
Consistency During the Court Process

The San Francisco Public Defender's Checklist Project Pilot Study

By Elise Jensen, Michela Lowry, Emily Gold LaGratta, and Melissa Labriola

Center
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© June 2018

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Acknowledgements

This project was supported by Grant Number 2013-DB-BX-0047 from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect those of the Department of Justice.

For their support and assistance, we thank Kim Ball and Wendy Rose, who have been our senior policy advisor and grants program specialist, respectively, since the beginning of the project. This study was implemented as a collaboration between San Francisco Public Defender's Office and Center for Court Innovation.

At the San Francisco Public Defender's Office, Jeff Adachi, Public Defender for the City and County of San Francisco, was integral to the beginning stages of the project, as well as its implementation. Deputy Public Defenders Simin Shamji and Aleem Raja were also critical to project implementation, data collection, and the editing of this report. We are grateful for all their involvement in this project. In addition, we would like to thank Donna Mandel, a policy analyst, for her feedback on an earlier draft report.

At the Center for Court Innovation, we would like to thank Julius Lang and Brett Taylor for their assistance and insights on this project. We also thank Amanda Cissner, and Rachel Swaner for their edits on earlier drafts of this report. In addition, thank you to Greg Berman for providing feedback on the report. Thank you to Robert Wolf, Matthew Watkins, and Samiha Meah in the communications department for assisting with the publication of this report.

We are also grateful for the attorneys at the San Francisco Public Defender's Office who assisted with the project evaluation by taking the time to complete surveys, as well as participate in a focus group about the project.

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Executive Summary

About the Project

In 2013, San Francisco Public Defender's Office received a grant from the Bureau of Justice Assistance (BJA) to pilot checklists amongst its misdemeanor and felony attorneys. The checklists were designed to provide the steps or tasks needed to be done during the filing of various motions, hearings, and interviews in a court case with the goal of improving efficiency and consistency. The checklists were developed by a project team from the Public Defender's Office and the Center for Court Innovation.

The team ultimately developed ten checklists, covering the following topics:

- Search and seizure;
- Illegal pat-searches;
- Client immigration status;
- Bail motions and hearings;
- Interviewing eyewitnesses;
- Interviewing eyewitnesses involved in field identification procedures;
- Confrontation Clause under *Crawford v. Washington*;
- Confrontation Clause under *Hammon v. Indiana*;
- DNA chain of custody;
- Initial client meetings.

The checklists were initially piloted among the misdemeanor attorneys in March 2016; checklists were subsequently rolled out among the felony attorneys in November 2016.

The Center for Court Innovation's evaluation of the pilot project included pre- and post-implementation surveys with both misdemeanor and felony attorneys. Surveys asked respondents about their familiarity with the topics covered by the checklists and about the utility and implementation of the checklists. Further information to contextualize survey responses came from a focus group and interview with public defenders.

Findings

The following themes emerged from the evaluation:

- The attorneys liked the idea of checklists. In the survey, they indicated that the checklists increased their confidence that no procedural steps were overlooked and improved consistency across clients.
- Survey respondents rated the checklists as more useful for some topics (i.e., eyewitness interview, initial client meeting, and DNA) than others (i.e., bail motions). Attorneys suggested that jurisdictions with fewer resources might have different experiences of checklist utility. In addition, some checklists that were not felt to be useful for attorneys themselves were seen as potential tools for support staff, such as paralegals, investigators, or legal interns.
- The attorneys opposed mandatory checklists. Large caseloads, limited available time, and limited instrument utility all contributed to this opposition.
- Some attorneys expressed frustration that more of them were not consulted in developing the checklists, resulting in topics that were irrelevant, simplistic content, or missed opportunities.
- The paper version of the checklists made them less accessible, because the attorneys had to wait for them to be placed in their office mailboxes. They mentioned that an online version would have been better, because the checklists could have been accessed at any point.

Recommendations

The findings resulted in ten recommendations for other jurisdictions hoping to incorporate checklists into their defense practice:

- **Have a single, general master checklist.** A single, simplified checklist could serve as a reminder for attorneys without being overly burdensome.
- **Include additional resources beyond a master checklist.** Some attorneys may be less familiar with certain topics. Optional follow-up checklists can provide comprehensive information on a variety of topics.

- **Collaborate with attorneys to design a checklist that is comprehensive and appropriate.** Checklists should not be developed solely by managing attorneys, but should incorporate feedback from multiple sources, such as misdemeanor and felony attorneys, as well as ones that are new and those who have been practicing for a while. It is possible that some checklists do not need to be completed by an attorney, and could be better suited to a paralegal, investigator, or intern.
- **Tailor checklists to the specifics of each jurisdiction.** Adjust according to local laws, attorneys' experiences, and specific caseloads to create tools that will be of most benefit.
- **Incorporate other staff who could assist with checklist completion.** Checklists may be a way to alleviate attorney workloads by enabling support staff to take on new roles.
- **Design the checklists so that they are straightforward and easy to use.** Checklists will be used more if they are simple and accessible. Some considerations include whether checklists can be made available online; whether formatting is clear and simple; and—for paper lists—whether black and white printing will make areas with color indistinguishable.
- **Track checklist use.** Managers should track which checklists are most and least used.
- **Consider external factors that might affect the timing of implementation.** Checklist creation, use, and tracking involve time that may not always be available. Other time constraints should be considered when implementing a new system.
- **Let local management decide if the checklists should be mandatory.** The checklists are intended to be useful for defense attorneys and increase consistency in casework. However, for defense attorneys burdened by large caseloads and limited support, mandatory checklists may impede the time they can devote to clients and cases.
- **Enlist a project manager as early in the process as possible.** A project manager with time dedicated to checklist implementation can both benefit the checklist effort and reduce strain on other staff.

Chapter 1

Introduction

In 2013, the San Francisco Public Defender’s Office, in collaboration with the Center for Court Innovation (hereafter, the Center), received a Field-Initiated grant awarded by the federal Bureau of Justice Assistance (BJA) to create the first-ever checklist system for public defenders and indigent defense attorneys nationwide. The goal of the checklist system is to improve the effectiveness and efficiency of indigent defense providers, thereby enhancing the delivery of justice to low-income clients. The checklists are to serve as an extra resource for frequently overtaxed attorneys working in a complex system, in order to systematically ensure that critical components of a case are not missing or overlooked. Specifically, this project led to the development of checklists on ten practice areas and set the foundation for integrating use of these checklists in attorneys’ day-to-day routines.

A series of national research studies have illustrated the negative effects of over-burdened and under-resourced defense attorneys on indigent defense outcomes (Baruchowitz 2009; Farole and Langton 2007; Flango 1994; Junod and Starr 2010; National Legal Aid and Defender Association 2003; Rhode 2012; The Spangenberg Group 2004). Clients are often encouraged to take a plea bargain, or attorneys have no time to prepare evidence that may result in an innocent verdict or reduce their sentence because of mitigating factors. Informed by this literature, the current project sought to create defender checklists to be piloted in the San Francisco Public Defender’s Office, then potentially adapted for use nationally. The benefits of using checklists have been studied across different fields—aeronautics and medicine in particular (Degani and Wiener 1990; Haynes et al. 2009). Checklists provide employees in high-pressure positions a lens through which to focus on the most immediate and crucial issues at hand, serving as a sort of “safety net” in situations in which repetition may result in mistakes. The San Francisco Public Defender’s Office initiative was inspired by recent literature—in particular, Atul Gawande’s *The Checklist Manifesto* (2009)—documenting the value of checklists in diverse fields, including the legal system.

This paper describes findings from the San Francisco pilot project. User feedback on the utility and burden of the checklists was collected through pre- and post-surveys and a focus group with defense attorneys, and interviews with deputy public defenders. Feedback was used to inform a separate practitioner’s guide listing recommendations for other indigent

defense offices across the country that seek to implement the San Francisco checklists or develop their own (LaGratta, Lowry, and Rodriguez 2018).

Background

Checklists itemize standard actions to be performed in a given setting, the goal being to ensure that no step will be overlooked. Checklists themselves are designed to combine precision and comprehensiveness with ease and efficiency of use. Therefore, each checklist contains a set of discrete items, organized as straightforward checkboxes (i.e., each recommended action either was completed or not), which can be quickly digested, assessed, and reviewed as applicable.

The use of checklists is not a recent phenomenon. The aircraft industry has benefitted from checklists since World War II (Ross 2004). 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 (Degani and Wiener 1990; Turner, Huntley Jr., and Volpe 1991).

In recent years, efforts to reduce complications in surgery and intensive care units have led to successful quality improvement initiatives using checklists in the medical field. Checklists have been shown to improve care and reduce morbidity and mortality in healthcare settings. The World Health Organization conducted a study of eight hospitals around the world, and found that the implementation of checklists reduced major surgery complications by 36% and deaths by 47% (Haynes et al. 2009). Hales, Terblanche, Fowler, and Sibbald (2008) systematically reviewed 178 medical papers from credible sources (i.e., peer-reviewed, university affiliated, or government published) where checklists were, for example, used in anesthesiology, emergency medicine, end-of-life care, and improvement of patient safety. Their analysis concluded not all checklists were effective at reducing error; however, none of the reviewed studies found checklists that created a situation where individuals were negatively impacted. Despite finding that checklists did not cause more problems, the authors cautioned against "checklist fatigue" when overly detailed checklists that require completion of all items become more of a burden than a resource.

Successful checklist implementation in safety-critical industries like medicine and aeronautics continues to offer a strong argument for their wider application. Atul Gawande's

The Checklist Manifesto (2009) documents how checklists can also be useful in other fields, particularly in the legal system where mistakes as small as administrative errors may result in lawsuits against attorneys, false convictions that can be devastating to individuals, and costly retrials for taxpayers (Silbert, Hollway, and Larizadeh 2015).

Based on the documented utility of checklists in multiple fields, this efficient and user-friendly approach could transform how public defenders—and potentially other agencies throughout the justice system—promote justice and serve the best interest of their clients. Additionally, appropriately developed checklists hold the possibility of facilitating staff development and retention and agency-wide capacity building across justice agencies.

The Present Study

Researchers at the Center worked closely with the San Francisco Public Defender’s Office on the development, implementation, and evaluation of checklists across the agency from October 2014 through July 2017. This paper describes findings from misdemeanor and felony attorney surveys and facilitated conversations with attorneys regarding perceptions of the checklists, including strengths, weaknesses, and extra time demands (if any) involved in adhering to the checklists. The project timeline and study methodology are described in Chapter 2; study findings are presented in Chapter 3.

Chapter 2

Project Overview & Research Methods

This chapter provides a brief description of the San Francisco Public Defender's Office, followed by an overview of the processes for creating the checklists and training public defenders to use the newly developed tools. The chapter concludes by outlining the methods used to evaluate the project.

The Setting

For over 90 years, the San Francisco Public Defender's Office has provided legal representation to people charged with a crime and unable to afford an attorney. Currently led by Jeff Adachi, California's only publicly elected public defender, the office provides legal representation to over 25,000 indigent defendants each year. The office has a rigorous two-week training program for newly hired misdemeanor and volunteer attorneys, as well as a cooperative training partnership for private attorneys who provide indigent defense in San Francisco.

Checklist Development

Prior to applying for the Bureau of Justice Assistance grant, Jeff Adachi had come across the idea of using checklists in professional contexts and decided to pilot them in the San Francisco Public Defender's Office. Once the grant was awarded, checklist development began with a project team of six people, comprised of a Deputy Public Defender, a paralegal, three managing attorneys, and a staff member in the Center's Expert Assistance Department. The purpose of enlisting the help of high-level staff was to generate buy-in from the attorneys who would be using the checklists, letting them know what to expect from the project. Once the project team was assembled, the project manager implemented a series of focus groups with misdemeanor and felony attorneys in January 2015. To guide the discussion, the project team created a guideline of critical checklist features, including: a concise goal or objective; simple and precise wording; a clear indication of *when* the tool should be implemented; a logical, sequential format; brevity; updated creation and revision dates; and flexibility to adapt to unexpected events (see Appendix A for the complete document).

The focus groups generated 10 to 15 potential checklist topics; the project team further narrowed down the list to a final product of ten checklists, each covering a specific topic area. National relevance also shaped the final topic list, with preference for what project managers referred to as “federal topics”—i.e., those not tethered to jurisdiction-specific local law. In addition, the project team reviewed closed case files (felony and misdemeanor) to identify issues that came up repeatedly across case types, with special attention to issues that were often overlooked.

Once the checklist topics were determined, staff from the Center worked to ensure that checklist language was appropriate for a national audience, without any jurisdiction-specific language or references to local case law. The Center also worked on formatting the checklists (e.g., so they were limited to a single page). The checklists were finalized in December 2015. At the same time, Center researchers began the evaluation of the project by surveying misdemeanor attorneys. Felony attorneys were surveyed in November 2016. At the end of the pilot, Center researchers administered a post-survey to misdemeanor and felony attorneys in March and June 2017, respectively. In July 2017, they conducted a focus group with attorneys (felony and misdemeanor) and interviewed two deputy public defenders (one of whom oversees the specialty courts/reentry unit).

Checklist Structure

In its final iteration, the set of ten checklists covered the following topics: illegal seizure; illegal pat-searches; client immigration status; bail motions and hearings; interviewing eyewitnesses; interviewing eyewitnesses involved in field identification procedures; Confrontation Clause under *Crawford*¹ and *Hammon*²; DNA chain of custody; and initial client meetings.

At the top of each checklist, boxes prompt users to consider the cases where the checklist might be applicable, and to identify the point in each case when the checklist should be

¹ *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.

² *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.

initiated. Following this series of yes/no checklist items, each checklist contains a “next steps” section, indicating follow-up actions based on previous responses.

Additionally, each checklist initially contained a separate tear-off page that included instructions for tracking checklist usage and impact, which was intended to be passed along to Center researchers for evaluation purposes. When this method proved cumbersome and ineffective, the project coordinator and manager at the San Francisco Public Defender’s Office decided to include an eleventh checklist—dubbed “Checklist 00”—to track checklist use (see Appendix B). Attorneys were asked to complete Checklist 00 as a preliminary step to determine which subsequent checklists they should use for each case. The ten final checklists can be found as Appendix C.

Piloting the Checklist

The project team piloted the project in two phases. Misdemeanor attorneys were part of the first phase, which began in March 2016, because managing attorneys determined they were the ideal group with which to pilot the checklists. Comprised of many newer and less experienced attorneys, this group already met weekly, helping to more seamlessly facilitate the pilot project. Standing weekly meetings provided a time to train the group in checklist implementation, administer the pre-survey, elicit user feedback, and provide ongoing updates. In the second phase, felony attorneys were trained and began piloting in November 2016.

The San Francisco Public Defender’s Office project managers created a training presentation for existing misdemeanor attorneys. The training provided a basic overview on checklists, including their role in other industries and key checklist features. Trainers introduced the ten checklist topics to be implemented in the pilot project, and demonstrated how to use the checklists and report on usage. All new hires assigned to the misdemeanor team were required to complete this training.

The pilot phase ran from March 2016 through March 2017.

Evaluation Methodology

The checklist evaluation drew on feedback obtained through pre- and post-surveys administered to checklist misdemeanor and felony attorneys and qualitative feedback gathered through conversations with attorneys and managing public defenders.

Pre-surveys were used to assess attorneys' familiarity with legal topics such as immigration, bail motions, Confrontation Clause, eyewitnesses, and initial client checklists. Sixteen misdemeanor attorneys completed the pre-survey (see Appendix D) in December 2015 during the pilot phase; an additional 24 felony attorneys completed the pre-survey in November 2016. The post-survey (see Appendix E³) was administered 14 months after implementation for misdemeanor attorneys and eight months for felony attorneys; attorneys were asked how often they used checklists in their work, whether they found the checklists useful, and how frequently their caseload included issues covered by the checklists. A total of 12 misdemeanor attorneys completed the post-surveys in March 2017; 23 felony attorneys completed the post-survey in July 2017. Not all the attorneys who completed the pre-survey completed the post-survey; therefore, we were not able to track change individually.

In July 2017, 11 attorneys—one misdemeanor attorney and ten felony attorneys⁴—participated in a focus group. A group interview was also conducted with the felony managers. The focus group and interview included open-ended questions to gain a deeper understanding of checklist training and implementation, as well as benefits and challenges associated with the new tools.

Pre- and post-survey responses were tabulated and are presented in the following chapter, along with feedback from the focus group and interview to help shed additional insight on quantitative survey findings.

³ The post-survey asked the same questions as the pre-survey. The post-survey in the appendix represents only the questions that were added to the pre-survey.

⁴ One attorney had been acting as a misdemeanor attorney at the time the checklists were piloted but had subsequently moved to the felony attorney unit; the other ten had been felony attorneys when they used the checklists. Not all of the attorneys in the focus group completed a survey.

Chapter 3

Results

The results in this chapter reflect attorney responses to pre- and post-surveys, along with feedback gained during in-depth discussions with checklist users and managers in charge of rolling out the checklist project. Findings are organized into four sections: 1) checklist rollout, 2) attorney preparedness, 3) checklist utility, and 4) checklist feasibility.

Checklist Rollout

Developing the Checklists

The checklists to be piloted by misdemeanor and felony attorneys in the San Francisco Public Defender’s Office were created in several stages, involving a project team and feedback from focus groups of attorneys to narrow down a list of 20 topics to ten final checklists.

During the focus group conducted at the end of the project, some attorneys complained that their input was not solicited during checklist development. As one explained, “There was one meeting where we were told what was happening, but we weren’t involved in any of the development.” An associated challenge described by focus group participants was which topics were selected for the checklists, when, according to another attorney:

A lot of attorneys already ... have their own checklists of things to make sure they consider for each case that might apply. Otherwise, these random cherry-picked issues [included] on the current checklists are so random—there are so many different issues in law.

A managing attorney agreed that input from line attorneys is important for developing checklists, acknowledging that it was difficult to decide what topics to include. He said,

People wish that there were many other topics—like a comprehensive manual of how to handle a criminal case—so we kind of had to decide what the big areas are and then let individual jurisdictions decide what comes in addition, via an analysis of [case] volume.

Training

One managing attorney emphasized that new tools must be created with attention to attorneys' time; not only do attorneys already have full caseloads, but they are also required to attend numerous trainings. In 2012, before the grant, the managing attorney conducted one-on-one and group meetings with the felony attorneys on the checklists, teaching them about making and using the checklists. During the grant period, misdemeanor attorneys were trained on using the checklists in December 2015. In November 2016, there was an office-wide training on checklists for felony attorneys. In January 2017, a managing attorney held three separate meetings, one with each of the three felony units, to re-explain checklists, improve buy-in, and solicit feedback. However, misdemeanor attorneys received checklist information and formal training during their regularly scheduled weekly meetings. According to a managing attorney, this more natural introduction may have facilitated greater buy-in among the misdemeanor attorneys. According to the felony attorneys, however, the checklist training was not well-received among all attorneys (misdemeanor and felony), because, as one explained, "we were all resisting the checklists themselves." All new hires received direct training from management-level attorneys on the purpose and implementation of the checklists, and instructions on using the checklists.

Mandated Use & Attorney Buy-In

According to one managing attorney, some of the hesitation to use the checklists came from their perception their introduction was a top-down mandate, and the perception that checklists were another thing that already overextended attorneys were required to do. This manager felt that, at least initially, the checklists were not taken seriously by the attorneys. "So, making it mandatory definitely got people's attention, but really the hope was that the checklists themselves would generate enough interest in people who want to use them." The hope, according to this attorney, was that the checklists would ultimately be shown to be beneficial (or not) through ongoing use.

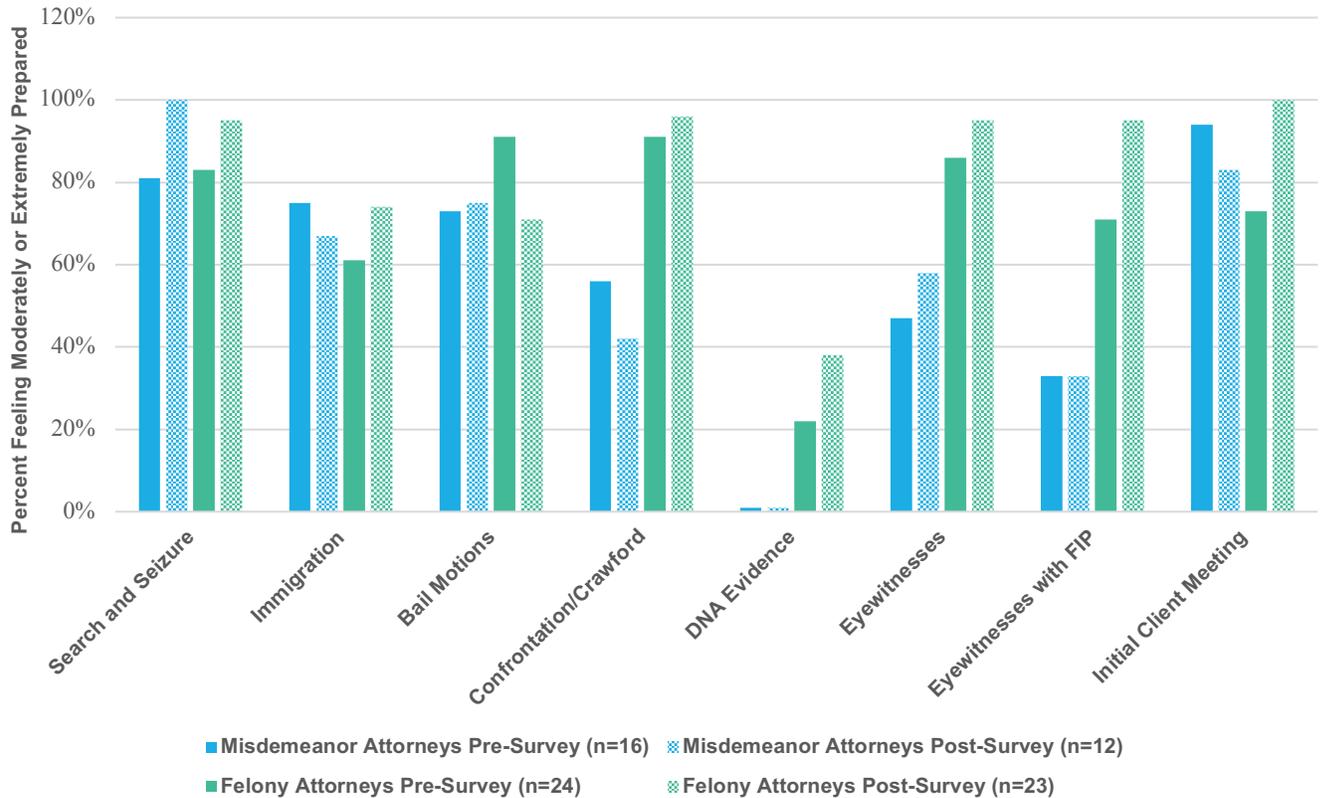
If the jurisdiction's [going to] decide to make it mandatory, put it on management to then review files, and have that follow-up with attorneys be part of their review process that they already have in place with the attorney. Incorporate the conversation of, 'These are the motions you filed. These were the checklists you didn't use,' or, 'You never used checklists. You never asked for an investigator. Why? These are your felony plea ratios.' So, those conversations that are already

happening in offices, I would incorporate the use of checklists as a conversation piece in there, and have it be part of the overall accountability system that each office has. So, don't do anything new or separate because it's too onerous to do that.

Attorney Preparedness

The pre- and post-surveys asked attorneys how prepared they were for filing various motions, hearings, and interviews before and after checklist implementation. Figure 1 presents the pre- and post-survey comparisons for both misdemeanor and felony attorney groups. Misdemeanor attorneys reported feeling more prepared in two areas following the implementation of checklists (search and seizure; eyewitness interviews); they felt somewhat *less* prepared in three areas (immigration; Confrontation Clause/Crawford; initial client meetings). There was little to no change among misdemeanor attorneys in terms of feeling prepared for bail motions or cases involving eyewitnesses. Felony attorneys felt more prepared for most topics on the list following the checklist roll-out; preparedness estimations improved in all areas but two (bail motions and Confrontation Clause/Crawford).

Figure 1. Attorney Perceptions of Preparedness, Pre- and Post-Checklist Implementation



Checklist Utility

The post-survey asked respondents if they generally found the checklists useful. Less than half (29%) rated the checklists as *somewhat* or *moderately* useful; similarly, 29% said they were *slightly* useful; none rated them *extremely* useful (see Table 1). Of those who found the checklists useful (i.e., somewhat, moderately, and extremely; results not presented in tables), respondents were most likely to indicate that checklists increased their confidence that no procedural steps were overlooked and improved consistency across clients; respondents were less likely to report that checklists enhanced their substantive knowledge⁵. Table 1 shows the

⁵ Percent of respondents is not reported in any subset of a question explaining why the attorneys thought the checklists were useful or not. In these cases, the number of respondents is so small that percentages would be misleading.

relative ranked utility of ten checklists.⁶ The checklists rated as the most useful were DNA, immigration, and eyewitness interview checklists. The bail checklist was rated the least useful by respondents. Asked *how* specific checklists helped them to improve their job performance, the trends generally followed the overall trends noted above (i.e., procedural fidelity and consistency were seen as the primary benefits). It is worth noting that the eyewitness interview checklists were seen as particularly useful for reminding attorneys to include the relevant procedural steps; the initial client meeting checklist was seen as particularly useful for promoting consistency across clients.

Table 1. Relative Perceived Utility of Checklists, Post-Implementation Responses

	Moderately/ Somewhat Useful	Slightly Useful	Not At All Useful
General Utility, All Checklists	29%	29%	43%
DNA Checklist	60%	13%	26%
Immigration Checklist	48%	24%	27%
Eyewitness Interview Checklist	45%	16%	39%
Fourth Amendment Checklist	37%	25%	38%
Confrontation Clause/Crawford Checklist	39%	19%	42%
Initial Client Meeting Checklist	33%	21%	46%
Bail Checklist	30%	27%	42%

Attorneys indicated that some checklists—for instance, the immigration checklist—would be more useful in jurisdictions with fewer resources and/or less experience in the specific area of law. According to the defense attorneys in the San Francisco office, they deal with immigration issues on a regular basis and are familiar with the necessary steps in such cases. However, they felt that defense attorneys in other jurisdictions where immigration cases are not as prevalent might benefit more from a checklist in this area. Similarly, while the San

⁶ Only seven of the ten checklists are presented in this table, because several of the topics were similar enough to be merged with another for the questions about perceived utility. Specifically, these topics include: illegal search and seizure (i.e., Fourth Amendment); eyewitness interview and eyewitness involved in field identification procedures (i.e., Eyewitness Interview Checklist); and *Crawford* and *Hammond* Confrontation Clauses (i.e., Confrontation Clause/Crawford Checklist).

Francisco office previously utilized a basic intake checklist, attorneys felt the intake tool would be helpful in other offices to provide the basic information that is needed for the case.

Beyond the intake checklist, attorneys reported that the detailed steps included in other checklists facilitated bringing in support staff with less experience. One attorney felt the checklists were “really helpful when I gave them to my intern. This one time the bail unit couldn’t do my bail motion in time, so, I gave [the intern] the checklist to do the interview.” Another saw the potential for task delegation as a selling point:

So, ideally, the form would get filled out, and then they would be disseminated to our support staff. Our investigator or my intern knows that from something I’ve checked off, they know that they need to write an investigation request. So, checking a box is going to save me time, because my paralegal is going to be able to do what I need them to do. That way, I’ll be motivated to use checklists.

Forty-three percent of respondents rated the checklists as not at all useful (see Table 1). Asked specifically *why* checklists were not useful (results not in tables), survey respondents were most likely to report that checklists were unnecessary given attorney’s level of professional knowledge and ability, or that the lists were too basic. In particular, respondents found the Fourth Amendment, immigration, bail, and initial client meeting checklists to underestimate their professional knowledge. The Fourth Amendment, immigration, bail, and Confrontation Clause checklists were reported to be too basic to be useful to respondents. One person in the focus group commented, “Some of them were designed as if I was an idiot—like the Fourth Amendment stuff, I already know that—it was totally useless. There are certain things you have to assume that lawyers know.” Other attorneys added that in the medical field, checklists tell practitioners what they *need* to do, but do not provide a detailed description of *how* to do it. They believed that legal checklists should similarly assume that legal professionals know *how* to file motions, and should simply serve as a reminder.

Focus group participants reported that the eyewitness checklist was not useful, because many of their clients were arrested without a witness present. The attorneys felt that most people knew what to file for bail motions; moreover, they have a team of people dedicated to filing these motions. However, they recognized that other jurisdictions may not have dedicated staff and, therefore, might find these checklists more useful. The attorneys said that they

were also familiar with conducting an immigration analysis, and Confrontation Clause/Crawford decisions.

Of the respondents who did not find the checklists useful, only one survey respondent did not agree with the fundamental concept of checklists. During further discussion in the focus group, attorneys clarified that while they supported the use of checklists in principle, they felt the implementation of these checklists was problematic. Specifically, they felt that the needs of the attorneys who would rely on them were not adequately considered during the design phase. Several attorneys reported that they would prefer one general checklist—as opposed to ten checklists designed around substantive areas, which they deemed unnecessary. One interviewee suggested, “A few things [in one checklist] would be absolutely useful to know that I’m not missing, but it’s the additional questions in each checklist that are unnecessary.” Another added, “it just has to be one page that incorporates as many major topics just to trigger us to think about it—not to educate us on the law.”

Though none of the survey respondents reported that they found the specific checklists that were created extremely helpful, nevertheless focus group respondents stated that they still like the idea of having checklists. One attorney explained, “Checklists can be useful because they make you feel better that you’re catching things you don’t want to miss. I like to check myself.” Another added, “They [are] a consolidated place where a lot of [information] is kept.” A managing attorney elaborated:

We all go to trainings all day, every day... in the legal field. We go, we sit for an hour. Some people take notes, some people don't, some people take their notes and put them in the trash. Some people file them, never see them again. What we don't have is a systematic way of them getting that knowledge into a workable place. So I think that in public defense, the checklist has great value because it takes ... areas of law and turns them into something useful, especially in an under-funded public defender office.

Level of Case Appropriateness

Of the surveyed attorneys who did not find the checklists useful, some of them reported that the topics were not appropriate for their cases. Focus group participants elaborated that the checklists included questions that were not applicable at the point of implementation, but that they might be relevant later in the process. In addition, some, but not all, focus group

participants felt the checklists were not thorough. One person said that they were missing plenty of information and did not make her feel like she was covering all the things she needed to remember. Another commented, “The checklists were not always relevant—they were too broad or not broad enough in specific instances,” and they admitted to checking the boxes on the checklist because their boss wanted to see that the checklists were being used.

A perfect example is a lot of my cases recently... are auto burglaries, which means an officer is doing a sting. He's looking for people breaking into cars. So the eyewitness who's a cop, is the one who is watching my client break into cars. The first checklist says 'Is there an eyewitness?' Yes, there's an eyewitness; it's a cop. Okay, but if I check that box, I know what's gonna happen next. The cop can't do a cold show⁷. I do not do a cold show checklist for a cop who witnessed an auto burg[lary]. So then I guess I should write down as an eyewitness, but I know what's gonna come down the road until I have that checklist; so, it was too broad, that was what made it difficult for me to fill out.

Two of the checklists in particular were deemed irrelevant, given respondents' caseloads: the DNA checklist—because the participating attorneys said they rarely dealt with DNA evidence—and the immigration checklist, given that the attorneys were assisted by a specialized immigration unit.

Checklist Feasibility

Time Spent

The time spent⁸ to complete each checklist was a common complaint among the attorneys. Nine attorneys said the checklists were not useful because they took too long to complete. Most of the focus group attendees said they would use the intake checklist, but completing the follow-up checklists was too time consuming. One attorney elaborated, “It's not freeing my time up at all—it's just more paperwork. I only want to do something that is going to help me.” The challenge of completing the checklists was especially relevant to

⁷ A “cold show” means that a witness sits in a car across the street trying to identify subjects.

⁸We did not ask the attorneys the time it took to complete the checklist; however, one managing attorney estimated that it took 10 minutes. Without attorney verification, we cannot confirm that this time is accurate; neither do we know how much time per case attorneys are used to spending on cases.

misdemeanor attorneys who—at least, according to the misdemeanor attorney in the focus group—handle many more cases than felony attorneys.

Checklist Accessibility

The original checklists were created only in a print version—versus an online or electronic option. Two post-survey respondents said that the print-only option, along with the checklist format, made the tools cumbersome. During discussions, attorneys echoed similar sentiments that the paper version was inconvenient. They suggested that an online format would be more useful, and would allow attorneys to access the checklists at any time, while print versions were available only a few days *after* attorneys met with clients⁹. The delay in receiving the paper version complicated implementation, because attorneys reported that they may have already forgotten specifics of their conversations with clients. Another anticipated benefit of an online version would be the ability for the website form to incorporate skip patterns and include additional information or checklists *only* when initial intake responses indicated their relevance. One manager believed that, while an online version of the checklists might have worked for the San Francisco office, a paper version would be more suitable for many jurisdictions that are not digitized.

Summary

In general, attorneys and managers raised a number of concerns regarding the design, implementation, and usefulness of the checklists. Specifically, attorneys expressed that the checklists took too long to complete and were not always appropriate for attorneys with years of experience and practical knowledge; that the timeframe for checklist completion was infeasible, given that some fields could only be completed later in the case than the checklists were meant to be implemented; and that checklist questions were not always appropriate for attorneys, but may have been more suitable for other professionals, such as investigators, interns, and paralegals, involved. Attorneys also reported that implementation of the checklists was made more difficult by the paper format.

Despite the many criticisms, the attorneys did like the *concept* of the checklists. Survey data showed that attorneys reported that some of the checklists made them feel more prepared. Specifically, misdemeanor attorneys appreciated the search and seizure and eyewitness

⁹After Checklist 00 was filed, the required follow-up checklists were then printed and left in the requesting attorney's mailbox, which often took several days.

motions lists, and felony attorneys had positive feedback on all but the Confrontation Clause/Crawford checklist. The eyewitness checklist was considered particularly useful, because it ensured that respondents did not forget any procedural steps. Respondents felt that the checklists may be more useful for interns, new attorneys, or other jurisdictions with fewer resources. Overall, attorneys reported that they would be more inclined to use a simplified, one-page (e.g., Checklist 00), non-mandatory checklist that would direct them to more in-depth checklists as needed.

Chapter 4

Conclusion & Recommendations

The following recommendations are based on the responses from the surveys, focus group with the defense attorneys, and the one interview with managing attorneys.

Recommendation #1: Have a single, general master checklist. Many of the attorneys complained that there were too many checklists that did not always pertain to their cases, or that the checklists covered topics about which they already had extensive knowledge. Therefore, a comprehensive master checklist would simplify the process, and attorneys could choose which additional checklists would be more useful for their cases.

Recommendation #2: Include additional resources beyond a master checklist. A master checklist is there to guide attorneys on what needs to be filed for each case. Some attorneys may not be as familiar with specific topic areas (e.g., DNA testing) and will need additional resources on that topic. Follow-up checklists that provide specific steps on the relevant topics checked could be created and used, especially to assist people who have less experience in a specific area. However, responding attorneys expressed that these follow-up checklists should be optional.

Recommendation #3: Collaborate with attorneys to design a checklist that is comprehensive and appropriate. One of the primary complaints among the attorneys is that they were not sufficiently consulted during checklist creation. This led to checklists that were felt to be too basic for most attorneys—better suited to a paralegal, investigator, or intern—and a burden to complete. While drafting the checklists, consult attorneys at different levels (e.g., new and veteran, misdemeanor and felony), managing attorneys, and staff with expertise in specific areas (e.g., forensic specialists) for input. This information would supplement the examination of case files, checklists attorneys have already created for themselves, and recent changes to the law.

Recommendation #4: Tailor checklists to the specifics of each jurisdiction. While some checklist components will be similar across sites, each jurisdiction should adapt checklists to state and local legislation, resources, and caseload composition. For example, in

California, it would be important to include a checklist relevant to Proposition 47, reminding attorneys to petition to reduce certain felony drug charges to misdemeanors. Attorneys suggested analyzing case data to determine which types of charges attorneys are most regularly presented with, and to ask attorneys what they most often miss when they are responsible for a case from start to finish.

Recommendation #5: Incorporate other staff who could assist with checklist completion. In some instances, specific information is already gathered by other (i.e., non-attorney) staff. For example, investigators may have a standard list of questions they ask of eyewitnesses. Allowing other staff (e.g., paralegals, investigators, interns) to collect information on the case for which they are responsible by using the checklists relieves the attorneys from doing all the checklist completion work.

Recommendation #6: Design checklists so that they are straightforward and easy to use. A major reason cited by the attorneys for not using the checklists was that they were overly complicated. Ease of use will increase completion. Following is a list of considerations that should be included in checklist design¹⁰.

- **Determine whether the checklists will be online or paper.** Online or digitized copies will make it easier to have a master checklist that triggers prompts for additional information (attorneys envisioned a software design like SurveyMonkey or Turbo Tax, where each answer to a checklist item prompts a different result). However, some jurisdictions will not have the capacity to build an online form. Regardless, attorneys suggest that the checklist be compressed to fit on a single page.
- **Ensure that the checklist is clear and the format is simple.** Laws are constantly changing, both federally and in local jurisdictions, and checklists need to be easily editable to remain relevant. A simple format will make such changes feasible.

¹⁰ The San Francisco Public Defender's Office developed additional checklists during the grant period as an in kind contribution. These checklists will be made available online on their website, as well as other offices in the state and nationally. For access to the checklists, go to: <http://sfpublicdefender.org/services/checklists>.

- **Consider the color of the checklists.** Some jurisdictions may not have the capacity to print in color, and some colors may not be easily distinguishable in black and white.

Recommendation #7: Track checklist use. The project managers in San Francisco were eager to learn which checklists were particularly useful. Rather than relying solely on anecdotal evidence, they designed a tracker to measure use. Every time an attorney used “Checklist 00” and indicated which subsequent checklists they would access, the information was stored. Once frequency of use is thus tracked, jurisdictions may benefit from additional investigation into why some checklists are underutilized.

Recommendation #8: Consider external factors that might affect the timing of implementation. It may not always be an appropriate time to implement a large-scale, time-consuming project like checklists. The lead attorneys mentioned, “Some offices will be going through other changes that will really affect their ability to [gain] buy-in and participate in the checklist process, either in their office or their jurisdiction, or both.” In this project, this challenge manifested itself in the issues with engaging other public defender’s offices to participate in the checklist pilot. Two sites were considered and neither were ultimately able to participate.

Recommendation #9: Let local management decide if the checklists should be mandatory. According to one of the managing attorneys, making checklists mandatory for smaller, resource-strapped jurisdictions might not be possible. This does not necessarily mean checklists should not be made available to their defenders. If checklists are to be mandatory, “make them accessible online, if possible, and then put it on management to review files [to determine fidelity and consistency] and have follow ups with attorneys as part of their regular review process.”

Recommendation #10: Enlist a project manager as early in the process as possible. Public defenders are strapped for time—in fact, this is a key factor driving the current checklist project. It is challenging to bring to fruition this type of large-scale, heavily coordinated project without the dedicated time of a staff project manager. In San Francisco, the project manager continued to have a regular caseload on top of taking on the checklist project. Regardless, he could dedicate a percentage of his time to keeping the project on track by organizing meetings and focus groups, keeping the checklist design on schedule, reviewing the language of each of the checklists, coordinating rollout, conducting initial

research, designing strategies to measure usage and address under-utilization, and following up with attorneys about compliance or noncompliance.

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Appendix A.

Guideline for Checklist Features

Top 10 Things an Ideal 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 at which the checklist is supposed to be used. Natural pauses in the workflow.
- 4) Short. Fewer than 10 items per pause point.
- 5) The wording should be simple and exact.
- 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) Allows the attorney to use judgement and deal with the unexpected.

Appendix B. Checklist 00

Checklist 00 – Which Checklists Do I Use?

In every case and for every client	Use checklists 01 and 02.
Is your client in custody or being held on bail that he/she cannot afford?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 03.
Did an officer interact with your client without a warrant and collect evidence as a result of the interaction?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 04.
Did an officer pat-search your client without a warrant and collect evidence as a result of that pat-search?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 05.
Does your case have an eyewitness to the incident?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 06.
Does your case have an eyewitness to the incident who participated in a Field Identification Procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 07.
In your case are there any hearsay statements that may be testimonial under <i>Crawford</i> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklists 08 and 09.
Is there DNA evidence in your case?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then use checklist 10.

Appendix C. Final Ten Checklists

Checklist 01 - Initial Client Meeting

WHICH cases: Every case, every client.

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

Explain the attorney-client relationship and build trust by saying to your client:

- I work for you, not for anyone else. I have a duty to work hard for you.
- I have to keep everything confidential. You should as well.
- Your charges are:
- The maximum punishment is:
- The next steps and timeline are:

Ask your client the following general questions about the case:

- Here is what the police wrote about your case. The police reports can have mistakes or lies in them.
- You tell me what happened.
- Give me contact information for any witnesses or people who can help.

Ask your client the following specific questions about the case:

- Were you stopped by the police or anyone else? Yes No
- Were you searched by the police or anyone else? Yes No
- Was your car, home, or anything else searched? Yes No
- Were you questioned by the police or anyone else? Yes No
- Did the police read you your Miranda rights? Yes No
- Did the police show you to a witness? Yes No
- Do you know what any witness said? Yes No

If so, please explain:

Ask your client the following questions about his/her personal history:

- Do you have a misdemeanor or felony record? Yes No

If so, please explain:

Where do you live and where did you grow up? _____

How much school did you complete? _____

When is the last time you worked? _____

Continued...

Were you born in the US?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Where is your family? _____		
What is their contact information? _____		
Where do your friends live? _____		
What is their contact information? _____		
Do you or did you ever use drugs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Details: _____		

NEXT STEPS: Use the answers above to see which other checklists may be relevant to your client's case.

Tracking:
Did the answers to these questions help you identify other checklists that may be applicable to your client's case? Yes No

Checklist 02 - 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.

Tracking:

Did this checklist help you collect information that was useful in researching the immigration consequences of your client's case? Yes No

Checklist 03 - Bail Motions and Hearings

WHICH cases: Every case where your client is in custody or being held on bail that he/she is having trouble affording.

WHEN to use: Fill out the checklist while (1) talking to your client about his/her background, (2) reviewing your client's RAP sheet, (3) writing the bail motion, and (4) at the bail hearing.

(1) Ask your client the following questions:

Are you currently employed? Yes No
If yes, please describe: _____

How long have you lived in the community? _____

Who are your primary contacts in the community? _____

What are the names and addresses of your family members? _____

Are any community or family members willing to come to court on your behalf? Yes No
If yes, who? _____

Have you ever been accepted into any drug treatment and/or rehabilitation programs? Yes No
If yes, when and which ones? _____

How would your incarceration affect your dependents?

Discuss with your client the following release options:

- | | |
|--|---|
| <input type="checkbox"/> Electronic monitoring | <input type="checkbox"/> Home detention |
| <input type="checkbox"/> Treatment program and/or counseling | <input type="checkbox"/> Supervised release |

Continued...

(2) Review your client's RAP sheet and determine all of the following:

Does your client have a bench warrant history? Yes No

If yes, describe: _____

Does your client have any violent (or other) convictions that may concern the judge? Yes No

If yes, describe: _____

(3) Draft the bail motion. Include a specific plan for release that is simple (return to family and job) or structured (program, supervised release, counseling).

(4) At the bail hearing, do the following:

- Ask your client's family and community members to sit together in the courtroom.
- During the hearing, ask your client's family and community members to stand and introduce themselves to the judge.
- If the judge feels like the client is a flight or safety risk, present the judge with supervised alternatives to jail.
- At the hearing, reiterate your specific plan for release: simple (return to family and job) or structured (program, supervised release, counseling).

Tracking:

Did you file a bail motion? Yes No

Did this checklist help you write the motion and prepare for the hearing?
 Yes No

Checklist 04 - Search and Seizure: Was the Client Seized?

WHICH cases: Every case where an officer interacted with your client without a warrant and collected evidence as a result of that interaction.

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

Ask your client the following questions:

Was there more than one officer? Yes No

Did an officer use physical force, commands, or his/her authority to stop you, get you to stay, or get you continue talking? Yes No

Did an officer touch you? Yes No

Did an officer pull out or touch a weapon? Yes No

Did an officer use any words or have a tone of voice that made you feel like you had to follow his/her orders or agree with him/her? Yes No

Based on your client's answers and the police report:

Would a reasonable person in your client's position have felt that he/she had to stop, remain in place, or continue with the encounter? Yes No

NEXT STEPS: If you checked *yes* for any of the above, then your client may have been "seized". If there was no warrant, if the seizure was unconstitutional, and if the government is trying to use evidence that was obtained from the seizure, then file a Motion to Suppress.

Tracking:

Did you file a Motion to Suppress? Yes No

Did the checklist help you analyze whether your client was seized? Yes No

Checklist 05 - Search and Seizure: Was the Client Illegally Pat-Searched?

WHICH cases: Every case where an officer pat-searched your client without a warrant and collected evidence as a result of that pat-search.

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

Based on your client's answers and the police report:

- | | | |
|---|------------------------------|-----------------------------|
| Was it reasonable for the officer to suspect your client was committing or had committed a crime? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does the officer's training and experience make such a belief reasonable? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Was your client acting nervous, surprised, or avoiding eye contact? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did your client fit a suspect's description? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Was it reasonable for the officer to believe your client may be armed and dangerous? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Was the officer's belief that your client was armed and dangerous based on something other than hunches or fears? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Can the officer point to specific facts that justify his/her belief that your client was armed and dangerous? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Would a reasonable person in the officer's circumstances be warranted in the belief that your client was armed and dangerous? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NEXT STEPS: If you checked “no” for any of the above, then your client may have been illegally pat-searched. If there was no warrant and if the government is trying to use evidence that was obtained from the pat-search, then file a Motion to Suppress.

Tracking:

Did you file a Motion to Suppress? Yes No

Did this checklist help you analyze whether your client was pat-searched?
 Yes No

Checklist 06 - 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? _____

Did anyone tell you anything about the incident or the suspect? Yes No

If yes, please describe: _____

Continued...

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...

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? _____

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

Continued...

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 prosecution? _____

What do you do for a living? _____

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

Tracking:

Did this checklist help you to identify the reliability of an eyewitness's account?

Yes

Checklist 07 - Interviewing an Eyewitness who Participated in a Field Identification Procedure

WHICH cases: Every case where there is an eyewitness to the incident who participated in a Field Identification Procedure.¹¹

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

Ask the eyewitness all of the following:

Did you identify anyone to the police? Yes No

If yes, did you participate in a Field Identification Procedure? Yes No

If the eyewitness answered yes to the questions above, ask all of the following:

How much time passed between the incident and the Field Identification Procedure? _____

Did the police take notes of what you said during the Field Identification Procedure? Yes No

What exactly did the police tell you before the Field Identification Procedure?

Did you hear any radio, phone, or face-to-face conversations between the officers before the Field Identification Procedure? Yes No
If yes, please describe: _____

Did the officers read you a Field Identification Procedure admonition? Yes No
If yes, did you sign it? Yes No

In your own words, describe the meaning of the Field Identification Procedure admonition that you signed.

Continued...

Did you give a description of the suspect to the police before you viewed the suspect in the field?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the police tell you anything about the person you were viewing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Were there other police officers standing near the suspect during the Field Identification Procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> How far away from the suspect were you during the Field Identification Procedure?	_____	
<input type="checkbox"/> Where did the Field Identification Procedure take place?	_____	
Were any other people shown to you during the Field Identification Procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, describe: _____		
Was the suspect in handcuffs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was anybody else in custody?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the police make any comments to you or give you any feedback about your identification of the suspect during or after the Field Identification Procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, describe: _____		

NEXT STEPS: If the eyewitness identification is unreliable, file a motion in limine to exclude it.

Given the above answers, determine:

Were there any defects in the Field Identification Procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the eyewitness's identification reliable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Tracking:

Did you file an eyewitness identification motion in limine?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did this checklist clarify the circumstances of the Field Identification Procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Checklist 08 - Confrontation Clause: Is the Statement Testimonial?

WHICH cases: Every case where the government is trying to use a hearsay statement that may be testimonial under *Crawford*.¹²

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

Did the statement make it clear to the police that what appeared to be an emergency is not or is no longer an emergency?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was the client (or the suspect) disarmed by the police?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the client (or the suspect) surrender to the police?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was the client (or the suspect) apprehended by the police?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the client (or the suspect) flee with little prospect of posing a threat to the public?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was the “primary purpose” of law enforcement questioning to deal with something that already happened rather than an “ongoing emergency”?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

NEXT STEPS: If you checked “yes” for any 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*.

Tracking:

Did you file a *Crawford* motion in limine?

Yes No

¹² *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.

Did this checklist help you establish a basis for that motion?

Yes No

Checklist 09 - Confrontation Clause: Does Your Client's Case Match *Hammon*?¹³

WHICH cases: Every case where the government is trying to use a hearsay statement that may be testimonial under *Crawford*.¹⁴

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"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was your client right next to or near the complaining witness?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was there an "ongoing emergency"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was the hearsay witness narrating an ongoing situation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Were the hearsay statements a "cry for help"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Were the hearsay statements the type of statements that give officers information to enable them to immediately end a threatening situation?	<input type="checkbox"/> Yes	<input type="checkbox"/> 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*.

TRACKING:

Did you file a *Crawford* motion in limine?

Yes No

Did this checklist help you establish a basis for that motion?

Yes No

¹³ *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.

¹⁴ *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.

Checklist 10 - 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.

<input type="checkbox"/> When (date/time) was the evidence collected? _____
<input type="checkbox"/> By whom? _____
<input type="checkbox"/> When (date/time) was the evidence packaged? _____
<input type="checkbox"/> By whom? _____
<input type="checkbox"/> Where was evidence stored while it was transported from the scene? _____
Was evidence stored with Crime Scene Investigation prior to booking? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> When (date/time) was the evidence booked? _____
<input type="checkbox"/> By whom? _____
<input type="checkbox"/> When (date/time) was the evidence retrieved from the property room? _____
<input type="checkbox"/> By whom? _____
<input type="checkbox"/> Where was the evidence then taken? _____ _____ _____
If the Medical Examiner collected the evidence, determine all of the following:
<input type="checkbox"/> Who collected it? _____
<input type="checkbox"/> When was it collected? _____
<input type="checkbox"/> How was the evidence stored? _____ _____
Continued...

- 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.

Tracking:

Did you file a DNA motion in limine? Yes No

Did this checklist help you identify if the DNA results might be unreliable?
 Yes No

Appendix D.

San Francisco Checklist Project Pre-Survey



San Francisco Checklist Project Pre-Survey

The purpose of checklists are to provide guidance to attorneys at key moments in a case and ultimately improve the effectiveness of indigent defense attorneys and in turn enhance the delivery of justice to low-income clients.

The purpose of this survey is to get a better understanding of your knowledge, attitudes, and behaviors on legal topics being covered by checklists. Your participation in the attached survey is essential in maintaining high quality standards. Please take the time to fill the short survey out and return immediately. **All information is anonymous.** Responses will be collected, tabulated and analyzed by the Center for Court Innovation.

Fourth Amendment

1. In the past year what percentage of cases involved a possible search or seizure issue?
[0-100%] _____%
2. How prepared do you feel to identify and litigate search and seizure issues?
 - Not at all prepared
 - Slightly prepared
 - Somewhat prepared
 - Moderately prepared
 - Extremely prepared

3. In the past year in what percentage of all of your cases did you file a motion to suppress evidence because of a possible search or seizure issue? [0-100%] _____%

4. Are there any trainings or resources that would help you identify and litigate search and seizure issues?

Immigration

5. In the past year in what percentage of cases did you ask your client where he/she was born? [0-100%] _____%

6. How prepared do you feel to identify and research the immigration consequence of a case disposition?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

7. In the past year in what percentage of all of your cases did you investigate the immigration consequence of a case disposition? [0-100%] _____%

8. Are there any trainings or resources that would help you identify and research the immigration consequence of a case disposition?

Bail

9. In the past year what percentage of your cases involved clients who were in custody because they could not afford bail? [0-100%] _____%

10. How prepared do you feel to write and litigate bail motions?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

11. In the past year in what percentage of all of your cases did you write and file a bail motion? [0-100%] _____%

12. Are there any trainings or resources that would help you write and litigate bail motions?

Confrontation Clause / Crawford

13. In the past year what percentage of your cases involved Confrontation Clause / Crawford issues? [0-100%] _____%

14. How prepared do you feel to identify and litigate Confrontation Clause / Crawford issues?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

15. In the past year in what percentage of all of your cases did you file a motion addressing the Confrontation Clause / Crawford issues? _____%

16. Are there any trainings or resources that would help you identify and litigate Confrontation Clause / Crawford issues?

DNA

17. In the past year what percentage of your cases involved DNA evidence? [0-100%]
_____ %

18. How familiar are you with the proper standards for collecting and maintaining DNA evidence?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

19. In the past year in what percentage of all of your cases did you look at the collection and maintenance of the DNA evidence to see if that could cause the DNA results to be unreliable? [0-100%] _____ %

20. Are there any trainings and resources that you feel would be helpful in determining the reliability of DNA evidence?

Eyewitness Interview

21. In the past year what percentage of your cases involved eyewitnesses? [0-100%]
_____%

22. How familiar are you with what questions to ask an eyewitness about their observations?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

23. In the past year in what percentage of all of your eyewitness cases did you (or your representative) interview the eyewitnesses? [0-100%] _____%

24. In the past year what percentage of your cases involved the police conducting a Field Identification Procedure with an eyewitness?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

25. How familiar are you with what questions to ask an eyewitness who participated in a Field Identification Procedure?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

26. In the past year in what percentage of all your cases did you (or your representative) interview the eyewitnesses about the details of the Field Identification Procedure? [0-100%]
_____%

27. Are there any training and resources that would help you interview eyewitnesses in general and about Field Identification Procedures specifically?

Initial Client Meeting

28. In the past year in what percentage of cases did you complete an initial client meeting (interview) form? [0-100%] _____%

29. How prepared do you feel to conduct a thorough initial client meeting (interview)?

- Not at all prepared
- Slightly prepared
- Somewhat prepared
- Moderately prepared
- Extremely prepared

30. Are there any trainings or resources that would help you conduct a thorough initial client meeting (interview)?

Appendix E.

San Francisco Checklist Project Post-Survey

The Center for Court Innovation San Francisco Checklist Project Post-Survey

The purpose of checklists is to provide guidance to attorneys at key moments in a case and ultimately improve the effectiveness of indigent defense attorneys and in turn enhance the delivery of justice to low-income clients.

After using the checklists for a significant amount of time, the purpose of this post-survey is to get a better understanding of your knowledge, attitudes, and behaviors on legal topics being covered by checklists, if you used the checklists and to determine if the checklists were helpful. Your participation in the attached survey is essential in maintaining high quality standards. Please take the time to fill the short survey out and return immediately. **All information is anonymous.** Responses will be collected, tabulated and analyzed by the Center for Court Innovation.

General Questions

1. In your opinion, how useful are these checklists?
 - Not at all useful
 - Slightly useful
 - Somewhat useful
 - Moderately useful
 - Extremely useful
2. If you felt that the checklists were useful, please indicate why (check all that apply).
 - Made me confident I wasn't forgetting any procedural steps
 - Provided consistency across all clients
 - Provided knowledge in content areas I felt less knowledgeable about
 - Other:

3. If you felt that the checklists were not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Fundamental concept of checklists
- Wrong format
- Took too long to complete
- Were on paper (vs. electronic)
- Unnecessary given my level of professional knowledge and ability
- Too basic
- Not on useful topics
- Other:

4. Do you have any ideas on how checklists could be improved?

Fourth Amendment

5. In your opinion, how useful is the fourth amendment checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

6. If you felt that the fourth amendment checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

7. If you felt that the fourth amendment checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

8. Are there any trainings or resources that would help you identify and litigate search and seizure issues?

Immigration

9. In your opinion, how useful is the immigration checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

10. If you felt that the immigration checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

11. If you felt that the immigration checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

12. Are there any trainings or resources that would help you identify and research the immigration consequence of a case disposition?

Bail

13. In your opinion, how useful is the bail checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

14. If you felt that the bail checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

15. If you felt that the bail checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

17. Are there any trainings or resources that would help you file and litigate bail motions?

Confrontation Clause / Crawford

18. In your opinion, how useful is the confrontation clause/Crawford checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

19. If you felt that the confrontation clause/Crawford checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

20. If you felt that the confrontation clause/Crawford checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

21. Are there any trainings or resources that would help you identify and litigate Confrontation Clause / Crawford issues?

DNA

22. In your opinion, how useful is the DNA checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

23. If you felt that the DNA checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

24. If you felt that the DNA checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

25. Are there any trainings and resources that you feel would be helpful in determining the reliability of DNA evidence?

Eyewitness Interview

26. In your opinion, how useful is the Eyewitness Interview checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

27. If you felt that the Eyewitness Interview checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other: _____

28. If you felt that the Eyewitness Interview checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

29. Are there any training and resources that would help you interview eyewitnesses in general and about Field Identification Procedures specifically?

Initial Client Meeting

30. In your opinion, how useful is the Initial Client Meeting checklist?

- Not at all useful
- Slightly useful
- Somewhat useful
- Moderately useful
- Extremely useful

31. If you felt that the Initial Client Meeting checklist was useful, please indicate why (check all that apply).

- Made me confident I wasn't forgetting any procedural steps
- Provided consistency across all clients
- Provided knowledge in this content area I felt less knowledgeable about
- Other:

32. If you felt that the Initial Client Meeting checklist was not useful, please indicate why (check all that apply).

- Not appropriate for my cases
- Unnecessary given my level of professional knowledge and ability in this content area
- Too basic
- Other:

33. Are there any trainings or resources that would help you conduct a thorough initial client meeting (interview)?
