

Historic Moments in Negotiation



By Lee Hornberger

History provides us with lessons on how to be better negotiators. Dr. Martin Luther King Jr. said that “life and history give eloquent testimony to the fact that conflicts are never resolved without trustful give and take on both sides.”¹ To help us better understand and learn from these lessons, we will take a trip through history. We will travel from a small village in rural Virginia in 1865; to Geneva, Switzerland, in 1954; to a student sit-in at Harvard University in Cambridge, Massachusetts, in 1969; to a lonely man in a lonely room in Washington, D.C., in 1974; and, finally, to a dinner at Wright-Patterson Air Force Base near Dayton, Ohio, in 1995.

April 9, 1865: After the Battle of Appomattox Courthouse

Bruce Catton’s *A Stillness at Appomattox* turns history into poetry.² On April 9, 1865, almost four years to the day after the Union surrendered Fort Sumter, Gen. Robert E. Lee, commander of the Army of Northern Virginia, has to make a decision. Does he bring to an end the carnage and bloodletting of the Civil War in a lost cause, risking humiliation and prisoner-of-war status for himself and his army, or does he escape to the mountains, engage in a prolonged guerilla war,

and extend the fighting? Gen. Ulysses S. Grant, head of the Union armies, also has to make a decision. After all the blood and gore, does he humiliate Lee and force a complete and unconditional surrender?³

On the battlefield, both Lee and Grant chose dialogue. Through a series of polite written communications, Grant requested that Lee meet with him to discuss terms. Lee responded with equal politeness. Lee put on his best uniform so as to be dressed for the occasion. They met.⁴

At first, they reminisced about the Mexican-American War in which they had both fought. Then they discussed surrender terms. Grant’s proposal to Lee permitted Confederate soldiers to return to their homes with their mules and horses. There would be no prison camps. There would be no guerilla warfare.⁵

When Union soldiers started to celebrate, Gen. Grant said to them that the war was over, the “Confederates were now our countrymen, and we did not want to exult over their downfall.”⁶ The bloodiest American war in history was almost over. “It was Palm Sunday, and they would all live to see Easter...”⁷

A Stillness at Appomattox teaches us that there is no virtue in trying to negotiate for the last possible concession out of the other side. In addition, it is crucial to understand the interests

and needs of the other side and attempt to accommodate those interests and needs while attaining your own interests, and treating everybody with courtesy, dignity, and respect.

1954: The division of Vietnam

After nearly a decade of war in Southeast Asia, Vietnam was split at the 17th parallel during the 1954 Geneva negotiations. World power brokers conducted the negotiations openly in front of their partially subservient client stakeholders. The power brokers were the Union of Soviet Socialist Republics, the People's Republic of China, and France. The partially subservient stakeholders were the Democratic Republic of Vietnam (North Vietnam) and the State of Vietnam (South Vietnam).⁸

On the heels of the Korean War, the power brokers were exhausted and wanted stability and peace. Even though the goal of both Vietnamese parties was the complete unification of Vietnam under the leadership of only one of the warring parties, the world powers—literally in front of the Vietnamese—negotiated a partition of Vietnam.⁹

At the beginning of these negotiations, United States Secretary of State John Foster Dulles refused to shake the hand of the premier of the People's Republic of China, Zhou Enlai. Ultimately, to spur the negotiations, Zhou Enlai said, "The two parties should take a few steps toward each other—which doesn't mean that each has to take the same number of steps."¹⁰

Vietnam: A History teaches us to shake hands with the other side because, in part, people can have long memories; shows us there is virtue in taking the first step because ultimately someone has to do it; reminds us that listening can be

more important than talking; and teaches us that an appropriate resolution does not always require equal moves by each side.

1969: Student sit-in at Harvard

Ken Gormley's *Archibald Cox: Conscience of a Nation* is a wonderful read of the highest order.¹¹ The book, in part, relates how Harvard Law School Professor Archibald Cox negotiated the end of a student sit-in at Harvard University in 1969. The negotiators were Professor Cox representing the Harvard administration and, on the other side, a student leader representing thousands of students. Cox and the student leader, working together, held simultaneous sets of negotiations.

The choreographed public negotiations were seemingly going nowhere. The simultaneous, private, one-on-one negotiations between Cox and the student leader were leading to a resolution. The student leader felt that Cox respected the students. In the private negotiations, these two negotiators were able to work ahead of where they were publicly. Between the two of them, they reached agreement on a prospective settlement and play-acted it to their stakeholders to achieve resolution.¹²

Archibald Cox: Conscience of a Nation teaches us to select the right time to negotiate, to be aware of who is actually negotiating about what with whom, and that showing mutual respect can help produce favorable results.

1974: Senator Goldwater and the Nixon resignation

In *With No Apologies*, Sen. Barry Goldwater outlined the delicate August 7, 1974, discussion that led to the resignation of President Richard M. Nixon on August 9, 1974.¹³ Almost immediately before this meeting, the House Judiciary Committee had voted in favor of three articles of impeachment. On August 5, 1974, Nixon had revealed that some of his prior denials of wrongdoing were now "inoperative." Goldwater and Senate Minority Leader Hugh Scott were scheduled to meet with Nixon. This would be a delicate discussion. If handled correctly, Nixon would probably—in the fullness of time—resign from office. If not handled correctly, Nixon might recoil and force a protracted, ugly political fight that would further divide the nation.¹⁴

The Republican leadership commissioned Goldwater to meet with Nixon and tell him that he should resign. As a prelude to this meeting, Goldwater talked with Ben Bradlee of *The Washington Post* and successfully persuaded the newspaper not to publish a planned request that Nixon resign. Attending the meeting with Nixon were Goldwater, Scott, and House Minority Leader John Rhodes. They informed Nixon

AT A GLANCE

History teaches us that there is no virtue in trying to negotiate for the last possible concession out of the other side. It is crucial to understand the interests and needs of the other side and attempt to accommodate those interests and needs while attaining your own interests, and treating everybody with courtesy, dignity, and respect.

“[L]ife and history give eloquent testimony to the fact that conflicts are never resolved without trustful give and take on both sides.”

— Dr. Martin Luther King Jr.

of the lack of support for him in the House and Senate—the numbers were not there—but they did not ask him to resign. Even though resignation was the only reason for the meeting, it was never mentioned. Two days after this courteous and respectful meeting, the president resigned.¹⁵

With No Apologies teaches us to choose the right spokesperson, treat the other side with courtesy and respect, try to put yourself in the shoes of the other person, and realize that what is *not* said can be as important as what is said.

1995: Peace at Wright-Patterson Air Force Base

In *To End a War*, Assistant Secretary of State Richard Holbrooke discussed the 1995 negotiations at Wright-Patterson Air Force Base near Dayton, Ohio, that helped resolve a bloody, hard-fought, and brutal war in Bosnia with the General Framework Agreement for Peace in Bosnia and Herzegovina.¹⁶ The competing forces included Bosnian Muslims, Bosnian Serbs, Serbian Serbs, and Bosnian Croats as well as people representing the interests of the United States, NATO, the European Union, and Russia.

According to Holbrooke, “[P]hysical arrangements could make a difference; every detail mattered.... We constantly looked for ways to break down the barriers of hatred and distrust.”¹⁷

As we all know, one way to do this is with good food. This is what Holbrooke did. He selected the introductory banquet location—the National Museum of the United States Air Force at Wright-Patterson Air Force Base—“with great care.”¹⁸ Dinner tables were placed under the wing of a B-2 stealth bomber suspended from the ceiling. Holbrooke “thought that reminders of American airpower would not hurt” and would exemplify the “best alternative to a negotiated agreement” (BATNA) to the diverse participants if they did not reach an agreement.

To End a War teaches us the crucial importance of details and negotiating environment, preparation for joint sessions, food and refreshment, adequate time, and always being aware of your BATNA.

Conclusion

History teaches us many lessons—if we have the vision to draw the right conclusions when facts are squarely faced and carefully considered. As David C. McCullough told the 1984 graduating class of Wesleyan University, “History is a guide to navigation in perilous times.... History is who we are and why we are the way we are.”¹⁹ ■



Lee Hornberger is immediate past chair of the SBM Alternative Dispute Resolution Section. He is in The Best Lawyers in America 2018 and 2019 for arbitration and on the 2016, 2017, and 2018 Michigan Super Lawyers lists for alternative dispute resolution. He earned a first-tier ranking in northern Michigan for arbitration by U.S. News—Best Lawyers® Best Law Firms in 2019 and received the ADR Section’s George N. Bashara Jr. Award in recognition of exemplary service.

ENDNOTES

1. “Beyond Vietnam” speech at Riverside Church meeting in New York, April 4, 1967, featured in Carson, et al, *A Reader and Guide: Eyes on the Prize, America’s Civil Rights Years* (New York: Penguin Books, 1987), pp 201–204.
2. Catton, *Civil War: A Stillness at Appomattox* (New York: Fairfax Press, 1984).
3. *Id.* at 681.
4. Foote, *The Civil War: A Narrative, Red River to Appomattox* (New York: Random House, 1974), pp 937–939.
5. *Id.* at 946–951.
6. Gilbert, *Civil War Battlefields: Walking the Trails of History* (New York: Rizzoli, 2017), p 131.
7. *A Stillness at Appomattox*, p 681.
8. Karnow, *Vietnam: A History* (New York: Penguin Books, 1997), pp 216–221.
9. *Id.*
10. *Id.* at 218.
11. Gormley, *Archibald Cox: Conscience of a Nation* (Reading: Addison-Wesley, 1997).
12. *Id.* at 211–214.
13. Goldwater, *With No Apologies: The Personal and Political Memoirs of United States Senator Barry M. Goldwater* (New York: Wm. Morrow & Co., 1979).
14. *Id.* at 261–263.
15. *Id.* at 266–269. See generally Nixon, *The Memoirs of Richard Nixon* (New York: Grosset & Dunlap, 1978), pp 1072–1073.
16. Holbrooke, *To End a War* (New York: Random House, 1998).
17. *Id.* at 203 and 243.
18. *Id.* at 243.
19. McCullough, *Historian Addresses Wesleyan*, *The New York Times* (June 4, 1984) <<http://www.nytimes.com/1984/06/04/nyregion/historian-addresses-wesleyan.html>> (accessed March 9, 2019).