



Defender Checklists: A Toolkit for Practitioners

Emily LaGratta
Michela Lowry
Krystal Rodriguez

With a foreword by Jeff Adachi

Foreword

by Jeff Adachi, San Francisco Public Defender

“We are what we repeatedly do. Excellence, then, is not an act, but a habit.” -- Aristotle

I first came to the subject of checklists after a friend recommended the book *“The Checklist Manifesto”* by Dr. Atul Gawande. A Harvard Professor and surgeon, Dr. Gawande argues that many of the 150,000 deaths that follow surgery every year could have been avoided if surgeons used a checklist to prepare. From washing one’s hands with soap, to cleaning the patient’s skin with antiseptic, to continuously checking the patient’s vital signs, Dr. Gawande discovered that failures in following essential procedures could be traced back to in at least half of the deaths documented. He concluded that checklists provide protection against such failures. “They remind us of the minimum necessary steps and make them explicit. They not only offer the possibility of verification of also instill a kind of discipline of higher performance.”

It turns out checklists work just as well for defense attorneys and public defenders, who are constantly juggling a myriad of tasks requiring a unique blend of research, investigation, experience, know-how and creativity. Whether a case requires us to file a motion to suppress evidence, or design an investigation plan for a mistaken eyewitness identification defense, we are called on to perform a series of complex steps we must complete in order to prepare our case and achieve the outcome we seek for our client. The outcome in a particular case depends on how well and effective each of those tasks is carried out.

Enter the checklist, which provides a host of benefits to both attorneys and clients while improving case outcomes.

- *Checklists Combat Complexity.* Because the work of a defense attorney is becoming increasingly more complex, it is very difficult to master every situation or legal problem that presents itself. Even an experienced lawyer must rely on the advice of others in handling unfamiliar problems or subjects. The law is constantly changing and there are always new issues of which to stay abreast, and new procedures which must be learned and applied, often in a short period of time.
- *Checklists Prevent Mistakes.* Checklists ensure attorneys don’t have to rely solely upon their memories or experience to handle a particular legal problem. In our office, we regularly conduct post-mortem examinations of our failures. We find, in most cases, our missteps and oversights could have been avoided by using checklists.

As San Francisco Public Defender, part of my job is to work with my staff to ensure that we are doing everything that should be done for every client and every case. So I decided to test Dr. Gawande’s assertions and began a mini-checklist revolution in our office.

The subjects we attacked in the resulting checklists were our most common, from investigation of certain types of cases, such as eyewitness identification, to case preparation, such as working

up a case for trial, and even simple court procedures, such as arraigning a client. We assigned the task of creating checklists to those who had substantial experience in the area, but we also had attorneys who did not have the experience review the checklist to see if they were able to comprehend it. Then, as Dr. Gawande advises in his book, we tested the checklists by having people use them and then revised them as we learned more. Dr. Gawande calls this process “validating” the checklist, and it is essential to ensuring that the checklist works and is constantly updated.

I realize that public defenders may often feel overwhelmed by high caseloads and too many tasks to do. Some have told me, “I don’t have time to organize a checklist!” But by having a checklist, defenders can better prioritize and keep track of what is done and what needs to be done on a case, and manage tasks more efficiently. Checklists also will help chief defenders illustrate to funders and boards the specific tasks that need to be performed on various types of cases.

My hope is that other offices will adapt these checklists to fit the needs of their attorneys and clients, and that together, we can have a checklist revolution!

Background: The case for defender checklists

Over the last two decades, national spending on legal assistance has decreased by approximately 33 percent,¹ while public defender caseloads have increased by 20 percent. Three out of four county-based public defender offices exceed the maximum recommended caseload per attorney.² For many public defender offices, this reality has translated into an unwelcomed mandate to do more with less, and it is easy to imagine the impact this has on client representation. One Minnesota study found that only a little more than half of public defenders agreed that they were well prepared for their cases in the past year.³

Strained resources also translate into limited training resources and oversight for these already-overtasked defenders, particularly new lawyers. A Nevada report highlights that new attorneys are “being thrown into practice with no training or support... having to figure it out for [themselves].”⁴ The Comprehensive Review of Indigent Defense in Virginia reached similar conclusions: “inadequate resources and an absence of an oversight structure... form the basis of an indigent defense system that fails to provide lawyers with the tools, time and incentive to provide adequate representation to indigent defendants.”⁵

Adequately funding public defense may not have an easy path forward, but providing meaningful training resources for defenders is within reach. The San Francisco Public Defender’s office has developed an innovative approach to create and implement defender

¹ Rhode, Deborah. (2012) “Equal Justice Under Law: Connecting Principle to Practice.” *Journal of Law & Policy*.

² Farole & Langton, U.S. Department of Justice, Bureau of Justice Statistics, *Census of Public Defender Offices: County-based and Local Public Defender Offices*, 2007, NCJ 231175 (September 2010).

³ Junod, Deborah Parker and Starr, KJ. (2010) “Evaluation Report: Public Defender System.” Office of the Minnesota Legislative Audit Commission. Available at <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

⁴ National Legal Aid and Defender Association (2003) “Evaluation of the Public Defender Office: Clark County.” Clark County, Nevada Final Report. Available at http://www.nlada.net/sites/default/files/nv_evalofpdofficeclarkcountyjseri03-2003_report.pdf

⁵ Spangenberg, Robert L. et al. (2004) “A Comprehensive Review of Indigent Defense in Virginia.” American Bar Association, Standing Committee on Legal Aid and Indigent Defendants. Available at: http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/va_report2004.authcheckdam.pdf.

checklists to better guide its attorneys through key moments in a case. The initiative is founded in literature – Atul Gawande’s *The Checklist Manifesto* – that documents the value of checklists for complex and overworked systems, such as the legal system:

“[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.”⁶

Checklists, Gawande argues, offer a strategy “almost ridiculous in its simplicity,” that itemize standard actions to be performed in a given setting, so that no step is overlooked.

Checklists themselves are designed to combine precision and comprehensiveness with ease and efficiency of use.

For example, public defenders are required to discuss immigration issues with clients whose case may trigger collateral consequences. A checklist such as the one shown in part at right (provided in full as Appendix A) could be used with every client to flag for possible issues. Each checklist contains a set of discrete items, organized as straightforward checkboxes (*i.e.*, each

Excerpt from Appendix A: Immigration Checklist

Ask your client the following questions:

Were you born in the U.S.? Yes No

If yes, then there are no immigration consequences because the client is a U.S. citizen.

If no, ask your client all of the following questions:

Have you ever had, or do you now have, any legal status, including:

- Lawful Permanent Resident (LPR)? Yes No
- Temporary Protected Status (TPS)? Yes No
- Deferred Action for Childhood Arrivals (DACA)? Yes No
- Deferred Action for Parental Accountability (DAPA)? Yes No

What is your Nationality? _____

What is your Country of Origin? _____

How long have you been in the United States? _____

Have you ever been deported from the U.S.? Yes No

If yes, list the approximate date of each deportation: _____

Continued...

⁶ Gawande, Atul. 2009. *The Checklist Manifesto*. Picador.

recommended action either was completed or not), which can be quickly digested, assessed, and reviewed as applicable.

The benefits of using checklists have been studied extensively in the medical and aeronautics field. In aeronautics, the complexity of today's aircraft requires a systematic approach to operations. The aircraft checklist has long been regarded as the foundation of pilot standardization and cockpit safety, and the improper use, or non-use, of the standard industry checklist by flight crews is often cited as the probable cause or at least a contributing factor in aircraft accidents.⁷

In recent years, efforts to reduce complications in surgery and intensive care units, too, have led to successful quality improvement initiatives using checklists. Checklists have been shown to improve care and reduce morbidity and mortality in healthcare settings. A 2008 study of eight hospitals around the world, found the implementation of checklists reduced major surgery complications by 36 percent and deaths by almost 50 percent.⁸

⁷ Degani, A., & Wiener, E. L. 1993. [Cockpit checklists: Concepts, design, and use](#). Human Factors, 35(2), 345-359.

⁸ Weiser T G, Regenbogen S E, Thompson K D, Haynes A B, Lipsitz S R. others. 2008. "An Estimation of the Global Volume of Surgery: A Modelling Strategy Based on Available Data." The Lancet 372 (9633): 139–44.

| Surgical Safety Checklist | | | World Health Organization | Patient Safety <small>A World Alliance for Safer Health Care</small> |
|--|--|---|---------------------------------|---|
| Before induction of anaesthesia | Before skin incision | Before patient leaves operating room | | |
| <small>(with at least nurse and anaesthetist)</small> | <small>(with nurse, anaesthetist and surgeon)</small> | <small>(with nurse, anaesthetist and surgeon)</small> | | |
| Has the patient confirmed his/her identity, site, procedure, and consent? <input type="checkbox"/> Yes | <input type="checkbox"/> Confirm all team members have introduced themselves by name and role. | Nurse Verbally Confirms: <input type="checkbox"/> The name of the procedure <input type="checkbox"/> Completion of instrument, sponge and needle counts <input type="checkbox"/> Specimen labelling (read specimen labels aloud, including patient name) <input type="checkbox"/> Whether there are any equipment problems to be addressed | | |
| Is the site marked? <input type="checkbox"/> Yes <input type="checkbox"/> Not applicable | <input type="checkbox"/> Confirm the patient's name, procedure, and where the incision will be made. | To Surgeon, Anaesthetist and Nurse: <input type="checkbox"/> What are the key concerns for recovery and management of this patient? | | |
| Is the anaesthesia machine and medication check complete? <input type="checkbox"/> Yes | Has antibiotic prophylaxis been given within the last 60 minutes? <input type="checkbox"/> Yes <input type="checkbox"/> Not applicable | | | |
| Is the pulse oximeter on the patient and functioning? <input type="checkbox"/> Yes | Anticipated Critical Events To Surgeon: <input type="checkbox"/> What are the critical or non-routine steps? <input type="checkbox"/> How long will the case take? <input type="checkbox"/> What is the anticipated blood loss? To Anaesthetist: <input type="checkbox"/> Are there any patient-specific concerns? To Nursing Team: <input type="checkbox"/> Has sterility (including indicator results) been confirmed? <input type="checkbox"/> Are there equipment issues or any concerns? | | | |
| Does the patient have a: Known allergy? <input type="checkbox"/> No <input type="checkbox"/> Yes Difficult airway or aspiration risk? <input type="checkbox"/> No <input type="checkbox"/> Yes, and equipment/assistance available Risk of >500ml blood loss (7ml/kg in children)? <input type="checkbox"/> No <input type="checkbox"/> Yes, and two IVs/central access and fluids planned | Is essential imaging displayed? <input type="checkbox"/> Yes <input type="checkbox"/> Not applicable | | | |
| <small>This checklist is not intended to be comprehensive. Additions and modifications to fit local practice are encouraged.</small> | | | <small>Revised 1 / 2009</small> | <small>© WHO, 2009</small> |

Given the limited-capacity, high-need situation of public defenders described above, checklist literature suggests a number of questions. Could any of these benefits be captured for defenders, who like pilots and doctors, must make hundreds of life-altering decisions in a given day, often with significant time and resource constraints? What decision points might be appropriate? How would interested agencies generate buy-in and feedback about this new resource? What outcomes might these agencies expect to measure to gauge success? This toolkit aims to help interested jurisdictions answer those questions and chart a course for implementation.

Step 1: Planning

The San Francisco Public Defender's Office paved the way by developing a number of checklists that address matters of substantive U.S. Constitutional law or practical matters that are relevant to defenders nationally, such as flagging collateral immigration consequences or best practices for interviewing eye witnesses. Some of these checklists are included as Appendices A – D for reference and adaptation. But lessons from other fields – and from San Francisco itself – show that engaging the professionals who will be asked to implement the checklists is essential.

Whether you are building upon existing models or developing new checklists, successful implementation will require planning to ensure that the effort itself is well-designed and has the resources and buy-in needed to carry through to implementation. Expect this planning process to require the dedication (and time) of senior leadership and a capable attorney serving as a project manager for at least six to nine months. Recommended planning steps are outlined as follows.

A) Get staff involved: Anticipate a range of receptivity to the concept of defender checklists, including a healthy dose of skepticism from many. Many professionals find it uncomfortable to discuss shortcomings in their practice; others will resist the implication that something as simple as a checklist could improve their practice. In the early days of implementing checklists in San Francisco, senior attorneys, in particular, resisted the checklists. Engaging a range of staff from the beginning may help to solicit these concerns from the start and help to generate their support of the effort going forward. Include attorneys at all levels, including new attorneys, supervising attorneys, and attorneys with specialized roles (*e.g.* arraignments), as well as non-attorneys, such as case managers, investigators, and paralegals. Even if some of these individuals will not be involved in pilot testing the checklists, they will all have valuable perspective on the question of how and when checklists might be useful.

San Francisco used a combination of informal one-on-one meetings, group meetings, and existing trainings, to get staff feedback. The format should match the office's culture, as well as the time and schedule constraints of its staff. Consider whether attendance by agency leadership would inhibit lower-level staff's candor when discussing the topic and convene them separately when necessary.

Possible discussion questions:

- What topics/questions are easy to miss in the typical client interaction or case preparation?
- What issues are easy to misdiagnose?
- What steps or lines of inquiry are defenders finding difficult to remember?
- What issues are most commonly overlooked by supervisees?
- Which moments in a case are the most rushed and therefore susceptible to error?
- Which moments in a case are the most difficult procedurally and therefore susceptible to error?
- Which moments in a case are the most difficult in terms of substantive law and therefore susceptible to error?

A critical outcome of this discussion will be to gain consensus internally about what problem(s) you hope that checklists would solve. Some possible answers: addressing known errors in client communication or legal representation, or perhaps more likely, a mere suspicion of such, or addressing new legislation or procedural rules that are unfamiliar to attorneys. In any case, the objective of the checklist(s) should be clear and responsive to specific needs. Consider using one or more sample checklists to help guide the discussion and make it more focused.

Additionally, be sure to get feedback from staff about what the pilot period could look like. Who should participate and for how long? Should participation be voluntary or mandatory?

What opportunities will there be for defenders to give feedback about the checklists' content and how they were implemented?

As mentioned above, you should anticipate that professionals (particularly the more seasoned ones) may take offense at the suggestion that their complicated responsibilities can be boiled down into a tidy checklist. This happened when checklists were implemented with surgeons and pilots, too.

Possible push-back or criticism to anticipate:

- Checklists feel like administrative work
- Short checklists are perceived as too obvious
- Long, detailed checklists are too cumbersome
- Independence of attorneys; resistance to top-down initiative

Much of this criticism can be addressed by ensuring that senior members of the agency are on the first line of testing new checklists. Also, the more that the planning discussion explores these points of criticism openly, the more likely you are to dispel these concerns.

B) Get client feedback: Research shows that perceptions of fairness and understanding of the process can be far more predictive of client satisfaction than the case outcome itself. Consider whether there's a role for client feedback in this process, too. How might clients help at the planning stage to answer questions like: what aspects of their representation seem most confusing or might benefit most from a more clearly delineated process? What do they perceive to be the points of case preparation that are most susceptible to error? These conversations won't be dispositive, but they will be informative and help to build support for future implementation. Also, discussing the checklist concept with clients early on may also help to ease potential defender concerns that using checklists will give clients reason to lose faith in defenders' abilities.

Suggested strategies for talking with clients:

- Conduct an informal survey with select clients
- Host a voluntary focus group at the office
- Conduct a more rigorous client survey

C) Crunch the numbers: Consider what data is available that may inform potential problems that checklists could address.

Data to consider:

- Pretrial outcomes, including bail decisions
- Motion practice outcomes
- Number and types of motions filed
- Case processing measures
- Case dispositions
- Sentences

These types of data are influenced by many factors, many beyond the control of the defender, but they may reveal issues that could be helped by this process.

Step 2: Drafting and piloting test

Drafting checklists is a recipe of equal parts content, format, and implementation planning.

What's on the checklist? How and when will the checklist be used? What would make the checklist user-friendly and most likely to be adopted by staff? What might safeguard against staff resistance? These issues are explored below.

A) Develop the checklist content: Initial planning should reveal a number of practice areas that might benefit from a checklist. The topics to be covered on the checklists should cover the problems areas attorneys identified as most appropriate for use of a checklist. Some suggestions:

Possible topics or touchpoints

- Initial client interview
- Motions practice and/or tracking what hearings to request
- Elements of specific hearing types
- Discrete trial issues
- Sentencing procedures
- Client communication on topics that could include: immigration status; police interaction; mitigating factors; fact finding questions; sentencing
- Highly technical areas (*e.g.* forensic sciences)

Once the substantive content is developed, consider these guidelines adapted from The Checklist Manifesto.

1) Be precise and practical.

For example, a checklist item stating “Investigate the immigration consequences for your client” is too broad. Unpack these broad steps into bite sized steps. (See Appendix A, for a sample Immigration checklist.)

2) Make it short and implement it at a clear pause point.

Aim for each checklist to contain fewer than ten elements, if possible. Asking more of busy attorneys may reduce adoption and usage. It should also be utilized at a point in the case with a natural “pause point.” Possible pause points include: after client interview, before negotiating plea with the prosecutor, or before talking to the client about consequences.

3) Keep it simple and exact.

For example, a draft checklist may have an item asking: “Is the client in custody on excessive bail?” Make sure that “excessive bail” is clearly defined.

The checklist cannot be lengthy. A rule of thumb some use is to keep it to between five and nine items, which is the limit of working memory.

[The Checklist Manifesto](#), p. 123

At the end of each checklist, consider what the analysis or action item should be. For example, at the end of an evidentiary checklist, consider a final step to be: “If there was a problem with the collection or maintenance of the evidence, file a motion challenging its admissibility.”

2B) Choose a format that is user-friendly: The formatting of the checklist itself should be conducive to the workflow of busy defenders.

Good checklists... are precise. They are efficient, to the point, and easy to use even in the most difficult situations.

[The Checklist Manifesto](#), p. 120

Consider whether a hard copy or electronic version would be most user-friendly and therefore easiest to adopt. Free software is available to help create the checklists.⁹ Also consider practical design resources and barriers. Does your office have easy access to a color printer or

⁹ See, for example: <http://printablechecklist.org/>; <http://www.household-management-101.com/support-files/checklist-template.pdf>; and <http://www.nicetemplates.org/free-checklist-template.html>.

should checklists be designed in black and white? Can and should any checklist answers prepopulate other systems in use by the office so as to minimize redundancies?

[A] checklist cannot fly a plane. Instead, they provide reminders of only the most critical and important steps- the ones that even the highly skilled professionals using them could miss. Good checklists are, above all, practical.

[The Checklist Manifesto](#), p. 120

Checklists can help reinforce other agency priorities, such as using plain language with clients. If attorneys aim to avoid acronyms and legalese when talking with clients, checklists too should avoid those terms so the client understands the question being asked. For example, asking ““Did you do a cold show?”” could be more helpful by defining “cold show.” Checklist wording can also help remind the lawyer to explain this term of art in plain language.

The tone and word choice should also be respectful of clients and the process. “Is the client from an overbearing family?” should be rephrased. This question is subjective as worded and does not clearly communicate the objectives of this checklist item.

Consider organizing or labeling the checklists by governing law or what stage in the case it would be most useful. You could also consider whether separate decision tree worksheets should be developed to complement the checklists or whether the checklists can guide attorneys through the possible pathways.

C) Plan for implementation: When you are ready to plan your checklist pilot test, return to the goals of the initiative. Consider opportunities to lighten the workload of those participating in the pilot to acknowledge the extra effort they're putting in. Also consider professional development and leadership opportunities (*e.g.*, leading future trainings) that could flow from this experience.

Note that when tested in the medical field, checklists were most successful when tested initially by professionals with the seniority (and patience) to make the necessary changes.

All pilot participants should be trained before the pilot starts. Sample training materials are available as Appendix E. Offices with horizontal representation may pose challenges unless all attorneys are trained.

Consider having a control group of attorneys at the implementation stage, who do not use the checklist. The purpose would be to compare their performance, memory and effectiveness in the checklists' subject matter, to other attorneys who worked with the same subject matter without the benefit of the checklist.¹⁰

Expect some speed bumps as the pilot launches, including additional pushback or lack of adoption. Offer opportunities for both staff and clients to give feedback during the pilot period to ensure that their concerns are heard. Continuing this feedback loop will improve the content and delivery itself, as well as generate additional buy-in for the project. You will also want to monitor usage regularly to detect whether all pilot participants are in fact participating, to reengage those whose participation may have waned.

¹⁰ Gawande, Atul. "When Checklists Work and When they Don't." *The Incidental Economist*, Publisher (only include this information if it is different than the name of the blog site), March 15, 2014, theincidentaleconomist.com/wordpress/when-checklists-work-and-when-they-dont/

Step 3: Measuring change

After investing time and energy into implementation, all involved will want to know what impact the checklists are having. The results of using checklists can be meaningfully evaluated, only after they have been substantially implemented. San Francisco was able to conduct an initial review of their checklist implementation efforts using staff surveys and facilitated conversations with staff members regarding perceptions of the checklists, including strengths, weaknesses, and extra time demands (if any) involved in adhering to the checklists. The full research report is available [here](#).

Admittedly, tracking outcome data – like whether defendants’ cases were dismissed more often or they experienced more favorable sentences – is far more challenging and influenced by many variables outside of the checklist project. However, it’s worth considering the following as a means of demonstrating the project’s impact.

A) Measure whether checklists were used: Tracking usage presents the first hurdle. Develop a method to know whether attorneys are 1) actually using the checklist and 2) using the checklists as intended. If direct observation is not possible by supervisors or even by junior team members or interns, a staff member could review completed forms in case files or consider other means for completed checklists to be submitted for review.

B) Measure whether checklist usage changed the knowledge, attitudes, and behaviors of the attorneys who used them: It may also be useful to track whether attorneys have changed their approach to certain practice areas or checklists. Have they become more accustomed to using checklists? Do they prefer some checklists over others? Are initially resistant attorneys finding the checklist useful? One survey question for consideration that was asked among medical professionals implementing checklists: “if you were having an operation, would you want the checklist to be used?” Assess current practices among newer employees, so you can measure outcomes post implementation.

C) Consider whether case outcomes or other outputs have changed: There are many variables that affect a case outcome – and many definitions of a “good” case outcome as well. But it is worth considering what objective outputs or outcomes might be tracked as part of your checklist pilot. Are there certain types of errors – *e.g.* missed opportunities to file a motion – that could help tell the story of how the checklists changed defender practice?

Questions to consider when assessing checklists include:

- Are the outcomes related to the purpose of your program or plan?
- Is it within your control to influence outcomes?
- Are your outcomes realistic and attainable?
- Have you moved beyond satisfaction in your outcomes?
- Is there a logical sequence among your short-term, intermediate and long-term outcomes?
- Are there any “leaps” in your outcomes (*i.e.*, gaps in progression of impacts)?¹¹

¹¹ “Checklists for Measuring Outcomes.” Available at https://eca.state.gov/files/bureau/measuring_outcome_checklist.pdf (last visited Mar. 22, 2018). Evaluation Division, Bureau of Educational and Cultural Affairs, U.S. Department of State.

Step 4: Review, revise, and roll out

Checklists must not become ossified mandates that hinder rather than help. Even the simplest requires frequent revisitation and ongoing refinement.

[The Checklist Manifesto, p. 174](#)

Just as in the beginning of the pilot, ongoing engagement with those who participated in the pilot is important to solicit feedback about the content, format, and implementation of the checklists. Have the needs of the office changed? Has the substantive or procedural law changed, requiring new content to be considered? Consult with internal and external experts to answer these questions. Are there format changes that would make the checklists more user-friendly? How would office-wide roll out work? How can the checklists be incorporated into existing trainings for new and existing staff? This iterative process will help ensure that the checklists survive leadership change, staff turnover, and other changing priorities of the agency.

Conclusion

Checklists aren't the answer to many challenges that public defender offices face. Those challenges are significant. But they may help address training and supervision gaps and serve as a tool to improve practice. They also give defenders new metrics by which to measure their impact, which might help in their efforts to address more systemic barriers to the public defense system.

For more information about how checklists have been implemented in San Francisco, CA, please visit <http://sfpublicdefender.org/services/checklists>. For more information about other improvements to the criminal justice system, please visit www.courtinnovation.org.

APPENDICES A – E: Sample checklists

What follows are a number of sample checklists developed by the San Francisco Public Defender Office. In considering whether one or more may be right for your office, review:

1. What local problem would this checklist solve?
2. What parts of the included content are applicable? What local adaptations or edits are needed?
3. What process would be needed to make any needed edits or adaptations?
4. Are there language or format changes that would make the checklist(s) more accessible to and user-friendly for local attorneys?

Immigration Status

WHICH cases: Every case, every client.

WHEN to use: Fill out the checklist while talking to your client about his/her background.

Ask your client the following questions:

Were you born in the U.S.? Yes No

If yes, then there are no immigration consequences because the client is a U.S. citizen.

If no, ask your client all of the following questions:

Have you ever had, or do you now have, any legal status, including:

- Lawful Permanent Resident (LPR)? Yes No
- Temporary Protected Status (TPS)? Yes No
- Deferred Action for Childhood Arrivals (DACA)? Yes No
- Deferred Action for Parental Accountability (DAPA)? Yes No

What is your Nationality? _____

What is your Country of Origin? _____

How long have you been in the United States? _____

Have you ever been deported from the U.S.? Yes No

If yes, list the approximate date of each deportation: _____

Continued...

Do you have a parent, spouse, or child in the U.S. that has any legal status?

Yes

No

If yes, list all such persons: _____

Do you have an alien registration number?

Yes

No

If yes, what is it? _____

Do you have an immigration attorney?

Yes

No

If yes, what is his/her contact information? _____

NEXT STEPS: If your client was not born in the U.S., use the information above to research the immigration consequences of any disposition of the criminal case.

APPENDIX B

Interviewing an Eyewitness

WHICH cases: Every case where there is an eyewitness to the incident.

WHEN to use: Fill out the checklist while meeting with the eyewitness.

To determine the series of events, ask the eyewitness all of the following.

What were you doing just before the incident?

What were you doing earlier in the day?

What exactly did you see happen?

What was the first thing that caught your attention?

Was anyone with you during the incident?

Yes

No

If yes, please describe:

When did you first see the suspect (person you identified)?

What did you do right after the incident?

To determine the circumstances of the eyewitness' account, ask him/her all of the following questions:

Where were you located in relation to the suspect? _____

Continued...

How far were you from the incident? _____

Did the distance between you and the incident ever change over the course of the incident? Yes No

If yes, please describe: _____

Did anything get in the way of you seeing the incident (e.g. traffic, trees, or people)? Yes No

If yes, please describe: _____

What was the lighting like at the time of the incident? _____

For how long did you observe the suspect? _____

What were you focusing on during the incident? _____

Was there a gun present during the incident? Yes No

Were there cars present during the incident? Yes No

Do you know anyone involved in the incident? Yes No

If yes, please describe: _____

Did you speak to anyone about the incident (including other witnesses) before you spoke to the police? Yes No

If yes, please describe: _____

Did you hear the police talking to any other witnesses? Yes No

If so, what did you hear the other witnesses saying, if anything? _____

Continued...

Did anyone tell you anything about the incident or the suspect?

Yes No

If yes, please describe: _____

To determine the state of the eyewitness at the time of the incident, ask him/her all of the following:

Do you wear glasses/contacts? Yes No

If yes, were you wearing them at the time? Yes No

Did you have anything to drink before the incident? Yes No

If yes, what and how much? _____

Were you taking any prescription medications at the time of the incident?

Yes No

If yes, what? _____

Were you using any drugs at the time? Yes No

If yes, what? _____

What was your state of mind at the time of the incident? _____

What emotions did you experience while observing the incident? _____

To determine the eyewitness's account of the suspect, ask him/her all of the following questions:

Can you describe the clothing and accessories of the suspect? _____

Can you describe what the suspect looked like? _____

Continued...

What is your race/ethnicity? _____

What is the race/ethnicity of the suspect? _____

Was there anything distinctive-looking about the suspect? _____

Did you hear the suspect talk? Yes No
If yes, what did the suspect say? _____

What was the quality of his/her voice? _____

Did the suspect have an accent? Yes No

Was there anything unique about his/her voice? Yes No

Had you ever seen the suspect before the incident? Yes No

Do you believe you could identify the suspect now, after the incident?
 Yes No

For further information about the eyewitness, ask him/her all of the following questions:

How do you feel about the incident? _____

How do you feel about testifying? _____

Have you received a subpoena? Yes No

What statements have you given the District Attorney? _____

What do you do for a living? _____
Continued...

What is your level of education? _____

Have you ever been arrested? Yes No
If yes, when, where, and what happened? _____

What is your date of birth, address, and phone number? _____

Do you have any upcoming travel plans? Yes No
If yes, when, where? _____

NEXT STEPS: Given the above answers, determine:

Would the eyewitness appear reliable in court? Yes No

Is the eyewitness's statement reliable? Yes No

APPENDIX C

Confrontation Clause - Does your client's case match *Hammon*?¹²

WHICH cases: Every case where the government is trying to use a hearsay statement that may be testimonial under *Crawford*.¹³

WHEN to use: Read the police reports and then fill out the checklist while talking to your client about the incident.

Was your client "at large"? Yes No

Was your client right next to or near the complaining witness?
 Yes No

Was there an "ongoing emergency"? Yes No

Was the hearsay witness narrating an on-going situation?
 Yes No

Were the hearsay statements a "cry for help"? Yes No

Were the hearsay statements the type of statements that give officers information to enable them to immediately end a threatening situation?
 Yes No

NEXT STEPS: If you checked "no" for all or most of the statements above, then the hearsay statements may be testimonial and you should file a motion in limine to exclude the hearsay statements under *Crawford*.

¹² *Davis v. Washington, Hammon v. Indiana*, 547 U.S. 813 (2006), the Court ruled that the Confrontation Clause of the Sixth Amendment, as interpreted in *Crawford v. Washington*, does not apply to "non-testimonial" statements not intended to be preserved as evidence at trial.

¹³ *Crawford v. Washington*, 541 U.S. 36 (2004), is a United States Supreme Court decision that reformulated the standard for determining when the admission of hearsay statements in criminal cases is permitted under the Confrontation Clause of the Sixth Amendment. The Court held that cross-examination is required to admit prior testimonial statements of witnesses who have since become unavailable.

APPENDIX D

DNA - Chain of Custody

WHICH cases: Every case where there is DNA evidence

WHEN to use: Fill out the checklist while reading the police and DNA reports.

When (date/time) was the evidence collected? _____

By whom? _____

When (date/time) was the evidence packaged? _____

By whom? _____

Where was evidence stored while it was transported from the scene?

Was evidence stored with Crime Scene Investigation prior to booking?

Yes No

When (date/time) was the evidence booked? _____

By whom? _____

When (date/time) was the evidence retrieved from the property room?

By whom? _____

Where was the evidence then taken? _____

Continued...

If the Medical Examiner collected the evidence, determine all of the following:

Who collected it? _____

When was it collected? _____

How was the evidence stored? _____

When was it released to an outside lab? _____

By whom? _____

How was it transported? _____

By whom? _____

NEXT STEPS: To determine the reliability of the collection and maintenance of DNA evidence used in your case, prepare a flow chart/spreadsheet with the above information. After preparing and reviewing the flow chart/spreadsheet, answer the following:

Could the process for collecting and maintaining the evidence cause the DNA results to be unreliable? Yes No

NEXT STEPS: If the DNA results could be unreliable, then file a motion in limine to exclude the evidence.

APPENDIX E: Sample training materials¹⁴

¹⁴ A PowerPoint version of this presentation is available by emailing info@courtinnovation.org.