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## In Practice: Lessons Learned From the Paris Peace Accords

Forty years later, the famous negotiations illuminate useful lessons for today's counsel, says attorney Dan Lawton.

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The most high-profile negotiation of the past 50 years was that culminating in the Paris Peace Accords of 1973. The accords supposedly ended the Vietnam War. This year marks the 40th anniversary of the accords. Though the accords yielded two Nobel Peace Prizes, we hear almost nothing about them today.

To compare the negotiations at Paris to the garden-variety negotiations which make up so much of a civilian lawyer's daily practice today seems a stretch. And yet the lessons of the Paris Peace Accords are timeless and true today, no matter what the stakes in our own cases. This is my humble take on four of them.

### What Happened

In 1969 there were more than 475,000 U.S. troops in Vietnam. To that point, more than 48,000 U.S. servicemen had been killed in the war. Two hundred more were dying (and 800 more being wounded) each week. The war was a stalemate. Growing numbers of Americans questioned whether the war effort could succeed and whether it was morally justifiable. The new U.S. president, Richard Nixon, had promised an "honorable end to the war in Vietnam," whatever that meant. Fruitless peace talks had been going on in Paris since 1968.

In early 1970 secret peace negotiations began between the U.S. representative, Dr. Henry Kissinger, and his counterpart, Le Duc Tho of North Vietnam, outside Paris. (The Americans didn't tell their South Vietnamese allies of these secret talks, something which became a big problem later.)

The main sticking points were these: The Hanoi government wanted the South Vietnamese government headed by Nguyen Van Thieu dismantled and replaced with a "coalition government," which it would control. The Americans wanted all North Vietnamese and NLF (Viet Cong) troops out of the South, among other things. Neither side could yield on these points. And so things went nowhere, for over two years.

Then, in October 1972, a breakthrough: Le Duc Tho dropped Hanoi's demand for dissolution of the Saigon government. The Americans dropped their demand the enemy withdraw from the South. There was an agreement-in-principle at last. There would be an immediate cease-fire. All U.S. forces would leave Vietnam within 60 days. Hundreds of U.S. prisoners of war would return home in time for Christmas. Permanent peace and unification of Vietnam would be accomplished by the Vietnamese themselves, later, through elections.

On the eve of Nixon's hoped-for re-election, the White House sensed the chance to close. Kissinger announced, "Peace is at hand." The statement made headlines worldwide. Nixon sent his diplomats to Saigon with a copy of the draft agreement to show to the Thieu government.

And now the South Vietnamese learned for the first time of the clandestine negotiations that had gone on behind their backs for nearly two years. They were stunned to see what they viewed as a U.S. sellout — American consent to a "cease-fire in place," which would leave all enemy forces in place, resupplied and in the field, in the South.

When the parties returned to Paris in November 1972, the U.S., at Saigon's urging, now presented dozens of changes to the draft accords. These included a demand that all enemy troops leave the South. After some fruitless haggling, the North Vietnamese walked out. They refused to commit to coming back. Furious, Nixon then unleashed the so-called "Christmas bombing" of 1972 on the North. The strikes were the heaviest launched by U.S. forces since the end of World War II. Thirty-three American airmen and hundreds of Vietnamese civilians were killed, scores of American airmen taken prisoner, and 28 U.S. aircrafts (including 16 B-52s) destroyed by enemy action.

Behind the scenes, the White House asked Hanoi to return to the talks. Hanoi agreed, pointedly telling Nixon that a bombing halt was not a precondition to their return. Nixon suspended the bombing, and told Kissinger to accept the October deal if that was what it took to get the deal done. In private, Nixon bludgeoned Thieu into accepting the October deal as written (with a promise of massive additional U.S. aid) or else be abandoned by the Americans. Thieu, knowing he had no choice, bitterly consented. All parties signed at the Majestic Hotel in Paris, on Jan. 27, 1973. The diplomats drank champagne and posed for pictures.

Their celebration was premature.

### **Takeaways for Negotiators**

Lawyers and parties should not waste time arguing over the shape of the table.

How much time have you seen wasted in negotiations while lawyers (or others) argued over the "shape of the table"? So far as I can tell, this term originated at the Paris peace talks.

In 1968 (when the talks first began), the negotiators' first problem in Paris was not any substantive term. It was the shape of the table. Hanoi wanted a circular table — so as to make all parties (including the Viet Cong) appear equal. Saigon wanted a rectangular table, so as to limit the opposite "sides" to just two (seemingly excluding the Viet Cong, whom Saigon did not recognize). For several months, the diplomats sipped tea, munched French pastry, slept in hotel beds, and argued over the shape of the table in Paris. Finally, they compromised. The North Vietnamese and South Vietnamese negotiators would sit at a circular table. The other parties would sit at individual square tables, around the periphery.

Today, one wonders whether any term in the Paris Peace Accords turned on this seating arrangement. In 1969 our family's neighbors included the Ferguson family. Their oldest boy was Jack Ferguson, a high school senior. Against his parents' wishes, he enlisted in the Marine Corps. They shipped Jack, a lance corporal, to Vietnam. He arrived there on Christmas Eve 1969. Eight weeks later, he was dead, killed in action at age 18. His family, and others, were heartbroken. I wonder how many other brave young men like him died while the men in Paris argued over the shape of the table.

The lesson, "Skip trivia and proceed to the real issues," is obvious. Less obvious is how hard it is for us as lawyers to let go of the desire to "win" every single issue, large or small, and to avoid micromanaging every detail in our perceived favor.

Injecting late-added terms after everyone has reached an agreement in principle will destroy trust and possibly the agreement itself.

Have you seen an agreement-in-principle reached, then, afterward, seen someone inject new, material terms?

This is exactly what happened in October 1972. Thieu, angry over what he viewed as a betrayal behind his back by his American allies, insisted on material changes to the agreement (including that South Vietnam be recognized as a sovereign nation). The U.S. relayed 44 of these to the North Vietnamese, in late November. The North Vietnamese retracted their own prior concessions, insisted on new concessions, and then walked out (on Dec. 16). Nixon's brutal "Christmas bombing" followed. Ultimately, the Americans retreated to the same terms they'd agreed to in October. Their later-injected demands went by the wayside, or were resolved in favor of North Vietnam. Kissinger aide John Negroponte bitterly summed it up this way: "We bombed the North Vietnamese into accepting our concessions."

The lesson here seems clear. Once an agreement-in-principle is struck, don't inject new material terms afterward and expect any better deal. You probably won't get it. What you will get is a breakdown, delay and ill will.

The crude use of "leverage" to force concessions is unpredictable, and may produce only ill will (rather than concessions).

How many possible deals have you seen delayed (or undone) because of a party's crude use of "leverage" in negotiations?

In private, I hear lawyers speak of tools like motion practice, threatened re-examination of patents, and oppressive discovery as "leverage" intended to induce a favorable settlement. In theory, this idea is logical. But in practice, it is often wrong. Crudely used, "leverage" often produces pushback, not submission. Parties to negotiations are human. And so they don't always use cost-benefit analysis in making decisions under stress.

Nixon's "Christmas bombing" seems an apt example of the failed use of "leverage" to force concessions. The strikes produced zero concessions, and significant ill will, from the North Vietnamese. The best that can be said about it is it arguably brought the North Vietnamese back to the table (a concession in itself). What we will never know is if they would have come back anyway, and without the inflexibility they displayed after the bombing, had Nixon never ordered the raids.

If the deal has post-closing obligations, there must be real-world tools for enforcement.

Have you seen a settlement with post-closing obligations signed, then fail later, because good enforcement tools weren't in the agreement?

The Paris Peace Accords provide a stark example. Because the parties were not making a permanent peace (only a cease-fire), they had to invent a means for ensuring peace in the interim. In Article 17, they created a "Four-Party Joint Military Commission" to police the cease-fire. An "International Commission of Control and Supervision" would adjudicate any disagreements. In practice, none of this worked. The "International Commission's" members were representatives of these military heavyweights: Canada, Hungary, Indonesia and Poland. When Hanoi began flouting the cease-fire, the joint and international commissions were impotent to do anything about it. By 1974, with Nixon driven from office by Watergate and the White House forbidden by Congress from spending further money on military operations in Indochina, the U.S., too, became impotent to do anything about it. And so nothing was done about it. In

April 1975 North Vietnamese forces rolled into Saigon, ending the war decisively in a way no diplomats could have.

Later, Kissinger said this about the importance of enforcement tools: "An agreement that you don't enforce is a surrender; it's just writing down surrender terms." Fisher and Ury themselves wrote no truer thing in their widely read primer on the art of negotiation.

### **Conclusion**

I mean no criticism of the skill and effort of our countrymen who negotiated as best they could at Paris. The hand of cards they had to play, given the realities on the ground in Vietnam and at home, was a poor one, and everybody at the table knew it. But the lessons that we can learn from them are timeless and valuable in any negotiation, 40 years later.

*Dan Lawton is the principal of Lawton Law Firm in San Diego. He dedicates this column to Warren John Ferguson Jr. and his family, of Fullerton.*

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