

Federal Judicial Center
Dementia and Law: Helpful Tips for Courts
Audio File: Dementia_Melissa Batchelor_Helpful Tips for
Courts_Sept 2024_V4

Interviewer [Male]: Dr. Batchelor, thank you for joining us today. In this segment, we'll be discussing how judges and court staff can prepare for interactions with individuals who have dementia. Now throughout this series, when I use the word dementia, I use it as an umbrella term that represents a variety of things including Alzheimer's disease.

So, with that broad definition in mind, could you please describe how dementia might present itself in the courtroom and how individuals who have mild dementia might present differently from those who have more severe dementia?

Dr. Batchelor: It can be really hard to tell if a person has a mild dementia compared to being easier to detect if it's more advanced. Symptoms can vary from person to person. Without really knowing that person, you just kind of have to accept where they are in that present moment.

A person living with dementia may experience fluctuations in their symptoms, so that means they may have varying ability from moment to moment. But the main categories that you really want to pay attention to are memory lapses. Does the person have trouble recalling specific events or details? Are you seeing language difficulties? This could be trouble finding the

right word during a testimony, or maybe they're pausing more frequently.

You might see changes in attention and calculation. This would be more trouble to kind of maintain their attention and focus over long periods of time or being easily distracted by background noise or other people in the room. You might see changes in reasoning and judgment. So, they may make mistakes with logical thinking or judgment, or they may have trouble following a complex series of instructions.

You might see more problem-solving issues. Oftentimes, a person with dementia really lacks insight into the actual consequences of decisions, or they may overestimate their own self-reported ability. You could also see changes in mood and personality. So, you may see more anxiety, confusion, or frustration with this person.

Then other things to think about are perception and sensory changes. This happens in dementia, where the person may misinterpret sensory information around them or they may misunderstand when they're spoken to. This is compounded if the person has other age-related changes such as changes in visual loss or if they're more hard of hearing. Those can make it much more difficult for that person to understand their environment accurately.

When we think about communication, the person may be able to communicate clearly but they may need support. We oftentimes need to provide very clear simple questions and give more frequent breaks for that person. The more severe the person's dementia, the more supervision and assistance they're going to need or they may need an advocate or a legal representative to communicate on their behalf.

Lastly, looking at behavioral symptoms. One of the hallmark symptoms of dementia is the inability to use and understand language, that becomes worse as the disease progresses. So, what that leaves is their behavior to communicate to us. If you see someone becoming more agitated or wanting to get up to walk around or repetitive actions like wringing their hands, all of those things can be communication that they're not comfortable. They can be disruptive to a courtroom setting if they're not identified early and managed successfully.

Interviewer: One legal area relevant to dementia is competency. Judges often look to expert reports when determining an individual's competency. Now, from your experience, what types of information are included in those reports, and who provides that information?

Dr. Batchelor: Competency is a legal term compared to like decision-making ability in the moment. Competency reports are

often provided by a primary care provider, a psychologist, a psychiatrist, a neurologist or a geriatrician. The biggest thing to think about here is if this has been a comprehensive evaluation that's been done over time because dementia doesn't happen suddenly. So if someone was fine three months ago and now they're diagnosed with very advanced Alzheimer's, that would be like a red flag because a sudden change like that would indicate more of a delirium. That should be a reversible issue, something that we could change.

Dementia progresses over months and years, but the rate at which those things happen varies from person to person. But the comprehensive reports should include evaluations with summaries of these time point assessments, when they were performed, and the things that a judge would want to look at are the evaluator's credentials. Is this something that this person has been trained to do?

The reason for the competency evaluation would be important to me because was this just a general concern. Did this start off as a general concern for that person's health and well-being or was it like we need to adjust mom's will or I want to evoke power of attorney? Because all of those things can matter. There's a lot of elder abuse and fraud and neglect and financial exploitation, and so just making sure that that's on the radar.

You also want to make sure that there's background information. This includes a very comprehensive medical history, which includes kind of their past and their current diagnoses, what medications they're taking, treatments and evaluations, their relevant kind of social, educational, and occupational history because it's just telling you kind of who this person is in context.

In the clinical interview, you are going to want to have behavioral observations. Make sure that there's a physical exam where there's been an assessment of their hearing, their visual ability, their functional ability. If you have that information or even an attorney, if they have how well the person can walk and function, that's going to help determine what you might need to do to make accommodations for them as well.

You're also going to look at psychometric testing. So is there a Mini Mental State Exam or MMSC, or a MoCA, which is a Montreal Cognitive Assessment, and this goes back to those warning signs. Like are they looking at recall judgment language ability, again have they been screened for depression because depression can mimic dementia, and then collateral information. This could probably actually be the most important piece because these are interviews with family, friends, and caregivers who know that person really well. Then making sure that there's been a review of legal documents to find out if

this person has designated a power of attorney and how long ago they did that.

Then other testing would be making sure that there's blood work, that a head CT has been done. We basically just try and make sure that it looks like a comprehensive evaluation that's ruled out every other possible cause for this. Then, obviously, ending with the diagnostic impressions. You know, what does this provider think is going on related to competency and making that decision making determination.

Interviewer: Now let's presume that a judge or a member of the court staff suspects that a litigant has dementia but it's not been disclosed, what can the court do in that situation?

Dr. Batchelor: I think the first thing to do is really just observe that person and to document the specific behaviors that you are seeing. Then the next step would be kind of seeking informal clarification. Is that person with a family, a friend, a caregiver who can kind of give you more information of whether or not this is normal behavior for that person? At that point they may disclose that there is some type of memory issue or cognitive issue going on.

You may need to consult with legal counsel. You may need to request a competency evaluation. It might be important to appoint a *guardian ad litem* or a legal representative for that person scheduling or holding a competency hearing after you have

the competency evaluation. Then, just making sure that appropriate accommodations are made such as the frequent breaks and be sure that you simplify your legal language or providing an assistive device like a hearing aid or glasses to that person.

Then the last thing, you know, you might need to consider an alternative dispute resolution such as mediation or arbitration just because that can be less stressful and a more accommodating arrangement for that person.

Interviewer: Now that's a great list of suggestions, but what if it's not the litigant but it's the attorney that the judge or court staff suspect of having dementia? What recommendations do you have in that situation?

Dr. Batchelor: You start with kind of observing the person and maybe documenting the behaviors that you're seeing. Then I think there, it'll be important to really have an informal discussion with that attorney to find out if there's something else going on. I mean, stress impacts our memory. You know, stressful life situations. You don't really know everything that's going on. It could be that person is just having a bad day. You're looking for patterns over time. Like one bad day, we don't have dementia. Right? But you're looking for that pattern over time which is why you're documenting those behaviors.

It might be that you need to recommend a voluntary evaluation to be done. You might need to make accommodations. Maybe the attorney has a hearing loss or is experiencing visual loss or changes that he or she is going to need accommodations to be made. It might be that they need to have a co-counsel appointed or a *guardian ad litem*. Then, at a certain point, it may become necessary to refer them to the Bar Association or some sort of professional responsibility committee and/or hold a competency hearing for that attorney.

Interviewer: What might the court suggest to attorneys as ways to help clients with dementia manage the demands of the legal process?

Dr. Batchelor: There's a lot of different things that can be done. The first would be to be sure if the person wears a hearing aid or glasses to understand their environment, that those things are on. Including dentures. Being sure to simplify communication. So, using very clear and simple language. Avoiding legal jargon as much as possible. Being sure that you talk more slowly. If the person seems to not be able to hear you, a lot of older adults have high-frequency hearing loss, so all you have to do is just lower your voice, and they can hear your voice at that lower level.

When you're speaking to them, and you're explaining an important concept, to be sure that you have that person repeat

back in their own words their understanding of what you said would be important. Then being sure that you break down complex information into smaller and more manageable sections.

It's also important to keep in mind to use not only written materials but visual materials. So, provide a written summary of discussions and making sure that those are written at like a 6th or an 8th grade level, but also to think about using visual aids should you display information in a chart, or a diagram, or a timeline that illustrates the information that maybe they need to remember.

If possible, to involve family caregivers or family members with the client's consent of course. Because when we involve those people in the discussions, they can also help to reinforce and explain things if when they get home the person is confused about what was said.

Lastly, I think using technology and memory aids is important. If you're using video conferencing, maybe record that or have a transcript made for that person so they can review that information. If that's not possible, you know, having people use a notebook or a calendar. Then sending them electronic reminders to help them not only keep track of important appointments but also any tasks that they need to perform or do in between meetings.

The other thing to think about is having more frequent and shorter meetings. So, if this person can't handle a two-hour meeting, maybe you need to do one hour. So, holding shorter meetings, that helps to prevent fatigue. It also may help the client to retain the information better.

Then also, making sure that you can have the meeting in the same format or same environment. Having a familiar and comfortable environment is important. So it might be that instead of having them come to the office, which can be a stressful situation in itself, maybe you go to their home to have some of the meetings.

Based on all of that, thinking through would it be important or better for this particular client to have a special court session. So based on the client's needs and their routine, can we schedule this hearing at a time when the client is most alert and functional would all be important and a thing to think about.

Interviewer: Now being party to a federal case or part of a court hearing can be a stressful and new experience for anyone, whether you have dementia or not. So, are there ways that courts can more systematically assist litigants who have dementia or, frankly, any litigants?

Dr. Batchelor: A person without dementia may have an easier time regulating their internal and external responses to

being tired or hungry, or hot or cold, or feeling anxious compared to a person who has dementia. They're going to have a lot more difficulty with that self-regulation and they may need more support.

A lot of the things that courts can do to manage those things are the same things that any business would do to make them more age-friendly and dementia-friendly. So, let's talk about some of the things that individual courts or attorneys can do. You can consider developing an informational packet that really takes the person through from the arrival to the court proceeding, to where you're supposed to go, to how do you exit the building.

Prior to the court date, I think it's important to encourage anyone who's never been to the courthouse to do like a test run because, if you know where you're going, that's going to decrease the amount of stress that you're put on or that you're going to be under on the actual day of the hearing or the court proceeding.

Making sure that all parties have phone numbers and the contact information of who they should call if they run into a problem. So whether that's the court reception, or a help desk, or the attorney themselves.

Giving really good information about when you're arriving to court. Like where's the location for the best parking lot.

Are there any associated costs or codes that they need to use to pay for parking? Making sure that you include the location for handicapped parking and the closest elevators to that parking. Then also indicating the best door for entering the building and the door closest to where they're going to be going.

Then, clearly describing the security protocols will be important as well. Are food and drinks allowed? What bag size limitations might there be? Then making sure that there are accommodations for any health conditions and are clearly indicated with that security protocol. In case the person has a pacemaker or has had a hip replacement, those things could slow you down at security. So just helping them prepare for kind of like the arrival and getting into the building.

Then the next things are things that are really good for age and dementia. Like the physical building considerations. The first is signage. So, making sure that all signs are clearly displayed. That they have basic kind of bold font. That they're at eye level. That there's a high contrast between the letters and the background.

Make sure that your signs don't have a lot of abstract icons or images on them. This is not the time to be fancy. Making sure the signs are at eye level and that they're placed at critical decision-making point. So, when you come down a hall, and there's a choice to go either way, that's a good place

to have a sign. Then thinking through not only the signs coming in the building but making sure that signs leaving the building say kind of the way out. That's even helpful in a doctor's office. You come out of an exam, and you're maybe like, which way do I go, then you see one that says way out, and you're like, it must be that way.

In thinking about doors, making sure that the signs are on the doors that they're related to. Not kind of adjacent. Making sure that glass doors are clearly marked. Again, if someone has a visual impairment, they may not see that's a glass door. Those are not fun to walk into.

Making sure that the signs for the toilets and the exits are clearly marked. Making sure your doors are lightweight and they're easy to open or that they have a little electronic handicap button that you can press that will help open doors that are heavier.

And thinking about your flooring, it's really important to reduce the amount of glare and reflection. I think a lot of buildings think that high and glossy floors are aesthetically pleasing. They are not age-friendly. You also want to avoid boldly patterned carpets.

Making sure there's a high contrast with your stairs or your staircases. By this, I mean, like, if all the stairs are white, that there's like a black strip at the end of each step,

so as you're coming down, it's very clear to see where the steps end. And the same thing with them going up, that it's very clear that that's a staircase.

Then making sure that your floor surfaces are as flush as possible. This just helps to avoid somebody catching their toe and potentially falling, but also helps anybody with a walker or wheelchair making sure they don't get stuck.

With seating, you want to make sure the seats are high enough that someone can sit and stand easily. Making sure the seats are recognizable. Making sure that a bench looks like a bench and not an abstract piece of art. Just help people recognize these things.

In thinking through lighting, you want to make sure that your entrances and your exits are very well-lit. That you use natural light as much as possible. Also having magnifying glasses or like little magnifying, it could be handheld, with a small flashlight because that might be needed to help read paper documents. But you can also use technology. It would be a great thing to also have on an iPad that the person could enlarge or zoom in as they needed to.

Another important consideration is making sure there's a designated quiet space and making sure that the caregiver or family members know where that is. Because if a person is used to being in a quiet space at home and they come into a busy and

bustling courthouse or courtroom, they may need a break if they become anxious or stressed.

Then the last things to think about are how do we set our caregivers up for success. We all know things should run on time, but they may not. So, in addition to knowing where the quiet space is, having them bring some sort of activity kit that they can use to distract the person if needed. Making sure they bring a sweater or a small blanket in case the courtroom is cold.

Also bringing water, snacks, and what to do to get lunch. Either bring it with you or where are places close by that you can get lunch because that way they can prepare for any type of scheduling delays. Like, if the person can't walk a mile to get a sandwich, we probably need to bring that with us.

Then, if the person has any incontinence issues, we may want to bring some additional supplies and a change of clothes in case we have an accident that day. That way, we can fix that without having to leave and reschedule everything.

Interviewer: Now looking specifically to judges, are there ways that judges can manage their courtrooms, case management, or their own behaviors that can assist individuals with dementia?

Dr. Batchelor: When you're thinking about managing your procedures, just making sure that you have several different

things that attorneys know that they can request. You know, flexible scheduling. Knowing if more frequent breaks might be needed. Simplifying the procedures themselves. Being sure that you allow extended times, and then, if needed, making sure that a private session could be held.

So far as like the individual judge's behavior, I think setting a positive mood for the interaction. Again, it's like sometimes if you set off on the right foot, you can stay on the right foot. So be sure that you get the person's attention. If you're not able to do that kind of with verbal attempts, to make sure that there's somebody there that can kind of help physically get their attention. To recognize that this ability to use and understand language is what's really impaired with dementia, and so you may have to look or listen for kind of the underlying feelings and emotions of what the person is either saying or looking at their nonverbal behavior.

Being sure that you're very clear in your communication and that you're double-checking for understanding. So, if you speak to them clearly in language that they should understand, just asking them to repeat back important information, in that way, you're clear that they understood what you said. Summarizing key information and then overall, I think just being patient, and empathetic, and paying attention to those nonverbal cues is going to be helpful for everyone.

Interviewer: Well, thank you for the recommendations and
thank you for taking the time to speak to us today.

[End of file]

[End of transcript]