Walden University

College of Social and Behavioral Sciences

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Walden University
2019

Abstract

A Thematic Analysis on How Forensic Psychologists Conduct Personal Injury Evaluations

by

Denise M. Autret

MA, University New Haven, 2004

BS, California State University, Sacramento, 1998

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Psychology, Forensic

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Abstract

Psychological evaluations administered by forensic psychologist in personal injury cases are surrounded by complex issues. Although empirically-based research has legitimized that psychological damages do exist in personal injury cases there is a missing link in the way forensic psychologists are conducting these evaluations. Prior researchers suggested that some personal injury evaluations had been dismissed or overlooked due to a lack of a standard of care. Addressing the current literature, this study examined how a diverse group of 14 licensed forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent) were conducting personal injury evaluations and their perspectives on the implementation of a standard of care. A qualitative thematic analysis design was used to gain a more in-depth understanding of this phenomenon. Systems theory was the conceptual framework that informed this study and guided the methodology employed. The identified themes were organized into steps reflected in an adapted version cube model. The study promotes positive social change by fostering confidence in the field of psychology and personal injury evaluations with regard to bolstering the overall credibility, reliability, and validity of the practice and processes involved. Further, positive change can occur through the development of framework that assists in leveling the practice by keeping evaluations flexible, but consistent; basing the decision regarding implementing a standard of care on the utility of the framework, along with future findings and developments in the field.

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Dedication

I would like to dedicate this dissertation to the men and women in mental health professions who worked to improve the lives of the people they serve. It is through their dedication that our society is more aware than ever regarding human behavior and the often-unspoken power of the mind. I would also like to dedicate this dissertation to the forensic psychologists who serve as liaisons of sorts, between psychology and law. The ability to implement science-based practices with psycho-legal concepts, relevant and reliable assessment instruments, and competency-based paradigms is not an easy undertaking and one that is often misunderstood and underappreciated.

The measure of intelligence is the ability to change - Albert Einstein

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Chapter 1: Introduction to the Study

Introduction

The issues surrounding compensation for psychological damages, in personal injury cases are complex. Evaluations performed by forensic psychologists in personal injury cases are often conducted with the intent to be used in civil litigation (American Academy of Psychiatry & Law, 2015). While there are empirically based studies legitimizing that psychological damages do exist in such cases (O'Donnell et al., 2015; Trost et al., 2015), there is a missing link in the way forensic psychologists conduct their evaluations. Now that more and more personal injury cases involve seeking compensation for not only the physical damages, but the psychological aspects as well, it is important to understand and determine how psychologists can best assist this population (Drogin, Piechowski, Hagan, & Guilmette, 2015; Troolines, 2012). In this chapter the researcher briefly covers the background and literature surrounding the topic with more details and studies to follow in Chapter 2. The researcher also covers the purpose, research questions, and the overall nature of the study.

Background

Some of the studies conducted that demonstrated psychological damages exist in personal injury cases (O'Donnell et al., 2015; Trost et al., 2015), also pointed out that there was a missing link in the manner in which forensic psychologists conduct these types of evaluations, which may have led to their findings being minimized or even overlooked when it came to awarding compensation in our court systems. Of equal concern were the perceptions of injustice in personal injury cases which can add to the injured individual's overall mental health (Ioannou et al., 2016; Trost et al., 2015). Mental health concerns like post-traumatic stress disorder (PTSD),

depression, and other mental health issues related to quality of life can have a long-term, even life-long effect. Additionally, O'Donnell et al. (2015) imparted that the process of seeking compensation for these types of damages can further complicate these mental health concerns and contribute to longer healing times. Early interventions that target at risk individuals, may not only assist in their healing, but also decrease the overall cost of for long-term compensation cases (Ioannou, 2017; O'Donnell et al., 2015).

The assessments used in mental health and quality of life evaluations have the scientific (empirically based) backing and acceptability to assist psychologists, in determining a treatment plan and administering medication. However, when these same empirically based assessment methods are employed by a forensic psychologist in personal injury cases, they have been dismissed, due to a lack of a standard of care used by the forensic psychologist conducting the overall personal injury evaluations. Basically, a framework or step by step guide that outlines the evaluation; adequate mental health assessments and includes tests for potential malingering is needed in order to meet the varying standards of admissibility (Troolines, 2012). Having a standard of care in place, when conducting personal injury evaluations, may help to fill the missing link for individuals seeking psychological compensation in their personal injury case. Fradella, Fogarty, and O'Neill (2003) indicated that the impact of the Daubert standard on the admissibility of behavioral science testimony should not be underestimated. Practicing forensic psychologists who understand and know why these types of claims are either not admissible or do not hold up in court, should do all that they can to move in a direction that has the best outcome for their clients, while remaining ethical and within the parameters of the legal jurisdiction and profession in which they serve (Allan, & Grisso, 2014; Fradella, Fogarty, &

O'Neill, 2003; O'Donnell et al., 2015; Troolines, 2012; Trost et al., 2015;). Doing so may not only help the individuals they serve but may ultimately assist the discipline in the eyes of society and the court system.

Bowels (2012); Troolines (2012), and others such as Heilbrun, DeMatteo, Marczyk, and Goldstein (2008) opined that the lack of having a universally accepted standard of care explaining the minimal acceptable standards of conduct for personal injury evaluations, was one of the primary reasons that the assessments ended up being unused or inadmissible. Young (2015) pointed out that even in instances when forensic assessments are admissible, it is important that the forensic psychologist ensure that they are employing empirically based practices rooted in diligent methodologies. Not being able to defend the reason or research behind the methodologies employed, in personal injury forensic assessments, can lead to the forensic psychologist's expert opinion being thrown out, tarnished, or result in an unwarranted verdict (O'Donnell et al., 2015; Drogin et al., 2015; Troolines, 2012; Young, 2015).

Vallano (2013) concurred having a universally accepted standard procedure for conducting psychological inquiries and assessments were important. However, he also expressed that more research, focused on examining a juror's preconceived notions of psychological injury, was needed because those preconceived notions may also result in an undesired outcome. He indicated that psychological injuries were frequently devalued by the judicial system, legal officials, as well as jurors. His stance was finding methodologies that could educate the above-mentioned parties were also of great consequence.

Problem Statement

The fact that currently there is not a universally accepted standard of care explaining the minimal acceptable standards of professional conduct, when conducting personal injury evaluations (Heilbrun et al., 2008; Troolines, 2012), can result in their being dismissed or deemed inadmissible in part due to the varying standards of admissibility (Daubert v. Merrell Dow, 1993; Frye v. United States, 1923). Although no one study can address all the concerns surrounding forensic psychological evaluations in personal injury cases, addressing the standards of admissibility seemed to be a logical first step. This was a gap in the literature, and the focus of the present study. Bowels (2012); Heilbrun et al. (2008); and Troolines (2012) recommend that future researchers conduct studies that address the gap, in research, on how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations.

Purpose of the Study

The purpose of this study was to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations and their perspectives on implementing a standard of care. For this study, a forensic psychologist was defined as a licensed psychologist who conducted forensic psychological personal injury evaluations as a part of their practice. This study may help fill the gap by providing the in-depth data necessary to bolster or refute the need for a standard of care (Bowels, 2012; Heilbrun et al., 2008; Troolines, 2012). This study may also assist in the

development of a basic standard of care framework that meets the criteria for judicial admissibility under the various standards of admissibility.

Research Questions

1. What are the specific steps forensic psychologists take when conducting personal injury evaluations?
2. What are the differences in the steps taken by forensic psychologists conducting personal injury evaluations operating under varying standards of judicial admissibility?
3. What are the perceptions of forensic psychologists regarding the implementation of a standard of care for personal injury evaluations?

Framework

The conceptual framework for this study was the Rodolfa et al (2005) cube model, which is rooted in systems theory. Rodolfa et al. (2005) first employed the cube model to propose 12 core competencies (foundational and functional) that are necessary for competency development in general psychology. The findings were meant to be used by psychology educators and regulators to enhance their ability to teach practicing and upcoming psychologists how to conduct their practices ethically and adequately. The cube model was also employed by Chu et al. (2012) to define the distinct competences that may be implemented by psychologists who assume various roles within the public sector and various organizations. Using this model afforded the researcher the ability to examine professional viewpoints, current forensic psychological personal injury evaluation practices in different judicial jurisdictions, while also integrating concepts that were relevant to the overarching themes, found in the Ferrara et al., 2016; Goldstein, 2007; Heilbrun et al. 2008, and Troolines, 2012 studies. Further, the cube

model allowed for relative ease in outlining the various prior concepts in a fashion that made it easy to integrate the current study's findings and concepts (faces of the cube) in a manner that the reader, educator, and/or practitioner could follow and implement strategically.

Nature of the Study

The nature of this qualitative study was thematic analysis. Thematic analysis is a flexible and useful research tool that can deliver rich, detailed, and descriptive data (Braun & Clark, 2006). The researcher employed a purposeful criterion-based sampling of convenience (Creswell, 2013). The selection criteria for the research was specific, requiring that the participants were licensed psychologists, had current experience conducting, or had conducted personal injury evaluations in the last 5 years, in the United States. No licensed psychologists from other countries were included. Participants were recruited from the American Academy of Forensic Psychology (AAFP), the American Psychology-Law Society (AP-LS), the American Academy of Forensic Science (AAFS) Behavioral Psychology Section, and the Society for Police and Criminal Psychology (SPCP). This was accomplished via targeted emails sent to AAFP, AP-LS, AAFS, and SPCP members, and administrators, which explained the study and formally requested to post for research recruitment on their websites. Additionally, individual e-mails were sent out to potential participants formally inviting them to participate in the research study. This research was voluntary, as such no reward was offered.

Semi-structured interviews were conducted to clarify how forensic psychologists were currently conducting personal injury evaluations under the judicial standards of admissibility in which they operated (Daubert, Frye, and Independent), and their perspectives on implementing a standard of care for personal injury evaluations. The interviews took place via Skype, by

telephone, or in-person where available. NVivo was used after the interviews were transcribed to code the data. Using this system assisted in upholding the trustworthiness of the study, while looking for themes, that developed from the data analysis. This thematic analysis helped pinpoint the similarities and differences in how forensic psychologists were conducting personal injury evaluations, in the different judicial jurisdictions, which also contributed to additional data needed to move toward the development of a standard of care that meets Daubert, Frye, and Independent standards of admissibility.

Definitions

The following list of terms was used throughout this study and provides relevant definitions pertaining to this research. Although other definitions may exist, they may not represent the intended use in this study.

Expert testimony: refers to the testimony given by a qualified individual regarding a scientific, technical, or professional issue (Melton et al., 2018).

Forensic Psychologist: is a licensed psychologist who conducts forensic psychological personal injury evaluations as a part of their practice.

Multiple data points: refers to the use of multiple sources of information. This typically includes some combination of interviews, review of important documents and records; medical history, academic records, court records, and the like (Bartol & Bartol, 2015).

Psychological assessment: refers to the instrumentation and tools used to measure the psychological constructs of an individual in psychological evaluations (Jackson & Roesch, 2016).

Psychological evaluation: is an examination into the nature and extent of an individual's current psychopathology, mental status, premorbid and current functioning, and their prognosis for recovery (Melton et al. 2018).

Personal injury: is a legal term used to describe a physical or psychological injury suffered by an individual (Ferrara et al., 2016).

Standards of admissibility: are standards used by courts to assist in determining the admissibility of scientific evidence and expert testimony (Weissmann, 2012).

Standards of care: are standards followed by an industry and are based on judicial constructs that establish minimally accepted professional standards of conduct. Compliance is mandatory carrying potential legal ramification if not followed (Heilbrun, Phillips, and Thornewill (2016).

Standards of practice: are the typical ways of doing things in a particular field, developing out of the industries formal guidelines or best practice standards. They are aspirational in nature, as such; they are not legally enforced (Heilbrun et al., 2016).

Tort cases: are civil matters involving individuals or groups that had a duty, breached their duty, and did so in a fashion which played enough of a causal role in the harm in question (Drogin et al., 2015).

Assumptions

Conducting a study involving forensic psychologists as participants necessitates some basic assumptions. The first assumption made was how forensic psychologist were currently conducting their personal injury evaluations, was important to the overall judicial proceedings and the public. This assumption was rooted in the literature discussing the lack of a standard of

practice or a standard of care for psychological evaluations as part of the reasoning behind the inadmissibility of the findings. The second assumption was that the background, education, training, and licensing requirements would vary amongst the forensic psychologists in the study. To help minimize some of this variance, only psychologists licensed to practice in the United States were included. However, of equal supposition, was the potential for similarities to exist in the way personal injury evaluations are conducted, and the type of assessments used, by participants operating under the same standards of judicial admissibility. Further, it was an expectation that while some participants may have voluntary forensic certification through the American Board of Professional Psychology or another source, many forensic psychologists would not have specific certification in forensic psychology, as such possessing specialty certification was noted, but was not a requirement.

Finally, an assumption was made that the participants in this study were truthful in their answers. And that they strived to behave and conduct their practices ethically, professionally, and within the guidelines of their discipline and legal jurisdiction. It was anticipated that this study would provide a detailed description of the current practices by forensic psychologists when conducting personal injury evaluations. Further, that the results of this research would provide an additional layer of in-depth-data needed to contribute to the existing body of knowledge relating to the need for a standard of care, in personal injury evaluations, and to provide additional data in the foundation for a framework that could then be further developed.

Delimitations

While the argument could be made that there was a need to examine how all types of forensic psychological evaluations (competence, product liability, personal injury etc.) are

conducted, as a first step toward generating their own standard of care, the scope of this study was focused on personal injury evaluations. Chapter 2 provides more detailed information on the research that surrounds this topic at various stages. The gap in research pertaining to the individual types of forensic psychological evaluations was an area that needed further research. Toward that end, this study was designed to seek rich and detailed information pertaining to personal injury evaluations, through qualitative, semi-structured interviews with a diverse group of forensic psychologists. It is of importance to note, that for the purpose of this study, a forensic psychologist was defined as a United States licensed psychologist who had held their license for 5 years, and conducts or had conducted, personal injury evaluations as part of their practice, in the last 5 years.

The geographic constraints of the interviews were one of the delimitations in the study. This was addressed by offering to conduct interviews through Facetime, Skype, or by telephone when in-person interviewing was not possible. This flexibility was necessary because two to four participants were needed, from each standard of admissibility (Daubert, Frye, and Independent) jurisdictions, as such; the participants were in various states and time zones throughout the United States. It is important to point out, that although geographical differences may have influenced how the participants conduct their practices, it was expected that those would be related more to the standards of admissibility, they operate under and their organizational similarities (APA, etc.), than their geographical location. As such, the homogeneity of the population from which the participants were selected was based on their profession and specialization, rather than their representation of greater society.

Another delimiting consideration was the choice to focus on personal injury evaluation specifically. Chapter 2 illustrates that forensic psychological evaluations, of all types, should be further studied in order to determine if a standard of care would be beneficial to the whole profession, thus bolstering the reliability, validity, and credibility of the various forensic psychological evaluations. The decision to focus on current practices and insights of forensic psychologists conducting personal injury evaluations and the judicial admissibility requirements for their area can help fill the gap in current research regarding personal injury evaluations. Additionally, the findings may also serve to further supplement the data for other types of psychological evaluations.

A qualitative interview design was the choice for this thematic analysis study. While a quantitative study design would provide numerical data regarding the similarities and differences in how forensic psychological evaluations are conducted, employing a Thematic Analysis approach, using semi-structured interviews, afforded the researcher the ability to take full advantage of the flexible nature of this approach, while also serving as a useful tool assist in delivering rich, detailed, and descriptive data (Braun & Clark, 2006). Qualitative semi-structured interviews were used to explore how forensic psychologists were currently conducting forensic psychological evaluations in personal injury cases, how those practices related to the judicial standards of admissibility in their judicial jurisdictions, and their perspectives regarding implementing a standard of care.

Limitations

Employing qualitative strategies that prove to be trustworthy, creditable, transferable, dependable and conformable are things that the researcher should have in mind at the onset of

the research project (Morse, 2015). It is up to the researcher to determine which strategies will best serve their research study. In this study, member checking, memoing, and an external audit were used to enhance the above-mentioned qualitative needs.

To address threats to overall quality and ensure the credibility of the study, member checks were conducted by asking the participants to review their interview responses, once they had been transcribed into a Microsoft Word® document. Creswell (2013) pointed out that member checking can afford researchers the ability to make corrections, clarify, or add any information that the participants provide regarding their feedback. Basically, it assists in ensuring a true representation of the participants' communication during the interviews. The researcher employed memoing, as she read the participants' responses to the interview questions. This assisted in logging important points, theories, and themes as they emerged. Using memoing also enabled the researcher to keep track of her thought process and the important aspects of the topic, as well as the ability to track new developments as they emerged. Additionally, the researcher conducted an external audit by an outside researcher that was not connected with the study. The outside researcher reviewed the totality of the project findings, interpretations, and reported conclusions. This process ensured that the researcher conducted the study in a valid and trustworthy manner. This method was outlined in detail by Lincoln and Guba (1986), who point out that member checking was a crucial facet of qualitative research.

Another limitation was the sample size of the participants, in that they may not be representative of the larger population of psychologists who conduct forensic psychological evaluations in personal injury cases. The study was also bound by the general limitations of employing semi-structured interviews with open-ended questions. Finally, the researcher

conducting the study was not a licensed psychologist practicing in the field of forensic psychology.

Significance

As personal injury cases continue to grow, so does the need for the development and implementation of a standard of care for forensic psychologists who conduct personal injury evaluations for the courts (Bowels, 2012; Heilbrun et al., 2008; O'Donnell et al., 2015; Troolines, 2012). This study aimed to provide the additional in-depth data necessary on how forensic psychologist conduct personal injury evaluations to demonstrate or refute the need for a standard of care to be developed. This study was inspired by the Troolines (2012) study, whose findings support the development of a standard of care for conducting forensic psychological personal injury evaluations. It was the researchers hope that the findings in this study would not only add to the necessary data but could also assist in the development of a tangible working prototype (framework) for a standard of care for conducting forensic psychological evaluations in personal injury cases. Which, future researchers could then test in quantitative studies, and could possibly lead to the implementation of a standard of care to be adopted in the United States. Positive social change can occur through the development of a standard of care for forensic psychological personal injury evaluations. Having a standard of care may minimize the occurrence of forensic psychological personal injury evaluations not meeting the standards of admissibility and being overlooked or deemed inadmissible.

Summary

Forensic psychology is rooted in not only being competent in the practice of psychology, but also the ability to appropriately apply those skills to legal proceedings. An increase in

personal injury cases that include seeking compensation for psychological damages has shed light on a need to ensure that the evaluations are conducted in a manner that meets the admissibility standards in the judicial jurisdiction for the case. In this chapter, some relevant research was provided, unfolding the purpose of exploring how forensic psychologists are currently conducting personal injury evaluations and their perceptions regarding the implementation of a standard of care. Research questions were developed to assist in gathering rich and detailed data. A conceptual framework was provided to clarify the theory that guided the research, along with the assumptions, delimitations, and limitations of the study. To support clarity, definitions were provided, based on their intended meaning within the study.

The intent of this study was to significantly contribute to the existing body of knowledge surrounding forensic psychological evaluations in personal injury cases, as such, it was necessary to understand what research already existed in order to fill any gaps. More research on the topic and the specific aspects, variables, and methodological procedures of this study, are defined and elaborated on, with more detail, in Chapters 2 and 3.

Chapter 2: Literature Review

Introduction

The need for quality forensic psychological evaluations grows exponentially as the numbers of personal injury claims, which include psychological evaluations, continue to increase. Part of developing sound quality forensic psychological evaluations may be evolving the practice toward the development of a standard of care. In some cases, not having a standard of care, for conducting these types of evaluations, has led to the evaluation being overlooked or deemed inadmissible in some court jurisdictions (Bowels, 2012; Heilbrun et al., 2008; O'Donnell et al., 2015; Troolines, 2012). There is a need for more research, which not only substantiates the necessity for, but also moves forward with the additional data collection essential for the development of a basic framework, regarding a standard of care for conducting forensic psychological evaluations including those in personal injury cases (Bowels, 2012; Heilbrun et al., 2016; Troolines, 2012).

In this chapter the researcher covers more detail regarding her literature review and the empirically based research surrounding the intricacies of the topic. The researcher also covers in, detail her conceptual framework including; the theory and model that assisted in the structure and design of this study.

Literature Search Strategy

There are several ways to conduct a literature search. Walden University (2014) suggested four steps in building a solid keyword search. The first step was to define the topic. Second, was to select key words out of the topic or research questions. Third, was to select databases to be used for the searches. And forth, was to connect the keywords using the various Boolean operators. Because the focus of this study was on how forensic psychologists, operating under different standard of admissibility jurisdictions, were currently conducting personal injury evaluations, it was necessary to make sure to narrow the topic enough that the results of the searches were manageable.

This literature review was the result of an exhaustive search and review of prior research and literature focused on forensic psychological evaluations, forensic psychological assessments, personal injury evaluations, and professional guidelines. Including the International Guidelines on Medico-Legal Methods of Ascertainment and Criteria of Evaluation of Personal Injury and Damage under Civil-Tort Law (Ferrara et al. 2016), and the processes involved in the development of a standard of care in child custody evaluations, which at the time of this study, were the only forensic psychological evaluation that had a standard of care (Bowels, 2012; Troolines, 2012).

The primary sources of information were the pulled from Walden University Psychology databases: ProQuest Dissertations and Theses Global, PsycArticles, Sage Journal, Eric, EBSCOhost, and LexisNexis Academic. Employing this method afforded the inclusion of multiple database searches and incorporated the ability to limit the results to scholarly peer-reviewed journals. The search contained variations of the following key terms: *Cube model,*

forensic psychology, forensic mental health assessment, forensic specialty guidelines, psychological assessments, psychological evaluations, personal injury, and standard of care, standard of practice, systems theory, and tort law.

It is important to note that the use of Boolean operators assisted in refining the searches. For example; employing the *Keyword Search* link served as a great learning tool to make the most out of the search experience. This included a feature that could assign what each term did in relation to the search terms. For example; the Boolean operators AND, OR, and NOT, all have different functions. The operator AND was used to connect different topics, limit the search, and reduced the results. The operator OR was used to find different ways to phrase a concept, expand the search, and thus increased the results. The operator; NOT was used to exclude results with the keyword and limited the search results (Walden University, 2014).

Another important feature was the ability to change the search field, also referred to as indexing. This provided the flexibility to look in specific areas like; all text, author, title, subject terms, and abstract. Additionally, refining the searches by; limiting the publication dates from 2012 to 2018, and further sorting by relevance, insured that articles also met the time frame requirements.

Conceptual Framework

This research was rooted in how forensic psychologists conduct their evaluations in personal injury cases. In all cases, regardless of their level (lower or higher court), for expert opinions and scientific findings, of any kind, to be admissible, they must meet the standards of admissibility, for the judicial jurisdiction in which they are presented. As mentioned in Chapter 1, there is not a universally accepted standard of care explaining the minimally acceptable

standards of professional conduct, when conducting personal injury evaluations (Bowles, 2012; Heilbrun et al., 2008; Troolines, 2012). In the context of this evolution, it was important to employ a relevant conceptual framework that possessed the ability to not only account for the objectivity in the information gathered, but also carried a component that enabled the ability to relay the findings in a manner that could be used to teach and/or promote organizational change. This basically disqualified many theoretical frameworks; as such this study employed a conceptual framework that examined the topic through a cube model (Rodolfa et al., 2005) rooted in systems theory.

Systems Theory

Systems theory had its beginnings in 1972, when biologist Von Bertalanffy embarked on an examination via the integration of information and entropy analysis into the overall examination of social systems. Basically, Von Bertalanffy (1972) developed his theory by incorporating the works of Boulding (1956) and Parsons (1956) with his own. Essentially, it served as a collective venture comprised of different disciplines, addressing the various challenges and rapid growth in technology and society. He theorized that concepts like; centralization, equifinality, and finality exist in all systems. Although his initial theory was regarding biological systems, he found it was relative to any science that had dealings with systems. Von Bertalanffy (1972) categorized educational institutions and other entities as systems that could be either simple or complex in nature. One interesting note regarding this theory, as it relates to this study, was the effect of progressive segregation of system components and the resulting gain of independence. Meaning; that when system components act as separate entities, this can threaten the entirety of the whole system (Suter et al., 2013). This was significant to this

study, in that, how each forensic psychologist conducted their personal injury evaluation could not only affect its individual admissibility in court but could also influence forensic psychological evaluations, in the eyes of society and our judicial system.

Research grounded or rooted in systems theory has demonstrated its utility to address complex, interdependent systems like; organizations, schools, and medical facilities (Suter et al., 2013). Wilson (2010) examined how various organizational leaders employed enterprise resource planning to address issues of post implantation. Shang and Wu (2013) employed a variation of systems theory to demonstrate that the theory could address and explain the interrelation between entities. Finally, of relevance for the use of systems theory, in this current study, was how Burris (2013) used systems theory to address whether healthcare leaders viewed systems theory and organizational learning as factors in strategic effectiveness. As indicated, systems theory has been used successfully in prior studies to design medical education programs (Kern et al., 1998) and was the best theory to use as part of the conceptual framework for this study. It is transdisciplinary by nature and involves the abstract organization of phenomena. Systems theory assisted in the development of the semi-structured interview questions that addressed the processes forensic psychologists take when conducting personal injury evaluations. Having the concepts of systems theory in mind further assisted when the researcher explored the theoretical and historical framework of child custody evaluations (which has a standard of care that meets standards of admissibility), and the *Padova Charter* (Ferrara et al.,2016) on the "Methods of Ascertainment and Criteria of Evaluation of Personal Injury and Damage under Civil-Tort Law". Systems theory concepts held equal relevance during the review

of the suggested standard of care for forensic assessments outlined by Goldstein (2007), and in further developing or refuting the Troolines (2012) findings.

Cube Model

As previously mention, the cube model had its roots in systems theory. Rodolfa et al. (2005) first employed this model to propose 12 core competencies (foundational and functional) necessary for general psychologist and their competency development. The findings were meant to be used by psychology educators and regulators to enhance their ability to teach practicing and upcoming psychologists how to conduct their practices ethically and adequately.

The utility of this model in psychological studies is versatile, as outlined in the Chu et al., (2012) study, where it was used to define distinct competencies for public psychologist in a variety of roles, within various organizations and the private sector. The cube model was also employed by Madan-Swain et al., (2011) as a tool for pediatric psychologists to use in the development of research competency skills at the doctoral level.

Literature Review

Forensic Psychology

Forensic psychology has been described as the specialized practice of psychology and its application to civil and criminal law. The ability to implement science-based practices with psycho-legal concepts, relevant and reliable assessment instruments, and competency-based assessment paradigms can assist in bridging the gap between psychology and the legal system (Bartol & Bartol, 2015; Melton et al., 2018; Weissman, 2012). Forensic psychologists should be educated and well versed in legal principles, laws and regulations, with the ability to apply them toward numerous dimensions of human behavior and actions, this includes; understanding and

navigating the fundamental disciplinary differences between law and psychology (Bartol & Bartol, 2015). One of the distinct differences between the psychological and legal fields is rooted in the way each of the disciplines conduct their conceptualization and fact-finding practices (Melton et al., 2018). More specifically, psychology has the propensity to lean toward generalities and speak in averages. This contrasts with the legal arena, where the predisposition is to operate from a conservative and cautious standpoint. In this field, success requires that the forensic psychologist not only possess the training and skill-sets necessary, but that they are also able articulate their findings in a clear, justifiable, and useful manner for the judicial system (Melton et al., 2018).

Even though the discipline's roots date back to 1893, forensic psychology was only formally recognized as a specialized branch of psychology, in 2001 by the APA (Bartol & Bartol, 2015). Forensic psychology has continued to grow and evolve over the last several decades. Today most practicing forensic psychologists have an advanced degree in psychology coupled with some form of specialized training in forensic psychology (Bartol & Bartol, 2015). As forensic psychology continues to evolve more avenues for specialized skillset development programs, training, certifications, and licensure will continue to progress as well. Currently, while it is not a requirement, the American Board of Forensic Psychology (ABFP), offers a diplomatic status certification to practicing forensic psychologists. This certification can help demonstrate the professional is equipped with, what the ABFP deems as, specialized qualifications and they possess the skillsets necessary for the field. Professionals can also gain specialized education through university programs, combined practices in the field, and independent peer-reviewed readings. Additionally, there are specialized organizations like the

American Psychology-Law Society (AP-LS), Division 41 of the APA. These types of organizations are committed to scholarly practices and leadership in psychology, law, and the legal arena.

Expert Testimony

There are several elements involved in the make-up of our judicial system including; court types, proceedings, personnel, and types of adjudication processes where forensic psychologist can be involved. One of those areas entails conducting psychological evaluations for the courts and providing expert testimony (Bartol & Bartol, 2015; Melton et al., 2018). From Hugo Munster, who served as a trial consultant and published *On the Witness Stand* (Munster, 1908), to Karl Marbe in 1911, who became the first psychologist to testify as an expert witness, in a civil trial. The road to psychologists serving as expert witnesses has been a long journey that continues to have its twist and turns (Dalby, 2014).

A forensic psychology professional, who serves as an expert witness, should not only possess the essential working knowledge of the moving parts within the judicial system and their applications toward the numerous dimensions of human behavior and actions, relevant to judicial legal questions, and standards, but they should continue to stay up to date on new developments by maintaining their training (Bartol & Bartol, 2015; Melton et al., 2018). The skillsets of a well-trained and ethical forensic psychologist should lend themselves well prepared for the assortment of practical, ethical and legal issues or considerations that may not only arise in court, but throughout their careers (Bartol & Bartol, 2015).

As an expert, when a forensic psychologist is called to provide testimony; they are responsible for providing scientific, technical, or other specialized knowledge to assist the trier

of fact in understanding the issue and/or in determining the facts in issue (Shapiro, Mixon, Jackson, & Shook, 2015). Having the proper training, credentials, and experience is not all that is required to testify as a forensic psychological expert. The professional will also have to meet what is known as the standard of admissibility for the judicial jurisdiction of the case. The admissibility of scientific evidence for all scientific expert testimony; including psychological, are governed by the standards of admissibility for the court jurisdiction in which the case is tried (Melton et al., 2018).

Standards of Admissibility

Standards of admissibility are used by courts to assist in determining the admissibility of scientific evidence and expert testimony (Bartol & Bartol 2015; Melton et al., 2018; Pikus, 2014). Because, mental health professionals are one of the primary sources of expert information it is a necessary component that they should possess a thorough working knowledge of the various standards and pitfalls within (Shapiro et al., 2015). It is relevant to point out, regardless of the standard of admissibility that is employed; the judge makes the final determination on admissibility. However, one important difference is the role the judge has under each of the judicial admissibility standards and who or what governs the information he/she is provided (Pikus, 2014). Below is a brief overview of how the judicial standards were established and peek into their evolution over the years.

The Frye Standard

What became known as the *Frye* standard of admissibility, stemmed from the 1923 federal appeals court decision, regarding the use of a systolic blood pressure deception test (lie detector) in the murder trial of James Alphonzo Frye (Pikus,2014). In *Frye v. United States*, the

courts denied the admissibility of the test based on a lack of general acceptance in the field. This established that under the *Frye* standard, admissibility would be based on what was "*generally accepted*" within the specialty field in question. Essentially the techniques and/or procedures, employed by the expert, must be generally accepted within the specific field and must also be generally accepted in the scientific community (Shapiro et al., 2015). The *Frye* Standard became the prevalent standard used in federal courts and 45 states, from 1923 thru 1993 (Woody, 2016). Under this standard, the judge plays a limited role in the admissibility and the scientific community guides the information in his/her decision (Pikus, 2014).

Federal Rules of Evidence (FREs)

In 1975 the Federal Rules of Evidence (FREs) were approved by congress and became the standard of admissibility for expert testimony in federal courts (Pikus, 2014). However, at the state level, each jurisdiction was free to choose to employ the FREs as a guideline, tailor them to their needs, or adopt their own distinctive rules (Woody, 2016). The FREs assist in the decision-making process of whom and/or what technology can be granted admissibility. There are several rules that are applicable for psychological testimony. For example; Rule 703, regarding an expert's role being helpful and probative; Rule 704, Opinion on an Ultimate Issue; Rule 705, Disclosing the Facts or Data Underlying an Expert's Opinion; and Rule 706, Court-Appointed Expert Witnesses, are all rules that can provide further clarification to a psychologist seeking to testify as an expert (Woody, 2016). Outlined below in more detail is Rule 702, which addresses the training, education, and methodologies. This rule is prevalently employed in cases where behavior health professionals are called in as experts.

Rule 702

Under this rule, expert relevancy and admissibility is based on whether the scientific, technical, or specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue. Pikus (2014) noted that professionals, who possess the knowledge, skillset, experience, training, or education, may testify and offer an opinion. As stated previously this rule and the other FREs became set for federal courts; however, at the time, it caused some confusion in the lower courts, regarding whether *Frye* remained valid, considering the FREs (Pikus, 2014; Woody, 2016).

The Daubert Standard

In 1991, the *Daubert v Merrell Dow Pharmaceuticals, Inc.* case, paved the way for a new standard of admissibility. Initially, the trial courts ruled that the scientific evidence presented by the scientific experts, in this case, did not meet the "general acceptance" standard under *Frye*, and there was not anything in the Federal Rules of Evidence that change that standard (Woody, 2016). In 1992 the case went to United States Supreme Court. Then, in 1993 the Court ruled that Federal Rule 702 made no reference to "general acceptance" requirement, as such *Frye,* no longer applied under the Federal Rules of Evidence in federal cases (Pikus, 2014). With that ruling, what is known as the *Daubert Standard* was implemented. After *Daubert*, two more cases were decided by the Supreme Court that significantly addressed expert testimony; *General Electric Co v. Joiner* and *Kumho Tire Co. v. Carmichael*. These three cases have become collectively known as the *Daubert Trilogy* (Pikus, 2014; Woody, 2016).

Essentially, under the *Daubert* standard, the methodologies employed are deemed reliable if: they can be tested, have been tested, are repeatable, put through a peer review process and

publication (Bartol & Bartol, 2015; Pikus, 2014; Woody, 2016). Sometimes under *Daubert* the determination of admissibility is established by conducting what is known as a *Daubert Inquiry.* This inquiry typically takes place prior to trial and without a jury. The inquiry is an extensive examination of the methodologies employed, by the expert, to derive their results, conclusion, and/or opinions. It also covers the potential error rate(s) of any methodologies used, as well as the expert's education, training, and their past cases, which are considered open public record. The inquiry results determine the admissibility of their testimony as an expert. When the methodology of a theory, technique, or assessment can meet the *Daubert* standard it is viewed as empirical evidence, by the courts. The use of empirically based evidence in our judicial system assists in the overall judicial processes and circumstances within the cases that go to trial. In effect, the *Daubert* standard can help to minimize the chances of someone being convicted on circumstantial evidence, gut instincts, or conjecture alone (Bartol & Bartol, 2015).

In Daubert, unlike *Frye*, it is the trial court judges and not the scientific community that are examining the admissibility of evidence or expert testimony. As such, the judge is responsible for determining the reliability of the scientific evidence. To assist with this process the court outlined four factors for trial judges to employ when making admissibility determinations. It is important to point out that it is not a requirement that trial judges employ the four factors when deciding (Bartol & Bartol, 2015; Pikus, 2014; Woody, 2016).

Use of Admissibility Standards in Court

As outlined above, the standard of admissibility requirements for federal cases is set. However, states have been able to choose which standard they would like to follow (Pikus, 2014; Woody, 2016). Consequently, the requirements to meet the standard of admissibility of evidence

can vary considerably from state to state. At the time this study was conducted, approximately 76% of the United States followed the *Daubert* standard, 18% (California, District of Columbia, Florida, Illinois, Maryland, New Jersey, New York, Pennsylvania, and Washington) continued to follow the *Frye* standard, and three states (6%) Nevada, North Dakoda, and Virginia, choose to use a combination case-by-case, approach in determining reliability or relevance of a said expert's testimony (Morgenstern, 2017). These three states are referred to as Independent, when referring to standards of admissibility, in this study.

Given the various standards of admissibility and the flexibility a judge has in the admissibility of evidence and expert testimony, it is also important to examine what qualitative content the judges are looking at when making their determination. Research findings have demonstrated, even in states operating under Daubert, the *gatekeeping* tendencies for judges, did not always include the full application of the Daubert criteria (Pikus, 2014; Shapiro et al., 2015; Woody, 2016). Rather it has been found that the tendency was to depend on the application of the FREs; reliability (18%), qualifications of the expert (17%), whether or not testimony will assist in the trier of fact (17%), and the relevance of the testimony (16%) that was used to determine if the psychological expert evidence was admissible (Shapiro et al., 2015). These findings were consistent with the Heilbrun (1996) study, conducted fifteen years prior, where it was found that behavioral science testimony typically admissible under *Frye* was also admissible under *Daubert*. Further, citing that when testimony was excluded, it would have been excluded regardless of whether the *Frye* or *Daubert* standard were used. Similarly, Faust, Grimm, Ahern, & Sokilik, (2010) found that the courts generally focused on whether the expert testimony was

reliable; however, that said, that "reliability" was not necessarily determined by the *Daubert* criteria.

Shapiro et al., (2015) echoed what many researchers have been saying. Essentially, when behavioral science testimony was based on inadequate facts or was determined to be a product based on unreliable methods, the testimony was not admissible. In fact, the most frequent reason for the exclusion of behavioral science expert was failure to assist in the trier of fact (Faust et al., 2010; Shapiro et al., 2015; Slobogin, 1999). It was also found that if a differential diagnosis was not considered, the expert's methodology was considered unreliable. Further noted, was that in instances where an in-person interview was not conducted, the testimony was more likely to be deemed unreliable and therefore not admissible. Additionally, if the findings or testimony were considered confusing, they were often excluded regardless of their importance (Shapiro et al., 2015).

Producing Quality Forensic Psychological Evaluations and Assessments for Court

Forensic psychological assessments are used in forensic psychological (mental health) evaluations to measure the psychological constructs of an individual, to inform various decision-making processes, within a legal context (Jackson & Roesch, 2016; Young & Brodsky, 2016). Forensic psychological evaluations have served to assist legal decision makers in various civil, criminal, and family arenas (Wygant & Lareau, 2015; Young & Brodsky, 2016). Evaluations conducted to determine competency to stand trial, competency to waive Maranda rights, parental custody, criminal responsibility, and personal injury are a few examples of how the utility of forensic psychological evaluations has grown over the years (Melton et al., 2018).

It is worthwhile to discuss some meaningful differences between forensic psychological evaluations and clinical psychological evaluations. First in a forensic evaluation it is the hiring party, attorney, court, and/or legal system that are considered the client. Meaning the relationship falls under professional privilege. Conversely in clinical evaluations the patient is considered the client and as such, falls under a doctor patient privilege (Archer, Wheeler, & Vauter, 2016; Bartol & Bartol, 2015).

A second substantial difference is the nature of the evaluation questions to be answered (Bartol & Bartol, 2015). The questions posed to the forensic psychologist are in legal terms asking legal question(s). Like their clinical counterpart, forensic evaluations typically include a comprehensive clinical interview, relevant records review, assessments of mental status, cognitive skills, personality characteristics, behavior, diagnosis and prognosis for recovery. However, forensic evaluators are not diagnosing for a treatment plan, rather the evaluation is centered on providing relevant information pertaining to the legal referral question(s) asked. As such, it is the forensic psychologist's responsibility to translate the legal questions into the psychologically technical scientific constructs on which to base their evaluation and the assessment instrumentation used within (Iudici, Salvini, Faccio, & Castelnuovo, 2015). Sometimes, this may result in findings that do not necessarily equate to what is the most psychologically or medically helpful to the individual being evaluated (Bartol & Bartol, 2015; Melton et al., 2018).

Because the use of forensic assessment instruments is an integral part of a forensic psychological evaluation, naturally, it is equally critical that the type of instrumentation used is derived from a reliable and valid source. This means that, in its design and creation, the

instrumentation made use of norming sample populations (Melton et al., 2018). Regardless of the type of psychological assessment that is administered, it is important that the practicing professional know which assessment best fits with the specifics in each case (Archer et al., 2016). Fundamentally, they must measure what they are deemed to measure. This ensures that instrumentation like assessments are adequate for the population in which the practicing professional will be using them.

Using psychological assessments in forensic settings continues to be a controversial topic within the discipline. Many are concerned with the non-distinction between the legal and clinical data delivered to the courts. Meaning that while the forensic examiner reported the clinical data and answered the legal question, they lacked the ability to explain how the data, opinions, conclusions, or findings were related (Iudici et al., 2015). There is an ever-growing body of empirically based and supported research that addresses these issues, as well as, the types of assessment instrumentation typically employed in an assortment of forensic environments (Archer et al., 2016). Evans and Finn, (2016) explained that some of this controversy can also be attributed to the shift in the clinical and forensic psychology fields. For example, psychological assessments use to be central to the practice of clinical psychology, however the review of training programs and research demonstrated that psychological assessments in a clinical setting were being used less than in past. Further, their use and practice in graduate training programs were becoming less common. Conversely, they found that the use of psychological assessments was on the rise and thriving in both neuropsychology and forensic psychology practices, imparting that professional organizations should not only recognize the importance of psychological assessments, in all areas of the discipline, but also make the necessary changes to

bring forth a standard of care for psychological assessments. In addition to organizations like the APA, companies like Psychological Resources, Multi-Health Systems, as well as others have devoted entire sections of their catalogues to both forensic and correctional instrumentation to make more reliable resources available (Edens & Boccaccini, 2017). As more research is conducted, models are being presented, that when implemented strategically, can assist practicing professionals to remain vigilant and successful in personal injury cases. For example; Young and Brodsky (2016) outlined what they refer to as the revised 4 D's (Dignity, Distance, Data, and Determination Done Judiciously) for working effectively in psychological injury and law. The 4 D's are comprised of an integrated set of principles to practice effectively and ethically within the forensic area of mental health, much like the 4 C's (Credibility, Clarity, Clinical Knowledge, and Certainty) are used to assist in delivering effective expert witness testimony (Otto, DeMier, Boccaccini, 2014). Young and Brodsky (2016) pointed out that the revised 4 D's expands on the 4 C's, to include how experts should prepare and conduct themselves from the referral through the evaluation and assessment process. Asserting, the 4 C's and 4 D's are consistent with meeting the admissibility standards in court.

Until there is a standard of care in place, for forensic psychological evaluations, including those for personal injury cases, remaining up to date and current on research, best practice guidelines, and admissibility standards can further assist forensic evaluators in their selection of generally accepted assessments. Maintaining this practice may not only serve their clients, but also help to ensure they are meeting their professions standards, as well as the standards of admissibility, for the case at hand. This is covered in greater detail in the upcoming sections of this paper.

Advancing from Standard of Practice to Standard of Care

My review of the literature demonstrated the terms; standard of practice and standard of care are often used interchangeably. For the purpose of this study it was important to recognize that they are indeed different constructs. Standards of practice are typically established by what is the industry standard. They stem from an industries formal guidelines or best practice standards. They are aspirational in nature, as such, they are not legally enforced. Conversely, a standard of care is based on judicial constructs that establish minimally accepted professional standards of conduct. Compliance is mandatory carrying potential legal ramification if not followed (Heilbrun et al., 2016). Well written, defined, and implemented professional standards and guidelines can carry significant influence on the development of a standard of practice, and ultimately a standard of care. Heilbrun et al. (2008), described the relationship between standard of practice and standard of care in forensic mental health assessment (FMHA) and provided the historical, regulatory, and legal influences that have helped to shape the standard of practice and their relevant use in attempting to operationalize a standard of care. Practicing professionals should embrace and not underestimate the important influence that professional standards can have on policy and practice, as well as their utility when navigating the intersection between law and psychology. Quality standards of practice are one of the items that can assist in the movement toward a standard of care (Heilbrun et al., 2016).

Psychologists, as in most professions, operate under some form of established structure like; guidelines, best practices, and ethical codes. Psychology and the sub-disciplines within are regulated by specialized professional societies, associations, and state and federal government legislation (Bartol & Bartol, 2015). Organizations like the American Psychological Association

(APA) help to inform the minimum standard of practice through the development and implementation of practice guidelines, specialty guidelines, practice principles, licensing board regulations, as well as ethical codes (Heilbrun et al., 2016). Over the years the APA, has continued to establish and develop general principles and ethical standards to serve as guidelines for best practices in psychology. Discussed below are a few standards that are particularly relevant to forensic psychology policies and practice within the legal context.

The Ethical Principles of Psychologists and Code of Conduct (EPPCC)

The APA first published these standards in 2002, and then put forth an amended version in 2010. The intention behind its development was to protect practitioners, individuals, and the organizations served through the practice of psychology (Heilbrun et al., 2016). The EPPCC provides guidance on five broad aspirational principles (beneficence and nonmaleficence; fidelity and responsibility; integrity; justice, and respect for people's rights and dignity). The aspirational principles are not enforced and do not define specific approaches or conduct, rather they serve to encourage practicing psychologist to conduct business in accordance with the highest ethical standards (Heilbrun et al., 2016). Conversely, the more specific professional standards (therapy, assessment, training, research, and publication), included in the *Code of Conduct*, are enforceable to some extent. While they are not legally enforced, failure to comply can result in anything from receiving a professional reprimand to dismissal from the APA.

Specialty Guidelines for Forensic Psychologists (SGFP)

The Committee on *Specialty Guidelines for Forensic Psychologists* and the APA first published the Specialty Guidelines for Forensic Psychologists (SGFP) in 1991 (Heilbrun et al., 2016). The intention behind the development was to offer further guidance, to practicing

professionals, in areas relevant to psychology and legal contexts, which was not provided in the EPPCC. These guidelines are the only guidelines, put out by the APA, that cover a complete specialty. In 2011 the APA revised the SGFP and renamed them the *Specialty Guidelines for Forensic Psychology* (SGFP). Forensic psychologists should follow the overarching guidelines and codes established for clinical psychologists and balance that with adherence to the *Specialty Guidelines for Forensic Psychology* (Bartol & Bartol, 2015). According to Heilbrun et al. (2016) these guidelines serve forensic psychologists as a template by which to gauge their performance while maintaining a sense of accountability. The *Specialty Guidelines for Forensic Psychology* (APA, 2011) are rooted in specific items of the APA's ethical codes and assist the practicing forensic psychologist in understanding, abiding by, and employing the best practices for the profession and the variety of additional ethical issues and legal regulations involved with expert testimony. Covering what is expected of the forensic psychologist, as well as, clarification of roles, confidentiality, identification of the client, intended use and potential recipients of the opinion and or evaluation, and limitations of professional competence (Heilbrun et al., 2016). Further, pointing out the forensic psychologist should be able to implement the above mentioned while maintaining a clear understanding of their boundaries and upholding the ethical codes of conduct for their discipline. The current version of the SGFP (APA, 2011) is due to expire August 3, 2021, and a revised version will be released, in an effort to remain current, as the field of forensic psychology continues to grow, to meet the needs of our evolving society and the needs of our judicial system.

The Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists

This is an expansive guide that covers why the guidelines are important, explicitly states the guidelines, and clearly defines the Association's definitions of culture, race, ethnicity, and multiculturalism. It was developed because, the APA recognized that practicing psychologists within any of the sub-disciplines or subfields, of psychology, need to be able to identify and understand that multiculturalism includes; matters of ethnicity, race, gender, sexual preference, mental, as well as physical disabilities (Bartol & Bartol, 2015). The APA produced the guidelines to address the importance of recognizing multicultural dynamics to assist psychologists in understanding, educating, training and treating their clientele (Bartol & Bartol, 2015).

International Guidelines on Medico-Legal Methods of Ascertainment and Criteria of Evaluation of Personal Injury and Damage under Civil/Tort Law

These guidelines were developed by an International Working Group composed of judicial and medico-legal experts, all of which were members of the International Academy of Legal Medicine (IALM). They offer a step-by-step illustrated explanation of sequential steps, as well as, a comprehensive description of the ascertainment methodology and criteria involved in an evaluation. These guidelines were developed out of necessity. The authors pointed out that even though the operational procedures and regulations in various countries are extremely heterogeneous; a common variable is that clinicians and/or medico-legal experts are involved in many of the cases (Ferrara et al., 2016). As such, they proposed that the ascertainment methods should be the same. This includes the analysis of the any clinical documentation or data, as well

as, how the clinical and instrumental assessments are executed. These guidelines have been adopted as Guidelines by the International Academy of Legal Medicine (IALM). Reviewing the steps within these guidelines can also assist in the development of a potential framework for a standard of care, as it covers many international concerns that are applicable to the various judicial jurisdictions in the United States.

Personal Injury and Forensic Psychological Evaluations

When an individual seeks damages in a personal injury case it is considered that the compensation is intended "to make them whole" (Kane & Dvoskin, 2011). Basically, financial compensation is paid to try and make up for the suffering. For the courts and the juries this is a challenging aspect to calculate, as it is not an easy task to assign a monetary value to an individual's pain and suffering. Vallano (2013) noted that when the pain and suffering was highly visible or gruesome, the jury's tendency was to award large damages. Conversely, when the injury was not visible or gruesome, but had caused emotional effects, it required the effects be proven by psychiatric or psychological records. Although personal injury and disability law have come to acknowledge the impact of psychological injury, this acknowledgement requires proof which commonly includes a forensic psychological evaluation (Vallano, 2013; Weissman, 2012).

In personal injury cases that include a psychological component, a forensic psychologist is typically hired to conduct an evaluation. The purpose of psychological personal injury evaluations is to consider whether an event or its effects have caused the individual psychological or emotional injury, and to what extent (Ferrara et al., 2016). Weissmann (2012) pointed out that personal injury evaluations are classified by the law of torts. Under tort law, monetary damages can be granted when one breached a duty of care owed to another, and in so

doing, caused them harm. In order to be successful, in trial, it must be established that an individual's actions or failure to act caused another's injuries (Ferrara et al., 2016; Weissmann, 2012; Vallano, 2013).

There are many assessment tools and instruments available for use in forensic psychology. For personal injury cases, as in any psychological evaluation, solely using one form of instrumentation and/ or assessment is not recommended (Heilbrun et al., 2016; Melton et al., 2018; & Weissman, 2012). In cases involving personal injury litigation, it has been suggested that the practicing professional conduct the evaluation in a comprehensive manner; employing a compilation of various test instrumentation and assessments tailored to the areas needing to be addressed (Ferrara et al., 2016; Melton et al., 2018; & Weissman, 2012).

Certain steps and developments must take place before guidelines and standard of practices can move forward with the legal backing and become a standard of care. The road to the development and implementation of a legal standard of care is paved by the standards of practice, statutes, and case laws relevant to the professional community they serve (Heilbrun et al.; 2016; Melton et al., 2018). As more and more cases involve a psychological injury component, it is important to continually seek to improve the methods and standards that guide the forensic psychology practice. This includes incorporating developments in the way forensic psychological evaluations are conducted, so that the evaluations and findings can meet the admissibility standards.

Relevant Practice Concerns

At the time this study was conducted there was not a universally accepted standard of care, for conducting forensic psychological evaluations, nor was there just one set of judicial

admissibility standards. The impact of differing standards of admissibility for behavioral science testimony should not be underestimated. Practicing forensic psychologists who understand and know why certain types of claims are ether not admissible or do not hold up in court, should do all that they can to move in a direction that has the best outcome for their clients, while remaining ethical to their profession and within the parameters of the legal jurisdiction in which they serve (Allan, & Grisso, 2014; Fradella et al., 2003; O'Donnell et al., 2015; Troolines, 2012; Trost et al., 2015).

The assessments used in mental health and quality of life evaluations have the empirically based backing and acceptability to determine a treatment plan and the administering of medication (Drogin et al., 2015; Troolines, 2012). However, when some of these same empirically based assessment methods are employed by forensic psychologist in personal injury cases they have been overlooked or dismissed in part due to a lack of a uniform standard of care used by forensic psychologist when conducting the overall evaluation. Forensic psychologists, in personal injury or tort cases, should demonstrate the steps they take. This can be accomplished by utilizing a scientifically informed approach to the evaluation, and a clearly written method of reporting that addresses the initial questions for the court. Equally important is the use of psychological test that are reliable, well validated, and are appropriate for the specifics of the forensic evaluation (Drogin et al., 2015). More research dedicated to gathering additional information is needed, to work toward a framework or step by step guide, that includes the adequate mental health assessments and tests for potential malingering in order to meet the varying standards of admissibility (Bowles, 2012; O'Donnell et al., 2015; Melton et al., 2018; Troolines, 2012). It has been suggested that if a standard of care were in place, for the each of

various forensic psychological evaluations, including those for personal injury cases, this may help to fill the missing link in their admissibility (Bowles, 2012; Heilbrun et al., 2015; & Troolines, 2012).

Another challenge when trying to establish a standard of care in forensic psychological evaluations is that the evaluations, like the assessment instrumentation used within, do not lend themselves to a one size fits all approach. Just as in child custody evaluations, each form of forensic psychological evaluation (personal injury etc.) would require a unique standard of care. The standard of care would also have to remain somewhat flexible in that, there would not be a fixed uniform battery or selection of measures that the forensic psychologist would employ in every personal injury evaluation. Meaning, that the forensic psychologist would need to know which tests to include, in their methodology, based on the legal questions in the case, as well as the reliability and validity of those tests (Gowensmith, et al., 2017).

The next section covers three of the current practice concerns relative to the practice of forensic psychological evaluations, and more specifically to forensic psychological personal injury evaluations. Possessing an understanding of these concerns and what is needed to address them, is an essential part of advancing not only psychological evaluations, but the discipline as a whole.

Reliability & Validity

Regardless of the type of psychological evaluation being administered it is important to make sure that the assessment instrumentation selected not only fits the norm sample in which it is going to be used, but that the methodologies employed, by the psychologist, lend credence to the assessment itself. Reliability, as defined by Stangor (2013), is determined by the extent to

which the variable or variables being measured are free from random error. Doing so can give credence to the forensic psychology assessment. Stangor (2013) broke reliability down into two types:

1. Internal Consistency Reliability - this involves the rate at which the individual items on the assessment relate to one another.
2. Test-retest Reliability - is determined by how well the results of one test, relates to the results of that same test, when administered again and again.

Recently Gowensmith, et al., (2017) conducted a study on the diagnostic field reliability of forensic mental health evaluations and found that although evidence for diagnostic formulation is bound to vary among cases and the evaluators themselves, the practitioners that used multiple sources of information (medical record review, in-person interviews, symptom checklists, etc.), were more likely to derive an accurate diagnosis.

Validity is defined by the degree to which the measured variable(s) truly measures the conceptual variable(s) that it is designed to measure (Stangor, 2013). Basically, are there systematic errors? When it comes to forensic psychological assessments it is important that they measure what they are deemed to measure. This precision is its validity. Psychological assessment validity can be broken down into three types (Richmond, 2013).

1. Construct Validity - this relates to convergent and divergent validity. Basically, if the assessment was set to measure the level of an individual's anxiety, does the test measure those psychological constructs? Further, when compared to other tests of similar construct, are the results the same. Equally important, is if weighed against test of a different construct the results should be different.

2. Content Validity - this relates to the capacity of a psychological assessment to sufficiently test a wide range of components that make up the specific construct of the assessment.
3. Criterion – related Validity - this is rooted in the predictability of an individual's performance regarding the focus of the assessment.

While there is no guaranteed method to conclude that a measured variable is free from random error or systematic errors, there are numerous methods researchers and practicing professionals can employ when assessing the reliability and validity of their practices and their assessment selections (Stangor, 2013).

A recent study examined the field reliability of competency to stand trial (CST), not guilty by reason of insanity (NGRI), and post-acquittal conditional release (CR) as operationalized psychological constructs; Acklin et al., (2015) demonstrated a wide variability exists in examiner consensus and agreement between examiners and judges, depending on the type of assessment the examination employed and the overall structure of the evaluation itself. The researchers brought forth a valid concern regarding the quality of forensic evaluations in the United States. Demonstrating the need for procedural standardization, application of structured professional work used in forensic instrumentation, and de-biased assessments in order to improve the quality of forensic mental health opinions. Pointing out, that in order to strengthen the quality of forensic behavioral science in the courtroom, not only is an implementable standard of care needed, but also a process that is explicitly designed to address and insure the overall competency of the individual examiners themselves. As the results and reliability, with regards to accuracy, rely heavily on how diligently the questions are asked, answered, and

interpreted. It has been suggested, that if practicing forensic psychologists were to bear these things in mind, and make sure they employ assessments and instrumentation that are scientifically based and empirically rooted, they should have no problem using the opinions they've drawn in a judicial setting (Heilbrun et al., 2016; Melton et al., 2018; Young, 2017a; Young, 2017b).

Malingering

The issue of exaggeration and/or malingering in personal injury cases has been and continues to be of concern for all parties involved. Bowles (2012) and others have indicated that some difficulties involved when attempting to determine the base rate of malingering, are rooted in the differing definitions of malingering and other mitigating factors (Melton et al., 2018; Troolines, 2012; Young, 2016a; Young, 2017a; and Young, 2017b). For example: which tests were employed in the research studies, what were the cutoffs, error rates, were the findings applicable for use in the court or only in a clinical setting. Bush, Heilbronner, and Ruff (2014) opined that a multi-method and evidenced based validity assessment process, that also incorporates psychometric measures, testing the validity of the examinee's statements, must be an essential part of forensic psychological evaluations. Ponting out that, in personal injury cases, there exist strong incentives, on the examinees part, to minimize or even exclude prior problems that may have contributed to their current injury. Administering these types of assessments is more of a screening instrument, allowing for the practicing psychologist to interpret the individual's disposition, relative truthfulness of the reported injuries, and the potential for malingering. This information can further assist in the selection of additional assessment tools for both the individual being examined and the questions relevant to the individual legal case.

Rouse et al. (2007) pointed out that a collaboration of assessment tools should be used and that a diagnosis should never be made as a result of just one assessment.

As more research is being designed and conducted, with regard to the best assessments to employ, it is important to keep in mind that a review of past and current research shows that the prevalence rate of malingering is more like 15 ± 15% and not the 40 ± 10% that has been reported in that past (Young 2017b). Currently, one of the more prevalent assessments used to detect for malingering, as well as PTSD, in personal injury cases, is the Minnesota Multiphasic Personality Inventory, Second Edition, Restructured Form (MMPI-2-RF). The MMPI-2-RF has been extensively researched and used in both individual and group settings. The results are easily understandable by the average person and jurors involved in current court cases. The versatility of the scales and their interpretation have proven to be of great value in assisting practicing professionals to avoid subjectivity and report findings that render defensible opinions (Young, 2017b).

Additional assessment instrumentation currently used for the detection of malingering in personal injury evaluations are the Miller Forensic Assessment of Symptoms Test (M-FAST) and the Atypical Response (ATR) validity scale from the Trauma Symptom Inventory (TSI). Christiansen and Vincent (2012) conducted a study that focused on symptom, performance, and response validity assessments, which are also relevant in all forms of psychological evaluations. Although the Christiansen and Vincent (2012) study was a simulation study, it provided information regarding the validity of these two commonly used forensic assessments, and their use for the detection of malingering in evaluations. They found that the individuals in an active litigation case presented more extreme patterns in their responses than their counterparts, not in

active cases. The results of the study demonstrated that both may be useful, when trying to assess the difference between malingering and honest responders, particularly when they are used together.

Post-Traumatic Stress Disorder (PTSD)

Posttraumatic stress disorder (PTSD) and malingering have long been, and continue to be, practice areas of concern, especially in personal injury cases (Cyniak-Cieciura et al., 2017; Young, 2017a; Young 2016a, Young, 2016b). Some of these concerns are a result of the way PTSD has been classified and reclassified within the different versions of DSM. Currently, PTSD has been integrated under the trauma related conditions of the DSM-5. Young (2016b) pointed out that in the DSM-5, PTSD has 20 listed symptoms placed into a four-cluster framework, and although it has some support in current literature, there are arguably other frameworks that seem to fit the data better. Diehle et al. (2014) believes that having PTSD placed in this manner may not only have treatment consequences for the individuals being treated but may influence various court cases as well. The authors embarked on a meta-analysis to identify which psychotherapy treatments were deemed the most operational when it came to the reduction of trauma-related conditions. These types of studies are very important not only for treatment plans but are also relevant in assisting the courts to understand the multilayered nature of PTSD. Similarly, Cyniak-Cieciura et al. (2017) imparted that the classification, and the significant changes to the diagnosis of PTSD in the DSM-5, raise professional questions regarding the accuracy of the proposed criteria to the structure of the symptoms. Cyniak-Cieciura et al. (2017) conducted a study that examined the current PTSD symptom structure in the DSM-5 based on King et al., (1998) model with the four, five, six, and seven factor models. Then they

compared those against the structure of PTSD symptoms in the International Classification of Diseases, Eleventh Edition (ICD-11) proposal of PTSD Symptoms. The researchers found that the use of the six- and seven factor hybrid models as well as the three-factor ICD-11 concept proved a more suitable fit to the data over all than other models.

Young (2016b) indicated that continued research that focuses on more specific symptomology, clusters, and the applications diagnosis in court, is needed. As more research is conducted to fine tune the symptomology and overall diagnosis, Young, (2016b) and Cyniak-Cieciura et al. (2017) imparted that currently some of the better test for PTSD, and the use of the results in court include: Trauma Symptom Inventory, Second Edition (TSI-2), Minnesota Multiphasic Personality Inventory, Second Edition, Restructured Form (MMPI-2-RF), and the Clinician-Administered PTSD Scale for the DSM-5 (CAPs-5). The results of these tests have some of the empirical backing that the courts desire when PTSD is a component in a personal injury case (Young, 2016b).

Reviewing the Standard of Care in Child Custody Evaluations

A relevant step in gaining insight into the development of a standard of care for personal injury evaluations, or any forensic psychological evaluation, is by examining the creation and implementation of the standard of care in child custody evaluations (Bowels, 2012; Troolines, 2012). Horvath, Logan, and Walker (2002) substantiated the need for a standard of care in child custody evaluations by demonstrating there was a high level of variability in the content and methods employed by the evaluators in these evaluations. Finding, there were significant inconsistences between practice guidelines and the professional practices themselves. Ackerman and Gould (2015) further expressed that due to the variability, confrontational nature, and high

stakes of the rulings in these types of cases, having a standardized approach was deemed essential.

The comprehensive guidelines for the completion of child custody evaluation were established by the American Academy of Child and Adolescent Psychiatry (AACAP, 1994), the Association of Family and Consolidation Courts (AFCC), the American Psychological Association (APA), and the Committee on Professional Practice Standards in 1994. Ackerman and Gould (2015) pointed out that the child custody guidelines detail the required scope of custody evaluations including; the type of data to be gathered and the way it is to be collected. Covering how written and/or oral presentations are to be crafted, ethical considerations for the evaluator, as well as fee arrangements. Child custody guidelines impart that evaluators should make use of multiple sources of data collection and remain informed by the legal criteria in each case (Ackerman & Gould, 2015; Melton et al. 2018).

Evolving the practice of forensic psychological evaluations to include a standard of care for all evaluation types, including personal injury, should include examining the impact of child custody evaluations and guidelines like the above mentioned. Doing so, can impart specific areas of focus to improve and expand upon (Heilbrun et al., 2016; Melton et al., 2018). Of equal importance is to examine what currently constitutes best practices and to conduct additional research that reviews and develops those established practices, guidelines, and codes. Incorporating best practices and code with empirically based research and legal findings that meet the jurisdictional standards of admissibility can assist in the development of a standard of care for personal injury evaluations (Bowels, 2012; Heilbrun et al., 2016; Melton et al., 2018; Troolines, 2012).

Summary

Examining the potential need for the development of a standard of care in personal injury evaluations, requires and understanding of all the moving parts involved. In this chapter, the researcher reviewed the literature relating to forensic psychological evaluations, specifically personal injury evaluations, as they relate to the development of a standard of care. The researchers review began with a brief description of her focus and the literature search strategy employed, complete with examples of the key terms and operators. She also discussed why the conceptual framework for the study examined the topic through the cube model, which is rooted in systems theory. Then she briefly described the history of forensic psychology and expert testimony.

The researcher reviewed the history and development of the various standards of admissibility and how they are utilized by the courts, presenting various research studies indicating what the judges are really looking at when making the determination of an expert's opinions or testimony. She presented a variety of research studies regarding the use of forensic psychological assessments and how to improve them, as well as the current practice concerns of reliability, validity, malingering and PTSD. Finally, the researcher reviewed child custody evaluations and the path that was taken in the development of a standard of care.

As noted there exists a need for more research, which not only substantiates if there is a necessity for, but also moves forward with the additional data collection essential for the development of a basic framework, regarding a standard of care for conducting forensic psychological evaluations including those in personal injury cases (Heilbrun et al., 2016; Troolines, 2012). This study may help to substantiate whether a standard of care is needed for

personal injury evaluations, while also assisting in gathering of the additional data necessary to advance forward in the direction of a standard of care, for personal injury evaluations.

Chapter 3: Research Method

Introduction

In personal injury cases, seeking compensation for psychological damages, psychological evaluations performed by forensic psychologists are complex and are often conducted with the intent to be used in civil litigation (Drogin et al., 2015). Although there are empirically based studies legitimizing that psychological damages do exist in such cases (O'Donnell et al., 2015; Trost et al., 2015), there is a missing link in the way forensic psychologists conduct their evaluations. As more and more personal injury cases involve seeking compensation for not only the physical damages, but the psychological aspects as well, it is important to understand and determine how psychologists can best assist this population (Drogin et al., 2015; Troolines, 2012). The need for quality forensic psychological evaluations continues to grow exponentially as the numbers of personal injury claims, which include psychological evaluations, continue to increase. One step toward developing sound and quality forensic psychological evaluations may be evolving the practice toward the development of a standard of care. In some instances, not having a standard of care, for conducting these types of evaluations, has led to the evaluation being, overlooked or deemed inadmissible in some court jurisdictions (Bowels, 2012; O'Donnell et al., 2015; Troolines, 2012). There was a need for more substantiating research that can move forward with the additional data collection essential for the development of a basic framework, regarding a standard of care for conducting forensic psychological evaluations, including those in personal injury cases (Heilbrun et al., 2016; Troolines, 2012). Therefore, this study was designed to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury

evaluations and their perspectives on the implementation of a standard of care for personal injury evaluations.

In the previous chapter, the researcher examined forensic psychology, expert testimony, and the various standards of admissibility, guidelines, as well as the use of forensic psychological evaluations in court. In this chapter, she describes the research methodology she selected for this qualitative study. More specifically, the researcher describes her method for exploring the forensic psychologist's experiences, practices, instrumentation, and methodologies, as well as how she coded and analyzed the data collected. The researcher also provides a discussion of the thematic analysis research methodology and its appropriateness for the use in this study. Lastly, the researcher outlines the ethical considerations related to this study and the strategies she employed to ensure trustworthiness.

Research Design and Rationale

Research Questions

Listed below are the research questions that guided this study. They were developed and structured based on the conceptual framework of the cube model (systems theory) which afforded the ability to examine professional viewpoints, and current forensic psychological personal injury evaluation practices in different judicial jurisdictions. The semi-structured interview protocol for the interviews can be found in Appendix H.

1. What are the specific steps forensic psychologists take when conducting personal injury evaluations?
2. What are the differences in the steps taken by forensic psychologists conducting personal injury evaluations operating under varying standards of judicial admissibility?

3. What are the perceptions of forensic psychologists regarding the implementation of a standard of care for personal injury evaluations?

Definition of Central Concepts

For the purpose of this study, *forensic psychologists* were defined as licensed psychologists who conduct forensic psychological personal injury evaluations as a part of their practice. A *Psychological evaluation* was defined as examination into the nature and extent of an individual's current psychopathology, mental status, premorbid and current functioning, and their prognosis for recovery (Melton et al. 2018). *Standards of admissibility* were defined as standards used by courts to assist in determining the admissibility of scientific evidence and expert testimony (Weissmann, 2012). *Standards of practice* were the typical way of doing things in a particular field, developed out of the industries formal guidelines or best practice standards. They are aspirational in nature, as such; they are not legally enforced (Heilbrun et al., 2016). Lastly, at the root of this study, *Standards of care* were defined as standards followed by an industry and are based on judicial constructs that establish minimally accepted professional standards of conduct. Compliance is mandatory carrying potential legal ramification if not followed (Heilbrun et al., 2016).

Research Traditions

Qualitative and quantitative research methodologies both contain descriptive elements when it comes to the selection of details regarding population or subject of study, data collection, data analysis, validity, reliability, and the issue of remaining unbiased (Creswell, 2015; Stangor, 2013). The two research methodologies differ in that qualitative research is founded in an individual's experience and *how* the perception of reality came to be for the individual. Further,

the strategies within the qualitative approach are inductive in nature beginning with an observation of what is going on, or taking place (Patton, 2015). This is, identifying patterns as they relate to the world or the individual's experiences and trying to determine the; *what* and *how's* there within, as the subject develops from the data. Some of more commonly known approach strategies for inquiry in a qualitative research project are generally narrative, phenomenology, ethnography, case study, and those rooted in deep-seated theory (Creswell, 2013).

Conversely, quantitative research is founded in the validation of data from more than one hypothesis. It is rooted in measuring the variables pertaining to cause-and-effect. Quantitative research methodology seeks to understand the *whys* of patterns and measures data using statistical analysis. This is typically done by employing some form of a survey design or experimental design strategy (Creswell, 2015; Stangor, 2013). Quantitative research employs a deductive approach that measures the concepts from a theory.

There is limited research regarding this topic, as such studies could be designed using quantitative or qualitative research methodologies, depending on the focus of the study. Patton (2015) pointed out that quantitative research methodologies are employed to test objective theories by identifying and analyzing the relationship between specific variables to determine whether the specified variables are related to one another. Because this study sought to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations and their perspectives on implementing a standard of care for personal injury evaluations, the use of a qualitative approach was employed.

This qualitative study was designed to gather data from a diverse group of forensic psychologists conducting personal injury assessments, in Daubert, Frye, and Independent jurisdictions thus assisting to provide the additional necessary data to develop a basic framework for a standard of care in conducting such evaluations. The nature of this qualitative study was thematic analysis. Thematic analysis was the most appropriate, like the more traditional phenomenological approach, it allows for the rewording and reframing of interview questions in response to discoveries made throughout the data collection process. However, it is more flexible in the number of participants. This afforded the ability to have more interviews, to reach the necessary territories and data saturation. While thematic analysis is not one of the traditionally employed approaches, its natural flexibility was a useful research tool that helped deliver the rich, detailed, and descriptive data (Braun & Clark, 2006) necessary.

Role of the Researcher

It was through her employment as a Biomechanical Laboratory Director for a Nationwide Forensic Firm, dealing with personal injury cases, that she first became familiar with this topic. The researcher's interest, understanding, and knowledge were further developed through her university course work and personal review of the empirical research surrounding the topic. It was during this time that she became aware that the psychological component, in personal injury claims, was either missing or dismissed due in part due to a lack a standard method for conducting personal injury evaluations (Bowels, 2012; Heilbrun et al., 2008; Heilbrun et al., 2016; O'Donnell et al., 2015; Troolines, 2012; Trost et al., 2015). This further piqued the researcher's interest in the topic and sparked the onset of the research design. The study was

designed to contribute additional data necessary to move toward making a positive social change in the discovered deficit.

Her role as the researcher was to design a qualitative thematic analysis study, gain IRB approval, recruit and screen qualified participants, conduct the research, analyze the data, and report the findings in an unbiased, clear, and concise manner. Creswell (2015) pointed out that qualitative research is interpretive research and evolves thorough close contact with participants. Qualitative data collection methods generally employ some form of field research. This can take place in various forms such as; in-person interviews, online interviews, focus groups, observation, stories, photographs, and other various documentation, that provides the useful data the researcher is seeking (Creswell, 2015; Stangor, 2013).

Semi-structured interviews were conducted (in-person, telephone, and Skype) to elucidate how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations. Although, this method of data collection has a flexibility advantage, it lacks, data collection standardization, which can make the approach highly vulnerable to interviewer bias (Frankfort-Nachmias & Nachmias 2008). As such, the researcher addressed any potential biases, personal interests, gains, or ethical concerns that may obstruct the study.

It is important to note that the researcher did not have any prior knowledge or any relationships with any of the participants, other than perhaps belonging to some of the same professional organizations, like the American Psychological Association. The semi-structured interviews were approached with composure and preparedness to establish a rapport with the

participants. While absolute negation of biases is virtually impossible, she conducted the study in a manner that was in line with good quality research practices (Creswell, 2013). This was achieved by remaining open-minded and holding a clear understanding of her own boundaries. As the researcher, her understanding and familiarity with the topic, may have led her to feel there was a necessity for the development of a standard of care in forensic personal injury evaluations. As such, the researcher employed necessary measures and validating strategies; like member checking, to remain impartial when seeking to answer the research questions.

Methodology

Participant Selection

When determining participant selection Morse (2000) pointed out that the researcher should consider the overall scope of their study. Basically, the broader the topic the more time it will take to reach the data saturation that is needed for the study. Maxwell (2013) indicated the importance of having a solid understanding of the nature of the topic. Suggesting, that if the topic of the research is clear and the information needed can be gleaned through interviews, then it is possible, fewer participants would be needed to reach data saturation. This relates to the quality of the data that the researcher was after, as well as how they wished to present their data findings. Morse (2000) pointed out that the quality of the data gathered, and number of interviews completed with each participant, assists in determining the amount of useable data, as it relates to each participant and the number of participants in the study. The goal is to reach data saturation. In other words, keep going until nothing new is being said (Maxwell, 2013).

For this study the researcher employed purposeful criterion-based sampling of convenience, as described by Creswell (2013). The selection criteria for the research was

specific, requiring that the participants were United States licensed psychologists, and had current experience conducting, or had conducted personal injury evaluations within the last 5 years, in the United States. Licensed psychologists from other countries were not included. The participants were comprised of two to four forensic psychologists who operated under the *Daubert Standard of Admissibility*, two to four participants who operated under the *Frye Standard of Admissibility*, two to four participants who operated under an *Independent Standard of Admissibility.* Employing thematic analysis afforded the ability to expand the number of participants to meet territory requirements and reach data saturation.

It is important to note that operating under different standards of admissibility coupled with the research that has shown the education, training, and credentials required to professionally conduct forensic psychological evaluations, in general, can vary (LaDuke, et al., 2012), it was expected that there would be variances in their daily practices. However due to the nature of the participants working in the same sub-discipline of psychology, with similar content in their education and training, the researcher considered the individuals practicing in this area of psychology as a homogenous group suitable for this study.

Once IRB approval was obtained (Approval number 10-22-18-0487487), the participants were recruited from the American Academy of Forensic Psychology (AAFP), the American Psychology-Law Society (AP-LS), the American Academy of Forensic Science (AAFS) Psychology Section, and the Society for Police and Criminal Psychology (SPCP). This was accomplished via targeted emails sent to AAFP, AAFS, AP-LS, and SPCP members, and/or administrators, which explained the study and formally requested to post for research recruitment on their websites. Additionally, follow-up emails and phone calls were sent formally inviting

potential participants to participate in the research study. The research was voluntary, as such no reward was offered. An example of each recruitment email can be found in Appendix A. Selecting participants that met the criteria afforded the ability to achieve the maximum variation in the diverse group while also expanding the sample size as suggested by the Troolines (2012) study.

Instrumentation

The participants for this research study were selected using a purposeful, criterion-based sampling of convenience (Creswell, 2013; Frankfort-Nachmias & Nachmias, 2008). Although in-person interviewing has been considered the best option (Maxwell, 2013), it is not always practical when a study involves participants from a wide geographical range (Troolines, 2012). Technical advances have afforded current researchers the ability to conduct participant interviews in several different ways. One of the goals of the study was to conduct interviews with participants operating under different judicial admissibility standards. This required expanding the participant selection to a wide geographical range. As such, participants selected for this study had to be willing to be interviewed through Facetime, Skype, or telephone when in-person interviews were not feasible. This online option offered the best advantage next to in-person interviews, but also offered the flexibility for differing time zones and participant availability.

The researcher served as the main instrument for data collection through conducting semi-structured interviews with participants. Creswell (2013) indicated that coming across unorganized or disheveled can not only make the overall interview uncomfortable but can also lead the participants to lose respect for the process and the study itself. Following an interview protocol can assist in recording and documenting information gathered during the interviews

(Creswell, 2013). To aid in the organization of the data collection process, and each of the semi-structured interviews, the researcher created the following protocols and trackers for participant recruitment: the semi-structured interviews, the confidentiality agreements, and the interview questions. Examples of which can be found in the appendix section of this paper. The researcher had a copy of the interview questions clearly labeled for each participant, so she could make notes of their responses. Affording her the ability to examine and gain a better understanding of how the selected group of forensic psychologists, were conducting their personal injury evaluations and their perspectives. In addition, the researcher also requested that the interviews be audio recorded for transcription purposes.

Procedures for Recruitment, Participation, and Data Collection

Once the participants were selected, as outlined above, the researcher collected data employing a semi-structured interview protocol via in-person, Skype, and telephone interviews. The participants had to be United States licensed psychologists who had current experience conducting or had conducted personal injury evaluations in the last 5 years, in the United States. Licensed psychologists from other countries were not included. The duration of the interviews was expected to range between forty-five to sixty minutes. The researcher documented the information provided by the participants and the audio recordings through handwritten notes and typed interview reports.

Data Analysis

The research design involved semi-structured interviews that the researcher administered. She employed an interview tracker, to provide herself with a tangible record of who was interviewed, when they were interviewed, and by which method they were interviewed.

Remaining organized throughout the study, not only assisted during the data collection phase, when rereading the interviews during the coding and analysis phase, it also assisted in maintaining the overall integrity and validity of the project (Maxwell, 2013). Once the interviews were completed and transcribed, the researcher made copies of each interview, to enable each participant the opportunity to review their individual responses before moving forward with the analysis phase.

Data analysis and coding are integral components in qualitative research (Creswell, 2013). Researchers develop codes from single words or phrases that represent significant meaning. Some researchers believe that coding should take place from the inception of a research project and includes pre-coding. Pre-coding was used to assist the researcher in the development of interview questions that may best answer the research questions and predicted categories. Using caution when employing pre-coding can help prevent the researcher from becoming so locked into their predetermined codes that they miss out on other developments, categories, or become bias (Stangor, 2013). Continuing to develop and/or refine codes as data is collected, afforded the researcher the ability to expand as developments were found or where necessary.

For this study the researcher exercised caution, to avoid bias in her predictions, so that she did not miss out on other categories or developments. The researcher employed some pre-coding, by way of incorporating some of the themes that were found in the Troolines (2012) study. However, the researcher also continued to employ coding throughout the research process. Doing so helped prevent her from becoming overwhelmed by the large amount of information gathered and assisted in being able to recognize areas that she had not initially

thought about. Thus, affording the researcher the ability to add new categories as themes emerged from the data.

Computer software was used to assist in managing the large amounts of data and organizing the process of coding, memo writing, and data retrieval as expressed by Maxwell (2013). For this study, the researcher had both physical and digital files. She employed Endnote to track resources, and Excel and Word for the development of trackers, forms, and interview transcription. NVivo was used for the transcribed and reviewed interviews to uphold the accuracy and efficiency of the study (Bazeley, 2007). Doing this afforded the ability to package and store all the data in one area. The use of computer software also assisted when it came time for the researcher to present and report the findings of the study (Bazeley, 2007; Creswell, 2013).

Issues of Trustworthiness

Employing qualitative strategies that prove to be trustworthy; creditable, transferable, dependable, and conformable are things that the researcher should have in mind at the onset of the research project (Morse, 2015). It is up to the researcher to determine which strategies will best serve their research study. The researcher in this study, employed various qualitative strategies like; member checking, memoing, and an external audit to enhance the above-mentioned qualitative needs.

Credibility

Credibility is considered one of the first facets needing to be established regarding the trustworthiness of a research project. Creswell (2015) pointed out that credibility fundamentally asks that the researcher, clearly demonstrate the research findings are congruent with reality. The researcher employed a variety of methods to address threats to overall quality and ensure the

credibility of the study. The researcher's primary consideration regarding ensuring credibility was the participation selection criteria, including obtaining a suitable sample size in order to reach data saturation. She considered this a form of triangulation, as she used the information and data given by multiple participants to validate and crosscheck with the information and data given by other participants. Additionally, member checks were conducted by asking each of the participants to review their interviews once they had been transcribed into a Microsoft Word® report. Creswell (2013) pointed out that member checking can afford the researcher the ability to make corrections, clarify, or add any information that the participants provide in their feedback. Basically, it assists in ensuring a true representation of their communication during the interviews. The researcher employed memoing, as she read the participants responses to the interview questions; this assisted in logging the important points, theories, and themes that emerged. Using memoing also served to track her thought process and the important aspects of the topic. Finally, the researcher implemented an external audit, by having an outside researcher, who was not connected with the study; review the totality of the project findings, interpretations, and reported conclusions reached. Following this method as outlined in Lincoln and Guba (1985), helped to ensure that she conducted the research in a valid and trustworthy manner.

Transferability

In qualitative research transferability is synonymous with generalizability in quantitative research (Creswell, 2015; Stangor, 2013). Essentially transferability is demonstrated by evidence that the research findings could be applicable in other contexts, situations, times, and populations. Frankfort-Nachmias and Nachmias (2008) described this as external validity. This

study was designed to gather additional data on how forensic psychologists were conducting personal injury evaluations under different judicial standards of admissibility and their perspectives on implementing a standard of care for personal injury evaluations. As such, it had more to do with describing the developing themes, than the generalizability of the findings (Creswell, 2015). Although the participants, of this study, may not be representative of the larger population of psychologists who conduct forensic psychological evaluations in personal injury cases, employing an audit trail assisted in the ability to provide a thick description of the phenomenon and provide a detailed account of the researcher's experience during the data collection. This was also instrumental in the researcher's ability to present her research findings in a trustworthy manner that affords future researchers and/or readers the ability to make their own judgements regarding the transferability, of the study's findings.

Dependability

Unlike quantitative research, which is concerned with reliability, qualitative research is concerned with dependability (Creswell, 2013). Researchers seek to safeguard dependability by employing techniques that demonstrate repeatability throughout the research study. Essentially, if the study was to be repeated, using the same methodology and participants, the results of the both studies would be the same (Creswell, 2015; Stangor, 2013). There are many different techniques that can be implemented to establish dependability. For this study the researcher addressed this concern by thoroughly outlining her entire research process (audit trail), to provide future researchers the ability to confidently replicate this study.

The researcher also incorporated an external audit. This was conducted by an outside researcher, who was not connected with the study. The outside researcher reviewed the totality of

the project findings, interpretations, and reported conclusions reached. This was conducted to assist in confirming the accuracy of her findings and to ensure they were supported by the collected data. Essentially an outside researcher lends credence to whether the researcher, was able to capture the truth and reality objectively (Creswell, 2015; Lincoln & Guba, 1985; Stangor, 2013).

Confirmability

Conformability relates to the level of confidence that the findings of a research study are rooted in the actual participant's answers and experiences, rather than the researcher's own personal beliefs or bias (Patton, 2015). For this study the researcher employed triangulation of the qualitative data sources by using the information and data given by multiple participants to validate and crosscheck, not only with the information and data given by other participants, but by further comparing the data to the conclusions in predicate research.

Additionally, throughout the study the researcher made use of an audit trail. This is a technique where the researcher records the details of their research process including; data collection, data analysis, and the interpretations of the data. The audit trail served as a record of her thoughts on what topics she considered unique or interesting during her data collection, thoughts regarding coding, and explanations for why she merged or combined codes together, as well as clarifying what the emerging themes meant (Patton, 2015).

Finally, she exercised reflexivity. According to Creswell (2013) reflexivity is when a researcher reflects on their own background and position to how they might influence the research study. The researcher did this by keeping a journal of her thought processes, actions, and overall research process for the study. Employing these types of strategies assisted in not

only remaining organized, but it also provided valuable insights to include for readers and future researchers enabling them to understand how the study was conducted and how various themes emerge from the collected data.

Ethical Concerns

When addressing potential ethical concerns, it was important to note that was a voluntary study and did not involve minors or high-risk populations. There was no known harm for participants who chose to participate in the study. The researcher obtained approval from the Walden University Institutional Review Board (IRB) before initiating the study and selecting participants. In accordance with the IRB protocol, each of the participants were given a full discloser consent agreement that was reviewed and signed, prior to the onset of the interview. The consent agreement was sent via US postal service, email, or delivered in person and served to assist in explaining and informing each of the participants of the purpose of the study. It also assured them of the confidentiality of their responses, as well as any risks or benefits of their involvement, and their right to withdraw from the study at any time (Creswell, 2013).

All materials including; journals, files, audio recordings, and transcripts were stored in a locked filing cabinet inside the researcher's home office. Only the researcher, had access to the transcripts. Prior to data validation (external audit) and publication, the researcher redacted all identifying information ensuring it was removed from the transcripts. Copies of the Consent Agreement and Statement of Confidentiality can be found in Appendix section of this paper.

Summary

As personal injury cases continue to grow, so does the need for a standard of care to be developed and implemented for forensic psychologists who conduct personal injury evaluations

and assessments for the courts (Trost et al., 2015; O'Donnell et al., 2015; Heilbrun et al., 2008; Young, 2015; and Troolines, 2012). This study aimed to provide the in-depth data necessary to further understand how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations. It was the researchers hope that future studies would be able to combine this study's findings with other empirically based studies, to generate a tangible working prototype of a standard of care for conducting personal injury evaluations.

In this chapter the researcher identified the central concepts of the study, while also explaining the rational for her selection of thematic analysis to explore the phenomenon. As the sole researcher she examined her role, worldview, and addressed potential bias. She provided a thorough account of the proposed participant population, sample size, and the recruitment process. The researcher further identified the various strategies she implemented, throughout the study, to address the credibility, transferability, and confirmability of the research. Finally, the researcher delineated the ethical procedures she implemented to conduct the research study in an ethical manner, while also protecting the research participants and the overall integrity of the study.

In Chapter 4, the researcher discusses her data collection process including; the setting of the interviews (In-person, Skype, or Telephone), participant demographics, as well as the methodology regarding the data analysis, and the development of themes and subthemes.

Chapter 4: Results

Introduction

The purpose of this thematic analysis was to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting personal injury evaluations and their perspectives on implementing a standard of care. The researcher sought to gain an in-depth understanding of what occurs during the personal injury evaluation process through a deeper understanding of the research questions. The study was conducted to help fill a gap in research by providing the additional in-depth data necessary to either bolster or refute if there was a need for a standard of care (Troolines, 2012). The findings of this study may also contribute to the development of a framework for conducting personal injury evaluations and lead to the development of standard of care.

To address the research questions, the researcher used a thematic analysis approach to gather a more thorough understanding of, (a) the specific steps forensic psychologist take when conducting personal injury evaluations, (b) the differences in the steps taken by forensic psychologists conducting personal injury evaluations operating under varying standards of judicial admissibility, and (c) the perceptions of forensic psychologist regarding the implementation of a standard of care for personal injury evaluations. In this chapter, the researcher discusses the data collection process, including the study setting, research participant demographics, and the way the data was collected. The researcher presents the methodology employed to analyze the collected data, as well as the process used to identify major themes and subthemes presented within the data. The researcher then discusses evidence of trustworthiness as it serves to support the thematic analysis. Finally, in the last section, of this chapter, the

identified themes are presented in a manner that thoroughly addresses the stated research questions.

Setting

The researcher utilized a thematic analysis approach to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions, were conducting their personal injury evaluations and their perspectives on implementing a standard care. The study was guided by the following research questions: (a) what are the specific steps forensic psychologist take when conducting personal injury evaluations? (b) What are the differences in the steps taken by forensic psychologist conducting personal injury evaluations operating under varying standards of judicial admissibility? And (c) what are the perceptions of forensic psychologist regarding the implementation of a standard of care for personal injury evaluations?

Obtaining Participants

After obtaining authorization from the Walden University Institutional Review Board to begin data collection, the researcher contacted potential participants by email and/or phone, from the following sources: the American Forensic Psychology (AAFP, see Appendix C), the American Academy of Forensic Science (AAFS see Appendix D), the American Psychological-Law Society (AP-LS, see Appendix E), and individuals (see Appendix G) that were recommended by potential participants and/or colleagues.

In total, 186 email invitations were forwarded to psychologist, and 32 initial recruitment and/or follow-up phone calls were made. As previously discussed in Chapter 1, the researcher speculated that a sample of two to four participants would be needed from each standard of admissibility (Daubert, Frye, and Independent) jurisdictions. Of the 186 psychologists who were

contacted, 19 responded, of those 14 signed up to participate in the study. Based on the United States licensing requirements, as well as the similarity in their profession and specialization, the participants were considered a small and homogenous group. The researcher employed purposeful criterion-based sampling of convenience, as described by Creswell (2013). The selection criteria were specific, requiring that the participants were licensed psychologists, and had current experience conducting, or had conducted personal injury evaluations within the last 5 years, in the United States. Licensed psychologist from other countries, were not included.

Demographics

The final sample was comprised of 14 United States licensed psychologists. The 14 participants covered a combined area of 34 states, (Appendix J) and 10 of the participants operated under more than one admissibility standard. The breakdown of participants by judicial admissibility standards were as follows: 2 psychologists operated under the Daubert standard only, 2 under the Frye standard only, 6 under both Daubert and Frye standards, and finally, 4 who operated under the Daubert, Frye, and Independent standards. Of the Independent standards, 3 operated under the state of Virginia standards, and 1 operated under the state of Nevada judicial admissibility standards. The researcher was unsuccessful in recruiting participants from the third Independent state of North Dakota.

Participants ranged in age from 35 to 65 years, with eleven of the participants being male and three females. All but two of the participants were board certified forensic psychologists by the American Board of Forensic Psychology (ABFP). The participants' experience conducting personal injury evaluations ranged from 5 to 28 years, with a mean personal injury evaluation experience level of approximately 12 years.

Data Collection

Once the fourteen forensic psychologists agreed to participate in the study, they were given a consent form with instructions to read, sign, and returned. This was accomplished through email, fax, U.S. postal service, and in person. Due to the wide geographical range participants had the choice of being interviewed via, Skype, Facetime, Phone, or In-person (were possible). Five of the interviews took place over Skype, six over the phone, three in person, and none of the participants elected to participate via FaceTime. The researcher followed the interview protocol she created and questioned the participants about how they conducted personal injury evaluations and their thoughts on implementing a standard of care. None of the participants were provided the questions prior to being interviewed. At the start of each interview each of the participants were provided with the definitions of standard of admissibility, standard of practice, and standard of care, as used in the study. The duration of the semi-structured interviews ranged from 35 minutes to 60 minutes, for a total of 11 hours of interviews.

Each of the interviews was audio recorded and detailed notes were taken as the participants responded. Doing so made the process much smoother when the interviews were transcribed prior to participant review. The researcher used software to compile and transcribe interview responses, as well as the review notes. Qualitative data analysis software was used to facilitate data organization and analysis progression. After each transcribed report was reviewed, corrections made, and the responses verified by the participants, the researcher organized and pre-coded each interview for analysis.

Data Analysis

Each of the transcribed interview reports was organized and pre-coded by paragraph heading style, using Microsoft Word® in a uniform question and response format following the previously discussed interview protocol (see Appendix H), guided by the semi-structured interview questions (see Appendix I). The interviews consisted of 31 questions organized into the following four categories: (a) the participant's background, (b) the participant's education and licensing, (c) the participant's approach to personal injury evaluations, and (d) the participant's thoughts on implementing a standard of care.

The software package NVivo was used to assist in further organizing, coding, and analyzing the qualitative data collected from the interviews. Each interview was charted separately with an alphanumeric number. Using a unique identifier helped to ensure the privacy and confidentiality of the participants and the data. NVivo was used to organize the rich and detailed qualitative information collected into 10 background related nodes and 11 theme nodes, which the researcher created to represent the various themes developed throughout the course of the interviews. The following is a list of the 11 theme related nodes created and a brief definition of the information contained within:

- Approach: Information contained in this node was related to how the participants described their general approach to personal injury evaluations.
- Challenges: Information contained in this node was related to participants' insights regarding some of the challenges they identified when conducting personal injury evaluations.

- Cons for Standard of Care: Information contained in this node was related to participants' opinions regarding the potential cons of implementing a standard of care for personal injury evaluations.
- Diversity: Information contained in this node was related to participants' experiences and their approach regarding issues of diversity.
- Ethical: Information contained in this node was related to participants' experiences and their approach to addressing ethical issues.
- Guidelines: Information contained in this node was related to participants' personal use and process regarding protocols, guidelines, and other materials to assist in their practice.
- Pros for Standard of Care: Information contained in this node was related to participants' opinions regarding the benefits of implementing a standard of care for personal injury evaluations.
- Role Admissibility Standards Play: Information contained in this node was related to participants' experiences regarding the role that admissibility standards had in the structuring of the personal injury evaluations.
- Strategy: Information contained in this node was related to participants' opinions on the strategies used in personal injury evaluations, tests, and assessments.
- Testing: Information contained in this node was related to participants' experiences and processes regarding the types and styles of tests used in personal injury evaluations.
- Thoughts on Standard of Care: Information contained in this node was related to participants' opinions regarding the implementation of a standard of care in personal injury evaluations.

The information collected through participant interviews regarding the above outlined topics were compiled into their respective nodes generated within NVivo. The information contained within each node was then further analyzed to identify recurring themes based on cross analysis of the similarities and differences within participant responses. Once all themes were identified, they were consolidated into an amalgamation of in-depth answers to the questions posed in the semi-structured interviews. The identified themes are discussed more thoroughly in the results section of this chapter.

Evidence of Trustworthiness

Credibility

The researcher employed a variety of methods to address potential limitations and ensure the credibility of the study. The primary method employed to ensure credibility was the participation selection criteria, including obtaining a suitable sample size in order to reach data saturation. According to Creswell (2014), credibility fundamentally means that the researcher clearly demonstrated that their research findings are consistent with reality. Gathering information from the 14 participants not only served to ensure credibility and data saturation, but it also served as a form of triangulation as outlined by Creswell (2013). The process of member checking was another critical component of ensuring credibility, by having the participants review the final transcribed reports of their interviews for accuracy, as described by Lincoln and Guba (1985).

Transferability

Transferability is to qualitative research as generalizability is to quantitative research (Creswell, 2015; Stangor, 2013). Essentially transferability is rooted in the applicability of the

research findings in other contexts, situations, times, and populations. This has been referred to as external validity (Frankfort-Nachmias & Nachmias, 2008). The researcher designed this study to gather additional data on how forensic psychologists were conducting personal injury evaluations under different judicial standards of admissibility and their perspectives on implementing a standard of care for personal injury evaluations. It is for that reason that the researcher was more concerned with describing the developing themes, than the generalizability or transferability of the findings (Creswell, 2015). While the participants of this study may not be representative of the larger population of psychologists who conduct forensic psychological evaluations in personal injury cases, by employing an audit trail, the researcher was able to provide a thick description of the phenomenon and a detailed account of her experience during the data collection phase of the study. This also proved instrumental in presenting the research findings in a trustworthy manner that may afford future researchers and/or readers to make their own judgements regarding the transferability of the study's findings.

Dependability

In qualitative research, dependability is rooted in the repeatability of the study (Creswell, 2013). Essentially, if the study was to be repeated using the same methodology and participants, the results of the both studies would be the same (Creswell, 2015; Stangor, 2013). Researchers seek to safeguard dependability by employing different techniques that establish and demonstrate repeatability throughout the research study. In this study the researcher addressed this concern by thoroughly outlining her entire research process via an audit trail, providing future researchers the ability to confidently replicate this study.

An external audit was also incorporated and conducted by an outside researcher who was not connected with the study. The outside researcher reviewed the totality of the project findings, interpretations, and the reported conclusions. This was conducted to confirm the accuracy of the findings and to verify they were supported by the collected data. The outside researcher lent credence to the researcher's ability to capture the truth and reality objectively (Creswell, 2015; Lincoln & Guba, 1985; Stangor, 2013).

Confirmability

Conformability directly relates to a researcher's level of accurately reflecting the participants' experiences and information, rather than their own thoughts or beliefs. Basically, are the study's findings rooted in the actual participant's answers and experiences, and not the researcher's own personal beliefs or bias (Patton, 2015). To accomplish this, the researcher employed triangulation, which Patton (2015) described as the comparison and crosschecking of information obtained through different means within the qualitative methodology to identify consistencies. Essentially, the researcher compared the information gathered through participant interviews, and then cross-checked that information among the individual participants, by having them review their individual interview reports for accuracy and completeness. Then the researcher compared that information and data further by comparing those themes to the conclusions in predicate research.

As mentioned previously, throughout the study the researcher used an audit trail where she recorded the details of the research process including; data collection, data analysis, and interpretations of the data. The audit trail served as a record of the researcher's thoughts regarding topics, experiences and thoughts during the data collection and coding phases, as well

as explanations for merging or combing codes together, and clarifying the meaning of emerging themes (Patton, 2015).

Finally, the researcher exercised what Creswell (2013) referred to as reflexivity. Reflexivity requires that a researcher reflect on their own background and position and determine how those might influence the research study. This was accomplished by keeping a journal of the researcher's thought processes, actions, and overall research process for the study. Employing these types of strategies was critical in remaining organized, but it also provided valuable insights, that the researcher could impart to the readers and future researchers, thus enabling them to understand how the study was conducted and how various themes emerged throughout the data collection process.

Results

The first research question in this study addressed how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting personal injury evaluations. To more fully understand their overall approach to personal injury evaluations, the researcher asked participants a variety of questions relating to not only their general approach, but also: (a) the specific steps they take when conducting personal injury evaluations, (b) the standards and/or guidelines they follow, (c) strategies and types of test typically employed, and (d) common challenges and/or oversights encountered. The following is a representation of the inquiry results.

Specific Steps Taken in Personal Injury Evaluations

Upon being questioned about the specific steps they take when conducting personal injury evaluations, the participants offered a variety of detailed descriptions. The researcher's

review of those descriptions revealed how the steps involved were positioned around a combination of the thematic aspects discussed below.

Initial contact. Regarding the chronology of being contacted and accepting a case, nine out of the fourteen participants noted that they were most often initially contacted by an attorney for either plaintiff or defendant counsel. Three participants also reported having been contacted by an insurance company, or some other institution, asking for a personal injury evaluation. One participant reported having been contacted by an organization that served as a search engine for lawyers to find specialized experts. Four participants did not delineate who initially contacted them.

Scope of the case. After initial contact, all the participants indicated that some form of in-person meeting or conference call took place between the requesting party and themselves to discuss the particulars of the case. During this time, they further assessed whether the case was appropriate for them and checked for any potential conflicts. One participant referred to this process as a pre-evaluation. Each of the participants reported the importance of clarifying what the requesting party was asking of them at this juncture. Nine specifically mentioned clarifying whether the hiring party was requesting; a record review and case consultation, record review and evaluation plan, or some other combination; imparting that this was an important element of the intake and vetting process as it assists in the further development of the case strategy. Five indicated that the time available for the overall evaluation process was also a factor in their decision to take on a case. Six participants stressed the importance of clarifying all aspects of the referral question (s) at this point. Finally, eleven of the participants reported that during this intake process it was also important to negotiate or clarify any special arrangements, such as the

need for a translator, whether the requesting party needed to be present for the evaluation, or any other special circumstances.

Referral question (s). All the participants indicated that in personal injury cases the referral question(s) were fundamental in the process of vetting a case and in the preliminary development of the strategies they may employ. Eight participants described that the review of the referral question (s) was typically accomplished by examining the referral question (s), a court order if there was one, as well as, identifying and clarifying the reason for the referral.

Four participants expressed that in their experience the referral question(s) typically pertained to two types of questions. The first type of question was characteristically diagnostic in nature, assessing the individual diagnosis in a manner more thorough than in some of other types of evaluations. The second type of question (s) generally pertained to causality, seeking to establish some connection between the diagnosis, the impairment, and some event; such as a trauma, an accident, or something of that nature. One of the participants reported always separating the types of questions in terms of their procedures; leaving the second type of question for the very end, stating it was a subjective process and answering them often involved delicate issues.

Contract, agreements, and fees. Half of the participants specifically reported that fees, agreements, and contracts were typically negotiated and signed for prior to accepting a case and moving forward. One participant conveyed that if such specifics were not clear from the very beginning, there were several pitfalls a professional could experience, including not getting paid. Two participants expressed having to chase down money or not having discussed things like the need for a translator, and who was going to pay for that service, as pitfalls they had experienced.

They did point out that those types of oversights generally only happen once, both imparting having learned the hard way, it was not likely something of that nature would happen to them again.

Gathering information. All participants stressed the significance of gathering all case and collateral information, as well as any data related to the alleged injury including a description of the injury in context. Pointing out, the relevance of doing so, at the case intake juncture when they were reviewing the referral question(s), if information was available. Twelve of the participants emphasized the importance of capturing the details of the injury right away. Five pointed out the importance was due to the possible variances' jurisdictions could have, regarding the types of injury that may entitle an injured person compensation. For example, one participant conveyed that some jurisdictions may consider a foreseeable mental injury to a bystander based on their position within the danger zone, whereas another judicial jurisdiction may require that a direct physical impact had occurred. They expressed that if the facts of the injury are in doubt, it may be necessary to provide different opinions that would address those different potential scenarios.

Each of the participants also reported the value of gathering as much secondary or collateral information, from as many different sources as possible, citing collateral resources and information could assist in identifying additional collateral sources which may provide supplementary preinjury information. For all participants, the process began with a combination of the following: A full understanding of the purpose and scope of the referral question(s), a thorough review of, and/or interviews with as many collateral resources as possible including, but not limited to medical, psychiatric, psychological history or treatment, personal and social

history, police or incident report, criminal record, employment history, and educational history. Pointing out that most of the above-mentioned information was gathered prior to evaluating or assessing the injured individual.

Consent. Eight participants relayed that prior to beginning the evaluation, they inform the individual of their role by issuing an informed consent, mentioning that doing so assisted them in making sure the individual being evaluated understood the scope of their involvement and understood what they were consenting to. This included informing the individual that they were entitled to have their attorney present, record the evaluation in some instances, take breaks, and any other important acknowledgement of their rights, pertinent to the situation. Three participants added that it really was not an informed consent in the traditional since, because in most cases the individual was not required to partake. One participant went on to point out that although the individual may be ordered to partake, you could not hold someone against their will. However, it was important they understand there may be consequences to their not participating.

Interviews, test, & assessments. All the participants imparted that the evaluation itself typically covered an extensive background history, assessments, and tests pertinent to seeking answers to the referral question(s), in a manner that fit the scope of the case requirements and the abilities of the individual being evaluated.

Background interviews were discussed by all participants, conveying that they were conducted to gather as much information, in as much detail, as possible. One participant stated, *"From birth to the present time"*. Seven participants pointed out that in some cases this process could take several hours, over one or more sessions, usually on different days. However, all

participants noted that typically forensic evaluations do not have the same time frame afforded to them as evaluations that take place within a clinical setting. Unanimously, imparting that remaining mindful of the case time constraints was fundamental. Five participants further divulged they were naturally thinking about what the best testing and assessments were for the case, throughout this and the entire process. Seven of the participants reported the background interviews were typically conducted using a semi-structured casual interview style to gather detailed information, including but not limited to, the individual's current job, family dynamics and their overall mental status. Four indicated that they try to integrate some of the psychological assessments and cognitive functioning assessments via an interview style format, but essentially, they were conducting their clinical and/or forensic interviews.

All fourteen participants reported conducting various psychological and personality tests, as well as cognitive functioning assessments, referring to them as critical components in their personal injury evaluation. Six reported using neurological test, even if it required, they referred that portion of the testing out, in situations where they were not qualified to conduct them. Eleven participants remarked on the need to consider relevant laboratory tests, medical reports, psychological and neurological testing, malingering testing, vocational evaluations, any impairment testing regarding their functionality, as well as all past or recent diagnosis, before moving forward with any additional assessments or testing. Further discussion, regarding the types of test typically employed, are covered with more detail in the *Strategies and Test Typically Employed* section of this chapter.

Analysis. Four participants specified that they typically had follow up questions once their evaluations were completed and would reach out to collateral sources and gather any

additional relevant information. Twelve participants conveyed that once all information had been gathered an analysis was conducted by synthesizing and scoring all the data, tests, assessments, collateral information, and interviews. Ten of the participants mentioned the need to consider potential alternative causes and incorporate relevant measures into the analysis. Five participants imparted that it was also important to keep in mind the evaluation was just one part of the personal injury case. Stressing every effort should be made to synthesize the data in a manner that captures the unique circumstances of the case, the injured person, and any evidence of causation involved that could assist the tier of fact, while also answering the referral question (s).

Reporting of findings. A cross analysis of the participants' responses to the interview questions revealed that reporting of evaluation findings typically fell into one or more of the following four methods. 1) Follow-up phone call or consultation, 2) written report, 3) deposition, and 4) testify in court.

Phone call/consultation. Twelve of the fourteen participants indicated that prior to moving forward with physically writing a summary or a report, they communicated with the hiring party to discuss case formulation and determine whether a written report was desired. Five participants noted making this phone call, even if a report was requested at the start of the case, citing in their experience, the request for a written report was subject to change due to a variety of reasons including undesired findings. Three pointed out they had experienced times when a report was not desired because the evaluation findings were not favorable to their client, and any written summary or report would have been discoverable. Eleven of the participants conveyed they had many personal injury cases that ended with a verbal report or consultation over the phone.

Written reports. Thirteen participants reported they had produced written reports for some of their personal injury evaluations. Further relaying, the significance of stating their opinions with a reasonable degree of certainty regarding weather or not the mental or emotional injuries sustained were the result of the said event. Pointing out that the description of the causal connection needed to cover ideology, consideration of potential alternative causes, other life stresses, the individual's personality, as well as how they addressed malingering concerns, which were prevalent in personal injury cases.

Eight participants discussed the importance of reporting the prognosis and factors that may assist in determining the level of compensation awarded to the injured party. This included covering things like the treatment, duration of treatment time needed, and impact of the injury on the individual's employment, earnings, family, and lifestyle. One participant recounted typically asking themselves questions like; was the individual partially disabled or totally disabled, were the injuries permanent, or was some or total improvement expected, as part of their report writing structure.

Participants' opinions were divided in some aspects of the written reports. While not all participants discussed the length of a written report, of the eight that did, the opinions were equally divided on the matter. Half indicated that written reports should be comprehensive, but not lengthy. Of those, three participants reported having experienced many evaluations that were quite lengthy, rambling on, but had not provided much in the way of valuable information. Conversely, the other four participants suggested that their reports were often long, due to the need to lay everything out in a fashion that was relevant to the tier of fact and answered the

referral questions(s). These four also mentioned the importance of including a summary of relevant pre-existing illnesses, but without the causal connection.

Deposition. Ten of the fourteen participants described having been deposed in personal injury cases. Eight of those ten, indicated that it was uncommon for them to be deposed in personal injury cases and even rarer to be called to testify in court.

Testimony in court. Only six of the fourteen participants reported having testified in court on personal injury cases. All fourteen of the participants in the study indicated that in their experience personal injury cases typically ended with a phone call and/or a written report.

Standards and Guidelines Followed

When participants were asked about the standards and guidelines they followed when conducting personal injury evaluations, all the participants reported being fundamentally guided by some combination of the following: APA Code of Ethics, APA Specialty Guidelines for Forensic Psychologists, DSM-5, and consultations with trusted colleagues, personal experience, and addressing the direction of the referral question. Three participants expressed that relevant case law, jurisdictional judicial policies and regulations also served as guidelines of sorts. Lastly, four participants indicated that they regularly participated in continuing education and conferences to assist in remaining current on new methods and techniques relevant to their practice.

Strategies and Tests Typically Employed

As mentioned previously all the participants divulged personal injury evaluations typically covered an extensive background history, interviews, assessments, and tests pertinent to seeking answers to the referral question(s) in a manner that fit the scope of the case requirements

and the abilities of the individual being evaluated. This included factoring in knowledge of relevant case law and judicial standards. Below is an amalgamation of the participant responses when asked about whether they employed a flexible or fixed battery of tests. What types of strategies and tests they typically employed? What assisted in determining their use? And, whether they assessed for malingering?

Flexible or fixed battery. All fourteen participants expressed the use of a flexible battery of tests based on referral question (s), history, and collaterals as part of their evaluation strategy. Nine pointed out that although there was a general way to approach personal injury evaluations, there needed to be flexibility in the methodology and measures used, due to the individual circumstances and random nature of personal injury cases.

Types of assessments and tests. Each of the participants reported that their strategy regarding the choice of assessments and tests was developed around the referral question (s), the court order (if available), circumstances in the case, time requirements, as well as the individual's ability to be evaluated. Four participants pointed out the referral question (s) typically pertained to two types of inquiry. The first type was usually diagnostic in nature, and the second type generally pertained to causality. One participant reported separating the questions as part of their strategy. Thirteen participants conveyed that collateral information, background interviews, and time constraints were instrumental in determining the types of assessments and tests they employed. Participants also noted that sometimes, due to limited time, conducting full versions of some tests was not possible.

It was unanimously reported that incorporating and conducting various psychological and personality tests, as well as cognitive functioning assessments, were part of the evaluation

strategy, which also included assessing for malingering. Some participants expressed testing for exaggeration and malingering from the onset and throughout the evaluation process.

Eleven participants stressed the need to consider relevant laboratory tests, medical reports, psychological and neurological testing, malingering testing, vocational evaluations, functional impairment testing, and past diagnoses prior to moving forward with any additional assessments or testing. However, eight participants also pointed out that emotional distress and mental disorders such as depression, anxiety, and post-traumatic stress disorder, were common in personal injury cases, expressing the importance of conducting actual assessments rather than assuming the diagnosis were present or not.

A cross analysis of participant responses revealed the use of various versions and combinations of twenty-eight psychological tests, personality assessments, and cognitive functioning measures. Nine participants expressed the importance and the utility of employing tests, assessments, and measures that had the scientific backing needed to meet judicial admissibility standards. Listed in alphabetical order below, are five of the scientifically backed and most commonly used by the study participants.

Miller Forensic Assessment of Symptoms (M-FAST). Five participants reported using this response style assessment along with the Structured Interview of Reported Symptoms (SIRS) or the Test of Memory Malingering (TOMM) as part of their systematic tests for malingering, provided there was adequate time and the individual was mentally capable. Two also noted its use with the Rey 15-Item Complex Figure Test for malingering.

Minnesota Multiphasic Personality Inventory -2-RF (MMPI-2-RF). Thirteen participants reported almost always using the MMPI-2-RF, or another version of it, in

conjunction with the TOMM or Personality Assessment Inventory (PAI), and neurological screening within their scope. Two conveyed using the MMPI-2-RF as an objective personality measure coupled with a symptom inventory like the Trauma Symptom Inventory-2, to assess the individual's response style, and/or Validity Indicator Profile (VIP) for cognitive aspects. Although, one strongly advised against using the VIP if the TOMM was employed, as the results did not always match up nicely. Another participant mentioned using the Wechsler Test of Adult Reading (WTAR) for measuring an individual's premorbid level of intelligence along with a full Wechsler Adult Intelligence Scale-IV (WAIS-IV), TOMM and MMPI, as their regular starting battery.

Personality Assessment Inventory (PAI). Ten out of the fourteen participants reported using this personality test. Four pointed out the PAI included scales that assessed the validity of the values measured. Three reported its use in conjunction with the MMPI-2-RF, depending on the individual's ability to participate in those types of tests.

Test of Memory Malingering (TOMM). Ten participants reported using this test of memory malingering for screening purposes in conjunction with other measures. Nine pointed out using the TOMM as part of their standard battery to begin with. Two further relayed that the TOMM, MMPI, and PAI had scientific backing that was recognized by the court.

Wechsler Adult Intelligence Scale-IV (WAIS-IV) Nine participants reported using this and a wide range of assessments of memory and learning or a Wechsler Adult Memory Scale and dementia screening. Two participants reported using the WAIS-IV along with the MMPI-2-RF

Common Challenges and Oversights

Participants were asked to describe some of the common oversights, as well as some of the ethical and diversity challenges they had encountered when conducting personal injury evaluations. They were also asked how they addressed those challenges. A cross analysis of their responses revealed the following to be among the most common challenges and oversights encountered.

Time. All participants noted that the timeframe available in forensic evaluations was a challenging factor. Four participants also imparted that sometimes the turnaround time, in which the attorney or hiring party wanted feedback or a report, could also be challenging. One commented about times when cases had been turned down due to time constraints. Three participants indicated that factoring in time constraints was not only important when determining types of assessments and tests, but also the time needed to review material and interview collateral resources, as well as analyzing and synthesizing all the data to form an opinion. Two participants stressed the importance of really taking the time to review all of the information, rather than just skimming through.

Objectivity and professional boundaries. Objectivity was unanimously reported, in some form or another. Eleven relayed the importance of remaining within one's professional boundaries and the specific tasks required in the case; noting that remaining objective and in control of their own personal biases was a common ethical challenge. Six pointed out the challenge of staying within the confines of the referral questions. Five pointed out that gaining an accurate sense of what was going on, being asked, and separating actual symptoms from

malingered, exaggerated, or sometimes minimized symptoms was often challenging. Two others cited determining causality as one of their common challenges in personal injury cases.

Ethical challenges. When specifically asked about ethical challenges' participants shared the following: eight reported balancing ethical dilemmas were often a challenge. Those participants further imparted that ethical challenges became increasingly more so when they received pressure from the referral source. Ten participants expressed the temptation to please the hiring attorney, or client, as an ethical challenge that existed. Four of those participants conveyed that in personal injury evaluations results were not always favorable to their clients, recalling times when they had to stand by the ethics of the profession and acknowledge the inherent limitations of the evaluation.

Nine participants reported being able to recognize, acknowledge, and understand the limitations of the evaluation, data, and conclusions could sometimes be challenging. Three participants indicated that synthesizing all the data and information gathered is a challenge, but one reported that it was an instrumental part of the task. Four participants recounted having seen many professionals manipulate data in a manner that was neither standard practice nor ethical. Two participants recalled accounts when raw data had been requested by an attorney to be reviewed by the court. Another shared the experience of having read many depositions, summaries, and reports that were blatantly biased. Three others reported encounters where they and the opposing expert had differing opinions but had utilized the same data. Pointing out that this was not only an ethical challenge, but one that could devalue the discipline in the courts. Three participants suggested balancing out the methodologies they employed and how they fit with the referral question (s) was a way to manage this challenge and assist them in cross

examination. Two others indicated that employing scientifically or empirically backed methodologies that could be explained in, and accepted by the court, often helped alleviate some of those challenges.

Another reoccurring challenge mentioned by six participants, was when the referral source or attorney tried to dictate how the evaluation was conducted, how the report was written, or asked them to change their findings. Five pointed out experiencing attorneys asking for things outside of their scope or pushing for an opinion that was not there. One participant recalled occasions when there was concern regarding whether the plaintiffs had recorded them or the evaluation, without their consent. That same participant pointed out the challenge faced when attorneys requested to be present or have the evaluation recorded. Stating that it was unethical, and they did not permit it unless the court ordered them to do so. Six participants pointed out that although it could be difficult, at times, it was critical to address ethical conflicts or matters quickly and head-on, by setting clear and hard boundaries.

Diversity challenges. Participants unanimously reported that issues of diversity were a constant challenge in personal injury evaluations. Eleven participants relayed that cultural, ethnicity, and language challenges were the most common. Two participants also mentioned age, gender and sexual orientation as diversity challenges they had encountered more of recently.

Two participants recalled times when certain acceptable assessment instruments were not in line with the understanding or interpretation of the evaluated individual's culture. This challenge was addressed by making sure the individual's culture was both understood and incorporated into how the evaluation was conducted. Another participant said they addressed similar challenges by asking themselves questions like what methodologies are culturally

normed for this individual and case? Relaying that by remaining vigilant, maintaining case and cultural awareness assisted in addressing both cultural and ethnicity challenges.

Nine participants reported encountering language challenges when conducting personal injury evaluations. Two participants said one way to address certain language challenges was by having a translator and/or interpreter for interviews and assessments when necessary. Conversely, three other participants conveyed experiencing challenges when a translator or interpreter was not available. Two of those participants noted that although it created challenges, often resulting in the delayed ability to move forward, there really was not a way to prepare. Rather, it was more about knowing when to wait and recognizing when things were outside of their control. Three participants expressed the challenge of how ethnicity, culture, and language factors could get lost in translation. Reporting they did not believe their opinions were as solid when they had to translate, because ideas and beliefs that were culturally acceptable may appear psychotic to a mental health evaluator unfamiliar with that particular culture. One of the participants explained that if the evaluated individual was psychotic, their speech was disorganized and they were not making complete coherent sentences, the translator or interpreter might just fill in the blanks, not out of malice, but because that's what the human brain naturally does.

Religious challenges were mentioned by six of the fourteen participants. Four participants commented that this challenge was addressed by remaining well-versed in the cultural and religious needs of the individual being evaluated and having appropriate translators and/or interpreters when it was necessary. Two reported many of the religious challenges were intertwined with other diversity issues. One imparting that ideas and religious beliefs that were

culturally acceptable may appear otherwise to the evaluator, citing an example of religious based animal sacrifice. Another participant reported that all the diversity issues, including the religious based ones, needed to be put through the lens of cultural, gender, sexual orientation etc., in order to gain a clear sense of what is going on.

Nine participants reported psychological complications and/or limited medical capacity of the evaluated individual, as a challenge. Five noted that there were mental deficits that did not lend themselves well to a particular form of testing, which presented many challenges. One participant used an example of an individual with mental illness who was fixated on their religious and/or cultural beliefs, expressing the difficulty in teasing out what was psychotic from what were diversity factors. Further stating, in instances such as that, even when proper tests and interviews were conducted it was still quite difficult. Three pointed out that by remaining vigilant, properly trained, and practicing in accordance with what is acceptable within the practice, was how they addressed those challenges.

Thirteen of the participants reported that addressing challenges as they presented themselves was how they typically handled many of the challenges encountered. Each stressing the importance of being able to explain the methodologies used in detail, their utility in court, and that as the evaluator, they were not attempting to hide anything.

Differences in Approaches under Differing Judicial Admissibility Standards

The second research question addressed in this study was related to differences in the steps taken by forensic psychologist conducting personal injury evaluations operating under various standards of a judicial admissibility. To gain a more in-depth understanding of their experiences, the researcher asked the participants questions regarding the ways in which their

approach was tailored to address or meet the standards of admissibility for the judicial jurisdiction in which they worked. The researcher also asked how many of their evaluations had been used in court and whether any of their evaluations had been deemed inadmissible? If so, why? Below are the results of those inquiries.

While all the participants recognized the importance of knowing the judicial standards of admissibility, only four reported using that knowledge to tailor their approach. One mentioned that when operating in a Daubert jurisdiction, employing instruments that meet reliability and validity expectations were important. Three participants imparted the importance of not only knowing the judicial standards of admissibility, but also what was understood in the court system. Pointing out that sometimes cases may cross over several jurisdictions, as such changes can occur County by County. Each stressed the importance of remaining mindful of those jurisdictional changes when developing strategies and structuring personal injury evaluations. Two participants added traditional standards could become even more complicated in situations where the evaluation was completed in one jurisdiction, when they were actually intended for litigation in another jurisdiction, and consultation between professionals took place in a number of jurisdictions at the same time. Both stated that in these circumstances the legal standard had less to do with how the personal injury evaluation was conducted and more to do with how the results would be interpreted and reported. One participant conveyed that it basically came down to how the evaluation was conducted, were scientific measures employed, were diversity issues addressed, were there any assessments regarding malingering, and whether the findings were presented in a clear or confusing manner.

Ten participants reported that they didn't really do anything different, regardless of the judicial jurisdiction (Daubert, Frye, or Independent), by way of tailoring their approach to meet or address the standards of admissibility for their judicial jurisdiction. Stating, it was more about remaining aware of what the judicial standards of admissibility were and understanding where and how the case was going to be litigated. Four participants indicated that their approach was tailored to the needs of the referral question (s) and the individual being evaluated.

Thirteen of the participants commented on the importance of operating from an ethical place and conducting good quality evaluations by employing scientifically validated and accepted measures in the field and by the courts. Four acknowledged that, other than operating in a manner that was consistent with the admissibility standards of both Daubert and Frye, they really didn't give them much thought. Pointing out that by routinely practicing in that manner they had not encountered any problems with jurisdictional admissibility standards.

When asked how many of their evaluations were used in court, all the participants responded their evaluations had been used in one way or another within judicial proceedings. Each indicated that it was difficult to say exactly how many were used, where, or how. Two participants conveyed that even when they had testified in personal injury cases it was not always clear where the evaluation itself had been used.

When participants were asked whether any of their evaluations had ever been deemed inadmissible, all but one reported no. The participant who responded yes, explained the evaluation was deemed inadmissible due to the new direction the case ended up taking, not because it was conducted improperly. Another participant reported having experienced a similar event, but in criminal cases never in personal injury cases.

Perceptions Regarding the Implementation of a Standard of Care

The third research question addressed in this study was related to the perceptions of forensic psychologist regarding the implementation of a standard of care for personal injury evaluations. To gain a more in-depth understanding of their perceptions, the researcher asked the participants about their thoughts on implementing a standard of care, and regardless of their position, the researcher also asked for their opinions regarding the benefits and complications of implementing one, as well as their thoughts on what should be included. A cross analysis of those inquires resulted in the amalgamation below.

Thoughts on implementing a standard of care. Eight participants were in favor of implementing a standard of care for personal injury evaluations. Each suggested that having specific guidelines and/or a standard of care could be of assistance when conducting personal injury evaluations. Six of the eight participants in favor of implementing a standard of care suggested such a standard may also assist in educating the courts on what was expected in a good quality evaluation. Four thought they might help in building confidence in the practice itself. Five participants remarked that they could help communicate the purpose of the evaluation, report, and/or testimony to the client. Another pointed out the usefulness in establishing what was needed to answer referral questions, as they had experienced several discrepancies regarding quality of the personal injury evaluation, and it could also be a way to level the practice.

Conversely, three participants were not in favor, and three others were split on whether they were in favor of implementing a standard of care for personal injury evaluations. Of the three participants not in favor, two pointed out that while having some sort of standard or guideline would be beneficial, implementing a standard of care, whereby it was mandated, was

not necessary. Although, one of those participants also explained that even though they did not want to be told how to conduct their evaluations, they had seen enough poorly conducted evaluations that perhaps having a standard of care may hold some merit. The third participant opined that it would be the attorneys and judges that would probably benefit the most from any standard of care that could be established. Further, explaining that anyone who did not hold up to the standard would basically work themselves out of being an expert.

Of the three participants that were spilt on the implementation of a standard of care, two recognize the potential utility in assisting attorneys and the court system in identifying good work from bad work but did not personally feel it would help in their practice. The third participant in this group stated that anything that mandated the way they conducted their evaluations would be an infringement on their professional boundaries. Pointing out that in civil lawsuits, things are different based on the type personal injury involved. As such there were not always similar fact patterns or legal issues at hand. One participant explained that one of the reasons they were split in their decision was that in their experience, personal injury cases across jurisdictions had a lot of heterogeneous fact patterns, so they did not see having standards of care as a good fit. On the flip side this same participant shared their experience of using the National Football League (NFL) head injury battery of tests. Relaying it was made up of a consensus battery of fifteen tests, that as a professional they could add to, affording a certain degree of flexibility. Pointing out that on the one hand there may be utility in keeping the knuckleheads or sellouts held to certain standards. Conversely, on the other hand, an expert may not like a test, or the test employed may not even measure other issues needing assisting, but because they were part of the personal injury battery, they would have to conduct them.

Benefits regarding a standard of care. All participants were asked in what ways they believed a standard of care might be beneficial to judicial proceedings? A cross analysis of participants responses revealed the following.

Twelve participants commented that having them could assist in keeping evaluations flexible but consistent. Five participants proposed how such a standard of care could be used as a template to train and educate up-and-coming psychologists, as well as those already conducting personal injury evaluations. Three went further providing suggestions regarding the utility of how implementing a standard of care could assist in identifying some of the more common errors such as failing to communicate the purpose of the evaluation, using collateral sources, consider malingering, writing a report, and providing testimony.

Six participants advocated the potential benefit they could provide in demonstrating to the courts what qualifies as a good and thorough evaluation versus what should not qualify as such. Two imparted that having a standard of care in personal injury evaluations had the potential to help fill the gap or gray area between psychology and law. Two others perceived them as a way of assisting the field of psychology and personal injury evaluations with regard to bolstering the overall credibility, reliability and validity of the practice and processes involved in a quality evaluation.

Complications regarding a standard of care. All participants were asked in what ways they believed a standard of care might complicate judicial proceedings? Below are the results of that inquiry.

Seven participants reported there were always going to be controversial concerns whenever professionals are mandated to conduct their practice a certain way. One went on to say

especially when they are not qualified to do so. Another participant stated that if a test or measure was in the standard of care as a requirement, but really wouldn't assess the needs of the referral question or the individual, they would have issue with that but because it was mandated, they would have to do it regardless of whether it had merit or not.

Three participants expressed that if the standard of care was not developed properly, or if it was not understood, it could result in un-validated conclusions of inadmissibility. One of those same participants imparted that there were times as a professional when one must think outside the box. In those instances, having a standard of care could be used against the provider because they deviated from the set standard of care, even if for an understandable reason. Stating, while those actions could be explained for the most part, it was often a gripe seen when moving toward a standard of care. Another stressed that judges did not possess the necessary education, training, experience nor the qualifications to interpret psychological evaluations, and that could result in adopting a one-size-fits all approach, which may not fit certain cases, patterns, or clients.

What should be included? Regardless of their position, for or against the implementation of a standard of care for personal injury evaluations, all fourteen participants were asked, based on their experience, what should be included in the standard of care for personal injury evaluations? Two participants suggested that the creators of a standard of care should include a reputable review board. Seven participants communicated the inclusion of strategies or methods regarding practicing within professional boundaries and the confines of the referral question (s). One pointed out that the standard of care could easily be patterned after the Association of Behavior Therapy (AFTC) and the APA's policies as they have the largest practice for custody evaluations. Six participants indicated it should be a requirement for those

conducting evaluations to have good understanding of case law associated with personal injury cases in their jurisdiction.

Twelve of the participants commented on laying out the general processes involved in conducting personal injury evaluations. Five participants suggested outlining the general methods required to perform an evaluation properly, comparing those with established standards while remaining mindful of the professional guidelines of the field of psychology. Two suggested pointers on how to look for the legal issue (s) in the case, which was typically causation in personal injury case. Seven commented on the inclusion of how to conduct comprehensive reviews of collateral information, medical records, educational records, and the benefit of consulting collateral sources. One participant suggested including steps or explanations on issues like; what constitutes a detailed review of incident, the importance of gathering as much information from collateral sources as possible, and the number of mental status or psychological tests that should typically be conducted.

Three indicated including pointers on how to address the forensic question (s), then synthesizing the information and data gathered, and forming a professional opinion. Four others mentioned outlining the minimally accepted standards for many of the common diversity related themes; including examples regarding the types of resources that would be needed to conduct an evaluation via a translator, as well as what types of assessment methodologies are culturally normed for the specific client. Continuing along those lines, two other participants opined about including pointers on the informed consent process.

Eight participants stated the need to include current practices strategies and methods that have the scientific validity, reliability, and the acceptability of the courts. This included assessing

for cognitive functioning, personality, and malingering. Six participants reported including methods for testing, with examples of some frequently used tests that hold scientific validity. However, four of the participants pointed out that any tests included in the standard should not necessarily be mandated to be used each time, rather a general list of professionally accepted and scientifically backed tests and assessments to pull from when designing their strategy. Two participants mentioned this included using assessments that were normed for the specific client's demographics.

Finally, four participants conveyed the need to include pointers on report structure including: how to prepare a report, how to be as comprehensive as possible while still being thorough, what should or shouldn't be included due to legal issues, what data to use, how to back up your data in an opinion and/or testimony, as well as covering how to address ethical issues that may arise.

Summary

In this chapter the researcher provided information relating to how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent) were conducting their personal injury evaluations and their perspectives on implementing a standard of care. The participants identified that the specific steps taken in personal injury evaluations were positioned around a combination of eight overlapping premises. Participants suggested the commencement of a case typically begin with contact from an attorney, for either plaintiff or defendant counsel, followed by an in-person or conference call taking place regarding the scope of the case. The participants conveyed the importance of vetting a case for clarity, any conflicts, or potential pitfalls that may exist. All participants identified the

referral question (s) as being fundamental in the process of vetting a case and in the preliminary development of the contracts, agreements, and strategies they may employ. Participants offered valuable insight into the methods and importance of gathering all information and data related to the alleged injury including a description of the injury in context. Further discussing the significance of conducting a thorough review of, and/or interviews with as many collateral resources as possible including, but not limited to medical, psychiatric, psychological history or treatment, personal and social history, police or incident report, criminal record, employment history, and educational history. They similarly identified conducting a flexible battery of various psychological and personality tests, as well as cognitive functioning assessments, referring to them as critical components in their personal injury evaluations.

In addition to describing their general approaches participants offered significant insight into the common challenges and oversights experienced such as timeframe constraints, professional boundaries, as well as some of the more common ethical and diversity issues that presented themselves in personal injury cases. Participants further imparted how the reporting of evaluation findings typically fell into one or more of the following four methods: follow-up phone call or consultation, written report, deposition, and testifying in court.

The second research question in this study was related to differences in the steps taken by forensic psychologist conducting personal injury evaluations operating under various standards of admissibility (Daubert, Frye, and Independent). To gain a more in-depth understanding of their experiences, the researcher asked the participants the ways in which their approach was tailored to address or meet the standards of admissibility for the judicial jurisdiction in which they worked. The researcher also asked how many of their evaluations had been used in court

and whether any of their evaluations had been deemed inadmissible? The participants unanimously recognized the importance of knowing the judicial standards of admissibility. Only four reported using that knowledge to tailor their approach. Ten participants reported that they didn't really do anything different, regardless of the judicial jurisdiction (Daubert, Frye, or Independent), stating it was more about remaining aware of what the judicial standards of admissibility were and understanding where and how the case was going to be litigated. Four of those participants indicated that their approach was tailored to the needs of the referral question (s) and the individual being evaluated.

When asked how many of their evaluations were used in court, all the participants indicated that their evaluations had been used in one way or another within judicial proceedings. Each indicated that it was difficult to say exactly how many were used where or how. Two participants conveyed that even when they had testified in personal injury cases, it was not always clear where the evaluation itself had been used.

Participants were asked whether any of their evaluations had ever been deemed inadmissible, all but one reported no. The one participant, who responded yes, explained the evaluation was deemed inadmissible due to the new direction the case ended up taking, not because it was conducted improperly.

The final research question addressed the participants' perspectives on implementing a standard of care. To gain a more in-depth understanding of their perceptions, the researcher asked the participants about their thoughts on implementing a standard of care, and regardless of their position, also asked for their opinions regarding the benefits and complications of implementing one, as well as their thoughts on what should be included. Although all the

participants indicated some utility in having some form of standard or guideline, they were divided on implementing a mandated standard of care. Of the fourteen participants, eight participants expressed they were in favor of the implementation, three participants were not in favor, and three others were split on whether or not they were in favor of implementing a standard of care for personal injury evaluations.

The participants all offered valuable insights into the benefits, complications, and what should be included in the standard of care. Their suggestions included laying out the general processes involved; including how to look for the legal issue, conduct comprehensive reviews of collateral information, how to address the referral question (s), then synthesizing the data and forming a professional opinion. Participants supported the inclusion of current practice strategies and methods that have the scientific validity, reliability, and acceptability of the courts. Lastly, they offered pointers on report structure including how to prepare a report, how to be as comprehensive as possible while still being thorough, what should or shouldn't be included due to legal issues, what data to use, how to back up the data used in an opinion and or testimony, as well as covering how to address ethical issues that may arise.

Chapter 5: Discussion, Conclusions, and Recommendations

Introduction

The purpose of this thematic analysis was to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting personal injury evaluations and their perspectives on implementing a standard of care. The researcher sought to contribute to existing inquiries regarding whether a standard of care was needed. This study also served as a method of collecting additional data to assist in the development of a basic framework for conducting personal injury evaluations. To gain a more in-depth understanding of what occurred during the personal injury evaluation process, a collection of rich and detailed information relating to the following research questions was collected and analyzed through responses from the semi-structured interviews:

1. What are the specific steps forensic psychologists take when conducting personal injury evaluations?
2. What are the differences in the steps taken by forensic psychologists conducting personal injury evaluations operating under varying standards of judicial admissibility?
3. What are the perceptions of forensic psychologists regarding the implementation of a standard of care for personal injury evaluations?

Fourteen forensic psychologists, licensed in the United States, who conduct personal injury evaluations, participated in the semi-structured interviews. The researcher designed the study in a manner that may assist future research endeavors seeking to improve the quality and

consistency of forensic psychological personal injury evaluations. The data collected from the interviews was organized and analyze using the qualitative software package NVivo. It was first categorized by the following four areas of inquiry: (a) the participant's background, (b) the participant's education and licensing, (c) the participant's approach to personal injury evaluations, and (d) the participant's thoughts on implementing a standard of care. Pursuant to these areas of inquiry, an analysis of the data collected was performed, which allowed for the development of various themes that directly addressed the stated research questions.

Interpretation of the Findings

To answer the above-mentioned research questions, the researcher inquired about the participants backgrounds and asked the following semi-structured questions from the interview protocol:

1. What is your general approach to conducting personal injury evaluations?
2. What are the specific steps you take?
3. What standards/guidelines do you follow for personal injury evaluations?
4. What types of test do you employ?
5. What assist you in determining the psychological testing you employ?
6. Do you evaluate for malingering and exaggeration? When, why, and how?
7. When structuring your test strategy, do you have a fixed battery of tests or a flexible customized battery of test?
8. What are some common challenges and/or oversights you have encountered during personal injury evaluations?
9. What are some of the ethical challenges and how are they addressed?

10. What are some of the diversity factors and how are they addressed?
11. In what ways is your approach tailored to meet or address the standards of admissibility for your judicial jurisdiction?
12. How many personal injury evaluations, conducted by you, have used been court?
13. Have you ever had a personal injury evaluation, conducted by yourself, deemed inadmissible? If so why?
14. What are your thoughts about implementing a standard of care for personal injury evaluations?
15. In your experience, what should be included in a standard of care for a personal injury evaluation?
16. In what ways do you believe a standard of care might be beneficial to judicial proceedings?
17. In what ways do you believe having a standard of care might complicate judicial proceedings?
18. How would a standard of care be helpful to you in conducting personal injury evaluations?
19. When a working framework for a standard of care is created, would you be interested in being contacted to participate in a research study testing the utility in your practice?

With the concept of systems theory in mind, the resulting themes along with the background inquiries were further organized and categorized to answer the research questions and present the findings through an adaptation of the Rodolfa et al. (2005) cube model for general psychology. It is relevant to note that the 3-dimentional competency model created by

Rodolfa et al. (2005) provided a conceptual frame of reference for the constructs of competency for professional general psychology. The model served as a conceptual frame of reference delineating the foundational, functional, and stages of professional development.

Rodolfa et al. (2005) described the foundational competency domains as the building blocks of what psychologists do. Functional competency domains were described as competencies built on the general foundational competencies shaped by the configurations of a particular practice specialty and/or task. Finally, the stages of professional development, as represented by Rodolfa et al. (2005) and denoted in this study's model, provide an outline of the professional development that the participants and psychologists in general need to gain, maintain, and enhance their competency throughout their professional carriers.

The researcher chose to present the study results through this model because it was easily adaptable to the competency constructs needed by forensic psychologists who conduct personal injury evaluations. This model afforded the ability to not only discuss this study's findings, but also integrate relevant predicate research findings and literature in a functional yet comprehensive manner. It is the researchers hope that this model may also serve as a conceptual frame of reference for practicing professionals responsible for conducting personal injury evaluations.

Figure 1 presents the researcher's adapted cube model and outlines the specific steps forensic psychologists take when conducting personal injury evaluations. It frames the answer to the first research question within the functional domains, while also visually incorporating the essential intersecting foundational domains and stages of professional development. The second and third research questions are answered and loosely framed within the foundational

competency domains, while also visually incorporating the intersecting functional domains and stages of professional development as described by Rodolfa et al. (2005). It is relevant to note that each of the reflected domains and stages can have multiple levels of development within them. For instance, Rodolfa et al. (2005) used the example that there are multiple levels of development in completing a doctoral degree alone. For expediency and their indirect connection in answering the research questions, a brief description of the foundational domains and stages of professional of development are outlined here and incorporated into discussions where appropriate.

Foundational Domains

Rodolfa et al. (2005) described foundational competency domains as the building blocks for what psychologists do. The domain definitions used in this study, hold true to those presented by Rodolfa et al. (2005) and are reflected here in a slightly adapted model depicted in Figure 1.The participants' responses along with relevant predicate research and literature were categorized into the following foundational domains:

1. *Reflective practice* – Their practice is conducted within the boundaries of competencies and commitment to lifelong learning including; scholarship engagement, critical thinking, and a commitment to the development of the profession.
2. *Scientific-knowledge and methods* – The aptitude to understand research and research methodology. The capacity to respectfully implement scientifically derived knowledge, data collection techniques and analysis, biological and cognitive-affective bases of behavior, and lifespan human development.

3. *Legal and judicial knowledge* – The ability to understand and implement that knowledge in language that addresses relevant case law, judicial standards, and assists with the trier of fact.
4. *Ethical practice and policy* – Awareness of ethical concepts of legal issues regarding professional activities with individuals, groups, and organization. Supporting and promoting the forward momentum and growth of the profession.
5. *Diversity awareness and practice* – Operating with awareness and understanding when working with diverse individuals, groups, and communities from various cultural, religious, and personal backgrounds.
6. *Interdisciplinary/multidisciplinary practice* – Identification and interactive involvement with one's peers and colleagues. Applicable knowledge regarding keys issues and concepts in related disciplines and the ability to work and collaborate with the professionals within them.

These foundational domains provide the necessary basis for forensic psychologists to develop the functional competencies needed to conduct personal injury evaluations.

Stages of Professional Development

The stages of professional development as represented by Rodolfa et al. (2005) and denoted in this study's model provide an outline of the professional development the research participants and psychologists in general need to gain, maintain, and enhance their competency level throughout their professional careers. Figure 1 illustrates those basic stages of professional development as: 1) doctoral education, 2) doctoral internship/residency, 3) post-doctoral supervision, 4) residency/fellowship, and 5) continuing education.

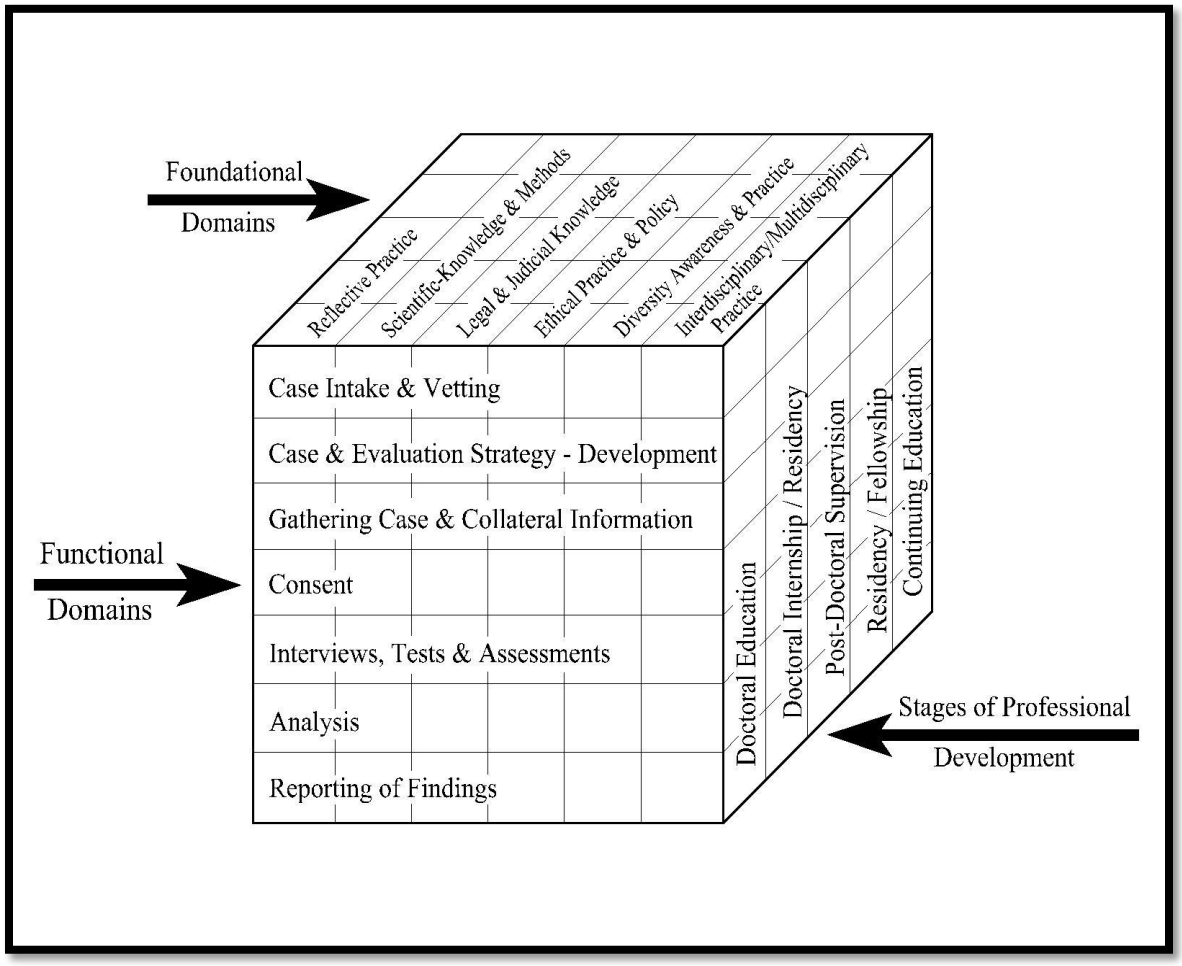

Figure 1. The intersecting competency constructs for forensic psychologists and the specific steps taken when conducting personal injury evaluations. *Note:* adapted with permission from "A cube model for competency development: Implications for psychology educators and regulators," by Rodolfa et al., 2005, *Journal of Professional Psychology: Research and Practices 36*(4), p 350. Copyright 2005 by the America Psychological Association.

Research Question 1

Research question 1: What are the specific steps forensic psychologists take when conducting personal injury evaluations? Predicate research suggested studies dedicated to gathering additional data needed to work toward a framework or step by step guide, which

included the adequate mental health assessments and tests for potential malingering to meet the varying standards of admissibility was needed (Bowles, 2012; O'Donnell et al., 2015; Melton et al., 2018; Troolines, 2012). It was in that vein the inquiry results of this study were analyzed and organized into their developing themes. The themes were then further combined and classified into the following overlapping seven functional domains: 1) case intake and vetting, 2) case and evaluation strategy development, 3) gathering case and collateral information, 4) consent, 5) interviews, tests, and assessments, 6) analysis, and 7) reporting of findings. For this study and model, the functional domains answer the first research question by reflecting the steps the participants (forensic psychologists) took when conducting personal injury evaluations. Each of the functional domains (steps) are presented in Figure 1 and discussed in detail below.

Functional Domains

1. **Case intake & vetting.** Participants suggested the commencement of a case typically began with contact from an attorney, for either plaintiff or defense counsel, followed by an in-person or conference call that covered the referral question (s) and scope of the case. This included covering and assessing the details of what the hiring party was requesting. For example, were they requesting a record review and case consultation, a record review and evaluation plan, or some other combination?

   Participants reported that a fundamental part of vetting a case for clarity, factoring in time constraints, and professional boundaries was through reviewing the referral question(s). Imparting, the care and detail that was put into this step could help the forensic psychologist identify if any conflicts or potential pitfalls exist. During this intake process it was equally important to negotiate or clarify any special arrangements, such as

the need for a translator, whether the requesting party needed to be present for the evaluation, or any other special circumstances. Half of the participants conveyed that fees, agreements, and contracts should also be negotiated and signed prior to accepting a case and moving forward.

2. **Case & evaluation strategy development.** Participants explained case and evaluation strategy were guided by the referral questions, scope of the case, time constraints, and professional boundaries. It is relevant to note that some of the participants reported they were naturally thinking about what testing and assessments methods were best suited for the case from the beginning of the entire process.

Participants reported the development of strategies was guided by the referral question (s) and was typically accomplished by examining the referral question (s), a court order if there was one, as well as, identifying and clarifying the reason for the referral. It was also reported that the referral question(s) typically pertained to two types of questions. The first type of question was characteristically diagnostic in nature, assessing the individual diagnosis in a manner that was more thorough than in some of other types of evaluations. The second type of question (s) generally pertained to causality, seeking to establish some connection between the diagnosis, the impairment, and some type of event such as a trauma, an accident, or something of that nature.

Participants pointed out that typically, forensic evaluations did not have the same time frame afforded to them as evaluations that take place within a clinical setting, so it was important to factor in any time constraints when generating their case strategy. As part of the case and strategy development many of the study participants also stressed the

importance of considering previous relevant laboratory tests, medical reports, psychological and neurological testing, malingering testing, vocational evaluations, any impairment testing regarding the individual's functionality, as well as all past or recent diagnosis.

3. **Gathering case & collateral information.** All participants imparted the importance of gathering all information and data related to the alleged injury including a description of the injury in context.

    Of equal value was gathering as much secondary or collateral information, from as many different sources as possible, citing collateral resources and information often assisted in identifying additional collateral sources, which may provide supplementary preinjury information. This process typically began with a combination of the following: a full understanding of the purpose and scope of the referral question(s), a thorough review of, and/or interviews with as many collateral resources and records as possible including, but not limited to medical, psychiatric, psychological history or treatment, personal and social history, police or incident report, criminal record, employment history, and educational history. Pointing out that most of the above-mentioned information was gathered prior to evaluating or assessing the injured individual.

4. **Consent.** The informed consent should be issued prior to beginning the evaluation, to inform the individual of their role and to make sure the individual being evaluated understood the scope of their involvement and understood what they were consenting to. This included informing the individual that they were entitled to have their attorney

present, record the evaluation in some instances, take breaks, and any other important acknowledgement of their rights, pertinent to the situation.

It is important to note that in personal injury evaluations the individual being evaluated was often mandated to partake in the evaluation, as such an informed consent in these instances was not an informed consent in the traditional since One participant pointed out that although the individual may be ordered to partake, they could not be held someone against their will. However, it was important they were informed and understood there may be consequences to their not participating.

5. **Interviews, tests, & assessments.** All the participants divulged personal injury evaluations typically covered an extensive background history, interviews, assessments, and tests pertinent to seeking answers to the referral question(s) in a manner that fit the scope of the case, time requirements, and the abilities of the individual being evaluated. This included factoring in knowledge of relevant case law and judicial standards.

Background interviews were conducted to gather as much information, in as much detail, as possible. One participant stated, *"From birth to the present time"*. Seven of the participants reported the background interviews were typically conducted using a semi-structured casual interview style to gather detailed information, including but not limited to, the individual's current job, family dynamics and their overall mental status. Four indicated that they tried to integrate some of the psychological assessments and cognitive functioning assessments via an interview style format, but essentially, they were conducting their clinical and/or forensic interviews. Seven participants pointed out that in

some cases this process could take several hours, over one or more sessions, usually on different days.

Each of the participants reported their choice of assessments and tests was developed around the use of a flexible battery of tests based on referral question (s), history and collaterals. Nine pointed out that although there was a general way to approach personal injury evaluations, there needed to be flexibility in the methodology and measures used, due to the individual circumstances and random nature of personal injury cases.

Eleven participants imparted that prior to moving forward with any assessments or tests, they reviewed and factored in any relevant laboratory tests, medical reports, psychological and neurological testing, malingering testing, vocational evaluations, functional impairment testing, and past diagnoses. However, eight participants also pointed out that emotional distress and mental disorders such as depression, anxiety, and post-traumatic stress disorder, were common in personal injury cases; stressing the need to conduct actual assessments rather than assuming whether or not the diagnosis was present.

Participants unanimously reported that incorporating and conducting various psychological and personality tests, as well as cognitive functioning assessments, were part of their evaluation strategy, which also included assessing for malingering. These findings are consistent with Rouse et al. (2007), who pointed out that a collaboration of assessment tools should be used and that a diagnosis should never be made as a result of just one assessment or test.

A cross analysis of participant responses revealed the use of various versions and combinations of twenty-eight psychological tests, personality assessments, and cognitive functioning measures. Nine participants expressed the importance and the utility of employing tests, assessments, and measures that had the scientific backing needed to meet judicial admissibility standards. Listed in alphabetical order below, are five of the scientifically backed and most commonly used by the study participants. 1***)*** Miller Forensic Assessment of Symptoms (M-FAST), 2) Minnesota Multiphasic Personality Inventory -2-RF (MMPI-2-RF), 3) Personality Assessment Inventory (PAI), 4) Test of Memory Malingering (TOMM), and 5) Wechsler Adult Intelligence Scale-IV (WAIS-IV)

Participants similarly reported that administering some of these types of assessments were used more as a screening instrument, allowing for the practicing psychologist to interpret the individual's disposition, relative truthfulness of the reported injuries, and the potential for malingering. Some participants expressed testing for exaggeration and malingering from the onset and throughout the evaluation process.

6. **Analysis.** Twelve participants conveyed that once all information had been gathered, an analysis was conducted by synthesizing and scoring all the data, tests, assessments, collateral information, and interviews. Ten of those participants mentioned the need to consider potential alternative causes and incorporate relevant measures into the analysis.

Five participants relayed that it was also important to keep in mind the evaluation was just one part of the personal injury case. Stressing every effort should be made to synthesize the data in a manner that captured the unique circumstances of the case, the injured person, and any evidence of causation involved that could assist the tier of fact,

while also answering the referral question (s). These findings are consistent with Iudici's et al. (2015), who imparted that it is the forensic psychologist's responsibility to translate the legal questions into the psychologically technical scientific constructs on which to base their evaluation and the assessment instrumentation used within.

7. **Reporting of findings.** A cross analysis of the participants' responses to the interview questions revealed that reporting of evaluation findings typically fell into one or more of the following four methods. 1) Follow-up phone call or consultation, 2) written report, 3) deposition, and 4) testify in court. All fourteen of the participants in the study indicated that in their experience personal injury cases typically ended with a phone call and/or a written report. Ten participants described having been deposed in personal injury cases, and only six participants reported having testified in court on personal injury cases.

    Regardless of how their findings were ultimately reported, all the participants expressed that communication with the hiring party was important with regard to developments, findings, and their opinions. The results of this study demonstrated that when the professional reports their findings they should state their opinions with a reasonable degree of certainty regarding weather or not the mental or emotional injuries sustained were the result of the said event; pointing out that the description of the causal connection needed to cover ideology, consideration of potential alternative causes, other life stresses, the individual's personality, as well as how they addressed malingering concerns, which were prevalent in personal injury cases.

    The report should also include the prognosis and factors that may assist in determining the level of compensation awarded to the injured party. One participant

recounted, as part of their report writing structure, typically asking themselves questions like: Was the individual partially or totally disabled? Were the injuries permanent, or was some improvement expected? This included covering things like the treatment, duration of treatment time needed, and impact of the injury on the individual's employment, earnings, family, and lifestyle.

Participants' opinions were divided in some aspects of the written reports. While not all participants discussed the length of a written report, of the eight that did, the opinions were equally divided on the matter. Half indicated that written reports should be comprehensive, but not lengthy. Of those, three participants reported having experienced many evaluations that were quite lengthy, rambling on, but which had not provided much in the way of valuable information. Conversely, the other four participants suggested that their reports were often long, due to the need to lay everything out in a fashion that was relevant to the tier of fact and answered the referral questions(s). These four also mentioned the importance of including a summary of relevant pre-existing illnesses, but without the causal connection.

The functional domains (steps) outlined above answer the question on how forensic psychologists were conducting personal injury evaluations. They are consistent with literature and predicate research in that while some of the steps lend themselves well to a standard or guideline there needs to be some flexibility in other steps, especially for the tests and assessments used. For example, Bush et al. (2014), opined that a multi-method and evidenced based validity assessment process, that also incorporates psychometric measures, testing the validity of the examinee's statements, must be an essential part of forensic psychological

evaluations; pointing out that, in personal injury cases, there exist strong incentives, on the examinees part, to minimize or even exclude prior problems that may have contributed to their current injury. Participants, predicate research, and the literature all revealed that testing for malingering was a crucial component in personal injury cases. Issues involving exaggeration and/or malingering in personal injury cases have been and continue to be of concern for all parties involved, some of the difficulty involved had to do with determining the base rate of malingering (Melton et al., 2018; Troolines, 2012; Young, 2016a; Young, 2017a; and Young, 2017b).

From a foundational and professional development perspective the purpose of psychological personal injury evaluations is to consider whether an event or its effects have caused psychological or emotional injury, and to what extent (Ferrara et al., 2016). Regardless of the type of tests or psychological assessments administered, it is important that the practicing professional know which assessment best fits with the specifics in each case (Archer et al., 2016), this competency includes; understanding and navigating the fundamental disciplinary differences between law and psychology (Bartol & Bartol, 2015). Iudici et al. (2015) pointed out that it is the forensic psychologist's responsibility to translate the legal questions into the psychologically technical scientific constructs on which to base their evaluation and the assessment instrumentation used within.

Research Question 2

Research question 2: What are the differences in the steps taken by forensic psychologists conducting personal injury evaluations operating under varying standards of judicial admissibility? The second question in this research study addressed a recommendation

also posed in the Troolines (2012) study, to expand her study by conducting a study which included a participant sample comprised of forensic psychologists operating under different judicial jurisdictions.

As such, the fourteen participants in this study covered a combined area of 34 states, (Appendix J), 10 of which, operated under more than one, admissibility standard. The breakdown of participants by judicial admissibility standards were as follows: 2 forensic psychologists operated under the Daubert standard only, 2 under the Frye standard only, 6 under both Daubert and Frye standards, and finally, 4 who operated under the Daubert, Frye, and Independent standards. Of the Independent standards, 3 operated under the state of Virginia admissibility standards, and 1 operated under the state of Nevada judicial admissibility standards. The researcher was unsuccessful in recruiting participants from the third Independent state of North Dakota.

Regardless of the admissibility standards they operated under, participants were asked the ways in which their approach was tailored to address or meet those standards of admissibility. The results of this study revealed that ten participants did not do anything different (Daubert, Frye, or Independent), by way of tailoring their approach to meet or address the standards of admissibility, regardless of the judicial jurisdiction; stating, it was more about remaining aware of what the judicial standards of admissibility were and understanding where and how the case was going to be litigated.

While all the participants recognized the importance of knowing and remaining mindful of the judicial standards of admissibility, only four reported using that knowledge to tailor their approach, including specifically employing methods that met the reliability and validity

expectations in Daubert jurisdictions. These participants imparted the importance of not only knowing the judicial standards of admissibility, but also what was understood in the court system. They stressed that personal injury cases may cross over several jurisdictions, as such changes can occur county by county; adding that traditional standards could become even more complicated in situations where the evaluation was completed in one jurisdiction, when they were actually intended for litigation in another jurisdiction, and the consultations between professionals had taken place in a number of jurisdictions at the same time. However, these participants also pointed out that even in those circumstances, the legal standard had less to do with how the personal injury evaluation was conducted and more to do with how the results would be interpreted and reported. As such, it basically came down to how the evaluation was conducted: Were scientific measures employed? Were there any assessments regarding malingering? Were diversity issues addressed? Whether or not the findings were presented in a clear or confusing manner?

Thirteen of the participants suggested that by routinely practicing from an ethical place and conducting good quality evaluations; by employing scientifically validated and accepted measures in the field and consistent with the admissibility standards of both Daubert and Frye, they had not encountered any problems with regard to jurisdictional admissibility standards.

The findings of this study revealed that most of the participants did not do anything different regardless of the judicial jurisdiction. Reporting that the admissibility had more to do with how the evaluation was conducted and whether it helped with the trier of fact in the case. This finding is consistent with literature and predicate research that demonstrated when a forensic psychologist is called to provide testimony; they are responsible for providing scientific,

technical, or other specialized knowledge to assist the trier of fact in understanding the issue and/or in determining the facts in issue (Shapiro et al., 2015). They are also consistent with the Heilbrun (1996) study, conducted fifteen years prior, where it was found that behavioral science testimony typically admissible under *Frye* was also admissible under *Daubert*. Further, citing that when testimony was excluded, it would have been excluded regardless of whether the *Frye* or *Daubert* standard were used. Similarly, Faust et al. (2010), found that the courts generally focused on whether the expert testimony was reliable; however, that said, that "reliability" was not necessarily determined by the *Daubert* criteria. Rather it has been found that the tendency was to depend on the application of the FREs; reliability (18%), qualifications of the expert (17%), whether or not testimony will assist in the trier of fact (17%), and the relevance of the testimony (16%) that was used to determine if the psychological expert evidence was admissible (Shapiro et al., 2015).

Research Question 3

Research question 3: What are the perceptions of forensic psychologists regarding the implementation of a standard of care for personal injury evaluations? Regardless of their position, all participants in the study were asked for their opinions regarding the benefits and complications of implementing a standard of care, as well as their thoughts on what should be included.

Thoughts on implementing a standard of care

Although all the participants indicated some utility in having some form of standard or guideline, they were divided on implementing a standard of care, which by definition would be mandated. Of the fourteen participants, eight participants expressed they were in favor of the

implementation, three participants were not in favor, and three others were undecided on implementing a standard of care for personal injury evaluations. An amalgamation of the responses from all of the participants; regarding the benefits of implementing a standard of care are discussed below.

Participants discussed the utility of a standard of care in identifying what was needed to answer referral questions, as well as classifying some of the more common errors such as failing to communicate the purpose of the evaluation, using collateral sources, considering malingering, writing a report, and providing testimony. It could be employed as a templet and/or training tool to help educate, up-and-coming psychologists, and those already conducting personal injury evaluations.

Such a standard of care may also serve in communicating the purpose of the evaluation, report, and/or testimony to the client. Having one could promote confidence in the field of psychology and personal injury evaluations with regard to bolstering the overall credibility, reliability and validity of the practice and processes involved in a quality evaluation. Troolines (2012) imparted having a standard of care may also help bridge the gap or gray area between psychology and law by demonstrating to the courts what to expect and what should qualify as a good quality evaluation. Basically, these eight participants agreed that having a standard of care could help level the practice, by keeping evaluations flexible but consistent, and anyone who did not hold up to the standard would work themselves out of being an expert.

Conversely, three participants were not in favor of implementing a standard of care for personal injury evaluations. All agreeing that while having some sort of standard or guideline would be beneficial, implementing a standard of care, whereby it was mandated, was not

necessary. The discussion below is an amalgamation of the responses from all of the participants in this study regarding the complications or controversial concerns of in implementing a standard of care.

The participants relayed that whenever professionals were mandated to conduct their practice a certain way there were going to be conflicts, especially when the entity or individual (s) determining what will be mandated, were not qualified to do so. One argument was that judges did not possess the necessary education, training, experience, nor the qualifications to interpret psychological evaluations, which could result in adopting a one-size-fits all approach, which may not fit certain cases, patterns, or clients. Further expressing, if the standard of care was not developed properly, or if it was not understood, it could result in un-validated conclusions of inadmissibility. For example, if a test or measure was in the standard of care as a requirement, but really wouldn't assess the needs of the referral question or the individual, they would have to employ it because it was mandated, regardless of whether it held merit or not. This could pose a problem, as there were times, as a professional, when one must think outside the box. In those instances, having a standard of care could be used against the provider because they deviated from the set standard of care, even if for an understandable reason. Further imparting, while those actions could be explained for the most part, it was often a gripe seen when moving toward a standard of care.

Lastly, three participants were undecided whether they were in favor of implementing a standard of care for personal injury evaluations. One participant explained that in their experience, personal injury cases by their nature and across jurisdictions had a lot of heterogeneous fact patterns, so they did not see having standards of care as a good fit. On the flip

side, the same participant shared their experience of using the National Football League (NFL) head injury battery of tests, relaying it was made up of a consensus battery of fifteen tests, that as a professional they could add to, affording a certain degree of flexibility. Essentially, pointing out that on the one hand there may be utility in keeping the knuckleheads or sellouts held to certain standards. Conversely, an expert may not like a test, or the tests mandated may not even measure the issues that needed assessing, but they would have to employ it. Another participant explained that although they did not want to be told how to conduct their evaluations, they had seen enough poorly conducted evaluations that perhaps having a standard of care may hold some merit. The third participant in this group stated that anything that mandated the way they conducted their evaluations would be an infringement on their professional boundaries. Pointing out that in civil lawsuits, things are different, based on the type personal injury involved. As such there were not always similar fact patterns or legal issues at hand.

The findings in this study echo the division expressed by professionals in the field and published literature that these evaluations, like the assessment instrumentation used within, do not lend themselves to a one size fits all approach. Just as in child custody evaluations, each form of forensic psychological evaluation (personal injury etc.) would require a unique standard of care. The standard of care would also have to remain somewhat flexible, in that there would not be a fixed uniform battery or selection of measures that the forensic psychologist would employ in every personal injury evaluation. Meaning, that the forensic psychologist would need to know which tests to include, in their methodology, based on the legal questions in the case, as well as the reliability and validity of those tests (Gowensmith, et al., 2017). These findings are consistent with Shapiro et al. (2015), who found that by utilizing a scientifically informed approach to the

evaluation, and a clearly written method of reporting which addressed the initial questions for the court, admissibility should not be a problem. Drogin et al. (2015) opined that this could be accomplished by utilizing a scientifically informed approach to the evaluation, psychological tests that were reliable, well validated, and appropriate for the specifics of the case and the individual being evaluated.

What should be included?

As mentioned previously, regardless of their position, for or against the implementation of a standard of care all fourteen participants were asked, based on their experience, what should be included in the standard of care for personal injury evaluations? It is relevant to note, that the suggestions and recommendations made by the participants stemmed from and intersected with the foundational domains and stages of professional development and are discussed in the order they would be employed and their relation to the competency domains represented in Figure 1.

It was recommended that the creators of any proposed standard of care should include a reputable review board and the standard should include a requirement for those conducting evaluations to possess an understanding of the case law associated with personal injury cases in their jurisdiction. Participants supported the inclusion of current practice strategies and methods that have the scientific validity, reliability, and acceptability of the courts, as well as practicing within professional boundaries and the confines of the referral question (s). One pointed out that the standard of care could easily be patterned after the Association of Behavior Therapy (AFTC) and the APA's policies, as they have the largest practice for custody evaluations. This supports the recommendations in the Bowell, (2012) and Troolines, (2012) studies.

The results of this study suggested laying out the general methods and processes required to perform an evaluation properly, while remaining mindful of the professional guidelines in the field of psychology. Commencing with vetting a case, participants suggested including pointers on the informed consent process and how best to conduct comprehensive reviews of collateral information, medical records, educational records, and the overall benefit of consulting collateral sources; then pointers on addressing the referral question through analyzing, synthesizing the data and forming a professional opinion.

As mentioned previously, participants recommended including current practice strategies and methods that have the scientific validity, reliability and the acceptability of the courts, providing examples of some frequently used tests and assessments for cognitive functioning, personality, and malingering. However, four of the participants cautioned that any tests included in the standard should not necessarily be mandated to be used each time. Rather, a general list of professionally accepted and scientifically backed tests and assessments, the practitioner could use to pull from when designing their strategy. Additionally, they should include assessments that outlined the minimally accepted standards for many of the common diversity related concerns; incorporating examples of the types of resources needed to conduct an evaluation via a translator, and what assessment methodologies were normed for the specific client's demographics including: culture, age, gender, sexual, and religious.

Participants suggested presenting pointers on how to look for the legal issue, which was typically causation in personal injury case. The standard of care should include steps or explanations on issues like what constitutes a detailed review of incident, the importance of

gathering as much information from collateral sources as possible, and the number of mental status or psychological tests that should typically be conducted.

Lastly, pointers on report structure including; how to prepare a report, how to be as comprehensive as possible while still being thorough, what should or shouldn't be included due to legal issues, what data to use, how to back up your data in an opinion and/or testimony, as well as covering how to address ethical issues that may arise. Participants described some of the common oversights and ethical challenges they had encountered when conducting personal injury evaluations. They relayed maintaining objectivity, professional boundaries, and time constraints as the most common.

Overall the findings support the development of a standard, whether it should be a mandated standard of care or a guideline/framework that serves practicing professionals is a question that time and further development of a framework can help answer. These results highlight some of the same information and concerns found in the literature, regardless of the stance taken, the road to the development and implementation of a legal standard of care is paved by the standards of practice, statutes, and case laws relevant to the professional community they serve (Heilbrun et al.; 2016; Melton et al., 2018). As more and more cases involve a psychological injury component, it is important to continually seek to improve the methods and standards that guide the forensic psychology practice. This includes incorporating developments in the way forensic psychological evaluations are conducted. Thus, moving forward with the development of a framework or guideline is a natural progression, one that can help move forward with enhancing the credibility, reliability, and validity of these types of evaluations now; basing the decision

regarding implementing a standard of care, on the utility of the framework along with future findings and developments in the field.

Limitations of the Study

To address the study limitations the researcher employed qualitative strategies that have proven to be trustworthy, creditable, transferable, dependable, and conformable, like member checking, memoing, and an external audit (Morse, 2015). These were strategies Morse (2015) suggested researchers use to enhance the above-mentioned qualitative needs.

In an effort to address threats to the overall quality and ensure the credibility of the study, member checks were conducted by asking the participants to review their transcribed interview responses. Creswell (2015) pointed out that member checking can afford researchers the ability to make corrections, clarify, or add any information that the participants provide regarding their feedback. Basically, it assisted in ensuring a true representation of the participants' communication during the interviews. The researcher employed memoing, as she read the participants' responses to the interview questions. This assisted in logging important points, theories, and themes as they emerged. Using memoing also enabled the researcher to keep track of her thought process and the important aspects of the topic, as well as the ability to track new developments as they emerged. To ensure that the researcher conducted the study in a valid and trustworthy manner, an external audit was accomplished by an outside researcher that was not connected with the study. The outside researcher reviewed the totality of the project findings, interpretations, and reported conclusions.

Another limitation was the sample size of the participants, in that they may not be representative of the larger population of psychologists who conduct forensic psychological

evaluations in personal injury cases. The study was also bound by the general limitations of employing semi-structured interviews with open-ended questions. Although, this method of data collection has a flexibility advantage, it lacks, data collection standardization, which can make the approach highly vulnerable to interviewer bias (Frankfort-Nachmias & Nachmias 2008). While absolute negation of biases is virtually impossible, the researcher conducted the study in a manner that was in line with good quality research practices (Creswell, 2013). This was achieved by remaining open-minded and holding a clear understanding of her own boundaries. The researcher was aware that her understanding and familiarity with the topic may have led her to feel there was a necessity for the development of a standard of care in forensic personal injury evaluations. As such, the researcher addressed potential biases, personal interests, gains, and ethical concerns that may obstruct the study, by employing necessary measures and validating strategies, such as member checking, to remain impartial when seeking to answer the research questions.

Finally, the researcher conducting the study was not a licensed psychologist practicing in the field of forensic psychology.

Recommendations

The findings provided additional data on how forensic psychologist conduct personal injury evaluations; they also have the potential to provide clarity and assist in the development of a tangible working prototype (framework) for conducting forensic psychological evaluations in personal injury cases, which future researchers can test in future studies, and may lead to the implementation of a standard of care to be adopted in the United States. Additionally, the findings can serve to further supplement the data for other types of psychological evaluations.

The model presented afforded the ability to discuss the current findings, but also integrate relevant predicate research and literature in a functional yet comprehensive manner. The findings and model can easily be further developed in future studies seeking to enhance personal injury evaluations. Perhaps, studies that expand on the functional domains by contributing additional steps, layers, and data that unfold the intricacies within them. More research analyzing current practices, guidelines, and standards of practice used by professionals who conduct personal injury evaluations is needed. For example, comparing and integrating recommendations by predicate research and guidelines including the International Guidelines on Medico-Legal Methods of Ascertainment and Criteria of Evaluation of Personal Injury and Damage under Civil/Tort Law (Ferrara et al, 2016), the comprehensive guidelines for the completion of child custody evaluation (APA, 1994), and what Young and Brodsky (2016) outlined as the revised 4 D's (Dignity, Distance, Data, and Determination Done Judiciously) for working effectively in psychological injury and law, into a comprehensive framework that can contribute additional data on the evaluation process.

Finally, it was the researcher's hope that the model presented may also serve as an adaptable conceptual frame of reference for practicing professionals responsible for educating psychology students and those conducting personal injury evaluations.

Implications

This study was inspired by Troolines (2012), whose findings supported the development of a standard of care for conducting forensic psychological personal injury evaluations. This thematic analysis study expanded on the Troolines (2012) study by examining how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and

Independent), were conducting personal injury evaluations and their perspectives on implementing a standard of care.

The findings of this study and future research studies can impact positive social change by promoting confidence in the field of psychology and personal injury evaluations with regard to bolstering the overall credibility, reliability and validity of the practice and processes involved in a quality evaluation. Further, social change can occur through the development of framework, standard of practice, and perhaps a standard of care for forensic psychological personal injury evaluations. Eventually this may help level the practice by keeping evaluations flexible, but consistent. Doing so may also minimize the occurrence of forensic psychological personal injury evaluations being overlooked, deemed inadmissible, or in some cases not meeting the standards of admissibility.

Conclusions

In an attempt to address a research gap presented by Troolines (2012), the focus of this thematic analysis was to examine how a diverse group of forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), were conducting their personal injury evaluations and their perspectives on implementing a standard of care. The study utilized a sample of fourteen forensic psychologists who conducted personal injury evaluations as part of their practice. The goal of this study was to gain a better understanding of what takes place in these personal injury evaluations and gather additional data necessary to bolster or refute the need for a standard of care (Bowels, 2012; Heilbrun et al., 2008; Troolines, 2012).

The researcher performed a literature review to become familiar with the theoretical and historical background of forensic psychological evaluations, more specifically personal injury

evaluations and psychology in tort law. Semi-structured interviews were conducted to more fully understand the current practices and procedures for these types of evaluations. The research questions were answered and presented using an adapted version of the Rodolfa et al. (2005) cube model. This afforded the researcher the ability to examine current forensic psychological personal injury evaluation practices in different judicial jurisdictions, while also integrating prior concepts and relevant overarching themes found in the Ferrara et al. (2016), Goldstein (2007), Heilbrun et al. (2008) and Troolines (2012), studies. Presenting the overall information and findings through this model made it easy to integrate the current concepts (faces of the cube) in a manner that the reader, educator, and/or practitioner can follow and strategically implement to enhance the reliability and validity of personal injury evaluations.

The researcher answered the first research question by identifying and reflecting the steps that the participants (forensic psychologists) took when conducting personal injury evaluations. It was determined the evaluation steps were positioned around a combination of overlapping premises. The overlapping premises were further combined and chronologically categorized into the seven steps represented in Figure 1, as functional domains: 1) case intake and vetting, 2) case and evaluation strategy development, 3) gathering case and collateral information, 4) consent, 5) interviews, tests, and assessments, 6) analysis, and 7) reporting of findings.

All participants identified the referral question (s) as being fundamental in the process of vetting a case and the strategies they may employ. Participants discussed their experience regarding method selection and the importance of gathering all information, data related to the alleged injury, conducting a thorough review of, and/or interviews with, as many collateral resources as possible. Participants were also in agreement regarding the use of a flexible battery

of psychological and personality tests, as well as cognitive functioning assessments, referring to them as critical components in their personal injury evaluations. Finally, the participants relayed how the reporting of evaluation findings typically fell into one or more of the following four methods: Follow-up phone call or consultation, written report, deposition, and testifying in court.

The findings outlined in the functional domains (figure 1) provide a basic outline or framework regarding how forensic psychologists operating in different judicial jurisdictions are conducting personal injury evaluations. They are consistent with literature and predicate research, in that some, of the steps lend themselves well to a standard or guideline there needs to remain some flexibility when it comes to the tests and assessments used within (Bush et al., 2014; Drogin et al., 2015; Ferrara et al., 2016; Troolines, 2012).

The second research question in this study was related to differences in the steps taken by forensic psychologist conducting personal injury evaluations, operating under different standards of admissibility (Daubert, Frye, and Independent). To gain a more in-depth understanding of their experiences, the researcher asked the participants the ways in which their approach was tailored to address or meet the standards of admissibility for the judicial jurisdiction in which they worked. The researcher also asked how many of their evaluations had been used in court and whether any of their evaluations had been deemed inadmissible? While, the participants unanimously recognized the importance of knowing the judicial standards of admissibility, only four reported using that knowledge to tailor their approach. Ten participants reported that they did not do anything different, regardless of the judicial jurisdiction (Daubert, Frye, or Independent), stating it was more about remaining aware of what the judicial standards of admissibility were, and understanding where and how the case was going to be litigated.

Predicate research and literature suggested that not having a standard of care for conducting these types of evaluations, has led to some evaluations being overlooked or deemed inadmissible in some court jurisdictions (Bowels, 2012; O'Donnell et al., 2015; Troolines, 2012). The participant responses did not support that opinion in as far as they were able to truly answer the question regarding; how many of their evaluations were used in court. While all the participants responded that their evaluations had been used in one way or another within judicial proceedings, each participant indicated that it was difficult to say exactly how, when, or where they were used.

These responses were consistent with the Faust et al. (2010) and Heilbrun (1996) findings, where it was determined that behavioral science testimony typically admissible under *Frye* was also admissible under *Daubert*. Further, imparting that when testimony was excluded, it would have been excluded regardless of whether the *Frye* or *Daubert* standard was used. Admissibility was generally focused on whether the expert testimony was reliable and provided scientific, technical, or their specialized knowledge to assist the trier if fact in understanding the issue and/or in determining the fact in issue (Shapiro et al., 2015).

The final research question addressed the participants' perspectives on implementing a standard of care. To gain a more in-depth understanding of their perceptions, the researcher asked the participants about their thoughts on implementing a standard of care and, regardless of their position, also asked for their opinions regarding the benefits and complications of implementing one, as well as their thoughts on what should be included. Although all the participants indicated the utility of having some sort of standard or guideline, they were divided on implementing a mandated standard of care. Of the fourteen participants, eight participants

expressed they were in favor of the implementation, three participants were not in favor, and three others were split on whether they were in favor of implementing a standard of care for personal injury evaluations.

The participants all offered valuable insights into the benefits, complications, and what should be included in the standard of care. Their suggestions included laying out the general processes involved; including how to look for the legal issue, conduct comprehensive reviews of collateral information, how to address the referral question (s), then synthesizing the data and forming a professional opinion. Participants supported the inclusion of current practice strategies and methods that have scientific validity, reliability, and acceptability of the courts. Lastly, they offered pointers on report structure, including how to prepare a report, how to be as comprehensive as possible while still being thorough, what should or shouldn't be included due to legal issues, what data to use, how to back up your data in an opinion and or testimony, as well as covering how to address ethical issues that may arise. Participants described some of the common oversights and ethical challenges they had encountered when conducting personal injury evaluations. Troolines (2012) listed time constraints, ethical and professional boundaries as some of the common challenges, echoing those findings the participants in this study also described maintaining objectivity, professional boundaries, and time constraints as some of the most common ethical challenges. For example, remaining within one's professional boundaries and the specific tasks required in the case; noting that remaining objective and in control of their own personal bias could be challenging, especially when there was pressure from the referral source regarding things like: time constraints, requests for raw data, or manipulation of data or finding that were unfavorable for their clients.

Overall this study was able to answer this first research question regarding how forensic psychologist were conducting personal injury evaluations by outlining the steps in an adapted version of the cube model (Rodolfa, 2005). Adding to the data and answering the second research question, the ten of fourteen forensic psychologists reported they did not do anything different in their evaluations due to the judicial admissibility standards per se, rather it was more about how the evaluation was conducted, if it was reliable, and whether if helped with the trier of fact. Basically, if a testimony was excluded, it would have happened regardless of which judicial admissibility standard the case was under. Rounding off the study and answering question three: the findings reveled that of the fourteen participants, eight participants expressed they were in favor of a standard of care, three were not in favor, and three remained undecided. The participants offered insight into the benefits and concerns of a mandated standard. However all the participants supported incorporating some form of flexible standard or guideline that laid out the general methods and processes required to perform an evaluation properly and assisted with enhancing the credibility, reliability, and validity of forensic psychological evaluations. The findings of this study can be used as a basic framework regarding how (steps) personal injury evaluations are conducted. These findings can be expanded upon, basing the decision to move toward a standard of care, on the utility of the framework along with future findings and developments in the field.

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Appendix A: Certificate of Completion

Certificate of Completion

The National Institutes of Health (NIH) Office of Extramural Research certifies that **Denise Autret** successfully completed the NIH Web-based training course “Protecting Human Research Participants”.

Date of completion: 06/17/2014

Certification Number: 1490016

Appendix B: Recruitment Protocol

Purpose: This is the Recruitment Protocol to be used in the participant recruitment for the study titled: A Thematic Analysis on How Forensic Psychologists Conduction Personal Injury Evaluations.

Methodology:

Note: Statistically, a minimum of 200 emails invites will need to be sent out to reach 20 participants. As the researcher, I believe this number will afford me the ability reach the anticipated number of participants needed to reach data saturation. While also allowing the flexibility to add additional participants, if needed, to reach data saturation or to replace a participant that may have to withdraw from the study.

1. Review the member listings for the following professional organizations and compile a listing of individuals to email:
    - AAFP
    - AAFS (psychology section)
    - AP-LS (if necessary)
    - SPCP (if necessary)
2. Send out initial email invites and log all activity on the Email Recruitment Tracker.
3. Once responses are received from interested potential participants update the Email Recruitment Tracker, send a follow-up email that includes more details, the consent agreement, along with a request that they:
    - Sign the consent form, if they are interested in participating, and return it via email.

- Whether or not they are willing to be interviewed via Skype or Facetime
- Three date and times, in the next few weeks, that would work for them to be interviewed.

Note: This time frame is subject to change depending on how many potential participants respond and the availability of the researcher.

4. Once signed consent and potential times are received:
    - Select and schedule the tie that fits best, Schedule the time slot and Update Email Recruitment Tracker.
5. Send a Confirmation email that includes:
    - Thanking them for their wiliness to participate
    - The time selected and a reminder of the expected duration of the interview
    - How contact for the interview will be made
6. A reminder email will be sent to the participant 24 hrs. Prior to the scheduled interview. This email will restate what was outline in the Confirmation email.

Note: If a potential participant does not respond to two email invites, reminders, or reschedules an interview more than once, as the researcher, I will view it as notice that the potential participant is not really interested or too busy to meet the commitment, and I will not pursue them any further.

Appendix C: AAFP Recruitment Email

Dear (name, directed to an individual)

My name is Denise Autret, I am writing to invite you to participate in a 45- 60 minute confidential interview on how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), are conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations.

I am seeking to recruit psychologists licensed in the United States who are currently conducting or have conducted forensic psychological personal injury evaluations in the last 5 years.

The interview is composed of questions regarding your forensic evaluation practices and your perceptions on implementing a standard of care for personal injury evaluations. The interview can take place via Skype, FaceTime, or In-Person, based on your preference.

Participation in this study is voluntary and confidential. Participation in this study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer and/or withdraw from the study at any time.

I am conducting this research study as a doctoral candidate at Walden University. For more information and to discuss eligibility, please contact me directly at xxxxxx@xxxxxx or (xxx) xxx-xxxx.

Respectfully,

Denise Autret, MSFS
Doctoral Candidate, Walden University

Appendix D: AAFS Recruitment Email

Dear (name, directed to an individual)

My name is Denise Autret, I am writing to invite you to participate in a 45- 60 minute confidential interview on how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), are conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations.

I am seeking to recruit psychologists licensed in the United States who are currently conducting or have conducted forensic psychological personal injury evaluations in the last 5 years.

The interview is composed of questions regarding your forensic evaluation practices and your perceptions on implementing a standard of care for personal injury evaluations. The interview can take place via Skype, FaceTime, or In-Person, based on your preference.

Participation in this study is voluntary and confidential. Participation in this study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer and/or withdraw from the study at any time.

I am conducting this research study as a doctoral candidate at Walden University. For more information and to discuss eligibility, please contact me directly at xxxxxx@xxxxxx or (xxx) xxx-xxxx.

Respectfully,

Denise Autret, MSFS
Doctoral Candidate, Walden University

Appendix E: AP-LS Recruitment Email/Post

Dear (name, directed to an individual)

My name is Denise Autret, I am writing to invite you to participate in a 45- 60 minute confidential interview on how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), are conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations.

I am seeking to recruit psychologists licensed in the United States who are currently conducting or have conducted forensic psychological personal injury evaluations in the last 5 years.

The interview is composed of questions regarding your forensic evaluation practices and your perceptions on implementing a standard of care for personal injury evaluations. The interview can take place via Skype, FaceTime, or In-Person, based on your preference.

Participation in this study is voluntary and confidential. Participation in this study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer and/or withdraw from the study at any time.

I am conducting this research study as a doctoral candidate at Walden University. For more information and to discuss eligibility, please contact me directly at xxxxxx@xxxxxx or (xxx) xxx-xxxx.

Respectfully,

Denise Autret, MSFS
Doctoral Candidate, Walden University

Appendix F: SPCP Recruitment Email

Dear (name, directed to an individual)

My name is Denise Autret, I am writing to invite you to participate in a 45- 60 minute confidential interview on how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), are conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations.

I am seeking to recruit psychologists licensed in the United States who are currently conducting or have conducted forensic psychological personal injury evaluations in the last 5 years.

The interview is composed of questions regarding your forensic evaluation practices and your perceptions on implementing a standard of care for personal injury evaluations. The interview can take place via Skype, FaceTime, or In-Person, based on your preference.

Participation in this study is voluntary and confidential. Participation in this study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer and/or withdraw from the study at any time.

I am conducting this research study as a doctoral candidate at Walden University. For more information and to discuss eligibility, please contact me directly at xxxxxx@xxxxxx or (xxx) xxx-xxxx.

Respectfully,

Denise Autret, MSFS
Doctoral Candidate, Walden University

Appendix G: Individual Invitation Recruitment Email

Dear (name)

I am conducting interviews as part of my doctoral research to explore how forensic psychologists, operating in different judicial jurisdictions (Daubert, Frye, and Independent), are conducting their personal injury evaluations, and their perspectives on implementing a standard of care for personal injury evaluations. As a psychologist practicing in this area you are in an ideal position to give firsthand knowledge from your own perspective.

The informal interview can take place via Skype, FaceTime, or In-Person and takes about 45- 60 minute and is confidential. I am simply trying to capture your forensic evaluation practices and your perceptions on implementing a standard of care for personal injury evaluations.

There is no compensation for participating in this study. However, your participation will be a valuable addition to my research and the findings could lead to a better understanding of forensic evaluation practices and the professional perspectives involved.

If you are willing to participate, please contact me directly at xxxxxx@xxxxxx or (xxx) xxx-xxxx.

Respectfully,

Denise Autret, MSFS
Doctoral Candidate, Walden University

Appendix H: Interview Protocol

Purpose: This is the Interview Protocol designed to be used to guide the interviews of the participants for the study titled: A Thematic Analysis on How Forensic Psychologists Conduction Personal Injury Evaluations.

Methodology:

1. Introduce myself
2. Thank the participant for taking the time to participate in the study.
3. Briefly, refresh the participant on the title on purpose of the study.
4. Review the consent form with the participant, making sure to restate:
    - The confidentiality of their responses
    - The voluntary nature of the study and their ability to withdraw or choose not to answer questions at any time.
    - The expected timeframe of the interview
    - That the interviews will be audio recorded for transcription purposes
5. After the interviews completed update the Interview Tracker and transcribe the interview into a Microsoft Word report.
6. Email the copy of a one- or two-page transcribed report to the participant for review to ensure it accurately represents their responses (member checking) and update the Interview Tracker.

    Note: If changes to the interview responses are needed, they will be made and an email reflecting the changes will be sent the participant for review. This process will continue until the participant feels the responses accurately represent their responses.

7. Redact all identifying participant information prior to moving on to validation through an external audit.

Appendix I: Interview Questions

Date: _____

Skype/FaceTime/In Person: _____

Name of Interviewer: _____

Name of Interviewee: _____

I will be inquiring about how you conduct forensic psychological personal injury evaluations and your perspectives on implementing a standard of care. As such, in the interviews I will inquiring about your individual practice procedures, **standard of admissibility** you operate under, and your perception on the implementation of a **standard of care**, in personal injury evaluations I am not inquiring about a **standard of practice** in the professional organizational since. For clarification purposes I have provided some of the definitions, used in this study, below.

Standard of Admissibility: are standards used by courts to assist in determining the admissibility of scientific evidence and expert testimony (Weissmann, 2012).

Standard of Practice: is considered to be the typical way of doing things in a particular field, developing out of the industries formal guidelines or best practice standards. They are aspirational in nature, as such; they are not legally enforced (Heilbrun, Phillips, and Thornewill (2016).

Standard of Care: are standards followed by an industry and are based on judicial constructs that establish minimally accepted professional standards of conduct. Compliance is mandatory carrying potential legal ramification if not followed (Heilbrun, Phillips, and Thornewill (2016).

Background

Participant Information:

- Age
- Gender
- Length of time you have been a licensed psychologist?
- Do you conduct personal injury evaluations?
- For what type of cases (criminal, civil, private practice, or court ordered) have you conducted personal injury evaluations?
- Length of time you have been conducting personal injury evaluations.
- How many personal injury evaluations have you completed in the last five years?

Education, Licensing, and Specialized Training Approach to Personal Injury Evaluations:

- What type of degree you have?
- Do you hold in specialized forensic training or certifications?
- What state (s) are you licensed in?
- What judicial standards of admissibility do you operate under?

Semi-Structured Interview Questions:

1. **What is your general approach to conducting personal injury evaluations?**

- What are the specific steps you take?
- What standards/guidelines do you follow for personal injury evaluations?

2. **What types of test do you employ?**

    - What assist you in determining the psychological testing you employ?
    - Do you evaluate for malingering and exaggeration? When, why, and how?
    - When structuring your test strategy, do you have a fixed battery of tests or a flexible customized battery of test?

3. **What are some common challenges and/or oversights you have encountered during personal injury evaluations?**

    - What are some of the ethical challenges and how are they addressed?
    - What are some of the diversity factors and how are they addressed?

4. **In what ways is your approach tailored to address meet or address the standards of admissibility for your judicial jurisdiction?**

    - How many personal injury evaluations, conducted by you, have used been court?
    - Have you ever had a personal injury evaluation, conducted by yourself, deemed inadmissible? If so why?

5. **What are your thoughts about implementing a standard of care for personal injury evaluations?**

    - In your experience, what should be included in a standard of care for a personal injury evaluation?
    - In what ways do you believe a standard of care might be beneficial to judicial proceedings?
    - In what ways do you believe having a standard of care might complicate judicial proceedings?
    - How would a standard of care be helpful to you in conducting personal injury evaluations?

Closing Questions and Remarks:

- When a working framework for a standard of care is created, would you be interested in being contacted to participate in a research study testing the utility in your practices?
- Is there anything else you would like to add?
- Remind the participant that they will receive an email containing a transcribed report of their responses, you're their accuracy review.
- Thank the participants for taking the time to participate.

Appendix J: Map of the 34 States Represented

Arizona – AZ, Arkansas – AR, California - CA , Colorado – CO, Connecticut – CT, Delaware – DE, Florida – FL, Illinois – IL, Indiana – IN, Iowa – IA, Kansas – KS, Kentucky – KY, Louisiana – LA, Maryland – MD, Massachusetts – MA, Minnesota – MN, Missouri – MO, Montana – MT, New Hampshire – NH, New Jersey – NJ, New Mexico – NM, New York – NY, North Carolina – NC, Ohio – OH, Oklahoma – OK, Oregon – OR, Pennsylvania – PA, South Carolina – SC, South Dakota – SD, Texas – TX, Vermont – VT, Virginia – VA, Washington – WA, Wisconsin - WI