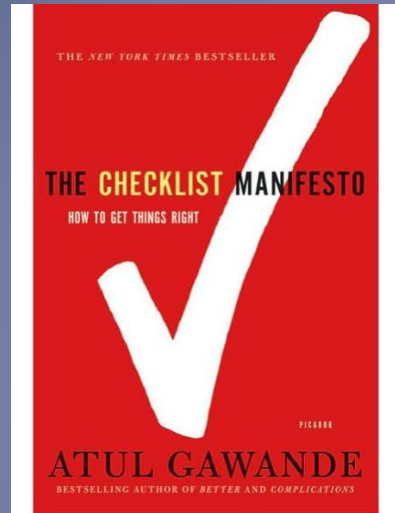


# A Checklist Revolution: Checklists for Public Defenders



# What problem do checklists solve?



“[T]he volume and complexity of what we know has exceeded our individual ability to deliver its benefits correctly, safely, or reliably ... That means we need a different strategy for overcoming failure, one that builds on experience and takes advantage of the knowledge people have but somehow also makes up for our inevitable human inadequacies”

# What problem do checklists solve?

“There are a thousand ways that things can go wrong when you’ve got a patient with a stab wound. But everyone involved got almost every step right –

the head-to-toe examination,

the careful tracking of the patient’s blood pressure and pulse and rate of breathing,

monitoring his consciousness,

the fluids run in by IV,

the call to the blood bank to have blood ready...



Except no one remembered to ask the patient or the emergency medical technicians what the weapon was.”

# Positive Results in the Medical Field

Surgical Safety Checklist

**36%** fewer major complications in surgery

**47%** fewer deaths

October 2008 study in eight hospitals around the world

# Aviation Checklists

In 1935, a new Boeing B-17 – “the most sophisticated airplane in aviation history” – went down during its showcase flight. Why? Because the flight crew had forgotten one simple step, causing the plane to nose dive into the ground after takeoff.



How might a checklist be helpful for public defenders?



# The case for public defender checklists

Checklists provide:

- ❑ A cognitive net that defends against failure.
- ❑ Freedom for our brains to focus on the hard stuff.
- ❑ A check against intimate familiarity, which can breed mistakes.

# Doing more with less



According to a 2010 NLADA report, public defenders in Ada County, Idaho, saw an average of **952 felony clients/lawyer**, allowing them just over **2 hours/case**.

## Reality Check

Currently, hospitals do **MOST** of the right things, on **MOST** patients, **MOST** of the time.

The Checklist helps us do **ALL** the right things, on **ALL** patients, **ALL** the time



World Health  
Organization

Patient Safety

A Patient Alliance for Better Health Care

*What would a similar pair of statements be for the public defense context?*

# Exonerations

National Registry of Exonerations (1989 – 2015)

**1600** number of exonerations in the U.S.



**1 in 5**

Involve inadequate legal defense  
as a contributing factor

# Creating Effective Checklists

## **1. DEVELOPMENT**

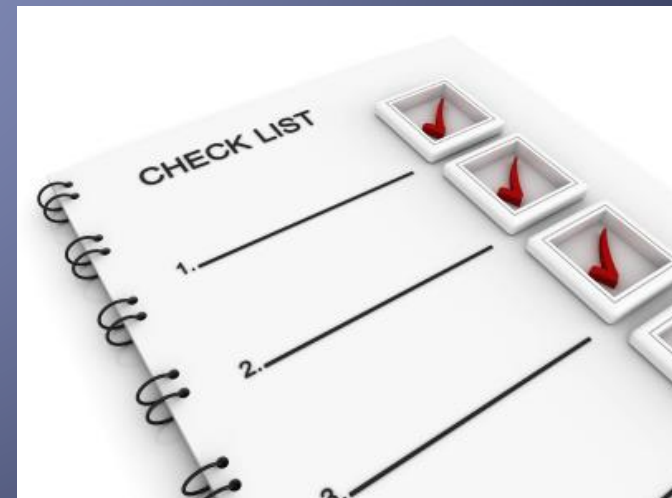
- Do you have clear, concise objectives for your checklist?

## **2. DRAFTING**

- Simple sentences
- Fit on one page

## **3. VALIDATION**

- Experiment with front line users
- Modify the checklist & future review



# Sample Checklist: Surgical Safety



## SURGICAL SAFETY CHECKLIST (FIRST EDITION)

Before induction of anaesthesia ▶▶▶▶▶▶▶▶▶▶ Before skin incision ▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶▶ Before patient leaves operating room

| SIGN IN   |
|---|
| <input type="checkbox"/> PATIENT HAS CONFIRMED <ul style="list-style-type: none"> <li>• IDENTITY</li> <li>• SITE</li> <li>• PROCEDURE</li> <li>• CONSENT</li> </ul> |
| <input type="checkbox"/> SITE MARKED/NOT APPLICABLE   |
| <input type="checkbox"/> ANAESTHESIA SAFETY CHECK COMPLETED   |
| <input type="checkbox"/> PULSE OXIMETER ON PATIENT AND FUNCTIONING  |
| <b>DOES PATIENT HAVE A:</b>   |
| <b>KNOWN ALLERGY?</b>   |
| <input type="checkbox"/> NO<br><input type="checkbox"/> YES   |
| <b>DIFFICULT AIRWAY/ASPIRATION RISK?</b>  |
| <input type="checkbox"/> NO<br><input type="checkbox"/> YES, AND EQUIPMENT/ASSISTANCE AVAILABLE   |
| <b>RISK OF &gt;500ML BLOOD LOSS (7ML/KG IN CHILDREN)?</b>   |
| <input type="checkbox"/> NO<br><input type="checkbox"/> YES, AND ADEQUATE INTRAVENOUS ACCESS AND FLUIDS PLANNED   |

| TIME OUT   |
|--|
| <input type="checkbox"/> CONFIRM ALL TEAM MEMBERS HAVE INTRODUCED THEMSELVES BY NAME AND ROLE  |
| <input type="checkbox"/> SURGEON, ANAESTHESIA PROFESSIONAL AND NURSE VERBALLY CONFIRM <ul style="list-style-type: none"> <li>• PATIENT</li> <li>• SITE</li> <li>• PROCEDURE</li> </ul> |
| <b>ANTICIPATED CRITICAL EVENTS</b>   |
| <input type="checkbox"/> SURGEON REVIEWS: WHAT ARE THE CRITICAL OR UNEXPECTED STEPS, OPERATIVE DURATION, ANTICIPATED BLOOD LOSS?   |
| <input type="checkbox"/> ANAESTHESIA TEAM REVIEWS: ARE THERE ANY PATIENT-SPECIFIC CONCERNS?  |
| <input type="checkbox"/> NURSING TEAM REVIEWS: HAS STERILITY (INCLUDING INDICATOR RESULTS) BEEN CONFIRMED? ARE THERE EQUIPMENT ISSUES OR ANY CONCERNS?                                 |
| <b>HAS ANTIBIOTIC PROPHYLAXIS BEEN GIVEN WITHIN THE LAST 60 MINUTES?</b>   |
| <input type="checkbox"/> YES<br><input type="checkbox"/> NOT APPLICABLE  |
| <b>IS ESSENTIAL IMAGING DISPLAYED?</b>   |
| <input type="checkbox"/> YES<br><input type="checkbox"/> NOT APPLICABLE  |

| SIGN OUT   |
|--|
| NURSE VERBALLY CONFIRMS WITH THE TEAM:   |
| <input type="checkbox"/> THE NAME OF THE PROCEDURE RECORDED  |
| <input type="checkbox"/> THAT INSTRUMENT, SPONGE AND NEEDLE COUNTS ARE CORRECT (OR NOT APPLICABLE)                                       |
| <input type="checkbox"/> HOW THE SPECIMEN IS LABELLED (INCLUDING PATIENT NAME)   |
| <input type="checkbox"/> WHETHER THERE ARE ANY EQUIPMENT PROBLEMS TO BE ADDRESSED  |
| <input type="checkbox"/> SURGEON, ANAESTHESIA PROFESSIONAL AND NURSE REVIEW THE KEY CONCERNS FOR RECOVERY AND MANAGEMENT OF THIS PATIENT |

THIS CHECKLIST IS NOT INTENDED TO BE COMPREHENSIVE. ADDITIONS AND MODIFICATIONS TO FIT LOCAL PRACTICE ARE ENCOURAGED.

# Implementing Effective Checklists

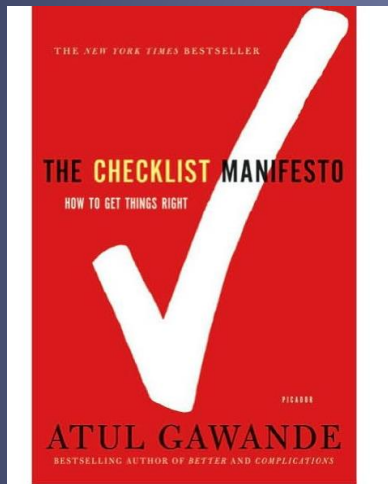


*What challenges should we expect?*

# Key Planning Steps

- *GET STAFF INVOLVED*
  - Who should be consulted
- *HAVE DISCUSSIONS*
  - What should checklists cover
- *ANTICIPATE PUSHBACK*
  - Be prepared to address concerns

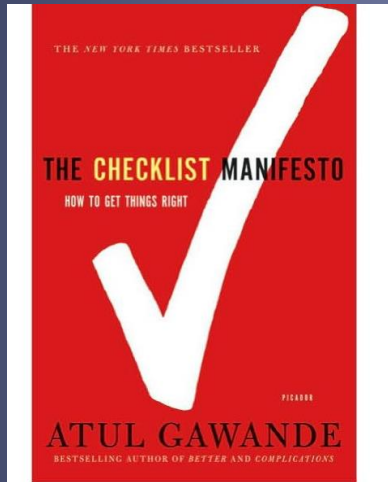
# Top 10 Things Every Checklist Should Have



- 1) Clear, concise objective.
- 2) Precise. It should be efficient, to the point and easy to use. Practical.
- 3) Define a clear pause point where the checklist should be used.
- 4) Short.
- 5) The wording should be simple and exact.

(continued...)

# Top 10 Things Every Checklist Should Have



- 6) Provides reminders of the most critical and important steps.
- 7) Simple, uncluttered, and logical format.
- 8) Date of creation/revision clearly marked.
- 9) Can be completed in a reasonably brief period of time.
- 10) Leaves room for craft and judgment and the ability to respond to unexpected difficulties that arise along the way.

# Possible Checklist Topics

Fourth Amendment

Immigration

Confrontation Clause

Homicide

Bail

Arraignment

DNA

Arson

Pretrial Motions

Eyewitness

# Sample Checklist: Immigration

| <b><u>Noncitizen Defendant Worksheet</u></b>   |                     |
|--|---------------------|
| Defendant: _____   | Case No. _____      |
| Attorney: _____  | Date: _____         |
| Attorney Phone & Email: _____  | Jurisdiction: _____ |
| <b><u>Current Immigration Status:</u></b>  |                     |
| <input type="checkbox"/> LPR - Lawful Permanent Resident (greencard)<br>Since when: _____<br>How obtained: _____   |                     |
| <input type="checkbox"/> Refugee or granted asylum status<br>Since when: _____   |                     |
| <input type="checkbox"/> Undocumented (entered illegally)<br>Date of Last Entry: _____   |                     |
| <input type="checkbox"/> In-Status Visa (visitor, work, student, etc...)<br>Date of Entry: _____   |                     |
| <input type="checkbox"/> Visa Overstay, since when: _____  |                     |
| <input type="checkbox"/> Previously Deported<br><input type="checkbox"/> From interior –no Immigration Judge<br><input type="checkbox"/> From interior –no Immigration Judge                         |                     |
| <b><u>Family Ties:</u></b>   |                     |
| Spouse/Partner: <input type="checkbox"/> USC <input type="checkbox"/> LPR <input type="checkbox"/> Undocumented  |                     |
| Children: Number _____ Ages: _____   |                     |
| USC                  I PR                  Undocumented  |                     |
| DOB: _____   |                     |
| POB: _____   |                     |
| <b><u>ICE Detainer:</u></b> <input type="checkbox"/> YES <input type="checkbox"/> NO   |                     |
| Defendant is: <input type="checkbox"/> IN CUSTODY<br><input type="checkbox"/> NOT IN CUSTODY   |                     |
| <b><u>Criminal History*:</u></b>   |                     |
| For each offense include: statutory citation, conviction date, sentence (including suspended time). Include juvenile adjudications, deferred judgments or other resolutions. ALL offenses important! |                     |

# Sample Checklist: 4<sup>th</sup> Amendment Seizures

## Fourth Amendment – Was the Client Seized?

WHEN TO USE: Whenever the government wants to use evidence from a warrantless search or seizure.

HOW TO USE: Read the police report and ask your client about his/her encounter with the police.

Ask your client all of the following questions:

Did the officer use physical force or show his/her authority to get you to stop or stay in place?

Yes                       No

Were there two or more officers involved?

Yes                       No

Did the officer display a weapon?

Yes                       No

Did the officer physically touch you?

Yes                       No

Did the officer use language or a tone of voice that made you feel like you had to comply with his/her request?

Yes                       No

Based on your client's answers and the police report, would a reasonable person feel he/she had to stop, stay in place, or comply with the officer's request?

Yes                       No

NEXT STEPS: If you checked "yes" for any of the above, your client may have been seized. If the seizure may have been unreasonable, research and file a Motion to Suppress.

# Sample Checklist: 4<sup>th</sup> Amendment Searches

## Fourth Amendment – Unconstitutional Pat-Search

WHEN TO USE: Whenever the government wants to use evidence from a Pat-Search.

HOW TO USE: Read the police report and ask your client about the Pat-Search.

After reading the police report and while discussing the Pat-Search with your client, answer all of the following:

Was it reasonable for the officer to suspect the client was committing or had committed a crime (consider the officer's training and experience)?

Yes                       No

Was it reasonable for the officer to believe your client may be armed and dangerous?

Yes                       No

Would a reasonable person in the officer's circumstances be warranted in the belief that your client was armed and dangerous?

Yes                       No

Can the officer point to specific and articulable facts that justify the belief that your client was armed and dangerous (not hunches or fears)?

Yes                       No

NEXT STEPS: If you checked "no" to any of the above, your client may have been unconstitutionally pat-searched. Research and file a Motion to Suppress.



*"When you create and follow systems you create the machinery that ensures consistency in your practice. That consistency ensures good work is repeated."*

**-Michael E. Gerber**

*The E-Myth Attorney: Why Most Legal Practices Don't Work and What to Do About it.*