Ross: Yes. When I talked about what Dave [Cassell] did for us, I think I called him up about a year later; and I said, "David, I think we have six people working or something like this, and I just wanted to thank you." And he said, "Well, if you really want to thank me, Jim, here's what you can do." I said, "What's that?" He said, "You can join this organization called the NACCB, that we're fighting the 1706 and stuff." I talked to Jane, and she said fine.

Jane Cronister-Ross: In St. Louis, we knew sort of who our competitors were; but as with all the other cities, we didn't talk to them if we could help it. I'm not sure how many of them knew anything about this issue at all; but the national organization allowed "At-large members," which is how we joined the organization.

Years later -- I can't tell you exactly how many, five or six years later -- a chapter formed in the Kansas City towns, and I got a letter from them indicating that we weren't really at-large anymore, we needed to join them. I said, "Not on your best day, and thank you very much." We liked being "At-large."

Grad: So in effect, it was an association of associations primarily. Is that a fair statement, Harvey?

H. Shulman: Yes, I know a lot of the folks look at it as raising money to pay the bills, but the reality was that people came in totally naïve about what lobbying was all about. Dave thought if he had a conversation with a couple members of Congress, the law would be repealed immediately. This was my perspective on it, which coincided with what most of the people there wanted. The only way that anything was going to get done was a grassroots effort. Whether I was the lobbyist or someone else was, it really didn't matter. For lots of technical reasons having to do with revenue, offsets, and other stuff, some one person was not going to be able to go in and change this.

However, if we had chapters around the country and if chapters got involved and stirred people up - We'd look at the Finance Committee in the Senate and the Ways and Means Committee in the House; and we'd say, "Okay, we have to find an IT staffing firm in Maine," - or wherever it was.

So the effort on chapters was really coincident with the idea that, to be successful in Congress, we needed to cover our bases geographically around the country; and there was no way that the national association could do that because it had no staff. This was before Peggy. I wasn't going to spend my time on the phone recruiting members. So it turned out that the chapters were not only the viable way to go but the way that very much fit into the model for success.

Grad: When was the decision made formally to form the national NACCB? What did you call it initially?

Hicks: The National Association of Computer Consultant Brokers

Grad: So you started with the NACCB name from the beginning?

G. Gentry: Right. We changed it to Businesses later. [National Association of Computer Consultant Businesses]

Grad: When did that occur? How soon after the January meeting?

G. Gentry: It happened at the January meeting.

Grad: So you made that decision right away to form the association. Did you commit to any expenses or costs or dues at that point in time?

H. Shulman: They were all very generously contributing their own time and money.

Nordemo: We didn't pay Harvey. There's something that needs to be said. Harvey and his firm were floating a huge receivable over a number of years before we paid it back.

G. Gentry: Harvey called me at one point and said that his firm was going to have to drop the association as a client if we couldn't pay our bills, which at the time we could not. I was President of NACCB at the time;

H. Shulman: That was two years later, by the way.

G. Gentry: I said, "What if I write a letter personally guaranteeing this debt. Will that be acceptable?" He said, "Well, I'll go back to the partners and see." So, without telling my husband, I wrote that letter, and they kept us on as clients.

My husband [Richard Gentry] found it out about 10 years ago. He was not a happy camper when he found out that I had committed us financially like that. David Hicks said later, "Yes, I remember that you said, 'Don't worry about it. It's been taken care of.'"

Lobbying by the Association

Grad: Did you hire a lobbyist at that point in time or not? Or were you the lobbyist?

H. Shulman: No, I was the lobbyist. In fact, the law firm had about 60 lawyers, and the law firm had a number of lawyers who were lobbyists. We used a few of those people on some very highly technical matters; but basically, I was the lobbyist, I was writing the contracts, I was doing the NACCB incorporation stuff.

Grad: Did you have an official title with NACCB at that time, Harvey?

H. Shulman: One that Grace gave me, which was "The Kid."

<Laughter>

G. Gentry: What happened was, as we had that first meeting and we would reconvene after our day's research, we would talk about what legal counsel we should employ. Several people would inevitably suggest, "Well, Harvey Shulman's here. We could hire him." And I would inevitably say, "No, he's just a kid. He's right out of law school. We need somebody who's been here a long time, has a lot of connections, understands DC and how to move around in it." So everybody would say, "Yes, yes, you're right."

So, one of the nights that we were there, we were having dinner and - I don't know if someone told you that I was making this objection or not - but Harvey came over and started talking to me. He starts telling me about when he graduated from law school and then he went to work for a Supreme Court Justice and then he did this and he did that. And I said, "How old are you?" And he told me, what, 34 or something like that. I said, "Do you know what I've been calling you?" He said no; and I said, "The Kid." So after that, he got my vote.

H. Shulman: I was actually 38 at the time.

G. Gentry: All I can tell you is you didn't look anywhere near 38. You looked like a kid.

Grad: What other expenses were you incurring at that point in time besides Harvey's time? What else? Secretarial? Mailings?

G. Gentry: It was very expensive to be the president of the organization because the president paid for all the communications. Every one of us who was an early president has agreed that we damaged our own companies as a consequence of the time, attention, and money that we poured into NACCB.

Grad: It's fascinating to me, the difference in how this formed and how ADAPSO formed in 1960. You formed on a very different basis. You as individuals took the responsibility of covering these operating costs.

G. Gentry: Yes, we were young. We were hot.

Ross: When Jane became Secretary of the organization, which was about two years after we got into NACCB, I'd never been to Washington, DC, and she had never been to Washington, DC. Of course, the first thing that came out of everybody's mouth was, "We're going to go to Washington, DC; and we're going to lobby."

So you had a lot of the owners of the companies themselves, who were actually spending their own money to come back to DC and lobby. Plus, at that time, Gephardt was in Missouri so we would send some stuff to him every once in a while, when we got a chance. So a lot of it fell upon the owners. But, to me, NACCB kind of always directed the people as to how you want to go about doing this.

Grad: It was very much volunteer run, not staff run, during this period of time?

H. Shulman: Not only that, but in the few years that I've been on this earth, I've worked with a lot of organizations; and I would say this was the most phenomenal group of people I've ever dealt with. To me, it wasn't even really a job.

NACCB, for many years, had a requirement in the Bylaws that the members of the Board of Directors and, I think, the Chapter Officers that were representing the Board and the Committee Chairs, all had to be owners of a company. So if a company got involved and took on responsibilities, the person who came to the meetings and the person who voted had to be an owner. Now, you could go back to your office and have one of your employees do the Xeroxing and other stuff, but it was not permitted to delegate responsibilities. In the early lobbying meetings, I think probably 90% of the people who came to lobby were owners of the companies. So it was more than just taking money out of their pockets; it was people giving an enormous amount of time.

Starting an NACCB Staff

Grad: Let me make a transition here. When did you start to have a staff, people you were paying to do work? Grace?

G. Gentry: One of my last acts as outgoing president was to recommend strongly to the Board - who by then knew that a strong recommendation must be passed, out of gratitude for my services - that for the benefit of the next president, they employ Peggy Smith, who was no longer involved in her company. Quite frankly, I was afraid we couldn't continue to recruit presidents unless we provided assistance.

Smith: Right. I had left, sold my half to my partner in January of 1989, and then I flew out to a Board meeting in San Francisco. And because my own company, Data Masters, was so affected by 1706, I felt very strongly about NACCB and what they were trying to do. So I went to the Board meeting and offered to start working with them. And, Grace, I'll turn it back over to you at this point.

G. Gentry: Did we pay you \$15 an hour?

Smith: Yes, you paid me \$15 an hour.

G. Gentry: She was the first paid staff member. It was clearly an act of love on her part.

Impact of Section 1706

Grad: What I'd like to do now is ask you what affect 1706 had on you initially, at that point in time. Dan, was there any effect on you?

Greenburg: Yes, it definitely put a real crimp on my business. I mean, we were in chaos in terms of how to deal with this; and we had to run a business while we were trying to figure out what to do. There were some companies that were going to continue using independent contractors. There were some companies that refused to. The consultants were threatening to leave the contracts if we made them be employees. So it had a real impact in terms of just the chaos in how we ran our operations.

Grad: Let me ask the question more precisely. What did your clients say and what did you ICs say? Was there a difference?

Greenburg: Yes. Our clients wanted us to comply with the law. They just didn't want to get involved at all, and they wanted to keep the contractors. So we were sort of in the middle of a lot of diverse agendas.

Grad: So your problem was just with the ICs?

Greenburg: No, the problem was with the clients also, because the ICs were raising a ruckus. The clients just wanted to make sure the ICs would be taken care of. They didn't care how we took care of it, but they just said, "Make sure they don't leave us because we're in the middle of some critical projects." I'd say we took probably about a 10 to 20 percent loss in the first year.

F. Shulman: We had a lot of the same issues. The clients wanted us to comply. We went to ICCA meetings, the Independent Computer Contractors Association. They really didn't understand. They looked at us as the bad guys. We wanted to convert people to employees until things settled out; and we probably lost a third of our contractors.

Smith: Same thing [at Data Masters]. Because of NACCB we were the knowledgeable part of the triangle. We handled our ICs very gingerly and spoke with the clients; and it went fairly smoothly. But we took probably a 20% cut.

Kenda: Maybe New England was a little bit further away. I don't remember losing a lot of business. We had to go from 100% ICs, 100% 1099s, gradually to where there were 65% W2s. But I don't remember losing a lot of business.

Up in New England, we started using it as an opportunity, as a trade association, to educate our clients and say, "This is why you want to work with NACCB members, because we understand how the law should apply." And that suddenly made a lot of other competitors want to be a part of the New England NACCB Chapter. It started to solidify around a core group of people that knew the law. I thought it worked out competitively fairly well for us.

John Chamberlain: I wouldn't say we lost any business. We just gradually tightened our practices. Of course, I was in the NACCB from the get-go, so I knew the law. I knew the issues, and so we improved our contracts. We also began imposing stricter requirements on the Independents that we would deal with. In the early days - we were already doing this in California - we were requiring them to have a business license, which is something you have to do in the State of California. Eventually, we just tightened up our business practices. It didn't put us out of business and we didn't lose any volume. We just kept trucking on.

Nordemo: We didn't lose any volume either. We had been consistent and had only 100% ICs. We had never had an employee contractor. We started a second company as a subsidiary that handled all of our employee contractors so that we kept them separated. And that was part of what we were selling, as Steve said, to the clients. We understand the law, and it's not a problem. It really helped a lot.

Hicks: Well, my model reflected what the last three said. We didn't have a particular client problem that said W2s only. That came later. We did the split - the two separate corporation situation- and really, really scrutinized the contractors. The "wannabes," we just didn't play with them. We just said, "You're going to have to be a W2; and if you want to work for Bank of America, you're going to be a W2 under this format." The true ICs became true ICs. The contracts came out of NACCB; and we just laid it down.

G. Gentry: Our business wasn't affected. We did educate our clients about what was going on. We continued to use ICs exclusively for a significant period of time, in part because of the type of contractors we tended to work with - higher levels. The type of contractors we were using were genuine contractors; and we just made sure that the rules we felt would protect them and us were enforced more rigorously. Eventually, as I think happened to many or most of us, we had to cave and have some W2s.

Murphy: I lost two-thirds of my business. Clients said you had to do it. People in Southern California, my competitors, said we're just going to hide in the woodwork. They'll never find us. My accountant, who had been fighting IC issues for years in the entertainment business, said,

“If you are going to be passionate and go to Washington and fight this law, you’d better look like Snow White because they’re going to come after you.” And, boy, they did. I got turned in by competitors. I got turned in by an ADAPSO member. They were going to get me shut up and quiet. Oh, tremendous impact.

Cronister-Ross: I don’t think it impacted our business. We just brought new people on; and we just made them be W2s. We did go to some of the ICs that had been on contract for awhile, that we knew would not be in compliance, and said, “This is a new law; this is how it works. This is what you’re not doing. You need to become a W2.”

Grad: I’ve got a quick question. Jon, did it affect you as an IC?

Jon Hahn: Yes, at the time I was working at NASA Ames Research Center; and I was working through two arms of General Electric. One was GE Space, the government contractor; and the other was GE Consulting, which was a professional services organization. They (GE Consulting) did bring me on as a 1099 to provide me to GE Space. Anyway, around December of 1986, I got a letter from GE Consulting saying, “Your contract will be terminated in three weeks; and you’re welcome to become an employee.” I had no interest in doing that. GE Space’s policy was always that we won’t hire a 1099 for this contract, but we will work with the corporation. So I went through a guy, who was also working on the project, who himself was incorporated, until I figured out what I was going to do. Then, in six months, I incorporated and went direct to GE Space.

Evans: I didn’t really suffer from anything from 1706. I kind of waited it out and let the customers be the bad guys. Once they started requiring use of W2s, then it wasn’t me going to the Independents and saying you’ve got to do it, it was the clients that they were working for.

Dave Cassell: We had an interesting situation, which happened with our biggest client. They were one of the first to react. They were, I guess, probably the biggest user of contractors in Houston at the time. They said, “All Independent Contractors will become W2 employees.” And they gave us like 60 days notice. I went back to them and said, “I have contracts with these Independent Contractors that don’t expire in 60 days. When those contracts expire, then we will provide you with W2 employees, if they desire to do so. And they seemed to have no problem with that. No effect on our business.

Grad: This is the end of our planned time. Thank you very much.

Participants:

Bugos, Glenn: historian
Cassell, Dave: participant
Chamberlain, John: participant
Cronister-Ross, Jane: participant
Evans, Randal: participant
Gentry, Richard: participant
Grace Gentry, Grace: participant
Grad, Burton: moderator
Greenburg, Dan: participant
Hahn, Jonathan: participant
Hicks, David: participant
Johnson, Luanne: participant
Kenda, Steve: participant
Murphy, Phyliss: participant
Nordemo, Bjorn Einar: participant
Roberts, Mark: participant
Ross, James: participant
Shulman, Fred: participant
Shulman, Harvey: participant
Smith, Peggy: participant
Yost, Jeff: historian