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WHEN ONE GOOF IS ONE TOO MANY

Pilots use checklists. Physicians, too. Why not detectives?

I do believe I should have photographed the flumazenil on the floor before I put it on the table. Yes, in hindsight I would have done that.

By Julius (Jay) Wachtel. One would think that if there is a time to dot all the i's and cross all the t's this would have been it. This wasn't just any case. [So why did the coroner's investigator pick up that object](#) before photographing it, violating a rule that every rookie knows?

It turns out that the vial found in Michael Jackson's bedroom contained a drug used to reverse the effects of benzodiazepine, a commonly prescribed sedative for treating insomnia. Flumazenil is useless for overdoses of propofol, the powerful surgical sedative that caused the troubled singer's death.

Dr. Conrad Murray is on trial for involuntary manslaughter. He allegedly overdosed Jackson with propofol, which has no known antidote, then failed to adequately monitor him. When the physician discovered that Jackson wasn't breathing, he supposedly threw a Hail Mary pass by administering flumazenil. Murray's lawyers vigorously disagree. What really happened, they insist, is that Jackson self-administered a lethal dose of propofol while the doctor wasn't looking. They even pointed to the syringe that he supposedly used.

Alas, Jackson's fingerprints aren't on it. [But the investigator's are.](#) That's welcome news for the defense, which is expected to argue that careless handling wiped away evidence of what really took place. It's their best shot. Jackson's fingerprints haven't been found on any syringes or medicinal containers, so unless Murray's legal team can plant doubts about the quality of the state's forensic efforts speculation that the pop star acted as his own physician will remain just that.

This odd case aside, poor police work can be very consequential. Last week a Texas man was freed after serving 25 years for murdering his wife. He had always insisted he was innocent, and he was right. (Click [here](#) for an account from the Innocence Project, and [here](#) and [here](#) for two articles in a series by the *Austin Statesman*.)

On August 13, 1986 Michael Morton left for work. Later that day a neighbor stopped by and discovered the body of Morton's wife, Christine. She had been beaten to death. Morton was promptly charged. Prosecutors presented a case that focused on the couple's quarrels and Michael Morton's dissatisfaction with his wife's weight and their sex life. To enhance the case a coroner used a questionable process to set the time of death as the previous evening, while the couple was home.

Jurors returned a guilty verdict in less than two hours. A half-hour later they came back with the sentence: life imprisonment. That was Michael Morton's first lucky break.

His second was when he gained representation by the Innocence Project. Earlier this year a private lab performed DNA testing on a bandanna found near the home but not introduced at trial. Bingo! Analysts reported that it bore the victim's blood as well as genetic material from a third party. That person was identified as an ex-con with a lengthy, multi-state record, including convictions for burglary and assault with intent to kill. He is now a prime suspect in two murders: the killing of Christine Morton and the beating death of an Austin woman two years later.

In their haste to get Michael Morton authorities ignored or glossed over several significant facts:

- Two days following the murder the victim's Visa card was used and recovered at a store in San Antonio.
- A \$20 check made out to Christine Morton was cashed nine days after her murder. Her endorsement had been forged.
- One day after the murder a neighbor told a deputy that a stranger's vehicle had parked near the Morton's residence on several occasions, and that its driver walked into the woods behind the home.
- In a recorded phone call with police eleven days after the murder, Christine Morton's mother related a conversation with the couple's three-year old boy, who was at home when the killing took place:

Child: "Mommy's crying. Because the monster's here. He hit Mommy. He broke the bed."

Grandmother: "Is Mommy still crying?"

Child: "No. Mommy stopped."

Grandmother: "Then what happened?"

Child: "The monster threw a blue suitcase on the bed. He's mad."

Grandmother: "Where was Daddy, Eric? Was Daddy there?"

Child: "No. Mommy and Eric was there."

A blue suitcase was found lying on Christine Morton's body. That and the child's words led the woman to conclude that her son-in-law was innocent. Just like he said, her daughter had been murdered by an intruder. But she later declined to speak with defense lawyers. And no, they were never told about the audiotape or the other unfollowed leads.

Atul Gawande is a friendly guy. He's also an author, a writer for *The New Yorker* and, in his spare time, a surgeon and professor at Harvard medical school. His most recent book, "[The Checklist Manifesto](#)," begins with the story of a girl who survived a lethal accident thanks to a coordinated effort by team of medical specialists. Paragraphs later he describes a complex case in which he participated that began equally well but nearly came to a tragic end because of a belatedly detected infection.

According to Dr. Gawande there are 150,000 post-surgical deaths each year. He estimates that half are avoidable. "However supremely specialized and trained we may have become," he writes, "steps are still missed. Mistakes are still made...Our great struggle in medicine these days is not just with ignorance and

uncertainty. It's also with complexity: how much you have to make sure you have in your head and think about. There are a thousand ways things can go wrong.”

Dr. Gawande's book has a simple goal: to insure that the i's get dotted and the t's get crossed. To keep things on the right track [it suggests that medical professionals do what pilots do](#) – use a checklist. (Click [here](#) for one that Dr. Gawande developed for the World Health Organization.)

Of course, the concept of a checklist is nothing new. Nearly every activity from bird watching to industrial processes has one. And yes, there are some for law enforcement. Click [here](#) for one that's specific to homicide investigation. Using it might have spared the coroner's investigator assigned to the Michael Jackson case considerable embarrassment (item H-5-a-4: “Photograph specific items of evidence such as footprints, cartridge cases, weapons, etc. as observed in place at scene...”) It might have prodded detectives investigating Christine Morton's murder to expand their inquiries beyond what they thought “obvious.” For example, sections H-16 and H-17 mention a need to look into the victim's finances and the theft of money or property.

Just like they've helped aviators and physicians, comprehensive, well-designed checklists can guide investigators through the complexities of the real world. If taken seriously they might also help neutralize tendencies towards tunnel vision. To accomplish these goals checklists must be living documents that require participation and endorsement by each officer who contributes to an investigation. They should be shared with prosecutors and made discoverable by the defense.

What Harvard's Dr. Gawande learned in the school of medical hard knocks is nothing new to criminal justice. As [a recent example](#) in Los Angeles demonstrates, human frailties and the exigencies of policing have the potential of producing outcomes that are every bit as disturbing as medical goofs. If using checklists can help – and there's every indication they can – let's put our heads together and get busy.