


BrainFishing Masterclass



Questioning Skills for Mediators and Negotiators

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Brain Science

Limbic System/Amygdala:

- Engages instantaneously – like a reflex.
- Triggers into the Fight/Fight/Freeze response.
- Immediately diverts blood flow from the pre-frontal cortex into the muscles.

The Reptilian Brain: Basal Ganglia

- Houses “automatic memory” – holds habits, routines, behaviours below our consciousness. We pull these up without editing or thinking.
- Holds our biases, judgments and reflexive opinions.

Neo/Pre-Frontal Cortex:

- Many supporting components, all contributing to self-awareness, conscious and rational thought, planning, deliberate choices and actions, with reasons.

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BrainFishing

Red Brain:

- Oldest part of the brain: limbic system, basal ganglia, amygdala
- Automatic actions – reflexes, heart rate, breathing, habits, automatic memory, etc.
- Designed for survival and to protect us
- Always on and working 24/7
- Only two categories: Treat or Threat
- When in threat: Fight or Flight
- Reacts instantly – like a reflex– the “Hijack”
- With re-triggering, can be maintained for a long time



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BrainFishing

Blue Brain

- Most recent part of the brain: pre-frontal cortex
- Conscious thought – rational and self-aware
- Highly analytical, sustained, creative problem-solving skills
- Works slowly, one problem or topic at a time
- Reacts five times slower than the Red Brain
- Uses enormous resources of the body, tires easily

**We are all designed to be
“Cognitive Misers!”**



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BrainFishing

- BrainFishing is engaging the best part of the other party, their **Blue Brain**, to find a better solution to the problem.
- When anyone is in their **Red Brain**, there is, and cannot be, and problem-solving taking place!
- BrainFishing is the process of calming the **Red Brain**, luring the **Blue Brain** to bring the best knowledge and skill to bear on the problem.
- We do this by focusing on Interests.

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Positions vs. Interests

- **Interests:** Wants, Needs, Concerns, Fears, Hopes, etc.
- **Position:** One Party's Solution to the Problem that Meets Their Interests

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Questioning Skills: **Positions** To Interests

Our "Position"

Is simply One Solution to that situation that will definitely meet our interests – triggers the Red Brain.

We communicate via positions, yet we need to work with and satisfy interests to resolve the Issue.

How do we discover the other party's Interests? **ASK THEM!**

Our "Interests"

Are the Wants, Needs, Concerns and Fears that we have in a given situation. Engages the Blue Brain.

Position:

The case law is clear – we'll win on the main point!

We won't compromise just to get this settled!

'Moving to Interests' Question:

That certainly could happen. Where do you see the strongest points? Where could it go sideways?

Good. What areas would it make sense to be flexible, given the expert opinions?

BrainFishing: **Information Gathering**

Information Gathering Question:	Reason you might ask:
<i>What are the main issues in the case for you?</i>	Helps you to understand the problem.
<i>How has this issue affected your life? Your work relationships?</i>	More understanding the problem.
<i>What, exactly, do you think the other party is missing in their analysis?</i>	Really understand the problem.
<i>Tell me more about that...</i>	While technically not a question, this is one of the most effective ways to gather and solicit more information.

BrainFishing: Problem Solving

Problem Solving Question:	Reason you might ask:
<i>What areas of the claim to you think warrant flexibility from you? From them?</i>	Solicit their ideas, and engage them in solving the problem.
<i>What would happen if we explored an ongoing working relationship as part of the resolution?</i>	This question focuses their thinking in a very specific direction, toward a specific solution.
<i>What information would you need to even consider moving off that number? What would change your analysis?</i>	Think a bit more broadly about the way we are approaching the problem.
<i>Regardless who pays, how much do you think is reasonable for the Plaintiff to accept? The Defendants to pay?</i>	Establish a resolution range to aim for as a first step in solving the problem.

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Questioning Skills – Exercise #1

Identify a difficult Positional Statement you've heard or received: _____.

Identify a typical, or common Positional response that comes to mind: _____.

Identify either/both Information Gathering or Problem-solving questions that could be asked instead:

Information Gathering: **Problem Solving:**

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Two Shifts and **Intention**

What actually happens when we ask a question?

Shift #1 – We ask questions

- Calms **our Red Brain** when we think, plan, reflect, and consider what question to ask. This engages us in **our Blue Brain**.
- When we move to our **Blue Brain** and ask questions, this causes the second shift -- **in them**....

Shift #2 – They automatically stop and think

- Questions seem to bypass the **Red Brain** and quickly engage the **Blue Brain**.
- This calms **their Red Brain**, engages **their Blue Brain**
- As they *think*, they calm down, become curious and engaged
- Good questions **compel** the other party to think, reflect

Two Shifts and **Intention**

Intention:

- These two shifts only happen when we are asking questions because we are:
 - Genuinely curious
 - Non-judgmental
 - And **actually want** to hear their response and learn from it

Acknowledging Statements

Provocative Red Brain Statements We Hear:	Typical Responses that Escalate the Red Brain:	Acknowledging, plus Questions:
<i>You know we have a strong case on liability!</i>	<i>Well, there are a lot of issues that could go against you in this case, too.</i>	So, you think liability is not going to be an issue. What exactly are you relying on that get's you there?
<i>You know they're just playing hardball! You need to get them to move if this is going to settle.</i>	<i>You haven't given them any reason to move yet.</i>	You're wanting to see them take this seriously. If they start moving off their last number, what kind of movement am I going to see from you?
<i>The contract is clear, they have assumed all these risks!</i>	<i>Courts often go past the four corners of the contract, which could expose your client to damages.</i>	You're relying heavily on the contract itself, I see that. What areas of the contract might a court rely on to find in <u>their</u> favour?

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Questioning Skills – Exercise #2

Take either an Information Gathering or Problem-solving question from the first exercise and input below, then identify two ways you could Acknowledge (without agreeing) just before asking the question:

Information Gathering:

Problem Solving:

Acknowledgment:

Acknowledgment:

Question:

Question:

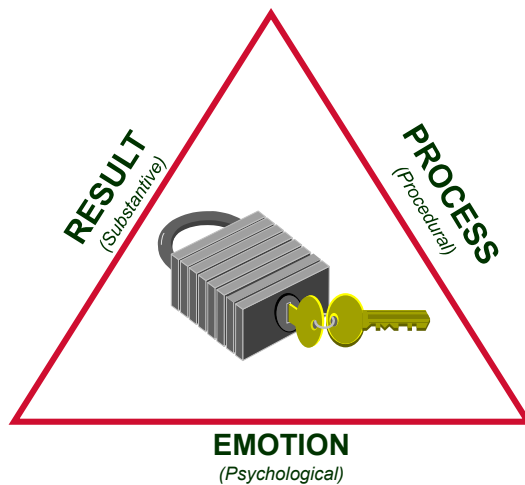
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Motivation: Understanding **Interests**

Triangle of Satisfaction



Three Types of Interests:

Results (Substantive Interests): This is the “what”, or the tangible outcome or solution. Triggers many Red Brain and Emotional Interests, along with some rational and conscious thinking.

Process (Procedural Interests): This is the “how”, or the process by which we are reaching a solution. Heavily focuses on the Blue Brain, on the pre-frontal cortex for thinking of options and planning ahead.

Emotion (Psychological Interests): This is what is going on emotionally or psychologically as we try to reach an agreement. Fully Red Brain around winning/losing, being right, feeling hurt, threatened, demeaned or disrespected. Status, self-worth.

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Questions and **Interests**

- **Acknowledging and Information Gathering Questions:** Target addressing Emotional/Psychological Interests. By acknowledging, asking and listening, it meets our need to be heard, to be recognized and seen, to be respected.
- **Problem-Solving Questions:** Focus the Blue Brain on Process interests and Result interests. It meets our need for procedural fairness, inclusion, and substantive fairness.

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Questioning Skills: Reality Changing

Once we know the “Why”, we may have to **Reality Test** the other party. We use questions for two key reasons:

1. **Gathering Information and Exploring:** Open questions, probing, clarifying, listening and understanding, acknowledging, etc. This is a key skill for effective mediation and resolution.
2. **Conveying Information:** One of the most effective use of questions is to convey information and compel them to think differently. This can **challenge or change** the other person’s perspective, make them reflect and consider other perspectives. This type of question minimizes defensiveness when engaging around difficult or sensitive information.

Questioning Skills: Reality Changing

Reality Changing questions	Reason you might ask
<i>You may well win, but regardless of who wins, how long are you thinking it will take to get a decision. How much do you think will be spent no matter what?</i>	This moves the focus beyond the outcome itself to include process interests, making them think about the problem a bit differently – if not necessarily happily.
<i>Given the lack of expert data or even hard evidence, how big a role is credibility going to play? How predictable are credibility issues?</i>	This question compels them to consider the level of uncertainty.
<i>Assuming you win on liability, which would be a great outcome for you, what issues are you seeing in proving this level of damages?</i>	This shifts their thinking away from winning on liability, and makes them re-think how much they'll recover.

Questioning Skills: **What If**

What If questions:

Reason you might ask:

<i>If you do your best but can't locate that witness, or they simply don't show up for trial, what are your chances of establishing liability?</i>	Their brain probably answers with a loud "NONE!" in their head, even before they speak.
<i>If we simply accept your theory of the case for a moment, how would you explain the emails they have produced?</i>	This question takes away the argument on whether their right or wrong, and requires them to make sense of other issues instead.
<i>If the union's concerns aren't addressed, what are the chances the membership will ratify this deal even if they recommend it?</i>	This is a question that forces the other party to confront the fact that unless both parties' concerns are addressed, there won't be a deal.

Questioning Skills: **Statement-to-Question**

Statement-to-Question:

Why you might use:

<i>I'm unfortunately not seeing anything conclusive in this report you've produced – what specifically are you thinking of relying on in this?</i>	They hear the comment, and then focus their attention on the question. The statement frames the context for the question, so it's not quite so open.
<i>You've had a clear finding of harassment for your behaviour in that incident with Fred – how are you planning to address that going forward with your colleague ?</i>	This statement-to-question focused the person squarely on an issue they are avoiding, then giving them a respectful way to think about moving forward constructively.
<i>We simply cannot sell your proposal to our membership, it just won't fly – what other ideas do you have that may be workable for us?</i>	This statement flatly dismisses the proposal, then asks a question that redirects the other party toward brainstorming or other options, keeping the dialogue intact in spite of the dismissal.

Questioning Skills – Exercise #3



Identify Information you want to tell them:

What's **their** Interest in knowing this?

What are some questions that will **convey** this information, or will gently challenge or broaden their perspective?

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Questioning Skills – Permission



When people are stuck in their Red Brain and not listening, a simple question that asks permission to tell will greatly increase their hearing you.

1. I know how important this issue is for you. Can I walk through the concerns I've seen in what you've explained? Is now a good time?
2. My goal, as I mentioned, is to help you make a good decision today, whatever that is. Can we go through some of the issues I'm not sure we've looked at yet?

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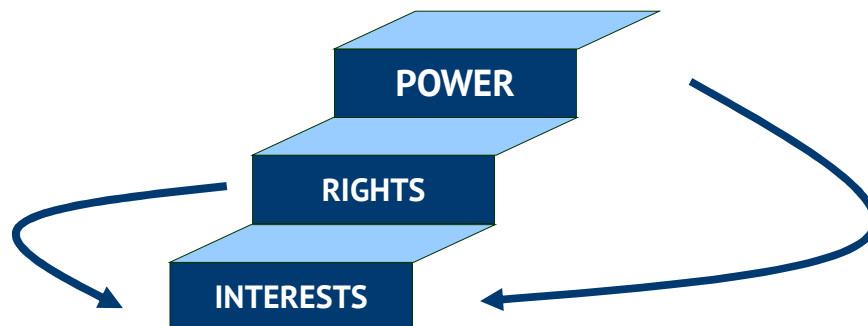
Questioning Skills – Closing/Confirming

A second closed question we use to crystallize something is a closing/confirming question.

1. Are we agreed, then, that this topic will be deferred and put on next meeting's agenda?
2. So, if my client covers travel costs and provides a positive letter of reference, and your client pays their own training costs, we would have a deal, is that right?

The Stairway

If you need to go up to Rights and/or Power, look for opportunities to **Loop Back** to Interests



Summary

- Influence comes from calming the **Red Brain**, engaging the **Blue Brain**, and making them think. Questions and Acknowledging Statements are the most effective approach for this.
- Watch what kind of interests they need to get met. Especially when Emotional/Psychological interests are in play, people are in **Red Brain** and cannot focus on or resolve Substantive issues.
- Shift to questions 70+% of the time. 30% of the time (briefly) tell them what you need to – and immediately follow with a question that engages their **Blue Brain**, makes them think, and keeps them constructive and focused.

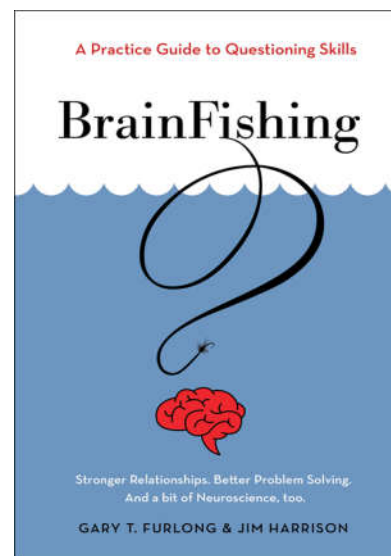
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Final **Questions?**

BrainFishing: Influence and the Art of the Question

All four BrainFishing
Videos are now at
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