

The CHES Method of Forensic Opinion Formulation: Striving to Checkmate Bias

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Expert witnesses use various methods to render dispassionate opinions. Some forensic psychiatrists acknowledge bias up front; other experts use principles endorsed by the American Academy of Psychiatry and the Law or other professional organizations. This article introduces CHES, a systematic method for reducing bias in expert opinions. The CHES method involves identifying a Claim or preliminary opinion; developing a Hierarchy of supporting evidence; examining the evidence for weaknesses or areas of Exposure; Studying and revising the claim and supporting evidence; and Synthesizing a revised opinion. Case examples illustrate how the CHES method may help experts reduce bias while strengthening opinions. The method also helps experts prepare for court by reminding them to anticipate questions that may be asked during cross-examination. The CHES method provides a framework for formulating, revising, and identifying limitations of opinions, which allows experts to incorporate neutrality into forensic opinions.

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Attorneys retain experts to help judges and juries understand relevant scientific material. Although one expects expert testimony to be scholarly and balanced, deceptive or irrelevant information may be introduced into courtroom proceedings. The legal profession, therefore, has established guidelines for admitting expert testimony into evidence. The Federal Rules of Evidence,¹ for example, describe standard procedures for expert testimony in federal court. The Rules, which were clarified by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,² and *Kumho Tire Co., Ltd. v. Carmichael*,³ restrict the intrusion of junk science, unreliable data, and inflammatory evidence into expert testimony.

Medical professionals, too, have faced the challenge of assuring that rendered opinions are free of bias. Although some health care professionals have argued that an expert witness is never objective,^{4–7} several professional organizations have addressed the

need for impartiality by incorporating guiding principles into their codes of conduct. For example, the American Academy of Psychiatry and the Law (AAPL) has included several principles of neutrality in the “AAPL Ethics Guidelines for the Practice of Forensic Psychiatry.”⁸ The Guidelines outline ways to diminish both internal and external bias. During forensic examinations, internal bias can be reduced by differentiating verified and unverified data and by distinguishing facts from assumptions and conclusions.⁸ Since external pressures can also affect objectivity, the Guidelines discourage the practices of accepting contingency fees from attorneys, proffering opinions before examining evaluatees, and dual agency (including performing forensic evaluations on one’s own patients).⁸

These parameters provide standardized methods for rendering impartial expert opinions during forensic psychiatric evaluations. Many experts, however, believe that bias will always be present during expert witness testimony. Katz⁴ and Diamond,⁵ for example, opined that an expert’s neutrality begins to dissipate as soon as she or he is retained by an attorney or judge who has a particular viewpoint about the case

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or about justice. It is challenging, they explain, to maintain neutrality while meeting the demands of the retaining party. These and other experts recommend, among other things, that experts decline or withdraw from cases when they cannot render objective conclusions that support the retaining attorney's position.⁹ Katz also has suggested that the AAPL Ethics Guidelines should require forensic psychiatrists to inform judges and juries about their biases, including the limits of their scientific knowledge.⁴

Other experts have chosen to work within the existing AAPL Ethics Guidelines framework by offering scholarly commentary on the importance of and pitfalls associated with conducting dispassionate examinations. Gutheil and Simon¹⁰ have described the effects of stable and fragile narcissism on expert witness testimony. Fragile narcissism may compel an expert to engage in conscious distortion of one's testimony and may contribute to a win-at-all-costs mindset. Gutheil and Simon have offered guidelines for enhancing one's objectivity including: stating the limitations of provisional opinions rendered before the expert has reviewed all the data; specifying additional data needed to formulate a more complete opinion; and providing consultation to attorneys after synthesizing one's expert opinion, in an effort to facilitate balanced representation by counsel of the expert's findings. Simon and Wettstein¹¹ have called attention to the need for standards for forensic mental health evaluations, and Goldyne¹² has described an introspective approach to reducing unconscious biases in forensic psychiatry. The present article describes the CHES method, a systematic set of procedures that fosters neutrality during conceptualization of forensic expert opinions.

Origin and Background of the CHES Method

Attorneys have developed a well-defined system to guide them when they interview witnesses under oath. They strive for favorable verdicts by introducing evidence during direct examination to influence the decisions of judges and juries. Cross-examining attorneys reshape prejudicial evidence and introduce divergent viewpoints by compelling opposing witnesses to acknowledge omitted details and overstated remarks. A skillful attorney uses cross-examination to strengthen his or her case, by reducing the prominence of objectionable evidence, including expert

witness testimony, in the minds of deliberating judges and jurors.

Bias may be introduced by attorneys during courtroom proceedings; however, expert witnesses are supposed to be neutral. They are expected to conduct dispassionate examinations of cases and to filter bias from their conclusions. Expert witnesses are familiar with the adversarial process of cross-examination and anticipate scrutiny of their opinions when they testify under oath. They also recognize that their own frames of reference, including experiences and familiarity with evidence-based data, may affect the substance of their opinions and testimony.^{7,12,13} In addition, seasoned experts acknowledge that opinions rendered may have been affected by the body of information that was interpreted.¹⁴ Consequently, impartial experts should concede to well-founded conclusions presented by opposing counsel. Experts must focus on providing valid information to the court and should not distort testimony to seek favor or adoration from attorneys or others.¹³ Adhering to these practices introduces balance into expert testimony and reduces the likelihood that experts will be viewed as advocates invested in specific verdicts.

Although concessions during testimony are sometimes necessary, too many concessions detract from the credibility of the witness. A systematic method for anticipating and limiting concessions improves the quality of a report and of expert testimony. The CHES method of opinion formulation is one such strategy. It includes steps that incorporate anticipating, considering, and responding to contrary reasoning and conclusions into the synthesis of opinions. At the same time, the method includes techniques that systematically enhance objectivity at every step of conceptualization.

A forensic report is somewhat analogous to the layout on a chess board. Opinions are formed after the expert witness completes a fact-finding mission that includes examining data and evaluatees. Like game pieces, an expert's opinions are positioned in the report based on a set of rules that include an evaluation of the strength and importance of each opinion. The weight of the supporting evidence for each opinion determines how a particular opinion may influence the overall report. The forensic psychiatrist formulates his or her opinions by following the rules, conceding facts when appropriate, and presenting opinions objectively.

Table 1 The CHES Mode for Forensic Opinion Formulation

C	Claim (state a preliminary opinion)
H	Hierarchy (of supporting evidence)
E	Exposure (examine for)
S	Study (and revise)
S	Synthesize (a revised opinion)

The CHES Method

The CHES method for forensic opinion formulation contains five steps: C, formulating the claim (preliminary opinion); H, establishing a hierarchy of supporting evidence; E, examining the evidence for exposure; S, studying the evidence; and S, synthesizing a revised opinion (Table 1).

After gathering the data, the expert formulates a preliminary opinion or claim. The expert assures that the opinion has a solid basis, is logical, and is valid by marshaling and categorizing the supporting evidence. The hierarchy is key; the evidence is presented in a logical sequence, and the strongest evidence is presented first. The expert then examines the opinion and supporting evidence for areas of exposure. This process includes identifying areas of potential vulnerability to cross-examination, including the presence and strength of possible opposing arguments. The expert studies the evidence to determine how best to respond to these weaknesses. If the expert determines that additional data are needed to bolster an opinion, she or he should request this information from the retaining attorney. Weak supporting evidence may be omitted or reformulated and concessions may be incorporated into the opinion. After completing these steps, the expert synthesizes a revised opinion with a stronger list of supporting evidence. The process may be repeated until the expert believes he or she has created a solid work product that contains reasonable opinions, supporting arguments, and necessary concessions.

The following case examples illustrate the CHES method concept. They are not actual cases that the author has encountered.

Case Examples

Case 1

Mr. V., who had been adjudicated not guilty by reason of insanity of a nonviolent drug-related offense, was being considered for placement in a community group home. His attorney had retained Dr.

Sand to render an opinion that would support releasing Mr. V. into the community. Mr. V. suffered from major depressive disorder with psychotic features and post-traumatic stress disorder, which developed after he was stabbed in the back during a robbery. Before he was hospitalized, he had no history of aggressive behavior.

Dr. Sand reviewed Mr. V.'s psychiatric hospital record, which described one act of aggression. In that episode, Mr. V. had been touched inappropriately by Patient P. Mr. V. immediately alerted staff, who assured him that he and the perpetrator would be separated. Several hours later, Patient P. fondled Mr. V. from behind. Mr. V. grabbed his attacker, shoved him against a wall, and threatened to harm anyone who approached them. Hospital staff members were able to persuade Mr. V. to release Patient P., to walk into a seclusion room, and to accept an oral anti-anxiety medication instead of an injectable one. One hour later, Mr. V. told staff that he was in better control of his emotions and behavior. He was permitted to leave the seclusion room and he had an uneventful evening. His medication was adjusted by the inpatient psychiatrist the following morning. His behavior remained stable, and he was released from the hospital three weeks after the incident.

CHES Method Analysis

Claim: the preliminary opinion. Dr. Sand's initial conclusion was that Mr. V.'s aggression did not suggest that he would engage in future violence. Community placement, therefore, was the least restrictive arrangement for him.

Hierarchy of supporting evidence. The following facts support Dr. Sand's conclusion: Mr. V. engaged in aggression to stop a sexual assault. Sexual aggression is not condoned in the hospital or in society. Such occurrences do not normally happen to a person during routine daily activities. This fact placed him at lower risk of having to defend himself against a sexual attack in the community in the future.

The sexual attack triggered a flashback and overly vigilant behavior in Mr. V., which made it difficult for him, a docile individual by history, to compose himself.

Flashbacks and hypervigilance are diagnostic criteria for post-traumatic stress disorder.¹⁴ Mr. V. complied with three additional weeks of intensive psychiatric treatment after he engaged in defensive

aggression. He was more stable than he was when he was attacked, as evidenced by the notations in his medical record and information he shared with Dr. Sand. Thus, he responded favorably to treatment.

Mr. V. will be under court and staff supervision if he is permitted to live in the group home. He and everyone who will be involved with his care and supervision know the court will intervene immediately if Mr. V. defies the conditions of supervision established by the court.

Examine for exposure during cross-examination. Mr. V. knowingly attacked a mentally ill individual. He showed poor self-control and he is likely to do this again, since past behavior is the best predictor of future behavior.¹⁵⁻¹⁷

There is no guarantee that Mr. V. will take his medication. Poor medication adherence will render him less stable and more likely to engage in aggression if he believes he is in danger. His perception of danger will be elevated relative to the average citizen in the community, as evidenced by his overly vigilant behavior in the hospital.

In real world situations, people violate society's rules. Mr. V. may attack someone who attacks him, as well as people who come to his aid, just as he did in the hospital.

If Mr. V. engages in aggressive behavior in the community, there will be fewer people available to contain him. Most people in the community will not know about his mental health and trauma histories. Thus, the consideration and support he received in the hospital will not be available to him in the community.

Study and revise. Mr. V. had a flashback that resulted in his inability to control his emotions and behavior. His symptoms have diminished substantially as a result of treatment optimization, and he is less likely to harm another person beyond what may be necessary to ensure his safety.

Group home staff will supervise Mr. V. and will monitor his medication. They will seek assistance for him from health care and legal authorities if he seems to be deteriorating.

Synthesize a revised opinion. Mr. V.'s attack of Patient P. was the result of a flashback, a symptom of post-traumatic stress disorder, which was triggered when he was sexually violated by Patient P. Similar

behavior has occurred in mentally stable individuals who have tried to protect their physical integrity. Mr. V.'s vigilance and refusal to cooperate with staff immediately after the incident were also manifestations of his illness. He strived to protect himself until he felt capable of trusting the staff again.

To his credit, Mr. V. was able to accept the staff's guidance and to tell them when he believed he was in better control of his emotions. Subsequent to the episode, three weeks of intensive psychiatric care diminished the frequency and severity of his symptoms. These improvements in his emotional health render him sufficiently stable to reside in a group home, which is the least restrictive placement for him.

Mr. V. will be monitored closely at the group home by staff who will immediately alert the court if his behavior or cooperation with treatment changes. He will be able to request additional supportive interventions if he believes the protocols set forth are not sufficient to maintain his safety. He has never refused treatment, and he insists he understands why he must continue to work with his mental health team to preserve his emotional health.

Case 2

Dr. Molt, a forensic psychiatrist, was retained by a plaintiff's attorney to examine data in a wrongful death lawsuit against a manufacturer of ingestible energy products. The attorney alleges that A.Z., a 17-year-old youth, died after he ingested a tainted energy product (TEP). The expert reviewed an autopsy report, a toxicology report, and articles about deaths attributed to ingesting the TEP, which is no longer available in stores or via the Internet. The hospital pathologist concluded that the youth's cause of death was accidental poisoning due to ingesting the TEP. The toxic chemical in the TEP was the only substance identified in the toxicology report. The attorney requested a report from Dr. Molt in three weeks' time.

CHES Method Analysis: Attempt 1

Claim: the preliminary opinion. Dr. Molt decided that while it is likely that the death was due to A.Z.'s ingesting a contaminated food product, there was not sufficient evidence to rule out other possibilities, such as intentional ingestion of a toxin for recreational purposes. Formulating an opinion under these circumstances would likely place Dr. Molt at risk for exposure during cross-examination, thereby

diminishing the expert's credibility in this and future cases.

Instead of rendering a weak opinion, Dr. Molt decided to request more information from the attorney, including A.Z.'s medical records and interviews with his parents and siblings. The medical records described an adolescent male with an unremarkable history of health problems with one possible exception: he was prescribed medication for treatment of anxiety approximately two years before he died.

Dr. Molt's interviews with A.Z.'s parents and siblings were productive. All reported that he became anxious and vomited whenever he traveled by air; the medication helped him relax. He had last ingested the medication about 18 months ago, when the family traveled overseas for a vacation. He had no other history of emotional problems, was dating, was a talented photographer, and played high school sports. His relationship with his girlfriend was stable. He did not use recreational drugs and was not sexually active. He looked forward to going fly fishing with his family. The trip was scheduled to occur two weeks after he died.

The attorney also arranged for Dr. Molt to interview the decedent's best friend B.Q., who seemed forthright. B.Q. said that A.Z. was excited about his future. On the day of A.Z.'s death, B.Q. and A.Z. ingested energy products together. B.Q. said he ingested one energy product, but A.Z., who was "famished after we worked out," ingested three of them. About one half hour later, B.Q. felt sleepy and went home to rest.

Dr. Molt then received permission to interview the youth's teachers, coach, two other teammates, and A.Z.'s girlfriend. They corroborated the data gathered during the preceding interviews. After gathering the data, Dr. Molt felt sufficiently confident to render a balanced opinion.

CHES Method Analysis: Attempt 2

Claim: the preliminary opinion. Dr. Molt opined that A.Z. had died due to unintentional ingestion of the TEP.

Hierarchy of supporting evidence. The pathologist listed the cause of death as an accidental ingestion of a TEP. The toxicologist identified the fatal chemical in the TEP as the only aberrant substance in A.Z.'s body. His best friend, B.Q., watched him ingest the TEP to satiate his hunger. A.Z. had no history of

sustained psychiatric symptoms or behavior that would suggest an intentional infliction of self-harm. He was optimistic about his future. His anxiety was situational and short lived.

Examine for exposure. The fatal chemical contained in the TEP has been described as a product used recreationally by athletes. Could A.Z., an athlete, have used the chemical to become intoxicated and accidentally overdosed? It is possible that the pathologist or the toxicology report missed a key detail.

Study and revise. Although the fatal chemical in the TEP has been used recreationally by athletes, A.Z.'s family, teammates, and peers insisted that he had never used drugs or other substances recreationally. The autopsy report did not suggest that he used the chemical recreationally. Dr. Molt reviewed literature about recreational use of the fatal chemical in TEP to assure he was familiar with the topic should questions arise or related evidence become available. If a toxicologist presents additional data, Dr. Molt will have to consider them.

Synthesize a revised opinion. A.Z. died after unintentionally ingesting a poisonous chemical contained in a TEP, which he ate because he was hungry. He did not know that the TEP was contaminated. He did not engage in recreational substance use or have debilitating emotional problems that might place him at risk of self-harm.

Dr. Molt may now focus on the damages portion of the report if the attorney requests this service.

Discussion

The CHES method of forensic opinion formulation is a well-ordered approach to systematic and objective data analysis for expert witness reports and testimony. The model encourages the expert to use supporting evidence judiciously and to acknowledge contrary evidence, when appropriate, in an effort to formulate balanced opinions that will withstand cross-examination.

The game of chess and the CHES method are similar in some ways. Practitioners of both crafts must understand the fundamentals and must think ahead to be successful. Preparation, discipline, and accepting challenging opportunities enhance the skill sets of chess players and expert witnesses. Also, skilled chess players and psychiatric experts may earn recog-

nitition in their respective professional circles. Despite these similarities, chess and the CHES method diverge in important ways. Perhaps the greatest difference between the game of chess and the CHES method is the opponent that each participant seeks to defeat. A chess player wins by trapping the opposing king. An expert witness strives to checkmate bias, but rarely if ever achieves the goal. When the CHES method is successfully employed, the outcome is more balanced and ethical testimony, based on “specialized knowledge [that will] assist the trier of fact” with adjudication.^{1,2} The process of formulating dispassionate opinions of substantial relevance and reliability is perhaps the greatest challenge of expert witness work.

At times, the CHES method may result in uncomfortable but necessary situations for experts. For example, an expert may concede she is unable to assist an attorney with supportive testimony when the magnitude of necessary concessions exceeds the significance of the proposed testimony and/or the expert’s comfort zone. Withdrawing from a case may be necessary to prevent the expert from entrapping herself or from diminishing her credibility in the medical and legal communities.⁹ The discussion with the attorney should occur as soon as the expert becomes aware of the situation so that the attorney may consider other options.

The CHES method facilitates honest discussions between experts and retaining attorneys because the expert has reviewed the data, considered alternate opinion(s), and decided what she may reasonably and dispassionately conclude before the discussion occurs. The expert should review the limitations of her opinion with the retaining attorney, so that both parties will be familiar with the scope of the testimony before the deposition or trial. This review may reduce the likelihood of expert-attorney misunderstandings during the litigation process. In addition, the CHES method provides a framework for discussions with attorneys regarding additional data needed to reach conclusions.

Conclusion

There are two main approaches to managing bias in forensic psychiatry. Many scholars believe the experts cannot be completely neutral and that they should acknowledge bias up front. This practice has

much to recommend it; however, the “AAPL Ethics Guidelines for the Practice for Forensic Psychiatry” implores experts to strive to achieve objectivity. The CHES method of opinion formulation operates soundly within the parameters of both schools of thought, because it systematically allows experts to concede necessary points, including limitations of reports, while they strive for objectivity. CHES is one of many approaches to fostering neutrality when formulating forensic opinions.

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