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CSI Literacy: The Forensic Application of Basic Skills Testing

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Abstract: *This presentation is a reflection on the application of literacy testing in a criminal case in the UK. A woman of retirement age was charged with fraud on the basis of a repeated false statement on a benefit form. The author was asked by defense lawyers to provide an expert opinion on whether the defendant's claim to have misunderstood the question due to limited literacy skills was credible. The presentation reviews the procedures developed by the author to come to an informed opinion, and discusses some of the limits of literacy testing the process revealed.*

Background

It is worth acknowledging from the beginning that this was one of the most extraordinary and interesting pieces of research ever tackled by the author. It has implications for the nature of justice, the significance of literacy, and the application of educational research to real world and pressing concerns. Due to the significance of this work for my own understanding of educational research, I have come to the conclusion that the best way to present this is as a personal reflective narrative.

In 2008 I was approached by a publicly-funded defense lawyer to see if the I would be willing to testify in court as an expert witness in the trial of a woman who had been charged with benefit fraud. The woman (whom I will call Mrs X) had lived in poverty for many years after her husband had been prevented from working for health reasons and she had been laid off from her employment. Mrs X had been receiving a certain benefit for 14 years after declaring that her household did not receive a certain category of income. It was as if Mrs X had signed forms stating that neither her nor her husband received disability benefits and were entitled to tax relief, while getting the benefits all along.

When it was discovered that Mr. X did in fact receive such income, Mrs X was charged with fraud as she was the person who signed the benefit forms. The amount in question was around \$18,000. Her defense was that she was incapable of understanding the question, and had simply completed it the way she had been told to do originally (in 1992), checking "no" on the form each time it was reviewed. When Mrs X. was informed of the mistake, she immediately remortgaged her home (a council house that the family had been able to buy cheaply after decades of tenancy) in order to repay the money to which she was not entitled. Nonetheless, the local authority decided to prosecute her for fraud. Mrs X. was able to obtain representation at no cost from public funds due to her extremely low income. Luckily for Mrs X, she had been assigned to a young lawyer who became interested in the question of whether Mrs X's skills had allowed her to understand the forms she was signing. In many cases, this line of defense might have been dismissed out of hand on the basis that when Mrs X signed the form it was her responsibility to ensure she could understand it.

I became involved when the young lawyer googled for a literacy researcher in the area. I got a phone call out of the blue one afternoon asking for a few simple pieces of information about literacy in the UK and how it "worked." I answered as best I could, and found myself being asked if I could contribute anything to the defense case. I would be called as an expert

witness for the defense if I could do so. If the evidence I was able to gather did not support their case I would be paid for the work, but not asked to testify.

Some Problems

As the author worked through the complexities of possible ways to inform an opinion, a number of interesting issues presented themselves. Among the most pressing was the obvious fact that it was in Mrs X's interest to get a low score on any form of literacy test she was asked to complete. The incentive was for her to throw the test in order to create a plausible defense. I had to find a way to ensure that I could justify claiming that she had not done so. There was also the critical, and generally not well explored, issue of leveling a very short piece of text. The number of words was less than ten, but they were complicated words with specialized meanings. Without being able to come to some sort of position regarding the difficulty of understanding this text I could not comment on the probability that Mrs X's mistake was genuine.

In essence, there were no fixed points in the situation against which other aspects could be aligned—except for my own growing sense of injustice and determination to bring my training and experience to bear on the situation and do something concrete to assist Mrs X. If I could not manage that, then what use were my years of study and my commitment to social justice? I was going to have to build my own ladder as I climbed.

Some Strategy

When I agreed to take the case on I was given confidential access to the case files, and was able to see Mrs X's claim not to have understood the questions on the form, as well as the way they were received by the people interviewing her. It is fair to say that the interviewers were not especially sympathetic to Mrs X, even after the money had been repaid. Prosecution could have been stopped at any point, but it was not. Nonetheless, the interview transcripts provide some insights into the key issues in the case.

At this point, I was a little adrift. I had ten years of post-PhD experience, I was running major literacy surveys in the UK and was seen as a useful contributor to issues of literacy assessment across UNESCO yet I had nothing to hand to help me through the case. The bizarre feeling of vertigo really underscored for me the extent to which I, and I suspect many educational researchers, work within a bounded field, with useful directional markings and consistent rules. When that is taken away we are left with having to make stuff up. And yet it was really important not to get "too creative"—if the interviewers were anything to go by my opinion was going to have to face some hostile questions.

Stripping things back to basics, I realized that there were two things I had learned over the years. The first, following social practices approaches to literacies (Barton, Hamilton & Ivanic, 2000) was that people's literacy engagement tends to be patterned across their lives. The dominant and powerful forms of literacy, such as the ones required to fill out government forms and understand bureaucratic language, tend to be distributed in a similar way to other social resources such as money and education (St.Clair, 2010). This makes it likely that limited access to these kinds of literacy resources would be associated with limited education and particular forms of employment history. Looking across the person's whole life, there should be a fairly consistent pattern of marginalization. It was quite uncomfortable to face this in such stark terms.

The second thing I had learned was that testing carries huge weight, even when it is not necessarily well designed or implemented. It looked like I was going to have to ask Mrs X to take some form of literacy test. But the issue remained—how could I be sure that she was not deliberately getting the answers wrong? After some thought I came up with the notion of asking her to complete two tests and compare the results. What I would be looking at was both the absolute score and the consistency between the tests, on the basis that while it would be easy to throw one test, it would be hard to throw two by the same amount.

Having developed these strategies, I arranged an appointment for Mrs X to come to my office at the university. This was a deliberate decision, as I felt it was important that she could see where I worked and feel that she had “the university” on her side, if things should work out that way. She was a pleasant woman, and stayed for about two hours doing the tests and chatting. There was no noticeable discomfort regarding the setting.

Reviewing the Form

In order to provide some context, it is useful to review the type of question that Mrs X had completed inaccurately. Figure 1 shows an example of the kind of question, with identical structural features to the original.

QUESTION 5 DO YOU HAVE A WORKS PENSION OR SUPERANNUATION?
Yes or No must be entered, if YES show your net amount e.g. I get £12.00 net every month from CO-OP. Please provide proof of this amount.

SELF	^{NO}
PARTNER	

If YES, I get £ _____ net every _____ from _____
 My partner gets £ _____ net every _____ from _____

Figure 1: Historical example of the type of question answered inaccurately

This is not a straightforward piece of text. Among the factors making it hard to read are:

1. Block capitals are harder to read than regular type
2. The text is very close together
3. There is a specialist word at the end of the question, functioning as a distractor

It would not be unusual for somebody meeting unfamiliar text at the end of a sentence to assume that the entire sentence was incomprehensible. The ability to parse the sentence into different components and, in effect, to read a compound question as:

1. Do you have a works pension?
2. Do you have any superannuation income?

is a relatively advanced literacy skill of the same type used to discriminate between literacy levels in international testing (Kirsch & Guthrie, 1980). It was also noticeable from the facsimiles of the original forms with which I was provided that the specific questions under examination were not answered in Mrs X’s handwriting. She stated consistently that she had asked staff in the council offices for help with the forms and for them to review the answers, and this seemed to bear her out.

Testing Mrs X

Mrs X completed two tests while she was in my office. The first comprised two test sections from the English Skills for Life system, following the instructions in the guides for assessors. The first was a level checking test in a short booklet. The questions include listening skills as well as selecting the correct information from a given passage. The questions require no writing—the respondent simply has to tick beside an answer or circle a few words.

Mrs X scored 2/12 on the literacy questions and 4/12 on numeracy. This result requires further testing, using the Initial Assessment instrument. The Initial Assessment instrument for literacy was administered, again according to the guidance. The questions are similar to the previous test, but provide a more accurate assessment. Mrs X scored at Entry 1 and there are indicators that people operating at this level would have difficulty with the forms. Individuals would be able to manage simple questions and single-step instructions, quite different from the compound question in the form. In addition, the emphasis at this level is upon familiar subjects.

Mrs X tackled three sections of the Canadian Essential Skills tests on Numeracy, Reading and Document Use. The language used in the tests is strongly compatible with UK usage. Results indicate that Mrs X would be a Level 1 learner. The Canadian Government define this level as:

1. Document is very simple.
2. Limited search using key words, numbers, icons or other visual characteristics to locate information.
3. Entering few pieces of information.
4. Minimal inference is required.
5. No knowledge of the content of the document is required to use the information. No analysis required. (HRSD, 2009)

The Housing Benefit forms are not compatible with this level of text use, particularly items 2 and 5. The questions are not well presented, lack visual characteristics and considerable knowledge of the content (such as the definition of superannuation) is required to respond appropriately. More importantly, Mrs X had scored at exactly the same level on both tests despite some differences in test design, adding enormously to the credibility of these results.

Biographical and Practical Issues

When I met Mrs X I asked her to complete a form I had created with simple questions covering her educational and work history. Among the reasons to ask her to complete the form were:

1. To get a written record of her work and employment history
2. To try out a compound question with a distractor

Question 5 of the form echoes the format of the problematic question (altered here to reflect the earlier example):

- Do you have a works pension or superannuation? What was your best subject or pedagogy?

In both cases it is a compound question with a distractor word in the second half. Mrs X did not complete the question on the form I created, simply inserting a question mark. When asked directly what her best subject was, Mrs X could answer immediately. This suggests that if she had been able to split the compound question, she could easily have understood what was being asked, but was unable to do so. This is an identical situation to the original question on the form, and strongly supports her contention in the interview transcripts that she was confused by “superannuation” and could not answer the first part of the question.

In terms of biography, Mrs X had attended school outside of the UK in a place and an era where education for girls was not a priority, and had left school with no qualifications. She had no books in the house, and her and her husband read a very accessible newspaper. Throughout her work history she had mainly manual jobs, with any text use being limited to quantities and simple arithmetic. Overall, this adds up to a consistent picture of a life lived without substantial reference to dominant forms of written language—such as those used for completing forms.

What Happened Next?

I completed a report stating that, in my opinion, Mrs X’s claims not to have knowingly completed the form inaccurately, and therefore not to have committed fraud, were entirely credible and included my justification. I lodged the report with the defense team and a number of months passed, during which trial dates were set and then postponed. It turned out that the prosecution were looking for their own “literacy expert” to challenge my report, but then dropped the case when they could not find anyone willing to do so.

Findings and Conclusions

One interesting set of findings from this process were those with relevance for assessment of adult knowledge. These include the need for multiple measures of knowledge to be applied, made as authentic as possible, and building towards a holistic and biographical portrait of the individual. The depth of assessment I brought to the case of Mrs X was considerably more than is typical in adult education broadly. It causes me to wonder about the extent to which there is a tendency to under-recognize or misunderstand the knowledge adults bring with them. The process underlines the extent to which “knowledge” cannot be abstracted from the experience and situation of the individual, but must be contextualized.

The work for Mrs X challenged my perception of myself as an academic researcher who “knows something.” In this case, working within the framework of the legal system, I knew nothing and had to create a process for justifying judgment almost from first principles. This was a healthy experience, and also a disorientating one. It required exploration of new terrain, and a changed understanding of the nature and application of expertise.

Implications for Adult Education

I see a number of implications in this work for our professional practice as adult educators, and the way we conceive of them. The first is the need for adult education researchers

to recognize that they have skills. All too often we work within familiar contexts, and it may take a pressing need to apply them in a novel and challenging context for them to be fully recognized. Related to this is the often overlooked degree of external credibility attached to our training and skills. We do have a great deal to offer, both pragmatically and theoretically, for struggles for social justice.

A second implication is that knowledge, if it is to be understood at all, must be understood as a biographical construct, deeply woven into the positionality and experience of individuals. Having to work out a way to demonstrate a level of knowledge and justify it to an external and hostile audience really forced me to confront the embeddedness of skills and practices. I did, of course, know this on a theoretical level, but I had never seen it in such a concrete way before.

Third is the importance of recognizing the limits of testing and what it can achieve. While it may provide some indication of upper limits of ability, its utility in determining lower limits, especially when it is in the test-taker's interests to score badly, is marginal. It took a lot of thought and triangulation to come up with what I believed was, in the end, a valid and reliable statement of ability. Finally, the experience re-emphasizes the benefits that can come from bringing together several areas of theory to bear on a problem. However, this does raise the question of whether it is possible to do so without a significant external stimulus, when so many academic reward systems are oriented towards work based in a single perspective.

In conclusion, this was a deeply challenging piece of work on the conceptual level, but I believe that the final outcome was correct and just. I feel extremely lucky to have had the chance to contribute in some way to the solution of a concrete and pressing difficulty for an individual in danger of having many years of struggle reversed.

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