

Perceiving Credibility: Judicial Decision-making in Domestic Violence Protective Order Cases

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Study Article

Person, C.J., Moracco, K.E, Agnew-Brune, C., Bowling, J.M. (2018). “I want what’s best for you, but I have to be fair”: A qualitative study of courtroom interactions in domestic violence protective order (DVPO) cases. *Violence Against Women*. 1-23 doi: 1177/1077801217738582

Disclaimer

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Presentation Overview

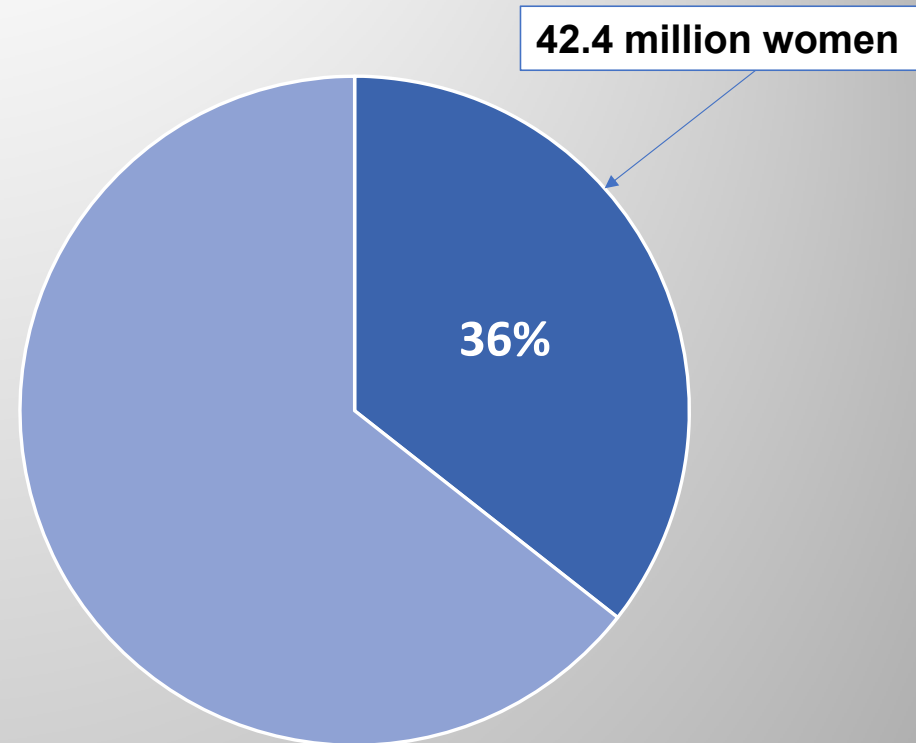
- Background
- Study Design & Data Collection
- Data Analysis & Results
- Conclusions
- Future Directions



Intimate Partner Violence (IPV)

- **Pattern of abusive behavior conducted by a current/former intimate partner:**

- **Physical Violence**
- **Sexual Violence**
- **Stalking**
- **Psychological Aggression ¹**



Percent of US Women Experiencing Lifetime IPV²

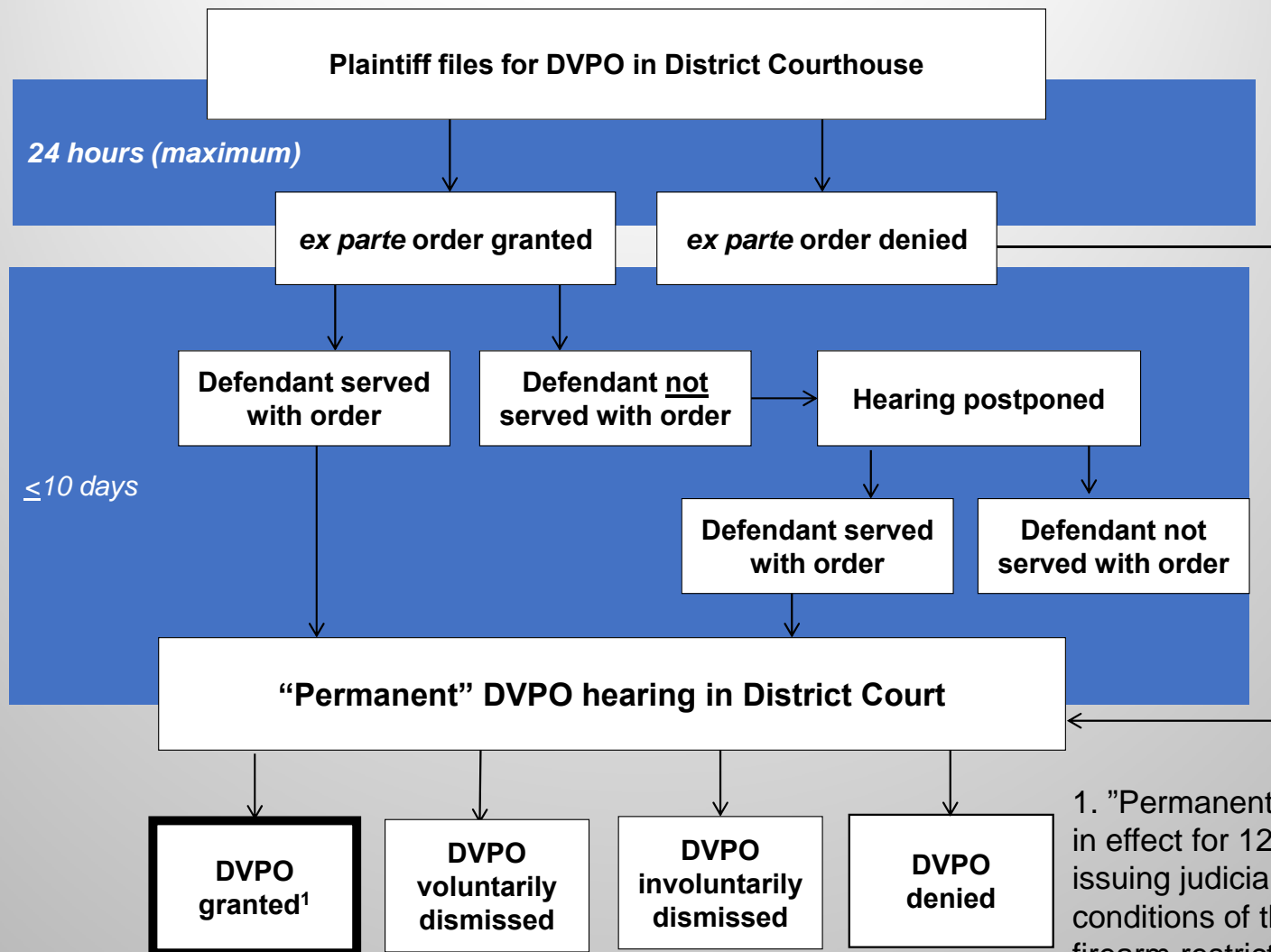
1. Breiding, Basile, Smith, Black, & Mahendra, 2015; 2. Black, et al., 2011

Domestic Violence Protective Orders (DVPOs)

- **Definition: Civil orders enacted by court system to restrict contact between intimate partners¹**
- **Require lower burden of proof than criminal cases²**
- **Most widely-used effective legal intervention for addressing IPV^{3,4}**
- **Cost-effective⁵**

1. DeJong & Burgess-Proctor, 2006; 2. Logan & Walker, 2010; 3. Benetiz, McNiel, & Binder, 2010; 4. Russell, 2012; 5. Logan, Walker, & Hoyt, 2012

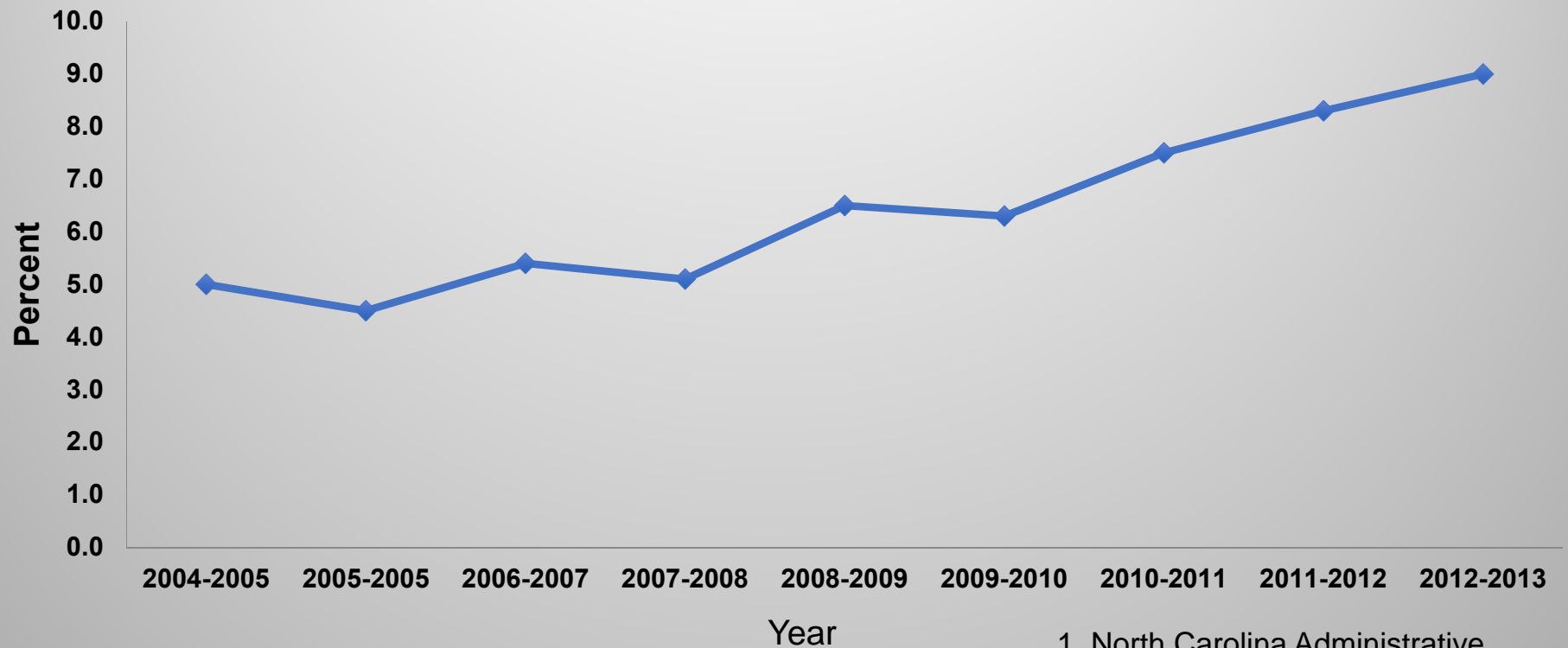
North Carolina DVPO Process



1. "Permanent" DVPOs are usually in effect for 12 months, and the issuing judicial official must specify conditions of the DVPO (e.g., firearm restrictions) at the DVPO hearing.

Ecological Study Findings 2004 – 2013¹

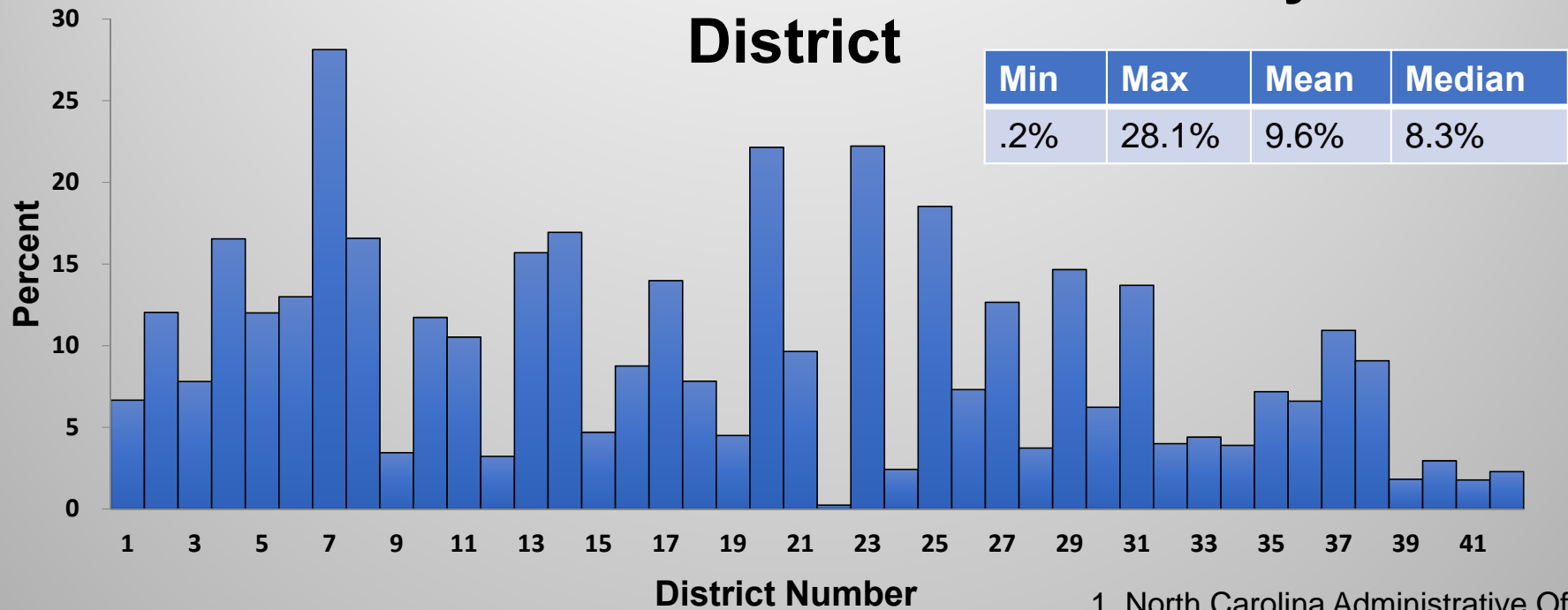
Statewide Median Domestic Violence Protective Order Denial Rate



1. North Carolina Administrative Office of the Courts

Ecological Study Findings 2011-2012¹

2011-2012 Statewide Denial Rate by District



1. North Carolina Administrative Office of the Courts

Study Rationale

- **Women experience repeated and severe violence before filing DVPOs¹**
- **Level of violence experience is not associated with receipt of a DVPO^{1,2}**
- **Findings indicate need to examine:**
 - **DVPO process**
 - **Role of judges and judicial decision-making**

1. Moracco & Bowling, in press;

2. Gist, McFarlane, Malecha, Fredland, Schulz, & Wilson, 2001

Judges and DVPO Cases

Judicial Decision-making

- Judge autonomy in granting/denying DVPOs
- *Pro se* litigants¹
- Protection of fundamental constitutional rights²
- Concerns over being viewed impartial⁴

Judicial Demeanor

- “Emotional presentation of authority”³
- Good-natured
- Bureaucratic
- Firm
- Formal
- Condescending
- Harsh

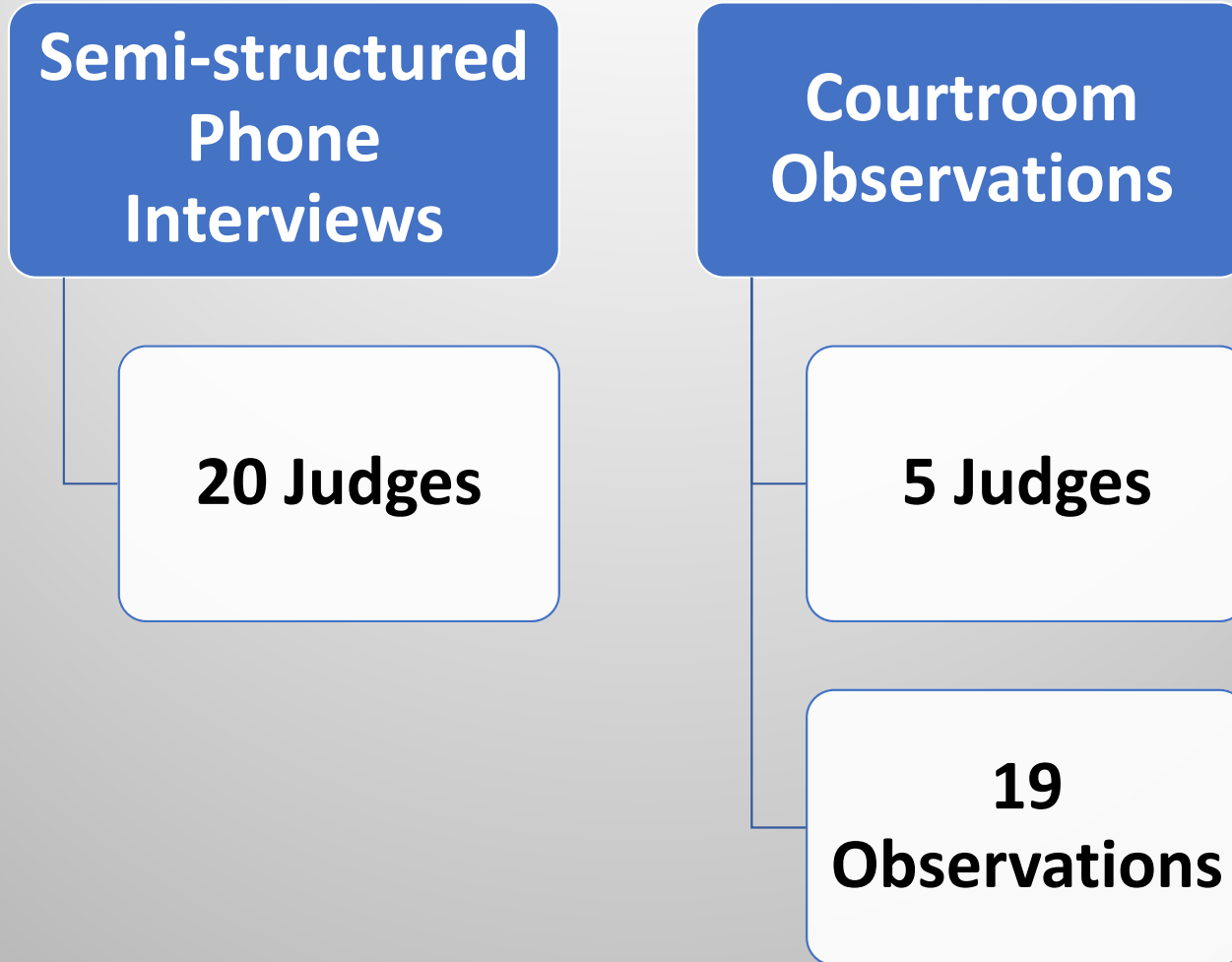
1. Greacen, 2014; 2. Matta, 2010; Landsman, 2012; 3. Ptacek, 1999



Research Question

What factors influence judges' decisions to grant or deny a DVPO?

Study Design



Study Design and Data Collection: Courtroom Observations

Timeframe	January – March 2013
Location	2 Urban North Carolina Courtrooms Designated for DVPO Hearings
Observation Time	Up to 4 Hours
Data Collection Strategy¹	Descriptive Observation Notes to Document Courtroom Settings, Participant Descriptions, Participant Actions

1. Spradley, 1980

Data Analysis: Courtroom Observations

- **Descriptive Notes Using Nine Dimensions of Social Space**
 - **Space, Actor, Activity, Object, Act, Event, Time, Goal, Field**
- **Notes Captured All Aspects of DVPO Proceedings**
 - **Who Participated, Their Actions, Interaction With Others**
- **Observation Notes Read Multiple Times**
- **Numerous Analytic Memos Written**

Study Design: Judge Interviews

Timeframe	March – June 2013
Study Location	North Carolina
Study Participants	20 District Court Judges
Sampling Frame	Stratified proportional sample with stratum defined by number of DVPO cases in county (sample = 54)
Recruitment	Email to listserv from Chief Judge, letter from Administrative Office of the Courts, Calls to sample of 54 judges

Data Collection: Judge Interviews

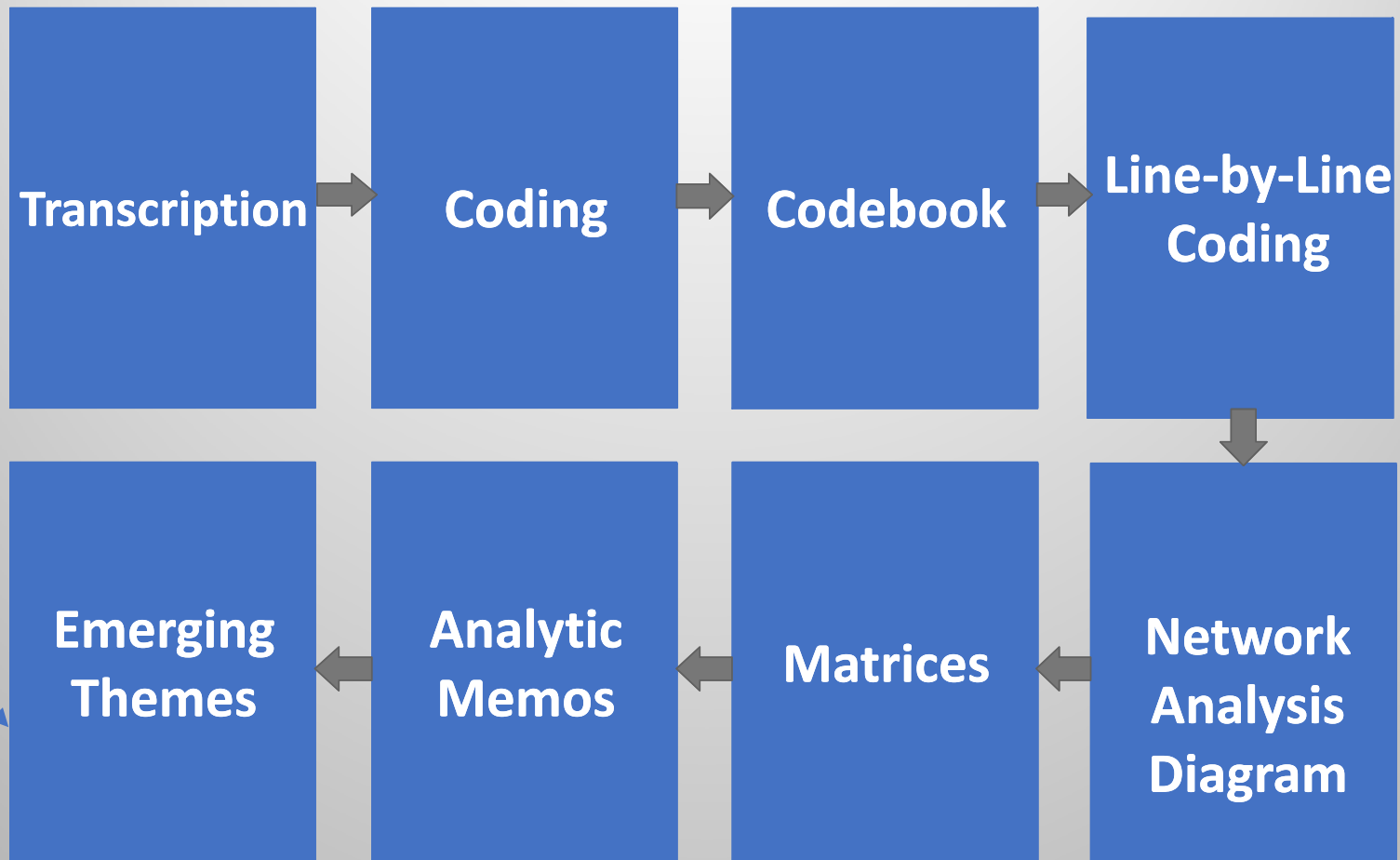
Interview Process

- **Receipt of Verbal Consent**
- **Audio Recorded**
- **Notetaking**

Interview Guide Topics

- **DVPO Case (Work) Experience**
- **Decision-making Process and Influences**
- **Information Needed to Make Decisions**
- **Improvements to DVPO Case Process**

Data Analysis: Judge Interviews



Team Review of Themes & Quotes

Independent Coding by Another Researcher

Results

Courtroom Observations

- 7 DVPOs Granted
- 3 Consent Orders Granted
- 6 Denials/Dismissals
- 1 Voluntary Dismissal
- 2 Continuances

Judge Interviews

- 14 Men, 6 Women
- Experience: 11 Years (Median)
- DVPO Cases/Year: 520 (Median)
- Previous Positions:
- Private Attorney, Public Defender, Assistant DA, Superior Court Clerk

Key Themes

- **Overseeing DVPO Cases With a Lack of Case Information**
- **Presenting Varied Judicial Demeanors and Engagement Levels With Litigants**
- **Perceiving Litigant Credibility**

Overseeing DVPO Cases With a Lack of Case Information

- Judges want to know about: severity and history of violence, context of abuse (e.g., shared children)
- DVPO case challenges due to: lack of DVPO case file information, limited evidence, few witnesses, and limited time for hearings
- Observation Findings: few “expert” witnesses, *pro se* litigants uninformed about court procedures and decorum

Overseeing DVPO Cases With a Lack of Case Information Quote

My feeling is [case information] is, it is generally incomplete, and I think that there are a lot of reasons for that. One, um, people . . . don't know what to say. . . . But you- you have the feeling that **a lot of times you, you get, you get some pieces of the story. I don't know that I've ever felt like I got the full story.**

(Judge 1: Male with 12.5 years of judicial experience)

Presenting Varied Judicial Demeanors and Engagement Levels With Litigants

Engaged Judges

- Ask Many Questions
- Lead Court Procedures
- Provide Directions and Guidance
- Speak in a Concerned and Congenial Tone
- Engage in Consistent Eye Contact

Non-engaged Judges

- Only Interrupt Testimony to Provide Directives
- Delegate Leading of Court Procedures
- View Providing Non-legal “advice” as Violation of Impartiality

Presenting Varied Judicial Demeanors and Engagement Levels With Litigants Quote #1

I don't provide any advice. I think it's not appropriate. **I can't be partial to either.** That's exactly why I use the court advocates to intervene. They explain what services are available in the community.

(Judge 2: Female with 15 years of judicial experience)

Presenting Varied Judicial Demeanors and Engagement Levels With Litigants Quote #2

You have to use your common sense. **If you go into a restaurant and you see him there, well you need to leave and go to another restaurant. And I look at the man and I'll say, "If you go to a restaurant and you see her there, well then, you need to leave."**

(Judge 3: Male with 7 years of judicial experience)

Perceiving Litigant Credibility

- **Judges pay attention to and interpret cues from litigants' body language and appearance**
- **Judges' perception of litigant credibility greatly influenced their case decisions**
- **Observation Findings: Witnesses deemed credible were extremely influential**

Perceiving Litigant Credibility Quote #1

I'm guessing from the way he was dressed and the way he conducted himself, he probably did not finish high school. And you know he's there with his hand over his mouth mumbling, he's slouched down in the chair, he's, you know, covering his face and eyes. . . . , **he just did not present himself well** at all and so, you know, **I want to believe him, but** he hasn't denied saying any of this so, you know, **what can I do?**

(Judge 5: Female with 6 years of judicial experience)

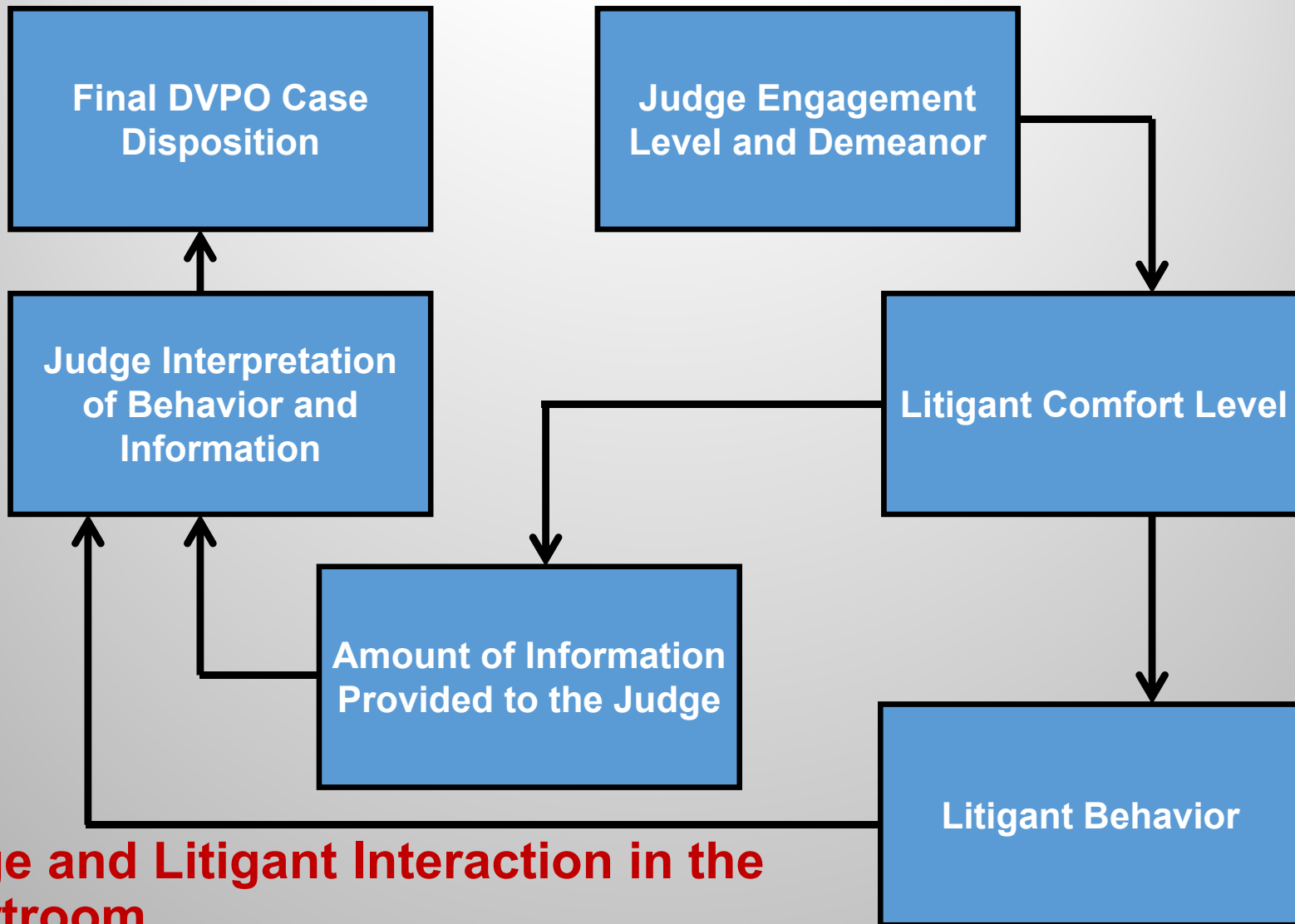
Perceiving Litigant Credibility Quote #2

I'm recognizing if these folks have not been to court before, they're gonna be nervous. Um. And **they're not gonna know how to act**—they're either victims or, or parties to the domestic violence just simply because of their upbringing and so forth, so th-they're not, **they typically are not gonna act appropriate.**

(Judge 6: Male with 4.5 years of judicial experience)

Key Themes Revisited

- **Overseeing DVPO Cases With a Lack of Case Information**
- **Presenting Varied Judicial Demeanors and Engagement Levels With Litigants**
- **Perceiving Litigant Credibility**



Judge and Litigant Interaction in the Courtroom

Conclusions

- **Judge demeanor has powerful influence in courtroom**
- **Some judges are unfamiliar with effects of trauma**
- **Judges are concerned about lack of case information**
- **A lack of case information may cause an increased reliance on credibility determinations and heuristics¹**

1. Agnew-Brune, Moracco, Bowling, & Person, 2017

Future Directions: Research and Practice

- **Research:**
 - **Include voices of survivors in future studies**
- **Practice:**
 - **Restructure court calendars**
 - **Utilize Domestic Violence Advocates**
 - **Provide training in optimal courtroom procedures**
 - **Provide enhanced training on domestic violence**

Limitations

- **Results cannot be generalized**
- **Data collected prior to analysis, no additional probing**
- **Judges observed \neq judges interviewed**

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References

- Agnew-Brune, C., Moracco, K. E., Person, C. J., & Bowling, J. M. (2017). Domestic violence protective orders: A qualitative examination of judges' decision-making processes. *Journal of Interpersonal Violence, 32*, 1921-1942. doi:10.1177/0886260515590126
- Benitez, C. T., McNeil, D. E., & Binder, R. L. (2010). Do protection orders protect? *Journal of the American Academy of Psychiatry and the Law, 38*, 376-385.
- Black, M. C., Basile, K. C., Breiding, M. J., Smith, S. G., Walters, M. L., Merrick, M. T., . . . Stevens, M. R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Retrieved from Atlanta, GA.
- Breiding, Basile, Smith, Black, & Mahendra. (2015). *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements, Version 2.0*. Atlanta, GA.
- DeJong, C., & Burgess-Proctor, A. (2006). A summary of personal protection order statutes in the United States. *Violence Against Women, 12*, 68-88. doi:10.1177/1077801205277720

References

- **Gist, J., McFarlane, J., Malecha, A., Fredland, N., Schultz, P., & Wilson, P. (2001). Protection orders and assault charges: Do justice interventions reduce violence against women. *American Journal of Family Law*, 15(1), 59-71.**
- **Greacen, J. M. (2014). Self-represented litigants, the courts, and the legal profession: Myths and realities. *Family Court Review*, 52, 662-669. doi:10.1111/fcre.12118**
- **Landsman, S. (2012). Pro se litigation. *Annual Review of Law and Social Science*, 8, 231-253. doi:10.1146/annurev-lawsocsci-102811-173911**
- **Logan, T., Walker, R., & Hoyt, W. (2012). The economic costs of partner violence and the cost-benefit of civil protective orders. *Journal of Interpersonal Violence*, 27, 1137-1154. doi:10.1177/0886260511424500**
- **Logan, T., & Walker, R. T. (2010). Civil protective order effectiveness: Justice or just a piece of paper? *Violence and Victims*, 25, 332-348. doi:10.1891/0886-6708.25.3.332**

References

- **Matta, L. (2010). Knowing the communities we serve. Court Review, 49, 14-22.**
- **Moracco, K. E., & Bowling, J. M. (2015). Is intimate partner violence severity associated with obtaining a domestic violence protective order? Unpublished manuscript.**
- **North Carolina Administrative Office of the Courts. (2015). North Carolina statewide DVPO filing rates. Unpublished raw data.**
- **Ptacek, J. (1999). Battered women in the courtroom: The power of judicial responses. Boston, MA: Northeastern University Press**
- **Russell, B. (2012). Effectiveness, victim safety, characteristics, and enforcement of protective orders. Partner Abuse, 3, 531-552. doi:10.1891/1946-6560.3.4.531**
- **Spradley, J. P. (1980). Participant observation. Independence, KY: Wadsworth, Thomson Learning.**



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