

# Daily Journal

MAY 1, 2024

## THE RESOLUTION ISSUE 2024

### COLUMN

## Mediation lessons from the backyard

BY GREG DERIN

Amy Tan is a renowned author profoundly observant of nature, human and otherwise. Her novel, "The Joy Luck Club," is beloved and deeply affecting. She is the winner of the National Humanities Award, among other honors. Few know that she is a member of the Board of the American Bird Conservancy and is working on her forthcoming book, "The Backyard Bird Chronicles."

I was moved to read excerpts from Tan's upcoming book, which appeared on March 13 in "The Paris Review." The passages were vignettes, observations made over several years by one skilled at perceiving her surroundings and the nuances of behavior. Henry David Thoreau commented that "[o]nly that day dawns to which we are awake." Tan demonstrates the power of attention and shares important lessons translatable to many aspects of our lives.

For more than 22 years, I have shared mediation rooms with participants, trying to help them find a path to resolution of complex controversies. I work with many attorneys on a repeat basis, and I am honored when they trust me to help guide these conversations. Most discussions, however, involve parties with whom I have not worked previously. Whether individuals or sophisticated businesspeople in conflict, they meet a mediator and require time and a process to develop trust before sharing intimate details of their lives, business plans and ambitions.

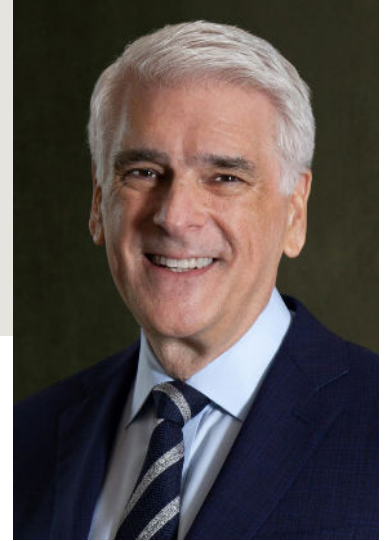
It was with that background that I was moved by Tan's gentle awareness of her encounter with a hummingbird seeking nourishment in her garden. She described her patient approach to proffering a feeder and allowing a hummingbird to inspect it, hover, glance, leave, return, inspect it from a new angle, leave again and finally return to drink from the strange object. The next day, when Tan heard a male hummingbird return to her patio, she put the feeder in the palm of her hand and held it out. The bird almost immediately landed on her hand and started feeding, warily appraising her the entire time. She asked herself, "Is that how a bird evaluates trustworthiness?" She, too, was evaluating the bird, its brilliant colors, its "exquisitely tiny feet." She noted its proportions, the layers of its feathers, and wondered what it was noting about her.

To Tan, the experience altered her life. Many mediators miss the opportunity to appreciate humanity in the room before them. To many, every mediation follows the same pattern, it becomes routine, step after step, almost always ending with a mediator's proposal. For me, the experience has remained fresh. In 22 years, no two participants have been the same. Every mediation has its own rhythm, as each is populated with unique human beings driven by singular dynamics. One builds trust by a patient sharing of one's own humanity and stands eye-to-eye, allowing parti-

cipants to conclude that they are safe sharing with you the elements necessary to explore optimal solutions for all concerned. Such trust is not free and is never given lightly, it must be earned. To some, it may seem evident, but in reality, it does not run deep, and only superficial information is shared, falling short of that which is useful in helping parties achieve true success.

On yet another day, Tan found her backyard had become a gathering place for a menagerie of young birds, all learning to fly and learning to feed themselves. Some were more adept, and others proved slower at learning essential skills, hanging on to the feeders. An adult jay returned the next day to its struggling offspring and assisted it by placing a seed into its mouth. They flew away together, later to return for another lesson in feeding. When the young bird resisted and instead ate seeds that had fallen to the ground, the adult departed. Left alone, the youngster eventually propelled itself to the feeder. It remained stuck awkwardly on the bottom, unable to reach the seeds. The young bird dropped off the feeder only to try again, demonstrating the persistence necessary to survive.

We all learn this skill early in life. We roll before we crawl, crawl before we walk, and walk before we run. We persist throughout our lives to achieve goals as we advance on the playground, in school and professionally. Yet, in



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the unnatural formality of negotiation during mediation, persistence needs to be coached. Parties often fail to demonstrate the skills which have otherwise become natural to them. Patience and persistence in a negotiation are essential. Only after testing each other do parties come to accept the limits of the possible or turn to creative alternatives that reveal possibilities not contemplated at the outset. The stakes are rarely as high as the starvation faced by young jays learning to nourish themselves, but the lesson is not lost.

Tan concluded thus: "The more I observe, the more I realize that every part of a bird and every behavior has a specific purpose, a reason, and an individual meaning. Instinct does not account for everything that is fascinating." So, too, our conduct as humans.