

Taking the War Out of Our Words

The Art of Powerful Non-Defensive Communication

Common Pitfalls in Current ADR Practices

Sharon Strand Ellison

Director of The Institute for Powerful Non-Defensive Communication

Sharon Ellison, M.S., Director of the Institute for *Powerful Non-Defensive Communication*, is an international communication consultant, an award-winning speaker, and the author of *Taking the War Out of Our Words*. She and her daughter, Ami Atkinson, produced the audio-book, *Taking Power Struggle Out of Parenting* winner of a Benjamin Franklin Award. Sharon has developed a communication process that gives people the ability to eliminate defensiveness in both professional and personal interactions. Sharon was one of 55 invited participants at an International Symposium, co-sponsored by the Minnesota Collaborative Law Institute with a grant from the Fetzer Institute. She was also an invited participant at the International Symposium on Human Dignity and humiliation at Columbia University, focused on the role of language in international conflict resolution. The guest speaker at the 11th annual Kaplan Lecture, Sharon received an honorary award as a pioneer in the field of communication.



In the field of collaborative family law ~ Sharon has been a speaker for the International Academy of Collaborative Professionals (IACP) annual conferences, as well as for state and regional conferences in both the US and Canada. She also provides training programs for collaborative practice groups. US practice groups include: San Francisco, CA; Chicago, IL; Minneapolis, MN; Milwaukee, WI; Taos, NM; Harrisburg, PA; Pittsburg, PA; Dallas, TX; Maryland; New Jersey; and New York. Canadian groups include: Edmonton, Calgary, Winnipeg, Ontario, and Quebec. Sharon has had papers published, including by the Collaborative Law Journal and for the Texas Bar Association, Collaborative Law Conference, as well as an article for the Marin, CA Collaborative blog.

Sharon has been a speaker for groups in related professions, including:

~ **Law:** the Association of Family and Conciliation Courts; Superior Courts of Los Angeles, Napa, and Sacramento; US Department of Justice; US & Canadian Bar Associations, and the Law Societies of Canada, bi-annual conference for family law judges and attorneys.

~ **ADR:** American Bar Association, International DR Conferences; the Association of Conflict Resolution, international conference; US Navy, International ADR Conference; Northern California Dispute Resolution Association, Annual Conferences; State Bar of Georgia, Annual ADR Conference; Federal Court Mediators, NH & Maine; ADR Working Group for the Federal Government, Washington D.C., and the Centre for Dispute Resolution, London, England.

~ **Mental Health:** Marriage and Family Therapists (MFT) continuing education provider; University of California, San Francisco Medical School, Langley Porter Psychiatric Institute; Center for the Vulnerable Child; Children's Protective Services of Oregon.

~ **Finance:** Ernst and Young; Wells Fargo; and the Institute of Divorce Financial Analysts.

In the vital area of cultural competence, Sharon has spoken for organizations such as: the UC Berkeley Staff Diversity Facilitator Network; and the Women's Global Health Imperative. She is dedicated to enhancing performance, creating leadership with integrity and building strength of community in every environment.

Table of Contents

	Introduction	1
	<i>The Importance of Identifying Pitfalls in Commonly Recognized Best ADR Communication Practices</i>	
1	Exercise & Discussion: Perceptions & Concepts 10 People in a Room The Hidden Assumption in the Phrase, “Power Corrupts” Two Forms of Power: Both Misunderstood Epigenetic Data: Brainwashing & the Cure Elephants in the Room: Adversarial Undertones & Stage Managing	2
2	<i>Exercise: The Impact of Minds Set</i> Thinking Like a Victim: Who Me? A Couple’s Argument <i>Definitions: The Power of Myth</i>	3
3	Pitfalls in Common Practices for Gathering Information The Underlying Myth/Assumption that Leads to the Pitfalls Six Pitfalls: Intention — Phrasing — Impact	4
4	The Non-Defensive Question: Beyond the Pitfalls <i>The Inherent nature of the Question</i> 1. Intention 2. Voice Tone 3. Body Language 4. Phrasing	5
5	<i>Practice: Applying the 4 Changes to Asking Questions</i>	6
6	Pitfalls in Common Practices for Making Statements <i>Part 1: Giving Feedback:</i> The Underlying Myth/Assumption that Leads to the Pitfalls 3 Pitfalls in Active Listening 2 Pitfalls in Confronting Issues & Naming Contradictions 2 Pitfall in Drawing Tentative Conclusions	7

7	Pitfalls in Common Practices for Making Statements	8
	<i>Part 2: Expressing Professional (or Personal) Perspectives</i>	
	The Underlying Myth/Assumption that Leads to the Pitfalls	
	Definition — Synonyms — Antonyms	
	3 Pitfalls: Intention — Phrasing — Impact	
8	The Non-Defensive Statement: Beyond the Pitfalls	9
	<i>The Inherent nature of the Statement</i>	
	<i>Part 1: Feedback to Others</i>	
	1. Intention	
	2. Voice Tone	
	3. Body Language	
	4. Phrasing	
	<i>Part 2: Expressing Professional Perceptions</i>	
	1. Intention	
	2. Voice Tone	
	3. Body Language	
	4. Phrasing	
9	<i>Practice: Applying the 4 Changes to Making Statements.</i>	10
10	Pitfalls in Common Practices for Making Predictions	11
	4 Pitfalls: Intention — Phrasing — Impact	
11	The Non-Defensive Prediction: Beyond the Pitfalls	12
	<i>The Inherent nature of the Prediction</i>	
	1. Intention	
	2. Voice Tone	
	3. Body Language	
	4. Phrasing	
12	<i>Practice: Applying the 4 Changes to Making Predictions</i>	13
	<i>(1) Limit Setting (2) Challenge Choice</i>	
13	Defensive and Non-Defensive Attitudes & Behaviors	14

14	Rationale for Suggested Voice Tones	15
15	<i>Chart: Voice Tone for Each Communication Format</i>	16

Introduction

~ For centuries, Aristotle's model for communication has been taught in Western culture as the art of winning arguments. *Powerful, Non-Defensive Communication* replaces this traditional model with one that gives each person the ability to communicate effectively without engaging in power struggle.

—Dr. Martin Jacobi, Past Dean, English Department, Professor Emeritus, Clemson University

Pitfalls in Commonly Recognized Best ADR Communication Practices

Historically, the field of law is far from being the only arena in which adversarial methods of communication have been used. Dr. Martin Jacobi, professor emeritus and past Chair of the English Department at Clemson University, also said that students have been taught, Aristotle's model of communication in classes in rhetoric and argument it has conditioned them to be focused on proving themselves right and others wrong. He went to say, "And then we send them out into diverse communities and expect them to get along."

To varying degrees, I believe this pervasive influence impacts how we all communicate. Professionals in any field, as well as clients, are likely to engage react defensively to disagreements and engage in power struggle, however subtle or overt. We often think of it as "just human nature," which it certainly seems to be.

Many professionals in various forms of alternative dispute resolution, including have thus put much effort into creating communication techniques, such as empathetic listening, that can be used to facilitate non-adversarial conflict resolution processes. Unfortunately, the roots of adversarial communication are deep and form a complex web that can block maximum success. Just as new saplings can grow out of old roots, many of the current "best practices" in ADR are still rooted in the old, adversarial model. In essence, specific myths or assumptions from historic methods function as the roots for newer techniques. While they may work better than traditional argumentative methods, they still limit the potential for highly effective, efficient conflict resolution.

In the session we'll start by examining how we, as professionals, often inadvertently, contribute to creating and accelerating needless conflict. The focus of this session will then be on a close examination of how five specific myths or assumptions have led to more than a dozen pitfalls in what are often regarded as best alternative dispute resolution practices. We'll then walk through steps for how to (1) eliminate the pitfalls, and (2) make four simple changes in intention, voice tone, body language and some aspects of phrasing that can defuse defensiveness and enhance alternative dispute processes. The results can be dramatic in achieving a level of understanding that gets to the heart of the underlying issues quickly and addresses deeper levels of the parties' interests and needs. Key to effective change here is recognizing the pitfalls.

Exercise & Discussion: Changing Perceptions and Concepts

1. Ten People in a Room: _____

2. The Hidden Assumption in the Phrase, "Power Corrupts"

3. Two Forms of Power: Both Misunderstood

A. _____

B. _____

4. Epigenetic Data: Brainwashing & The Cure

5. Elephants in the Room: Adversarial Undertones & Stage Managing

The *War Model* for Communication

The Impact of Defensive Attitudes and Behaviors

Defensiveness Leads Directly to “Thinking Like a Victim”

Exercise: Examining the Impact of Mind-Set

Directions: On the lines below, list the words you would use to describe another person’s behavior when you think you are doing your best to communicate, and the other person isn’t cooperating.

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Key Points — The Impact of Mind-Set:

1. _____
2. _____
3. The Superior-Victim Attacker Dynamic: A. _____
B. _____ C. _____

Key Points — A Couple’s Argument

1. _____
2. _____

The Power Of Myth Definitions:

1. _____

2. _____

Pitfalls in Common Practices for Gathering Information

Underlying adversarial assumptions, fueled by centuries-old myths, have been carried forward from an adversarial model of communication and create pitfalls some commonly accepted “best” communication practices.

The Myth/Assumption that Leads to the Pitfalls for Gathering Information:

PITFALL 1: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 2: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 3: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 4: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 5: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 6: _____

Intention: _____

Phrasing: _____

Impact: _____

Powerful Non-Defensive Communication™ (PNDC)

Changing Four Simple Key Aspects of Our Communication

The traditional *war model* use of our basic forms of communication turns them into tools for manipulation, control, and even punishment, which is not their natural function. These basic tools are: (1) questions; (2) making statements, including (a) feedback to others, and (b) expressing our own thoughts, feelings and beliefs; and (3) predicting consequences as a way to set limits. If we change 4 simple aspects with regard to these 3 forms of communication, we can transform each of them into powerful tools for defusing defensiveness and achieving goals without engaging in power struggle. These essentially simple changes can have the same kind of power as getting a new computer program—one that does what we want it to with far greater ease.

The Non-Defensive Question: Beyond the Pitfalls

THE INHERENT NATURE OF THE QUESTION: Curious — Open — Innocent — Neutral — Inviting

A. Intention: Curiosity. While a common legal principle is to never ask a question if you don't already know the answer too, in collaborative process, the curious question will get the heart of an issue quickly.

B. Voice Tone — (1) Avoid: Putting extra emphasis on certain words and/or coming up at the end of the question, as is traditionally done in most languages. **(2) Focus:** Smooth, calm flow of words, coming down in tone at the end of the question.

C. Body Language — (1) Avoid: Sending messages through body language, such as leaning in toward the person, using facial expressions to convey frustration or even trying to look concerned; and/or conveying judgment by frowning, raising eyebrows, shaking the head, shrugging shoulders, no matter how subtly. **(2) Focus:** Relaxed, open, receptive expression.

D. Aspects of Phrasing: Use any one or more of the 14 formats for asking questions.

NOTES: _____

***Practice* — Applying the 4 Changes to Asking Questions**

Here, we'll apply the four changes — intention, voice tone, body language and some aspects of phrasing to 3 of the 14 forms of question, chosen because they help avoid getting caught up in our own agenda. Practice in pairs and work with delivery. If you have extensive experience with PNDC, please feel free to use any form of question you wish.

Person's Statement: Use one example for both people, or each do one

Question(s): About what the person *means* by a particular word or phrase:

Question(s): About our own *assumptions* regarding what the person means:

Question(s): About the person's *intentions*:

Person's Statement: Use a participant's example

Question(s): About what the person *means* by a particular word or phrase:

Question(s): About our own *assumptions* regarding what the person means:

Question(s): About the person's *intentions*:

Pitfalls in Common Practices for Making Statements

PART I: GIVING FEEDBACK

A. The Underlying Myth/Assumption Leading to Pitfalls In Giving Feedback

PITFALLS IN ACTIVE LISTENING: "I hear you saying," or similar phrasing

PITFALL 1. _____

Intention: _____

Impact: _____

PITFALL 2. _____

Intention: _____

Impact: _____

PITFALL 3. _____

Intention: _____

Impact: _____

2. PITFALLS IN CONFRONTING CRUCIAL ISSUES & NAMING CONTRADICTIONS:

PITFALL 1. _____

Intention: _____

Impact: _____

PITFALL 2. _____

Intention: _____

Impact: _____

3. PITFALLS IN DRAWING TENTATIVE CONCLUSIONS

PITFALL 1. _____

Intention: _____

Impact: _____

PITFALL 2. _____

Intention: _____

Impact: _____

Pitfalls in Common Practices for Making Statements

PART 2. EXPRESSING PROFESSIONAL (OR PERSONAL) PERSPECTIVES:

The Underlying Myth/Assumption Leading to Pitfalls in Stating perspectives:

Definition: _____

Synonyms: _____

Antonyms: _____

PITFALL 1: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 2: _____

Intention: _____

Phrasing: _____

Impact: _____

PITFALL 3: _____

Intention: _____

Phrasing: _____

Impact: _____

NOTES: _____

The Non-Defensive Statement: Beyond the Pitfalls

THE INHERENT NATURE OF THE STATEMENT:

Open — Direct — Vulnerable — Subjective — Descriptive

STATEMENT — PART I: GIVING FEEDBACK TO OTHERS:

A. Intention: Observation — Holding up the mirror so others can get a reflection of how we see their reasoning, beliefs, feelings, and behavior.

B. Voice Tone: (1) Avoid: Extra emphasis on certain words, tone rising for emphasis, and/or tonal quality that conveys advice or judgment.

Focus: Relaxed, smooth flow of words, coming down in tone at the end of each phrase and sentence. **(2) Focus:** Relaxed tone as observer

C. Body Language: (1) Avoid: Tense body posture, frowning, raising eyebrows, arms out, head shaking either side to side for “no” or up and down for “yes” to reinforce points made. **(2) Focus:** Relaxed, calm, conveying thoughtfulness.

D. Aspects of Phrasing — Feedback: Step 1: When I hear . . . **Step 2:** and at the same time . . . **Step 3:** then it seems to me. . . .

PART II: SELF-EXPRESSION — STATING OUR OWN PERSPECTIVES:

A. Intention: Describing our own perspective subjectively as related to the issue or topic under discussion, rather than giving advice or stating opinion as fact.

B. Voice Tone: (1) Avoid: Defending and point proving. **(2) Focus:** The tone can be animated, responsive, as long as it doesn’t cross the line into a more urgent tone of convincing or blame.

C. Body Language (1) Avoid: Body language that invades the other person’s space or staring and frowning while talking. **(2) Focus:** A use of body language that is simply natural to the storyline of our own experience, which can include laughter, tears, and/or anger, as long as it’s part of the storyline and not directed at the person. “I felt so hurt and angry when . . .” *Not* “You make me so angry.

D. Aspects of Phrasing-Professional or Personal Statement: Step 4: Say your own thoughts, feelings and beliefs as if you were telling a friend a story.

NOTES: _____

Practice — Applying the 4 Changes to Making Statements

Here, we'll apply the four changes again — intention, voice tone, body language and some aspects of phrasing to the four formats for (1) giving feedback and (2) expressing professional perspectives. Practice again in pairs and work with delivery.

Person's Statement: You can use one or more of the participant examples previously used, or new examples.

When you say: Your interpretation of the person's words—what they would mean if you said them and meant it.

And at the same time, I see: Name any contradictions you see between the person's words and (a) her body language and tone of voice, (b) your past experience with the person, and/or (c) outside data.

Then I think . . . [or] My assumption is . . . [or] I concluded that . . . [or] It seems to me: State your tentative assumptions about what the contradiction means and/or what you think the person's intentions were, i.e. what caused the contradiction.

And so, my reaction is: State your own thoughts, feelings, and beliefs with regard to the issue/situation. Avoid referring back to the contradiction or it is likely to convey blame.

Pitfalls in Common Practices for Making Predictions

The Underlying Myth/Assumption Leading to Pitfalls in Making Perspectives: _____

PITFALL 1: _____
Intention: _____
Phrasing: _____
Impact: _____

PITFALL 2: _____
Intention: _____
Phrasing: _____
Impact: _____

PITFALL 3: _____
Intention: _____
Phrasing: _____
Impact: _____

PITFALL 4: _____
Intention: _____
Phrasing: _____
Impact: _____

NOTES: _____

The Non-Defensive Prediction: Beyond the Pitfalls

THE INHERENT NATURE OF THE PREDICTION:

Protective — Foretelling — Neutral — Definitive — Firm

Definition: Predicting consequences for various choices a person might make. Predictions are more commonly referred to as or setting limits creating boundaries.

A. Intention: Creating security through predictability by neutrally predicting the consequences for each of two or more choices a person has in a specific situation.

B. (1) Voice Tone, Avoid: Avoid a tentative tone. **Avoid:** coming up at the end of the prediction. **Avoid:** Urgent, harsh, dominating or punitive tones

(2) Focus: Relaxed, smooth flow of words, come down in tone at the end of the prediction, firmly and gently.

C. Body Language: (1) Avoid: Using body language in any way to convey dominance or threat, such as by moving in close to the person, standing over her or him, frowning and/or using other harsh expressions.

(2) Focus: Being relaxed and calm, conveying a willingness to honor whichever choice the person makes.

D. Aspects of Phrasing: Use “If – Then” phrasing to name the choice and consequences (see next page)

1. Limit-Setting Prediction:

(1) If you do (or feel, think, or believe) X, then I’ll do Y.

(2) If you don’t do (or feel, think, or believe) X, then I’ll do Z.

Key: The person making the prediction implements the consequence.

2. Challenge-Choice™ Prediction:

(1) If you do (or feel, think, or believe) X, then I think you might experience Y.

(2) If you don’t do (or feel, think, or believe) X, then I think you might experience Z.

Note: The kind of experience the prediction is made about can vary widely.

Example: (1) If you interrupt people often, then people may be less likely to listen to you. If you (2) If you wait until they finish what they are saying, then I think they will be more open to listening to what you have to say.

Key: The person making the prediction makes a tentative prediction regarding what the other person might experience. Life provides the consequences.

Practice — Applying the 4 Changes to Making Predictions

Practice in Pairs again. Using your own example, write out the sentence said by the person, or the issue you want to work on. Again, it can be same situation you used in the question and/or statement exercises, or a new one.

Statement or Issue You Want to Make a Prediction About — (Commonly referred to as setting a limit or creating a boundary): _____

1. Limit-Setting Prediction: Make a prediction clarifying how you will respond if the person makes a certain choice and how you will respond if he/she doesn't make that choice.

If you do (or feel, think, believe), then I will do (or feel, think, believe) Y.

1. _____

If you don't do (or feel, think, believe), then I will do (or feel, think, believe) Z.

2. _____

Challenge-Choice Prediction™: Tell the person what you believe he/she *might* experience if he/she makes a certain choice and what you believe she *might* experience if she doesn't make it. Here, you do not *do* anything in consequence. Since you're not creating the consequence, this prediction must be less absolute.

If you choose to do X, then I believe you might have Y consequences.

1. _____

If you choose not to do X, then I think you might be more likely to have Z consequences.

2. _____

Defensive and Non-Defensive Attitudes & Behaviors

Non-Defensive Attitudes and Behaviors	Defensive Attitudes and Behaviors
Open	Closed
Responsive	Withholding
Assertive	Passive
Receptive	Resistant
Consistent	Inconsistent
Flexible	Rigid
Direct	Evasive
Gentle	Lax
Thorough	Demanding
Firm	Harsh
Compassionate	Judgmental
Knowledgeable	Arrogant
Accountable	Blaming
Respectful	Demeaning
Accepting	Rejecting
Humorous	Sarcastic
Curious	Suspicious
Sincere	Manipulative

Whenever anyone in any kind of mediated process, whether it is a client or professional, is reacting with responses characterized by the right-hand column of words describing defensive *attitudes* and/or *behaviors*, it will undermine the process of working toward resolution.

These attitudes and behaviors are some of the “elephants in the room,” created when the client or professionals’ intentions, voice tones, facial expressions, and phrasing, push buttons and undermine the process. The outcomes can range from stalemate to the kind of compromise that leaves people with bitterness and resentment.

When the attitudes and behaviors reflect the words on the left side of the page, it can create an environment of safety where deeper levels of resolution can be achieved. Recognizing the need and gaining the skills sets essential to defusing defensiveness is a vital challenge in all our professional, personal and community relationships.

Powerful Non-Defensive Communication™

Rationale for Suggested Voice Tones for Each Communication Format

A “neutral” tone does not mean flat or monotone. It means being present, relaxed, gentle, without any extra messages coming through voice tone.

(1) Questions: The question is neutral because its purpose is simply to gather information, not give it. Even a frown of concern *sends* a message that can influence how the person responds, which violates the nature of the question.

(2a) Statements. Steps 1-3—Feedback: The tone is neutral because feedback is strictly observational, like holding up a mirror so the person can get a picture of our understanding of what he/she said. If emotion is added, it distracts the person from being able to hear and process the feedback, and often causes resistance.

(2b) Statements. Step 4—Our Perspective: Here we can fully and honestly express our thoughts, feelings and beliefs — as long as we don’t cross the line and try to convince the person to agree. Honesty — *without judgment* — can be a powerful force in creating trust.

(3) Predictions: Predictions are neutral because any information conveyed other than the available choices and consequences is very likely to come across as controlling and/or punitive.

Summary: Often we “leak” our own perspectives into our questions, feedback and limit setting. Staying neutral, except for when we are expressing our own thoughts, feelings, and beliefs, can make our communication simultaneously more respectful and honest.

The chart on the next page gives a quick overview of the kind of tone associated with each step in the process that will increase the odds that client(s) and/or other professionals will be more likely to stop posturing and engage in productive conversations.

Voice Tone Chart Non-Defensive Communication Formats

Questions:

Neutral & Receptive

Content Questions: The Topic Under Discussion

Neutral & Receptive

Process Questions: Attitudes, Emotions, Motives

Statements:

Neutral & Observational

Hear: The other person's overt message/words

Neutral & Observational

See: Anything that contradicts what they said

Neutral & Observational

Conclude: The meaning of any contradictions

Full Expression

Our Own Position: Thoughts, Beliefs, Feelings

Predictions:

Neutral & Foretelling

Set Limits: Consequences We Implement

Neutral & Foretelling

Challenge-Choice: Natural Life Consequences

Learning non-defensive communication can be challenging because, while the changes in intention, voice tone, body language and phrasing are simple, it is hard to shift away from deeply internalized ways of communicating that so often —consciously or unconsciously — create and accelerate conflict. As we discussed, research is increasingly verifying that our *experience* and even our *beliefs* have been “epigenetically” encoded and passed on for centuries. The exciting part is that science is also demonstrating that we can change this encoding within our own lifetimes. In the course of one conversation with a client, or another professional, we have far more potential than we might imagine to create the safe environment clients need to move out of defensive posture and make instant changes in attitude and behavior. This gives us untold options for making dramatic changes in all our relationships and the very functioning of human nature.