The CHESS 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 CHESS, a systematic method for reducing bias in expert opinions. The CHESS 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 CHESS 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 CHESS method provides a framework for formulating, revising, and identifying limitations of opinions, which allows experts to incorporate neutrality into forensic opinions.


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, 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., and Kumho Tire Co., Ltd. v. Carmichael, 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, 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.” 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. 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).

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. Katz and Diamond, 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.
or about justice. It is challenging, they explain, to
maintain neutrality while meeting the demands of
the retaining party. These and other experts recom-
mend, among other things, that experts decline or
withdraw from cases when they cannot render objec-
tive conclusions that support the retaining attorney’s
position.\(^9\) Katz also has suggested that the AAPL
Ethics Guidelines should require forensic psychia-
trists to inform judges and juries about their biases,
including the limits of their scientific knowledge.\(^4\)

Other experts have chosen to work within the ex-
isting AAPL Ethics Guidelines framework by offer-
ing scholarly commentary on the importance of and
pitfalls associated with conducting dispassionate ex-
aminations. Gutheil and Simon\(^{10}\) have described the
effects of stable and fragile narcissism on expert wit-
ess testimony. Fragile narcissism may compel an
expert to engage in conscious distortion of one’s tes-
timony 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 addi-
tional data needed to formulate a more complete
opinion; and providing consultation to attorneys af-
term synthesizing one’s expert opinion, in an effort to
facilitate balanced representation by counsel of the
expert’s findings. Simon and Wettstein\(^{11}\) have called
attention to the need for standards for forensic men-
tal health evaluations, and Goldyne\(^{12}\) has described
an introspective approach to reducing unconscious
biases in forensic psychiatry. The present article de-
scribes the CHESS method, a systematic set of pro-
cedures that fosters neutrality during conceptualiza-
tion of forensic expert opinions.

**Origin and Background of the CHESS Method**

Attorneys have developed a well-defined system to
guide them when they interview witnesses under oath. They strive for favorable verdicts by introduc-
ing 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 wit-
nesses to acknowledge omitted details and overstated
remarks. A skillful attorney uses cross-examination
to strengthen his or her case, by reducing the prom-
ience of objectionable evidence, including expert

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

Bias may be introduced by attorneys during court-
room 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 testi-
yfy under oath. They also recognize that their own
frames of reference, including experiences and famil-
arity with evidence-based data, may affect the sub-
stance of their opinions and testimony.\(^7,12,13\) In ad-
dition, seasoned experts acknowledge that opinions
rendered may have been affected by the body of in-
formation that was interpreted.\(^14\) Consequently, im-
partial experts should concede to well-founded con-
clusions 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 testi-
ymony and reduces the likelihood that experts will be
viewed as advocates invested in specific verdicts.

Although concessions during testimony are some-
times 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
CHESS method of opinion formulation is one such
strategy. It includes steps that incorporate anticipat-
ing, considering, and responding to contrary reason-
ing 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 evaluees. 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 psy-
chiatrist formulates his or her opinions by following
the rules, conceding facts when appropriate, and pre-
senting opinions objectively.
The CHESS Method

The CHESS 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 CHESS 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.

CHESS 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. 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.

CHESS 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 attor-
ney, 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 excep-
tion: he was prescribed medication for treatment of
anxiety approximately two years before he died.

Dr. Molt’s interviews with A.Z.’s parents and sib-
lings 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 fam-
ily 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 sexu-
ally 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 inter-
view 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 in-
gested one energy product, but A.Z., who was “fam-
ished 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 gath-
ering the data, Dr. Molt felt sufficiently confident to
render a balanced opinion.

CHESS 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 pathol-
ogist 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 toxi-
cologist presents additional data, Dr. Molt will have
to consider them.

Synthesize a revised opinion. A.Z. died after unin-
tentionally 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 CHESS method of forensic opinion formul-
ation 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 CHESS 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-
tion in their respective professional circles. Despite these similarities, chess and the CHESS method diverge in important ways. Perhaps the greatest difference between the game of chess and the CHESS 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 CHESS 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 CHESS method may result in uncomfortable but necessary situations for experts. For example, an expert may concede the 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 CHESS 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 CHESS 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 CHESS 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. CHESS is one of many approaches to fostering neutrality when formulating forensic opinions.

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**References**