ABSTRACT

RAY, BRADLEY RUSSELL. Reintegrative Shaming in Mental Health Court. (Under the direction of Virginia Aldigé Hiday).

Reintegrative shaming theory suggests that shame can be either stigmatizing or reintegrative and predicts that, stigmatizing shame increases the likelihood of crime, while reintegrative shame reduces criminal behavior recidivism (Braithwaite 1989). Stigmatizing shame involves labeling offenders as deviant and casting them out of the community. Reintegrative shaming focuses on condemning the deviant behavior without condemning the individual. Thus, the behavior is punished but the individual is reaccepted to the community after completing the punishment. Unlike stigmatizing shaming, reintegrative shaming is finite, ends with words or gestures of forgiveness, and, throughout the shaming process, there is an effort to maintain respect for the shamed individual. The theory suggests that when shaming is reintegrative, offenders are unlikely to recidivate because they are accepted back into the community and their morality is strengthened. This dissertation examines reintegrative shaming theory in a mental health court which is a type of problem-solving court that divert persons with mental illness out of the cycle of arrest, incarceration, release and re-arrest, by motivating them to connect with treatment and services and to change their behaviors. The body of empirical research on these courts is still small but finds support for mental health courts’ effectiveness in reducing recidivism, reporting that mental health court participants are less likely to offend than before entering the court.

The first three studies in this dissertation attempt to validate the whether reintegrative shaming occurs in the observed mental health court setting. The first is a qualitative
observation study which links the components of reintegrative shame to the court process to the mental health court process. The second and third studies use research instruments designed to objectively and subjectively measure reintegrative and stigmatizing shame in the Australian Reintegrative Shaming Experiments. The second study used systematic observation instruments, completed by multiple observers in both mental health court and traditional criminal court setting, and finds that the mental is more likely to practice reintegrative shaming and less likely to practice stigmatizing shame. The third study employed a survey instrument to interview individuals who had recently completed the mental health court process and found that those who completed the process are more likely to have experienced reintegrative shame than stigmatizing shame. The collective finding from these studies are that the mental health is more likely to practice observed reintegrative shame than the traditional criminal court and that those who complete the mental health court were likely to perceive this process as reintegrative rather than stigmatizing. The final study uses exit statuses from court as indirect measures shaming types to test the prediction of reintegrative shaming theory. Mental health court completion is used as a proxy measure for reintegrative shame, and being found guilty in traditional criminal court as a proxy measure for stigmatizing shame. This study found that those who have an exit status consistent with a reintegrative experience are less likely to recidivate than those who have a shame or stigmatizing experience.
Reintegrative Shaming in Mental Health Court

by
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A dissertation submitted to the Graduate Faculty of North Carolina State University in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Sociology

Raleigh, North Carolina

2012

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DEDICATION

Life can be really simple if you want it to be. Just let someone tell you what's right and wrong, true and false, and then surround yourself with people who agree. Things will be straightforward. You’ll be comfortable. This work is dedicated to Tweed, Adam and Peter for making sure that I never live that life.
BIOGRAPHY

Bradley Russell Ray was born on December 3, 1978, in Mt. Pleasant, Michigan. Shortly after graduating from Mt. Pleasant Senior High School in 1997, he moved to Marquette, Michigan, and attended Northern Michigan University. It was here that Brad developed a passion for sociology and in 2002 he earned a Bachelor’s degree in Sociology from Northern Michigan University. Brad later moved to Chicago, Illinois, where he worked under the supervision of Dr. Greg Scott at DePaul University and earned a Master of Science degree in Sociology in 2005. In August 2006, Brad furthered his graduate education at North Carolina State University. He taught several sociology courses and conducted research under the direction of Virginia Aldigé Hiday at NC State where he completed his Doctor of Philosophy degree in Sociology. In the fall of 2012, Brad will be an assistant professor at Indiana University – Purdue University Indianapolis.
ACKNOWLEDGMENTS

I am forever grateful to my parents Gary and Linda and my brother Paul for loving me unconditionally and always believing in me. Thank you so much for teaching me not to judge others and to keep an open mind. No one will ever know how far I have come or be as proud of me as you three.

I am a first generation college student who was raised in a working class family. As a child I didn’t know anyone who had a college degree and the very thought of going to college was confusing and scary. Had it not been for the encouragement I received from Maurice Henderson, Paul Duby, Kathie Kane-Willis, and Greg Scott I might not have finished college or even contemplated earning a PhD.

Ginnie Aldigé, my advisor and the chair of my committee, has been a caring and loyal mentor to me throughout my graduate studies at NC State. She always sets the highest scholarly standards and pushes me to do the best work possible. I will always remember when Ginnie was asked by a student if she planned to retire soon. She responded with shock and almost seemed offended as she replied, ‘Why would anyone retire when there is so much work left to be done and so much great work to read?’ I knew at that moment we would work well together. Her commitment to professionalism has been an ongoing source of motivation to me. Most importantly though, Ginnie always has my back and that’s a great feeling to have while you’re in grad school.
Charles Tittle had a major impact on the way that I think about science and the professional identity I strive to achieve. He always took the time to sit down and offer me words of encouragement and advice. Going to his home for the annual “crim parties” are among the most informative and enlightening experiences I had in grad school. Sometimes we would all sit around and listen to Charles and Debbie tell stories about the “big names” in criminology. Their stories helped me to think about the scholars whose work I admired as funny and interesting people. More importantly, these stories served as a major turning point in my life; for the first time I felt that I might actually fit in with the academic community. Stacy De Coster was always there to offer me advice and help me laugh about the grad student experience. I will always remember the feeling I had when I left Stacy’s office after a long chat, like I was one of the cool kids in school. She made sure that I thought about the “big picture” and that I maintained integrity in my scholarly work. Having Stacy serve as a committee member on my dissertation was one of the most fortunate things to happen to me in grad school. Finally, Sinikka Elliott has helped me to think about new directions in which to take my research. She provided me with some great feedback on my dissertation research that has challenged me to always be reflexive about my qualitative work.

I would like to thank all of the mental health court team members and participants whom I have observed throughout the years. I would especially like to thank Marie Lamoureaux and Caroline Ginley. When I write about these courts I strive to capture your compassion and dedication.
I've had a lot of ups and downs during graduate school and my friends made sure that I took the time to celebrate the ups and helped me to laugh through the downs. To Alecia, Christy, Cindy, Earl, Jake, Jon, Josh, Jules, Katrina, Lizzy, Mark, Michelle, Nick R., Nick S., Padraic, Richard and Zack, we started out as colleagues but each of you have become dear friends.

Had it not been for the immediate friendships I developed with Mark, Jules, Earl and Padraic, I might not have ever felt I belonged in graduate school. Mark, Jon, Jake and Zack have been a pivotal part in helping me develop and implement my research ideas in grad school. Jules, Laura, Christy and Jon were there for me, in person and online, for the most difficult times I faced during grad school and Richard and Nick were always there when I needed to grab a drink and have a good laugh. Cindy, this dissertation research absolutely could not have been completed without your help. You've been more of a friend to me than I, a mentor to you. Thanks for not taking a bus or walking back to Raleigh when I couldn’t find you. And finally, I’d like to thank Jen for dangling such a wonderfully beautiful carrot in front of me to chase.

Countless others helped to contribute to the strength of this research; however, any faults within it are my own.
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CHAPTER 1: INTRODUCTION

1.1 Prologue

Since the late nineties, the number of mental health courts in the U.S. has grown tremendously (Council of State Governments Justice Center 2011). These courts are problem-solving courts that divert persons with mental illness out of the cycle of arrest, incarceration, release and re-arrest, by motivating them to connect with treatment and services and to change their behaviors. The body of empirical research on these courts is still small but finds support for mental health courts’ effectiveness in reducing recidivism, reporting that mental health court participants are less likely to offend than before entering the court. None of this research provides data to explain the mechanisms by which mental health courts affect recidivism although some generally suggest, without any evidence, that reductions in crime are the result of the treatments and services with which the court links participants. Outside of this treatment and services assumption, there has been little attempt to explain why participating in a mental health court leads to reductions in crime.

The research in this dissertation attempts to explain why the mental health court process leads to criminal desistance using John Braithwaite’s reintegrative shaming theory, which postulates that criminal behaviors are deterred when shame is reintegrative rather than stigmatizing (1989). Reintegrative shame is disapproval of behavior, not a person, that is communicated in a respectful manner and that attempts to avoid the result of stigmatization by offering words or gestures of forgiveness to the offender. Moreover, the disapproval period is finite and ends with a ceremony or gesture that decertifies offenders as deviant and
welcomes them back into the community of law-abiding citizens. In contrast, stigmatizing shame involves labeling offenders as deviant and casting them out of the community. The key prediction of the theory is that stigmatizing shame increases subsequent criminal behavior while reintegrative shame reduces subsequent criminal behavior.

The purpose of conducting this dissertation is twofold: (1) to examine the extent to which reintegrative shaming occurs in mental health court and (2), to use data on participants from a mental health court to test the predictions of reintegrative shaming theory. I begin with a review of the literature on persons with a mental illness in the criminal justice system, and follow by discussing the history of the mental health court and the extant research on these courts. I then provide an overview of reintegrative shaming theory and the empirical literature that has tested the theory, paying particular attention to studies looking at reintegrative shame in the criminal justice system. Next, I report my four studies of reintegrative shaming in the mental health court. The first is a qualitative observation study of a mental health court in which I outline how Braithwaite’s conceptualization of reintegrative shame is tied to the court process. The second and third studies attempt to validate empirically whether reintegrative shaming occurs in a mental health court. Both studies utilized research instruments designed to measure reintegrative and stigmatizing shame in a criminal justice context (these instruments are discussed below). The second study used a systematic observation instrument that was completed by multiple observers in both mental health court and traditional criminal court to determine whether the mental health court is more likely to practice reintegrative shaming. The third study employed a survey instrument to interview individuals who had recently completed the mental health
court process to determine whether they were likely to perceive the court as reintegrative or stigmatizing. The final study used mental health court completion as a proxy measure for reintegrative shame, and being found guilty in traditional criminal court as a proxy measure for stigmatizing shame, and tested the association between these divergent experiences and criminal re-arrest.

1.2 The Incarceration and Arrest of Mentally Ill Offenders

In 1972, psychiatrist Marc Abramson asserted that persons with mental illness (hereafter PMI) were increasingly being handled by the criminal justice system, a process he referred to as the “criminalization of mentally-disordered behavior” (Abramson 1972). Some of the early empirical research supported these claims, finding that there were large numbers of PMI in jails and prisons (Lamb and Grant 1982; Stelovich 1979; Swank and Winer 1976; Whitmer 1980). Since then, surveys and structured clinical interviews have found that the number of people with a serious mental illness in jails ranges from 6 percent to 17 percent (Abram, Teplin, and McClelland 2003; Steadman, Osher, Robbins, Case, and Samuels 2009; Teplin 1990b; Teplin 1996) while the proportion of PMI in prisons ranges from 16 to 24 percent (Diamond, Wang, Holzer, Thomas, and Cruser 2001; Ditton 1999). These percentages are 3 to 5 times greater than the proportion of PMI in the general population

\[1\] For a discussion of these studies and those with alternate findings see Hiday, Virginia Aldigé. 1983. The Sociology of Mental Health Law. *Sociology and Social Research* 67 (January):111-128.
(Morris and Tonry 1990; Morris, Steadman, and Veysey 1997; Regier, Farmer, Rae, Locke, Keith, Judd, and Goodwin 1990; Rice and Harris 1997; Teplin 1990b).\(^2\)

Many suspect that deinstitutionalization contributed to increases in the incarceration of PMI (Lamb and Grant 1982; Stelovich 1979; Swank and Winer 1976; Whitmer 1980).\(^3\)

Because PMI were no longer held in hospitals, there were greater numbers of them in the community who were at risk of arrest (Whitmer 1980). Moreover, the criminal justice system is the only social institution that cannot turn away PMI. Private centers can refuse to treat patients they deem to be risky or disruptive; community mental health providers can reject those who have a criminal history; and hospitals can turn away those who appear threatening or intoxicated. Although research shows that arrest rates of PMI are now higher than those of the general population (Fisher, Silver, and Wolff 2006; Fisher, Simon, Roy-Bujnowski, Grudzinskas, Wolff, Crockett, and Banks 2011; Swanson, Borum, Swartz, Hiday, Wagner, and Burns 2001; Theriot and Segal 2005).

The assumption that this population is arrested and incarcerated solely because of untreated mental health symptoms is overly simplistic. A growing body of research suggests

\(^2\) Using a broad measure of mental illness that employs a single psychotic symptom, self-reported clinical diagnosis, or prior treatment by a mental health professional, James and Glaze (2006) reported that over half of all prison inmates had a mental illness. I do not include their reported percentage in the text. Their findings are often used for advocacy; however, the single symptom criterion can come from multiple sources (i.e. substance abuse) rather than mental illness. More valid studies limit the measure of mental illness to severe mental illness and use standardized interviews to determine diagnostic criteria (Fisher, William H., Ira K. Packer, Steven M. Banks, David Smith, Lorna J. Simon, and Kristen Roy-Bujnowski. 2003. "Self-reported lifetime psychiatric hospitalization histories of jail detainees with mental disorders: Comparison with a non-incarcerated national sample." *Journal of Behavioral Health Services & Research* 29:458-465, Teplin, Linda A. 1996. "Prevalence of psychiatric disorders among incarcerated women." *Archives of General Psychiatry* 53:664-664.).

\(^3\) To test the hypothesis that deinstitutionalization led to the criminalization of PMI would require reliable longitudinal data with pre and post deinstitutionalization rates which do not exist (see Teplin 1983 for discussion).
that the symptoms of mental illness may be less important in offending than other criminogenic and contextual risk factors (Bonta, Law, and Hanson 1998; Crocker, Mueser, Drake, Clark, McHugo, Ackerson, and Alterman 2005; Fisher, Roy-Bujnowski, Grudzinskas, Clayfield, Banks, and Wolff 2006; Silver 2000; Silver 2006). Research finds that police are no more likely to arrest PMI than non-mentally disordered suspects (Engel and Silver 2001) and that only a small portion (8 to 10 percent) of incarcerated mentally ill offenders are actually arrested for behaviors directly attributable to mental illness (Junginger, Claypoole, Laygo, and Crisanti 2006; Peterson, Skeem, Hart, Vidal, and Keith 2010; Skeem and Cooke 2010). Indeed, the strongest risk factors for arrest appear to be shared by offenders with and without mental illness (Bonta, Law, and Hanson 1998; Fisher, Silver, and Wolff 2006; Hiday and Burns 2010; Junginger, Claypoole, Laygo, and Crisanti 2006); however, a large percentage of PMI exhibit more of these risk factors (such as homelessness, antisocial behaviors, drug use, and criminal peers) than offenders without mental illness (Andrews, Bonta, and Wormith 2006; Girard and Wormith 2004; Skeem, Nicholson, and Kregg 2008). Draine and colleagues’ (2002) review of the literature on mental illness in relation to social problems such as crime, unemployment, and homelessness suggests that the direct impact of mental illness on crime is smaller than typically implied and that factors related to poverty (i.e. lack of education, problems with employment, substance abuse, and a low likelihood of pro-social attachments) exacerbate the relationship between serious mental illness and criminal behaviors (Draine, Salzer, Culhane, and Hadley 2002b; Hiday and Burns 2010).

Changes occurring in the U.S. criminal justice system may have also led to the increased arrest and incarceration of PMI. The “law and order” reforms of the 1980s led to
substantial incarceration increases. The number of inmates tripled from 1980 to 1998, from 501,866 inmates to 1,825,000 (Beck and Mumola 1999; Blumstein and Beck 1999); and by 2010 the number of inmates was approximately 2.3 million (Bureau of Justice Statistics 2010). Some of the offenses criminalized as part of the law and order reforms—particularly order maintenance (i.e. public-order offences) and drug crimes—may have disproportionally affected the arrest and incarceration of PMI (Blumstein and Beck 1999; Draine 2003a; Draine 2003b; Haney and Zimbardo 1998; Lurigio and Fallon 2007). PMI persons who are poor, unemployed, homeless and who self medicate are likely to commit order maintenance offenses, such as loitering, disturbing the peace, drinking in public spaces, and panhandling (Fagan 2003; Fagan and Davies 2000). Similarly, the war on drugs may have disproportionately affected PMI as more than half of PMI have a substance abuse problem during their lifetimes (Beckett and Sasson 2004; Robertson, Pearson, and Gibb 1996) and the majority of mentally ill arrestees have co-occurring substance abuse disorders (Austin and McVey 1989; Fisher, Wolff, Grudzinskas, Roy-Bujnowski, Banks, and Clayfield 2007; Junginger, Claypoole, Laygo, and Crisanti 2006; Swartz and Lurigio 1999; Teplin 1990a; Teplin 1996).

1.3 The Revolving Door

There are now more PMI being treated in jails and prisons than in public psychiatric hospitals, leading some to refer to prison as the last mental hospital (Gilligan 2001; Lamb and Bachrach 2001; Morrissey, Meyer, and Cuddeback 2007; Morrissey, Cuddeback, Cuellar, and Steadman 2007). Not only are PMI more likely to be arrested, they are more
likely to be sentenced, receive longer sentences, and serve them out (Porporino and Motiuk 1995; Travis 2005). Moreover, prisons and jails are generally poorly equipped to meet the needs of mentally ill inmates. There is little likelihood that treatment will be provided and a high likelihood that mental deterioration will occur while incarcerated (Hartwell 2004; Lamb and Weinberger 2005; Morris, Steadman, and Veysey 1997; Teplin, Abram, and McClelland 1997; Teplin, Abram, McClelland, Washburn, and Pikus 2005). When treatment is available it is often short term or delivered sporadically, and it is insufficient to address the severity of mental illness and the problems that accompany it (Human Rights Watch 2003).

Reentry into one’s community after incarceration is a difficult process for anyone who does not have adequate reintegrative support (Harris and Koepsell 1996; Porporino and Motiuk 1995; Travis 2005) but it can be particularly difficult for PMI. They are more likely to be homeless upon release, violate probation, and recidivate (Hartwell 2004). They struggle to obtain treatment; and community mental health centers and providers often turn them away because of their criminal status (Lamb and Weinberger 2005; Wilson, Tien, and Eaves 1995). This transition from incarceration into the community can be particularly difficult for PMI who have a co-occurring substance abuse diagnosis. Once PMI are released, the double stigma of being a mentally ill substance abuser continues to create barriers to treatment and services while the added third stigma of prior incarceration makes successful reentry into the community unlikely. Many of these individuals end up back in the criminal justice system (Cirincione, Steadman, Robbins, and Monahan 1994; Hartwell 2004), which has become a revolving door as PMI go from arrest, to court, to cell and back to the community without receiving the services and treatment, or receiving them sporadically and only short term.
CHAPTER 2: THE MENTAL HEALTH COURT

2.1 Prologue

Given the large numbers of PMI in the criminal justice system, and the fact that many of these individuals repeatedly cycle through the system, local jurisdictions have implemented various diversionary programs in which mentally ill offenders who are arrested are given an opportunity to avoid prosecution, or serving a sentence, if they successfully complete the program. Pre-booking programs attempt to divert PMI during initial contact with law enforcement. For example, crisis intervention teams provide intensive training for police officers to detect and divert at the first offending encounter with a PMI. Post-booking programs attempt to divert PMI while they are in jail or court (Steadman, Morris, and Dennis 1995). The mental health court (hereafter MHC) is an example of a post-booking diversion program that utilizes the treatment and services available in a given community to stem the frequency of mentally ill offenders contact with the criminal justice system.

Despite local differences, researchers and practitioners have outlined similarities between MHCs (Council of State Governments Justice Center 2011; Hiday 2007; Thompson, Reuland, and Souweine 2003). MHCs use a non-adversarial team approach in which criminal justice and mental health stakeholders come together to develop individually tailored plans for mentally ill offenders. They target offenders whose mental illness contributes to their criminal behavior while also considering any safety concerns that an offender might pose. When an offender is eligible, the court presents the terms of participation but the offenders decide whether to enroll in the court. They can opt-out at any time, in which case they are
sent back to traditional criminal court (hereafter TCC) for processing if pre-adjudicated enrollment, or to serve their sentences if post-adjudicated enrollment. Once enrolled, the court links her or him to community-based treatments and services, and then regularly evaluates compliance with these services and court mandates for behavioral change during court status hearings. Frequency and length of monitoring vary by court. The team modifies the participant’s treatment and uses incentives and sanctions to promote compliance; however, if a participant is continually non-compliant, the team ejects him/her from the MHC process and returns him/her to TCC or to serve the sentence. If an offender remains compliant for the allotted time, his or her charges are dismissed (in pre-adjudication cases) or the sentence is reduced (in post-adjudication cases).

Although MHCs attempt to divert mentally ill offenders to mental health treatment, team members recognize that they need to alter contextual risk factors. Thus, the MHCs link participants with mental health treatment and help develop participants’ skills and access to services that increase their self-sufficiency in the community (such as housing, relationship development, job and education training, etc.). This approach—that addresses the concern of mental illness interacting with criminogenic and social risk factors—tends not to be found in traditional criminal justice approaches and interventions like probation or parole (Draine, Salzer, Culhane, and Hadley 2002a; Fisher et al. 2006).

2.2 History of the Mental Health Court

MHCs are a type of problem-solving court (also called specialty courts or therapeutic courts). These courts offer an alternative to TCC and attempt to divert offenders out of the
criminal justice system by linking them with treatments, services or other community
alternatives that will alter underlying criminal behaviors. There are currently more than 4,000
problem-solving courts in the U.S. and they are a growing part of the criminal justice system
(Huddleston and Marlow 2011). The juvenile court of late nineteenth and early twentieth
centuries is the earliest example of what might be considered a problem-solving court (Quinn
2009; Wiener, Winick, Georges, and Castro 2010); however, the modern problem-solving
court movement is commonly associated with the first drug court in Dade County Florida in
1989 (Goldkamp 1999; Nolan 2001). That court was established to treat addiction among
defendants with a history of substance abuse who had been arrested on drug related charges.
It was developed at this time because the “law and order” reforms and “drug war” of the
1980s caused massive increases in court cases and jail overcrowding, and Dade County was
court ordered to reduce its growing jail populations (Inciardi, McBride, and Rivers 1996;
Nolan 2001; Quinn 2009).

Observers lauded the drug court model for its innovation and success, but reports of
success were largely based on stakeholder opinions and news stories of those reformed by the
court. The drug court model subsequently was quickly emulated in other jurisdictions
without systematic evaluation. In 1996, drug court stakeholders met to outline the "key
components" of a drug court (National Association of Drug Court Professionals 1997). These
resulting guidelines helped to secure monies from the federal government to establish even
more drug courts across the country. Ten years after the creation of the Dade County court
there were over 500 drug courts in the U.S.
Reported success of these courts led to the development of other types of problem-solving courts and the drug court guidelines laid the framework for them. In 1997 Broward County Florida started the nation’s first MHC that followed the drug court model when a judge observed the county’s “rapidly increasing” number of misdemeanor cases involving mental illness that led to overburdened court dockets and overcrowded jails (Petrila, Poythress, McGaha, and Boothroyd 2001). The court modified the key components of the drug court model to fit mentally ill offenders and proposed that judges who preside over the court’s docket should “possesses a unique understanding and ability to expeditiously and efficiently move people from an overcrowded jail system into the mental health system” (Boothroyd, Poythress, McGaha, and Petrila 2003: 16). Similar experiences in other jurisdictions led to the creation of MHCs across the U.S. (Goldkamp and Irons-Guynn April, 2000). In November 2000, the government approved the Law Enforcement and Mental Health Project that enacted legislation to develop and fund one hundred pilot MHCs. Since

4 An important fact often overlooked in the MHC literature is that the first MHC, actually preceded drug courts. In the early 1980s Judge Evan Goodman set up a MHC in Marion County, Indiana, at the Wishward Hospital gym on the basketball court and established a docket to deal with cases of mentally ill offenders arrested on minor charges (see Coons and Bowman 2010). Criminal charges were put on hold so the patient could be released from jail and civil commitment would become effective so the patient could be sent to a state hospital for treatment or, in some cases, could be ordered to outpatient treatment. Judge Goodman held periodic hearings to learn of patient progress and developed a “forensic team” made up of mental health social workers and psychiatrists who worked with the court, jail, and the parole and probation departments to monitor patients who were on outpatient commitment. This was the first post-booking, pre-trial diversion court that used a non-adversarial team approach. This makeshift court dissolved in the late 80s; but by the mid 1990s the county court and jail asked the Marion County Mental Health Association (MHA) to assist in dealing with the increasing number of PMI in the criminal justice system. The MHA brought together judges, prosecutors, jail staff, and service providers and started the Psychiatric Assertive Identification and Referral (PAIR) Project as a formal court program in 1996. The program did not contain all ten essential elements of a MHC (Council of State Governments Justice Center, 2008); it did not receive any federal government funds; and no scholarly research was done to evaluate the court.
then, the number of MHCs in the United States has grown to over 300 (Almquist and Dodd 2009).

The creation and proliferation of the “problem-solving courts” (both MHCs and drug courts) were primarily due to efficiency reasons. With the increases in incarceration and jail overcrowding across the country, judges were concerned about the costs (in time and money) of repeat offenders, a large proportion of who were drug abusers and PMI; and they were frustrated with the inadequacy of solving these problems with impersonal assembly-line justice. Problem-solving courts offered an appealing alternative to TCC where legal practitioners could balance public safety concerns, treatment needs and constitutional rights in a new model offering a potential solution (Quinn 2009; Nolan 2001). Intentions of the mental health and substance abuse professionals who aligned themselves with these courts were more benevolent. These stakeholders were concerned with getting PMI out of jails and into treatments and services that might improve their functioning in the community and quality of life (Coward 1997).

2.3 Empirical Research on Mental Health Courts

A number of aspects of the MHC have been examined in the scholarly literature. Several empirical studies have examined the inner-workings of the MHC process. Research on the Broward County, Florida, MHC focused on describing the court process (McGaha, Boothroyd, Poythress, Petrila, and Ort 2002; Petrila, Poythress, McGaha, and Boothroyd 2000; Petrila, Poythress, McGaha, and Boothroyd 2001) and examining how interactions with the judge in MHC differed from TCC (Boothroyd, Poythress, McGaha, and Petrila
They found that the MHC judge is more likely to engage participants in conversation and that the dialogue typically revolves around treatment needs, housing issues, and medication compliance rather than their criminal offending (Boothroyd, Poythress, McGaha, and Petrila 2003). In a Nevada MHC, Frailing (2010) coded remarks of three different judges in MHC. She found that while each judge had his/her own way of conducting court, all of them were informal and made remarks of praise and encouragement. The non-adversarial nature of MHC proceedings is commonly noted in published and unpublished evaluations and is described as one of the key components of the MHC (Council of State Governments Justice Center 2011; Frailing 2010; Hiday, Moore, Lamoureux, and de Magistris 2005; Moore and Hiday 2006).

Two studies have examined how these proceedings are perceived by MHC participants, both of which examine perceived procedural justice as a possible mechanism that might lead to reductions in criminal behavior (Poythress, Petrila, McGaha, and Boothroyd 2002; Wales, Hiday, and Ray 2010; procedural justice, and the findings from these studies, are discussed in greater detail below). Research on the inner-workings of the MHC process has just started to explore decision-making of the MHC team. Castellano (2011) found that MHC case managers act as “double agents” for participants. In some instances they use legal means, such as due process and fairness, to suggest that punishment not be used to obtain compliance; and in other instances, they align themselves with law enforcement to suggest that instruments of social control, such as drug testing, surveillance, and property searches be used to obtain compliance (Castellano 2011).
Another avenue of research examines who is selected into the MHC and who completes the process. Wolff, Fabrikant and Belenko (2011) developed a conceptual model to outline the formal and informal criteria that are used to select offenders for MHC. Formal criteria for acceptance include types of charges (e.g. some courts only accept misdemeanors), criminal history of a defendant (e.g. no violence in recent offences), and most importantly whether a defendant matches the goals of the court (i.e. a diagnosis of mental illness). Informal criteria refer to a defendant’s support from the referral source and perceptions of a defendant’s motivation.

Two studies have examined factors that predict MHC completion (Dirks-Linhorst, Kondrat, Linhorst, and Morani 2011; Redlich, Steadman, Callahan, Robbins, Vessilinov, and Ozdogru 2010). Both found differences in MHC completion by offender characteristics. Redlich et al. (2011), with data from four different courts, found that whites and females were significantly more likely to complete the MHC process; however, in a regression analysis that included controls for court site and legal factors, they found no significant difference by race or sex. Dirks-Linhorst and colleagues (2011), examining a single court, found that males, racial minorities, and those who committed new crimes while under MHC supervision were more likely to be terminated.

There are ten essential elements that most MHCs follow (Almquist and Dodd 2009); however, there are variations in procedures, and the treatments and services available in their communities (Steadman, Redlich, Callahan, Robbins, and Vesselinov 2011). Some research on the inner-workings of MHCs examines similarities and differences across courts. A national survey of 90 MHCs found consistency in whom the courts accept: most have been
diagnosed with a serious mental illness and many of them with co-occurring substance abuse problems (Redlich, Steadman, Monahan, Robbins, and Petrila 2006). A study of seven MHCs found that schizophrenia, schizoaffective disorder, bipolar disorder, and depressive disorders were the most common diagnoses (Steadman, Redlich, Griffin, Petrila, and Monahan 2005). All MHCs use a team approach to reach decisions about defendants; however, courts vary in who is involved in the team (Castellano 2011; Hiday 2007; Hiday, Moore, Lamoureux, and de Magistris 2005). Team members typically include a judge, case manager, probation officer, district attorney, public defender, and representatives from mental health services. Findings on other procedural differences include whether the court accepts defendants before or after adjudication (Redlich, Steadman, Monahan, Petrila, and Griffin 2005), length of time defendants are under court supervision and how court teams use incentives and sanctions to motivate defendants to be compliant (Griffin, Steadman, and Petrila 2002). For example, Griffin et al. (2002) found that most MHCs rarely use jail time (which is in stark contrast to drug treatment courts), but create individualized incentives and sanctions geared specifically to a participant’s circumstances (Griffin, Steadman, and Petrila 2002; Redlich et al. 2010).

**Mental Health Courts and Recidivism**

Most empirical work has attempted to evaluate the effectiveness of the MHC model by comparing the outcomes of MHC participants to a comparison group. Studies have examined service utilization (Boothroyd, Poythress, McGaha, and Petrila 2003), cost effectiveness (Palermo 2010; Ridgely, Engberg, and Greenberg 2007) and symptoms
However, the majority of MHC outcome evaluations have examined the key criminal justice goal of the court, that is, reductions in criminal offending. Their findings consistently suggest that MHCs can be successful in reducing re-offending. Participants have fewer arrests after MHC enrollment than before their enrollment (Christy, Poythress, Boothroyd, Petrila, and Mehra 2005; Dirks-Linhorst and Linhorst 2012; Herinckx, Swart, Ama, Dolezal, and King 2005; Moore and Hiday 2006; Steadman et al. 2011) and serve fewer jail days after than before their enrollment (Cosden et al. 2003; Cosden, Ellens, Schnell, and Yamini-Diouf 2005; Frailing 2010; Steadman et al. 2011; Trupin and Richards 2003). These studies also show MHC participants have a significantly lower likelihood of re-arrest than a comparison group even after controlling for demographic and criminal factors (Dirks-Linhorst and Linhorst 2012; Herinckx et al. 2005; McNiel and Binder 2007; Moore and Hiday 2006; Steadman et al. 2011). To date, no study has found that MHC defendants are more likely to be arrested after involvement in MHC.

Because of the ethics problem of denying treatment and services, only one study has employed random assignment of mentally ill defendants to an experimental or control group. In this one study, the control group received similar case management and treatment as the MHC group but went through TCC processing. Most criminal justice evaluations have used a quasi-experimental research design comparing MHC participant outcomes to those of a matched group of defendants not enrolled in MHC (Christy et al. 2005; McNiel and Binder 2007), defendants who were eligible but not referred or enrolled (Frailing 2010; Moore and
Hiday 2006; Steadman et al. 2011), or defendants who were enrolled in MHC but did not complete it either because they were terminated or because they opted-out (Dirks-Linhorst and Linhorst 2012; Frailing 2010; Herinckx et al. 2005; Hiday and Ray 2010; Trupin and Richards 2003).

There are two methodological issues that need to be considered in evaluating recidivism among MHC participants reported in these studies: program completion and the re-arrest risk period. Early studies of MHCs did not consider completion and used a post-enrollment risk period (e.g. the risk period for re-arrest began after the participant enrolled in the MHC process); thus, they were looking to see whether those who participated in the MHC program were less likely to be re-arrested for some period of time after they came under the supervision of the court. These studies did not consider that some participants do not complete the MHC process, leave after a limited time in MHC, and thus, have follow-up time not in MHC program, while most others remain in the MHC program during all or most of the follow-up. Herinchx et al. (2005) was the first study to consider MHC completion and found that those who completed the court were 3.7 times less likely to reoffend than those who did not. Moore and Hiday (2006) controlled for MHC exit status in examining re-arrest post-enrollment among those who exited the court and had similar findings. They suggest that researchers need to make the distinction between MHC completers and non-completers when evaluating the effectiveness of the MHC as those who complete the program received a full "dose" of MHC treatment (i.e. a combination of services, treatment, supervision and court monitoring).
These studies considered MHC completion, but used a post-enrollment risk period. However, MHC teams acknowledge that they are trying to change long-standing patterns of criminal behavior; participants often make mistakes early on in the MHC process and many are re-arrested (Redlich et al. 2010). In such cases, the team can decide to add the additional charges to the original ones on the MHC docket. If these participants complete the MHC process the additional charges are disposed of along with the original charges. Therefore, some researchers have operationalized the risk period for re-arrest as beginning after MHC exit and do not count arrests during MHC participation as failures (i.e. re-arrest). McNiel and Binder (2007) used survival analysis to look at time to re-arrest between MHC participants and a control group that was matched by propensity weighting. They ran two analyses, one that compared the MHC and control groups from the time of MHC enrollment (key arrest for the control group members) to the end of the follow-up period (6 mos. To 2yrs. 5 mos.), and another that examined re-arrest comparing only MHC completers, and the control group post-exit. They found that those who participated in the court were significantly less likely to recidivate than those in the control group, and that post exit reductions were significantly lower among MHC graduates than the control group. Hiday and Ray (2010), looking at differences 24 months post-exit among completers and noncompleters, found that both MHC completers and noncompleters had significantly fewer numbers of re-arrests after MHC than before but that MHC completers had significantly fewer re-arrests, were significantly less likely to be rearrested, and had a significantly longer time to re-arrest than noncompleters. Dirks-Linhorst and Linhorst’s similar study of re-arrest 12 months post-exit (2012) also found significant differences between those who completed and those who did not. Frailing
(2010) using jail days 12 months pre-enrollment and 12 months post-exit reported that both MHC participants and graduates combined had significantly fewer jail days than the control group during post enrollment and exit but did not look at the difference between participants and graduates. Her analysis did not control for confounding variables as the three other post exit studies did.

2.4 The Use of Theory in Mental Health Court Literature

The post-exit studies reviewed above took place in very different regional settings and each of the courts offered a different mix of treatments and services available in that area. Yet each of them found that those who graduated from MHC maintained reductions in criminal recidivism. One of the benefits of theory is that it can help make sense of such similar findings; moreover, theory might help explain what happens during the MHC process that leads to criminal desistence. In the problem-solving court literature the theories that are most frequently discussed are *therapeutic jurisprudence* and *restorative justice* (Nolan 2009). David Wexler and Bruce Winick who developed therapeutic jurisprudence as a theory of mental health law (Wexler and Winick 1991; Wexler and Winick 1996) argue that the law is a social force that can have both therapeutic and anti-therapeutic consequences. Therapeutic jurisprudence “wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected” (Wexler and Winick 1996). Restorative justice is a similar concept but is concerned with both the individual and the community as it wants to use the criminal justice system to restore offenders and victims back into the community after the crimes. It is
defined as a process whereby individuals who have a stake in a specific offence come together to resolve how to deal with the aftermath of the offence (Strang 2004). It holds that offenders should be reintegrated (rather than punished) by stakeholders who might be family, friends, members of the community, or even victims of their crime. In doing so restorative justice attempts to create communities that support rehabilitation.⁵

Therapeutic jurisprudence and restorative justice perspectives have much in common (Braithwaite 2002; King 2008; Nolan 2003; Nolan 2009); they both place an emphasis on emotions, healing and the well-being of those encountering the legal system.⁶ However, they differ in that therapeutic jurisprudence focuses on improving mental health of individuals while restorative justice is more broadly focused on amending any harm that has been done and restoring individuals in the community.

While scholars often refer to therapeutic jurisprudence and restorative justice as theories, they are conceptually different from social scientific theories and are better described as legal perspectives. Theories deal with specifying causal relationships from interconnected propositions that explain how phenomena are related. From these causal relationships, researchers can derive falsifiable hypothesis that can be empirically tested. Neither therapeutic jurisprudence nor restorative justice postulate a mechanism to explain how using the law therapeutically or restoring offenders will lead to less crime. Rather, each state that these perspectives should be utilized because they are better for society; they do not

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⁵ Despite the close tie between reintegrative shaming and restorative justice, the latter is not founded on RST as restorative justice predates Braithwaite’s work.
⁶ See Braithwaite 2002; King 2008 and Nolan 2009 for discussions of the similarities and differences between these perspectives
explain how a particular criminal justice process may be more or less therapeutic or restorative.

As legal perspectives, therapeutic jurisprudence and restorative justice have been pivotal in the growing number of problem-solving courts. Both perspectives shine a critical light on the criminal justice system’s “get tough” approach to crime and highlight the ability of the legal system to address social problems. However, they offer little help to researchers attempting to examine what is working inside the so-called “black box” of the MHC.

To date only two studies use theory to examine the mechanisms by which MHCs might reduce crime, both of which look at the role of procedural justice and coercion among defendants (Poythress, Petrila, McGaha, and Boothroyd 2002; Wales, Hiday, and Ray 2010). Procedural justice theory postulates that making fair decisions and having respectful relationships with defendants (giving them both voice and validation), lead to increased compliance with court mandates and the law (McIvor 2009; Tyler 2009; Tyler, Sherman, Strang, Barnes, and Woods 2007; Tyler and Fagan 2008). Coercion theory states that controls or sanctions delivered in a coercive manner (i.e. through the threat of force or intimidation) will lead to decreased compliance with the law (Colvin 2000). Wales, Hiday and Ray (2010) draw on this literature and specify how the mechanisms in these theories operate in the MHC process by arguing that judges are in an ideal position to demonstrate procedural justice and reduce feelings of coercion. By treating participants with respect, explaining decisions, giving them voice (in choosing whether to participate, and allowing them to express themselves in court), and validation (listening to them), judges create an alliance between the values and interests of the law and the MHC participant. As participants come into alliance
with the law, they will become compliant, thereby reducing recidivism (Wales, Hiday, and Ray 2010).

Both studies find that MHC participants report high levels of procedural justice (Poythress, Petrila, McGaha, and Boothroyd 2002; Wales, Hiday, and Ray 2010); and one found low levels of perceived coercion (Poythress, Petrila, McGaha, and Boothroyd 2002). The latter also finds that these perceptions varied significantly from defendants in TCC (Poythress, Petrila, McGaha, and Boothroyd 2002). While these studies do not test whether procedural justice or coercion is empirically associated with reduced criminal recidivism, they suggest what is happening during MHC that may explain reductions in recidivism. Moreover, they point to ways MHCs can be used to test social scientific theories. Because MHC procedures diverge from those in TCCs, they may be ideal venues for testing theoretical predictions.

The research conducted in this dissertation utilizes reintegrative shaming theory—a theoretical perspective that that has not yet been examined in the MHC—to examine some of the internal processes of the MHC as possible mechanisms that might explain criminal desistance among those who complete the MHC process.
CHAPTER 3: REINTEGRATIVE SHAMING THEORY

3.1 Introduction

Reintegrative shaming theory (hereafter RST) is an attempt to integrate existing criminological theories (i.e. labeling, social control, learning, anomie, subcultural) by shunting them around the central concept of shame (Braithwaite 1989: 107). The theory integrates concepts from each of these criminological theories and posits how they relate to, and are affected by, shame. This section begins with an explanation of RST and those predictions within the theory that are relevant to the research at hand, followed a review of the empirical tests of RST.

3.2 Overview of Reintegrative Shaming Theory

RST merges several criminological traditions around the concept of shame and, in doing so, attempts to explain crime and criminal recidivism at the individual and societal levels. According to Braithwaite (1989) shaming refers to “all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed” (100). Therefore, shaming does not only result from formal or informal punishments but can occur through other social practices over the life course. Part of being socialized into a family or community entails learning compliance from external controls that are communicated through a guardian’s overt disapproval and approval. Over time, these external controls become self controls as children develop a conscience rooted in the messages conveyed through external controls (Ahmed and Braithwaite 2005; Ahmed and
Braithwaite 2004; Ahmed, Harris, Braithwaite, and Braithwaite 2001; Braithwaite 1989).

According to Braithwaite, one of the major societal processes of shaming that contributes to this learned conscience is *gossip*. By gossiping about deviants, people learn about others’ perceptions of immorality and the possible consequences of deviant behavior. For example, if two individuals gossip about behaviors they consider moral and immoral they are simultaneously informing their learned conscience, as they will think of possible consequences that might result from committing the immoral behaviors, thereby lowering the likelihood of committing this behavior. Gossip can also educate about norms and behaviors that the individual may never experience; most individuals will never even contemplate certain crimes because of the gossip they have heard about the consequences of these crimes. Participating in gossip, therefore, reinforces beliefs in social norms while building a learned consciousness that will deter criminal behaviors.

Braithwaite (1989) states that all shaming is followed with acts that are primarily *reintegrative* or primarily *stigmatizing* by the shamer. *Stigmatizing shame* involves labeling offenders as deviant and casting them out of the law-abiding community. When this occurs, the deviant label becomes a master status; legitimate opportunities are blocked; and offenders seek out similarly labeled individuals and continue their criminal behaviors. Stigmatizing shame is consistent with labeling theory’s predictions in that stigma results in a transformation of one’s identity (Becker 1963; Lemert 1967); however, Braithwaite also incorporates subcultural theory’s predictions by stating that stigmatizing shame might also lead individuals to join groups that provide reinforcements, rationalizations or other collective solutions to their deviant identity (Sutherland and Cressey 1978)
Reintegrative shaming is a wholly different process than stigmatizing shame.

According to Braithwaite,

Reintegrative shaming is shaming followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant (Braithwaite 1989: 100).

Reintegrative shaming focuses on condemning the deviant behavior without condemning the individual. Moreover, through words or gestures of forgiveness, the offender is eventually accepted back into the community. What differentiates reintegrative from stigmatizing shame is that it is finite, ends with words or gestures of forgiveness, and, throughout the shaming process, there is an effort to maintain respect for the shamed individual. The key prediction of the theory is that that stigmatizing shame results in more crime and reintegrative shaming results in less crime.

Braithwaite argues that shaming, when reintegrative, is a more powerful deterrent of criminal behaviors than repressive social control. Both forms of deterrence limit autonomy; however, repression does so through coerced compliance while shaming, when it is reintegrative, coaxes or motivates individuals to choose compliance. We comply because we want others’ approval and fear being stigmatized by them; but moreover, reintegrative shaming can actually build up the offender’s conscience by telling him or her that deviant behaviors are out of character. Reintegrative shame communicates to an offender that she or he is a moral person, who will be welcomed back into the community of moral persons, but that she or he committed an act that is unacceptable and out of character. Formal
punishments communicate a lack of confidence in the offender’s morality; they suggest that the offender cannot be trusted to make his or her own decisions so someone else must. Over the course of several acts of punishment, offenders may begin to internalize others’ perceptions of their morality and effectively give up in altering their behaviors. RST suggests that choosing to comply, rather than being forced or coerced, is ultimately a more powerful and long-term deterrent.

RST integrates existing criminological theories as possible contingencies to the association between shaming types and criminal behavior. One set of these contingencies, *interdependencies*, are based on control theories of deviance, which posit that social bonds to others create conformity and reduce deviant behaviors (Hirschi 1969). According to RST, individuals are interdependent when they are reliant on others to achieve ends or others are dependent on them. Because they are reliant on other persons, interdependent individuals will be more likely to anticipate shame if they were to behave in a deviant manner, which will result in greater conformity. Furthermore, in those cases where interdependent individuals are deviant, they are more likely to receive reintegrative shaming because of the attachment they have to society. RST thus states that interdependent individuals are less likely to commit initial and subsequent acts of deviance.

Braithwaite suggests several characteristics that are associated with interdependency: commitment, employment, marital status, age, and gender. Commitment is essentially an individual’s stakes in conformity (i.e. the things one risks losing when she or he deviates or fails to conform). These stakes increase with education and occupational prestige, which lead to a greater anticipation of shame, which increases conformist behaviors. Age and marital
status reflect interdependency changes over the life course. As children mature, interdependent attachments change from family of orientation and school to family of procreation and workplace. During times of transition, between attachments, an individual’s anticipation for shame is lower and she or he is more likely to commit deviant acts. Interdependency also differs by gender. In a patriarchal society, females tend to have continual high interdependency through adolescence while males are socialized to break away from their family during adolescence and ‘sow their oats’ before ‘settling down’ and developing new interdependencies (Braithwaite 1989).

Braithwaite’s concept of communitarianism is an attempt to integrate macro level predictions of criminal behavior. Communitarianism is a societal condition in which most of the society’s members are highly involved in interdependent relationships. Thus, members of such societies have personal attachments to those in their communities and they place a high value on the needs of others. Communitarianism and interdependency are related in that a highly communitarian society (macro level) is the aggregation of many highly interdependent relationships (micro level). Communitarian societies foster shaming because people are more involved in each other’s lives. As such individuals will anticipate shame for their potential criminal behaviors and are more likely to desist. Moreover, because members of a communitarian society are more likely to be a part of supportive relationships (i.e. interdependent relationships) they are more likely to receive reintegrative shaming which will deter subsequent criminal behaviors (Braithwaite 1989).
3.3 Empirical Tests of Reintegrative Shaming Theory

Some studies derive hypotheses from Braithwaite’s descriptions of the concepts in *Crime, Shame and Reintegration* (1989), and his statements about how these concepts are related, and then directly test these hypotheses using surveys of individuals. Among these direct tests there has been little consensus on how to operationalize the theoretical concepts (i.e. reintegrative shame, stigmatizing shame, interdependency, communitariansim). Other studies test the theory by identifying a societal process whereby shame might be either reintegrative or stigmatizing or by locating survey items that may be similar to the concepts in RST. These studies are indirect tests of the theory, and have struggled with adequately identifying settings or finding survey items that capture both reintegrative and stigmatizing shame. In an attempt to address these issues a team of researchers at the Centre for Restorative Justice at Australian National University developed the Australian Reintegrative Shaming Experiments (hereafter RISE). The experiment randomly assigned offenders to either TCC or a restorative justice conference that was based on reintegrative shaming principles. The goal of the experiment was to locate two societal processes, each of which represented either reintegrative or stigmatizing shame (conferences and courts), to develop research tools to measure these concepts directly (both objectively and subjectively), and to test the predictions of RST.

7 Botchkovar and Tittle (2008) thoroughly address the difficulty in measuring shame. They point out Braithwaite’s ambiguity in defining his concepts, the lack of specificity in whether shame can be neutral, the sequential order of reintegrative shaming, and how frequently reintegrative shame needs to occur to have an effect.
Because this dissertation is concerned with RST’s predictions about reintegrative and stigmatizing shame on future criminal offending focus primarily on those studies that examine the relationship between these concepts in RST and crime at the individual-level.\(^8\) I first review those studies that have derived and tested hypothesis directly from the theory, which generally measure respondent’s perceptions of shame and forgiveness. Following this, I review those tests of the theory that have used societal processes to indirectly test RST. The research conducted in this dissertation uses criminal justice contexts to examine reintegrative and stigmatizing shame. As such I go into greater detail on the extant RST research that has used criminal justice contexts and pay particular attention to the research design and findings from the RISE experiments.

**Direct Tests of Reintegrative Shaming Theory**

Direct tests of RST use Braithwaite’s statements about the theory’s concepts, framework and predictions to derive and test hypothesis. The earliest direct test of RST focused on parenting and adolescent delinquency (Hay 2001). Shame was measured by asking adolescents whether their parents made them feel ashamed or immoral and whether they could apologize to erase the harm; while reintegration was measured by asking whether their parents see them as a good person, respect them, and whether they felt they could be forgiven by their parents. Drawing on Braithwaite’s definition of reintegrative shaming as something that occurs after an individual has been shamed (1989), Hay (2001) suggested that

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\(^8\) Several studies have examined the emotions associated with each type of shaming but they are not reviewed here (Ahmed and Braithwaite 2004; Harris 2006; Houts 1996; Loeffler, Prelog, Unnithan, and Pogrebin 2010; McAlinden 2005; Ttofi and Farrington 2008).
reintegrative shaming should be measured using an interaction effect between reintegration and shaming; thus, he measured high reintegration and low reintegration but not stigmatization. The study found that adolescent delinquency was lower when there was perceived shaming; however the interaction term was not significant suggesting that regardless of the level of reintegration, shaming resulted in reduced delinquency. Losoncz and Tyson (2007) conducted a similar study by surveying adolescents in Australia; however, they used survey items to capture shame, and reintegrative and stigmatizing shaming; and used structural equation modeling to test the causal path between these concepts. The study found support for the theory in that reintegration was negatively related to delinquency while stigmatization was positively related to delinquency (Losoncz and Tyson 2007).

Tittle and colleagues have done three direct tests of RST by asking respondents about their subjective experiences with shame and forgiveness and their perceived likelihood to commit future criminal/deviant acts (Botchkovar and Tittle 2005; Botchkovar and Tittle 2008; Tittle, Bratton, and Gertz 2003). Tittle and colleagues (2003) measured stigmatizing shame by asking respondents how often they had been made to feel ashamed, and measured reintegrative shame by combining this item with an item asking about the extent to which people in their social group are forgiving. The study reports little support for the theory: stigmatizing shame was associated with increased chances of projected misbehavior but there was no association between their measures of reintegrative shaming and projected misbehavior. Using survey data from Russia Botchkovar and Tittle (2005) measured stigmatizing shame and reintegrative shame similar to Tittle, Bratton, and Gertz (2003); but ask about the perceived likelihood of shame and forgiveness for several types of offenses.
They again find little support for RST: both stigmatizing and reintegrative shame were positively associated with projected misbehavior. In their most recent test of RST, Botchkovar and Tittle (2008) used predictions from criminological theories (i.e. general strain theory, deterrence theory, and self-control theory) as contingencies in the relationship between shaming types and crime. Using similar measures from their earlier work they tested several contingency hypotheses concerning the interactive effects of strains, perceived risks, and self-control on reintegrative and stigmatizing shaming in predicting projected misbehaviors and again found little support the theory.

A study by Murphy and Harris (2007) surveyed Australian tax offenders—who had previously been caught and punished—about their perceived treatment by the government taxation office. The survey asked whether they were treated with respect and dignity, whether they felt branded as non-compliant, and whether they felt they were forgiven, to capture reintegrative shame. The respondents were also asked about their likelihood to commit tax evasion in the future. The study found positive support for the theory: higher perceived levels of reintegrative shaming were associated with lower reports of projected tax evasion (Murphy and Harris 2007).

Rebellion et al. (2010) used survey items and a hypothetical vignette among a sample of university students to test RSTs prediction that anticipated shame leads to conformity. They tested anticipated shame against measures of self-control, deviant peers, certainty of punishment and financial strain and found that anticipated shame was most significant in predicting projected criminal behavior. Using path analysis they found that having high self-
control and few delinquent peers can increase anticipated shame (Rebellon, Piquero, Piquero, and Tibbetts 2010).

**Indirect Tests of Reintegrative Shaming**

Indirect tests of RST have either used responses from existing survey items to capture reintegrative and stigmatizing shame or employed a particular societal process to represent these concepts. The first empirical evaluation of RST, by Makkai and Braithwaite (1994), tested the theory using regulatory compliance among nursing homes. The authors note that ideally reintegrative shaming encounters should have been measured observationally; however, they instead used survey items that asked inspection teams their opinions and feelings about sanctioning non-compliant nursing homes. The items on this survey were not designed to measure reintegrative or stigmatizing shame directly, but were coded as being consistent with either a reintegrative or stigmatizing ideology. Their analysis found that when inspectors had a reintegrative ideology the home had fewer repeat violations (Makkai and Braithwaite 1994).

Zhang & Zhang (2004) used items about parental and peer delinquency disapproval, and parental and peer forgiveness, from the National Youth Survey. Following Hay (2001), they combined these measures to capture reintegrative shaming (i.e. reintegrative shame is shame followed by forgiveness). They found some support in that parental forgiveness (their measure of reintegration) and peer shaming both reduced the likelihood of delinquency; however, they also found that peer forgiveness increased delinquency. Moreover, the
interaction between disapproval (shaming) and forgiveness (reintegration) was not significant for parents or peers (Zhang and Zhang 2004).

A test by Schaible & Hughes (2011) used survey items from the World Values Survey and nationally aggregated measures to examine the effect of informal and formal stigmatization on homicide. In this study they were not able to measure reintegrative shaming. Informal stigma was measured as the proportion of individuals within a nation who indicated that they would not like to have someone with a criminal record as a neighbor, while formal stigma was measured using the national incarceration rate. Communitariansim was also measured using four questions on the importance of family relationships. They found that homicide rates were associated with communitariansim and informal stigmatization but that when they controlled for other societal measures, such as economic inequality, the sex ratio, and heterogeneity, the relationship was not significant (Schaible and Hughes 2011).

Another type of indirect test has been to identify a societal process that is consistent with RSTs concepts and predictions and to use this process as an indirect measure. Most studies of this type have used cultural differences to measure concepts from RST indirectly, use of cultural differences is likely the result of Braithwaite’s argument that that the crime rate is low in Japan because it more highly interdependent and thus more likely to practice reintegrative shaming (Braithwaite 1989). For example, Vagg (1998) argues that like Japan, reintegrative attitudes and beliefs are also widespread in Hong Kong. He suggests that because it is a highly interdependent society the judicial practices there should be perceived as reintegrative rather than stigmatizing. Using self-report data from Hong Kong juvenile
offenders, he found that they perceived that they were quickly labeled as deviant (often for trivial types of misbehavior such as smoking) and that they were likely to receive a severe punishment with little emphasis on reintegration. According to Vagg, the findings suggest that interdependence and reintegrative shaming are not related. However, the study begins with the assumption that Hong Kong is interdependent and does not attempt to validate this claim (Vagg 1998).

Baumer and colleagues (2001) used a similar technique by arguing that Icelandic culture has more communitariansim and is more likely to practice reintegrative shaming. To test this they compared rates of recidivism in Iceland to several countries and found that the recidivism rates in Iceland were not significantly different (Baumer, Wright, Kristinsdottir, and Gunnlaugsson 2001). However, there was no attempt to actually measure communitariansim in Iceland or any of the comparison countries.

Zhang (1995) used cultural differences to test RST by arguing that Asian-American families have higher interdependency than African-American families and should be more likely to use shame as a parenting practice (he does not attempt to distinguish between reintegrative and stigmatizing shame). He found no difference in shaming between these groups but did find significant differences by marital status, with married parents more inclined to use shame than single parents, regardless of ethnicity (Zhang 1995).

**Using criminal justice contexts to test reintegrative shaming theory indirectly**

As the above studies illustrate, a major challenge in testing RST is finding social processes in which both stigmatizing and reintegrative shame occur; only Makkai and
Braithwaite (1994) were able to measure both types of shame. Because RST draws heavily on Erickson (1962) and other labeling theorists (Becker 1963; Lemert 1967; Lofland 1969)—who suggest that criminal courts are ideal settings where stigmatizing shame occurs—finding criminal justice settings where reintegrative shaming occurs is ideal for testing the predictions of the theory.9 Research by Miethe, Lu and Reese (2000) offers an informative example of using the TCC as a control group. In this study the researchers argue that stated goals of drug courts have much in common with the principles of RST. These courts try to reintegrate the offender back into the community by publically decertifying their deviance with formal ceremonies (i.e. graduating defendants and dropping their criminal charges); they try to create interdependent relationships by having the offender come to court and meet with treatment professionals regularly, and the judges in drug court exhibit less punitive and more rehabilitative attitudes. To test the claim they compare defendants in a Las Vegas drug court to those with similar criminal offenses in a TCC setting; suggesting that those in TCC will receive more stigmatizing shame. They hypothesize that the relationship between the type of court and recidivism rates should remain after controlling for case and offender characteristics; however, their analysis found just the opposite, that drug court defendants had higher rates of recidivism than those in TCC (Miethe, Lu, and Reese 2000).

The authors argue that the findings are not the result of selection effects because the sample was matched on severity and type of drug used, nor are they result of increased supervision because TCC defendants with probation officers are under greater levels of

9 This is ultimately why the RISE experiments used the TCC setting as a control group to test the predictions of RST.
monitoring and were not more likely to reoffend. Instead, they state that the best explanation for their unexpected findings comes from the structure and process that they observed in the drug court proceedings. Referring to their brief field observations from the drug court they point out that they observed “a clear preponderance of stigmatizing rather than reintegrative comments directed at most offenders” and that “the individual defendant, not the act itself, was clearly the focal point of the judge’s common ‘tongue lashings’” (Miethe et al. 2000:537). While the judge would offer words of encouragement to the defendants, he would also berate them for a positive drug screen or missing court. Thus, the study found that the societal process that they used to indirectly measure reintegrative shaming was actually practicing stigmatizing shame. Moreover, while the stated intentions of the court were consistent with reintegrative shaming, the practices used in the courtroom were not. They conclude that the findings were unexpected but may be seen as offering support for RST given that stigmatizing shame, albeit in the drug court, lead to increased criminal recidivism.

3.4 The Australian Reintegrative Shaming Experiments

The Australian Reintegrative Shaming Experiments (here after RISE) were conducted under the supervision of Lawrence Sherman, John Braithwaite, Heather Strang and Geoffrey Barnes. The experiment randomly assigned adults arrested for drinking and driving, juveniles arrested for property or shoplifting offense, and youth arrested for violent offences. A restorative conference brings together the offender and the victim, as well as

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10 For a description of the methodology and findings see Sherman, Strang, and Woods. 2000. "Recidivism patterns in the Reintegrative Shaming Experiments (RISE)." Australian National University, for further descriptions of the experiments.
supportive family and friends for each, to explain the impact of the criminal behavior to offender. The aim is not to humiliate the offender, but rather to provide an opportunity for her or him to acknowledge and understand the consequences of the criminal act. Restorative conferences have a facilitator who guides the persons through the process by asking questions. Ideally both the victim and offender have the opportunity to say what is required to put things right. According to RST, the offender will feel shamed for the crime, but the family members will be there to provide support and to reintegrate him or her back into the community by offering words or gestures of forgiveness. The conferences in the RISE experiment lasted approximately 90 minutes while the court cases generally lasted less than ten minutes (Ahmed, Harris, Braithwaite, and Braithwaite 2001; Sherman, Strang, and Woods 2000b). In exchange for participating in the conference offenders had their charges dropped or reduced.

The RISE study team developed instruments to test the predictions of RST and created the Global Observational Ratings instrument (to gather objective measures) and the Act Justice Survey (to gather subjective experiences) (Harris 2001; Harris and Burton 1998). Each instrument included items that were designed to measure shame, and the extent to which shame was either reintegrative or stigmatizing. The goal of the experiment was to validate the instruments ability to measure reintegrative and stigmatizing shame; to examine objective and subjective differences between the TCC and the restorative conference

11 The study also included items to examine other theoretically relevant concepts such as defiance (Sherman 1993) and procedural justice (Tyler 1990; Barnes 1999).
experience and to see whether differences in these experiences result in less repeat offending.¹²

**RISE Findings**

The Global Observational Ratings instrument, which has 11 eight-point scales, was completed by three trained observers immediately following each court case or restorative conference. Harris and Burton (1998) reported that its inter-rater reliability, assessed by the percentage of agreement between observers, was acceptable. The Act Justice Survey was completed by interviewing offenders 2 to 6 weeks following implementation of the treatment (i.e. court or conference). Harris (2001) used exploratory factor analysis to determine which survey items loaded best in measuring reintegration and which items best measured stigmatization. Confirmatory factor analysis found that five items captured feelings of reintegration (Cronbach alphas = .70 in conference cases, .76 in court cases) and four times captured stigmatization (Cronbach alphas = .70 in conference cases, .81 in court cases). To examine the validity of RISE, Harris (2001) cross-checked the Global Observational Ratings Instrument with self-reported responses from the Act Justice survey (i.e. observation and interview with the same respondent). They found that in both the court and conference settings, observations of reintegration and stigmatization were correlated with self-reports (Harris 2001).

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¹² To date, the validation of these instruments has only been analyzed among the drinking and driving cases.
Using these instruments, RISE researchers found that there were significant differences between the conferences and court setting, both observationally and subjectively. As hypothesized, conference cases scored higher in reintegrative shaming than the TCC cases; but the court cases were not as stigmatizing (either objectively or subjectively) as they had hypothesized, being not significantly greater in stigmatizing shame (Ahmed, Harris, Braithwaite, and Braithwaite 2001; Harris and Burton 1998).

The factor analysis of self-reported items also tested the dimensionality of RSTs key concepts: shame, reintegration and stigmatization. In his original statements about the theory (1989), Braithwaite suggested that all shaming is either reintegrative or stigmatizing and that these two shaming types could be seen as polar opposites on the same continuum. However, the factor analysis found no support for their being the reverse of each other. Instead they concluded that these are discrete concepts (Ahmed, Harris, Braithwaite, and Braithwaite 2001), leading Braithwaite to suggest that that future empirical work should measure reintegration and stigmatization separately (Braithwaite and Braithwaite 2001).

Results of the RISE experiments on subsequent recidivism were first described by Sherman and Strang in their report to the Centre for Restorative Justice (Sherman, Strang, and Woods 2000a). They examined re-arrest one year post and found different results in court and conference effects on recidivism by each offence category. There was no significant difference between court and conferences groups for the juvenile property or shoplifting offenders. For the drinking and driving offenders there was a slight increase in re-offending for those in both conferences and court with no significant difference between them. However, for the youth violence offenders, those who had a restorative conference
were significantly less likely to reoffend than those in the court setting. This report only described and tested the differences between the court and conference groups by offense type without any statistical modeling to examine what other factors might predict recidivism and influence the relation between social processes and recidivism.

A later study by Tyler and colleagues (2007) further examined the same data among the drinking and driving offenses. Instead of using TCC and reintegrative conferences as indicators of different shaming types, they employed participant self-reported experience of reintegrative and stigmatizing shame to predict recidivism.\footnote{To date this is the only peer-reviewed publication that has investigated recidivism from the RISE experiments.} They analyzed two waves of interview data and official police reported re-arrest data (four years following the initial offense) on offenders in both conference and court groups. The first interview consisted of the Act Justice Survey items and captured perceptions of reintegration as well as feelings of procedural justice (the study did not use RISE’s measure of stigmatizing shame). The second interview asked offenders about their feelings of legitimacy towards the law and their drinking and driving behaviors. They found that feelings of reintegrative shaming and procedural justice were more likely to be reported by participants in the restorative conferences. They found no significant effect of being in the restorative conference on self-reported crime or police recorded re-arrest when controlling for age, gender, education, income and prior offending. But in a second analysis that measured reintegrative shaming by self-reports rather than by group membership (i.e. court or conference), they found that feelings of both reintegrative shaming and procedural justice were related to later perceptions
of legitimacy, which in turn predicted reduced levels of self-reported crime and police reported re-arrest when controlling for social characteristics and criminal history.

3.4 Summary and Overview

A review of the empirical tests of RST shows there are problems in measuring its concepts in direct tests of the theory; and most indirect tests have failed to offer empirical validity of the societal processes that they suggest as examples of shaming types. Much of the work done with RST in the RISE experiments was meant to address these shortcomings by creating research instruments to capture reintegrative and stigmatizing shame and to validate the restorative justice conference as a societal process that practices reintegrative shaming. While the RISE experiments offered mixed support for the theory (Sherman, Strang, and Woods 2000a), they did find that their instruments can be used to capture observations and self-reports of reintegrative and stigmatizing shame accurately (Harris 2001; Harris and Burton 1998).

The research presented in this dissertation is the first to use these instruments in a context other than restorative justice conferences for which they were originally developed. This study examines reintegrative and stigmatizing shame, using both the observational and self-report items, in a MHC setting.
CHAPTER 4: THE MENTAL HEALTH COURT SETTING

The MHC used in this study is located in southeastern United States. This site was selected because a faculty member had previously established contacts with the MHC team and had been a part of an evaluation of the court (see Hiday et al. 2005 and Moore and Hiday 2006). The county in which the MHC is located is rural, with two small towns and a population of less than 150,000. However, the setting is unique because the population is highly educated and affluent. There is a large major university in the county—with two other major universities in nearby counties—and a growing research park nearby. The percentage of residents in the MHC's county with a bachelor's degree or higher is twice the state average. Despite the county’s demographics, observations reveal MHC defendants to be mostly of low SES with a minority reflecting the county’s education, income and youth.

Table 7 compares demographic characteristics of the MHC participants who are used in the analytic sample of Chapter 6 with those arrested throughout the state in 2005. Although both groups are predominantly male, white and less than 35, MHC participants are more likely than all North Carolina arrestees to be female, white and older. Such disproportionate representation of this MHC is commonly found in diversion programs (Burns, Hiday and Ray 2012, Luskin 2001, Naples et al. 2007).

Defendants are referred to the MHC by the district attorney, a public defender, law enforcement personnel, judges, personnel in pretrial services, family members, social workers or treatment providers. Defendants must have a diagnosis of mental illness, a “dual
diagnosis” of mental illness and substance abuse, or a history of treatment for mental illness. Participants are offered enrollment in the court after being screened for suitability by the MHC team, consisting of the judge, prosecutor, defense counsel, criminal justice personnel, mental health liaisons, treatment providers, and sometimes probation and parole officers. This MHC hears cases of defendants charged with both criminal misdemeanors, mostly pre adjudicated, and felonies, mostly post adjudicated. In the case of violent offenders, the assistant DA screens for public threat and history of serious violence; and the victim(s) must agree to the transfer of the defendant out of TCC into MHC.

Once an individual is accepted, s/he may voluntarily sign an agreement to comply with the court ordered individualized treatment and behavioral mandates. While participating in MHC, the defendant's charges or sentence are placed in abeyance, pending fulfilling court requirements. In lieu of TCC processing and/or punishment, defendants are required to return to open court sessions each month for compliance audits. If a defendant remains in compliance with court orders for six consecutive months, s/he graduates from the court, and charges are disposed of positively. Compliance is determined at monthly team meetings that occur before each court session.

Like most MHCs, the court team utilizes court proceedings to achieve defendants' compliance with treatment and behavioral mandates. The judge speaks directly to defendants individually and any family, friends, or treatment team members who may accompany them, asking questions about their behavior, well-being, compliance, and progress. The judge’s information about a participant and the messages s/he delivers are--is largely guided by the team’s discussion of the participant in the pre-court team meeting. Defendants are given the
opportunity – and are often asked by the judge – to address the court. The judge gives encouragement and praise for efforts and improvements. If a defendant is non-compliant, the judge may express disappointment, ask about reasons for noncompliance, give advice and/or reprimands. If non-compliance continues or the defendant incurs additional charges, at the team’s suggestion, the judge may order alternative treatments or services, or place the defendant in jail for a short stay. The team might ultimately determine that the defendant is unsuitable for MHC and suggest that the judge reassign him or her back to TCC if pre-adjudicated, or activate the prison sentence, if post-adjudicated.

Earlier evaluations of this court have found that it effectively reduced criminal recidivism both during court participation and after exit (Hiday et al. 2005; Hiday and Ray 2010; Moore and Hiday 2006).
5.1 Prologue

I started observing the MHC in Orange County, NC, in the summer of 2007. During my initial visits to the court I struggled to make sense of the setting as the proceedings were so different from those in a TCC. The MHC proceedings take place in a traditional courtroom and all of the same court actors are present, but they behave in very different ways. The lawyers are not adversarial; the judge knows the defendants by name, ask questions about their personal lives, and offers words of encouragement; and many defendants actually appear happy to be there. In these initial observations I used an ethnomethodology approach (e.g., Bittner 1967; Burns and Peyrot 2003; Garfinkel 1967) as I was concerned with the routine operations of the court and the routine behaviors of court officers and participants. About a year after these first observations on reading Braithwaite's *Crime, Shame and Reintegration* (1989), I was instantly struck by how similar the MHC proceedings were to Braithwaite’s reintegrative shaming and how the predictions of his theory could be useful in explaining the findings from MHCs studies that have shown reductions in crime. Subsequently reintegrative shaming theory largely guided my observations.

Braithwaite suggested ethnographic field work as a starting point for testing the predictions of the theory (1985) and in later work with Ahmed and colleagues (2001) called for observational research to improve measurements of reintegrative and stigmatizing
shaming. Research on reintegrative shaming is in need of ethnographic work in a real world setting to produce examples societal processes that exhibit reintegrative shaming.

In this section I draw on over four years of observations of team meetings and court proceedings to illustrate how the observed MHC practices reintegrative shaming. To guide these qualitative observations I used the components of reintegrative shaming theory outlined by Makkai and Braithwaite (1994): (1) disapproval while sustaining a relationship of respect; (2) disapproval of the offense without negatively labeling the offender; (3) not allowing deviance to become a master status trait; and (4) ceremonies that decertify deviance. In this chapter I link these four components of reintegrative shaming to specific aspects of the MHC process, discuss some anomalies, and then briefly describe some observations of how reintegrative shaming varies across problem-solving court contexts.

**Disapproval while sustaining a relationship of respect**

Because MHC participants are charged with or have been found guilty of committing a crime, they must come to court regularly and comply with court mandates if they want the charges dropped or sentences reduced. Required attendance for monitoring demonstrates disapproval of the criminal behavior; however, at these hearings they are treated with respect. According to Braithwaite, respect is integral to reintegrative shaming; however, he notes that there is overlap in the use of respect in changing subsequent behaviors in his theory and the ideals of procedural justice; especially in a criminal justice context (Braithwaite, Ahmed, and Braithwaite 2006; Braithwaite and Braithwaite 2001). Procedural justice theorists suggest that if a person perceives the legal decision-making and treatment in the process as fair s/he
will be more likely to accept the decision and will be motivated towards self-regulation in the future (Tyler 2006). Research has found that perceived fair treatment (procedural justice) can have a positive effect on defendant views of the justice system (Casper, Tyler, and Fisher 1988; Fagan and Tyler 2005; Greene, Sprott, Madon, and Jung 2010; Piquero, Fagan, Mulvey, Steinberg, and Odgers 2005; Sprott and Greene 2010; Tyler and Huo 2002; Tyler and Wakslak 2004).

The respect that MHC participants receive is largely the result of the MHC being more procedurally just than the TCC model. As previously described, two studies of MHCs have found that MHC participants report high levels of perceived procedural justice (Poythress, Petrila, McGaha, and Boothroyd 2002; Wales, Hiday, and Ray 2010), one of which found that these perceptions were significantly higher for defendants in MHC when compared to TCC defendants (Poythress, Petrila, McGaha, and Boothroyd 2002). These studies suggest that procedural justice is largely the result of the interactions between the MHC judge and the participant. In MHC, the judge treats participants with respect, explains decisions, gives them voice in choosing whether to participate, and listens to their concerns. While my observations are consistent with this—that judges were ideal in demonstrating respect for participants—I found that the elements of procedural justice were largely rooted in the structure and overall courtroom atmosphere of the MHC.

Unlike a TCC setting, where court officers must handle a large number of cases on the docket in a timely and efficient manner, the MHC is able to limit the number of cases on the docket. Having a manageable, relatively small case load, allows team members and the judge to devote more time to each participant, while monthly status hearings help them get to
know each participants as a person rather than a docket number. The structural factors contribute to greater respect. The reduced caseload of the MHC also helps assure greater organization and predictability of the docket. The MHC participant arrives at court with the assurance that her or his attorney will be present, the prosecutor will be ready, and the case will be heard. This is rarely the case in TCC, as excessive caseloads may result in general confusion with unprepared prosecution and difficulty finding a public defender, causing delays and/or a rescheduling the court date (Feeley 1992). Moreover, because the decision-making process is largely handled in the pre-court team meeting, prior to the public court proceedings, the judge is able to use open court time to develop rapport and engage participants in conversations about personal matters relevant to their changing life courses, such as housing, employment, school activities and familial relationships, and to offer words of encouragement and praise.

Saying that procedural justice was largely rooted in the MHC’s structure and courtroom atmosphere is not to say my observations found that the MHC judge was not important in fostering respect for participants (I discuss these interactions and link them to an aspect of reintegrative shaming below); however, the respect that was observed in the MHC was not only cultivated by communication between the court officers and participants, but also by the MHCs structure which permitted a more calm and organized court atmosphere. This is consistent with extant procedural justice research which finds that court performance factors, including delays and time judges spend on cases, can affect overall evaluations of the court, net of perceived fair treatment (Benesh and Howell 2001; Casper, Tyler, and Fisher 1988; Olson and Huth 1998; Tyler and Huo 2002).
Disapproval of the offense without labeling the offender

Communicating approval and disapproval is largely the responsibility of the MHC judge. The MHC team discusses each participant’s progress before court and decides on the message to be conveyed in open court; but it is the judge who delivers the message of the team, be it words of praise or sanctions. The MHC observed in this study has three judges who preside over the court proceedings. Judge A led the establishment of the MHC and is still the judge who most frequently presides over the MHC proceedings. Judge B started working with the MHC as a prosecutor but was appointed judge in the MHC’s 6th year in operation; and Judge C started working with the MHC in its 9th year in operation. It is not the goal of this dissertation to evaluate these judges individually; however, it should be noted that my observations suggest differences in terms of shaming among these judges. Most of the MHC participants prefer Judge A as they often ask the MHC team members and court personal, “Will Judge A be here today?” and express disappointment when he is not. Judge A can be described as having a warm and caring personality; my observations suggest this is something that he consciously strives to achieve. He frequently carries a self-help, leadership or motivational book and takes notes on the participants’ specific interests, goals, and achievements during the pre-team meeting so as to be able to talk with participants about them in open court. More than the other judges, he shares experiences about his personal life in an effort to relate to participants and regularly tells them that he cares about them, wants to help them, wants the best for them, and loves them. I observed both of the other judges sitting in on the MHC proceedings to watch how Judge A interacts with defendants.
In each court session there are examples of the judge disproving of criminal and non-compliant behaviors while avoiding disapproval of the defendant, the person. At the opening of every court session, the judge addresses all of the new participants in court and gives them an overview of what to expect. Judge A tells the new participants,

“The court is not going to help you become rich or famous. We don’t do that here. Our collective goal is to help you be safe, sober and happy. I can’t offer you that in regular court. All that I give you there is finesse or jail. In here, I can offer you an opportunity to be safe, sober and happy. It’s your responsibility to take advantage of this opportunity. I know you can do it. You deserve to be safe, sober and happy. Tell me what I can do to help you get there.”

Telling the participants that they ‘deserve better’ is a common theme with Judge A and is consistent with reintegrative shaming. There is recognition that criminal behaviors have occurred, but participants are being given an opportunity to change themselves rather than being forced into changing. According to Braithwaite, reintegrative shaming does not focus on controlling behaviors but rather on building conscience so defendants see themselves as better than committing deviant behaviors and will choose not to commit those behaviors in the future.

As the court goes through the docket, the judge reads a participant’s name to come stand before the bench individually. The judge then greets the participant by name and directly asks questions of him/her. Sometimes the questions are meant to find out whether a participant feels s/he is doing well and whether there is anything that the MHC team can do
to help. Other times the judge, aware of noncompliance, asks questions regarding the non-compliant behavior.

It is during these non-compliant discussions that the reintegrative pattern of ‘condemning the deviant behavior, not the individual, is most evident. The judge tells such participants that they “need to get serious”, “stay focused” or gives them verbal warnings that they may be terminated (e.g. “This is your last chance” or, “If you mess up again you’re out”). When Judge A threatens termination from the MHC, he repeats his opening statement several times, “Only two options in there [TCC]… money or jail. Let’s get with it.” However, immediately following these statements of disapproval are statements of acceptance. Judge B tells the participants, “We don’t expect you to perfect. No one can be perfect. Lord knows, I’m not perfect. But we do expect you try your hardest. Let us know what we can do to help you.” Judge A often tells non-compliant participants, “We [the court team] are all here because we want to help you. We know there might be some slip-ups along the way. We accept that. Because we believe that you deserve a better life.” One of the most poignant examples of reintegrative shaming in these non-compliant situations is when a participant has a positive drug screen. Judge A regularly tells them, “I hate your behavior. I hate that you used drugs. But I still love you.” In this statement he is clearly stating his dislike of a behavior but his acceptance of the individual. Another way that the judge shows approval of participants is by relating to their noncompliance. For example, Judge A will tell participants who refuse to take medications about his own struggles with medication,

“I have dangerously high blood pressure. It’s so high that I have to take medication and if I don’t take my medication, I might not be here next month. I won’t be here for
my wife or my family, and that scares me, and it scares them. We both need to take our stuff not only because it’s important to us but because there are people who care about us.”

The above examples are just some of the more routine activities that occur during the MHC proceedings in which the judge communicates disapproval of the act but acceptance of the offender. While these types of communication are the norm, there are exceptions that I discuss below.

Not allowing deviance to become a master status trait

Beyond judicial style and court organization, the MHC team has developed a work culture and practice that is conducive to the reintegrative shaming process by avoiding the use of stigmatizing labels both in open court and in pre-court team meetings. Several examples demonstrate how the team systematically avoids these labels. The MHC organizers named the court “Community Resource Court not only to emphasize the concerted effort of the community but also to avoid any stigma from mental illness (Hiday, Moore, Lamoureaux, and de Magistris 2005). The team never refers to individuals on the court docket as criminals or defendants, but rather as “participants;” and the team refers to those participants who return to the court multiple times as "superstars," rather than repeat offenders.

There were several times during the pre-court meetings when team members discussed avoiding certain topics that might be considered stigmatizing or uncomfortable, such as mention of a participant’s specific illness in open court. During the team meetings Judge A sometimes said of mental health treatment, “we don’t need to talk about treatment
specifics in front of everyone.” Judge C sometimes recommended to the team that they address certain non-compliant participants at the end of the court session after everyone has left so that they can discuss stigmatizing topics privately. In several of these situations, he asked that I also leave the court room.

I have observed instances during pre-court meetings of the team displaying their collective attitude regarding avoidance of stigmatization. One more interesting observation was the transition of a new, young male team member, Dean (pseudonym). At his first team meeting, in a discussion of a participant’s recent employment at a fast food restaurant, the judge and court administrator both commented that it was great news. Dean stated, “Well, I guess I’m not eating there again.” A case manager immediately put him on the spot, “Why not?” He then looked around the table, surprised that no one laughed, and replied “I’m just joking.” The case manager went on to tell him that working at fast food might not be “glorious” but that this was a “very big deal” for the participant and that they should be “very proud of him”. It was interesting watching Dean become acclimated to the culture of the team. He may simply have been acting in a way deemed appropriate by the team, but I observed a much different attitude two years later when he sanctioned another person for a comment that was similar to his own earlier comments. During this team meeting a private attorney, who was sitting in on the team meeting to discuss his client’s noncompliance over the past month, responded to the case manager’s question of what he thought the court should do with the participant by saying, “Well personally I think the guy is nuts and should be in a loony bin.” All of the team members fell silent; some looked down and shook their heads in
disapproval. Then quietly Dean said to the private attorney, “We don’t talk about people like that here”.

While the organization of the court and the judges play a vital role in the MHC process, the team, like any working group, has developed its own culture. This culture is conducive to reintegrative shaming in large part because of the team’s willingness to defer to the mental health side of the team on many matters analyzing participant motivation to reform and strategies to encourage that motivation and the ability to reform. The regular mental health team members are the case managers, who counsel the legal side of the team on how best to deal with mentally ill persons and often suggest therapeutic alternatives to legal sanctions. Nolan (2001) states that problem-solving courts represent a shift in the criminal justice system towards offender pathologies; thus, certain criminal behaviors are seen as the result of mental disorder or drug addiction. In her observations of MHC case managers, Castellano (2011) suggests that part of this shift is recognizing the treatment authority of the case managers whose occupational training in mental health warrants the respect of court officers\(^\text{14}\). The observations presented here are in line with Castellano’s in that the case managers have a significant say in the MHC team’s decisions. I argue that this contributes to the reintegrative nature of the team as these professionals are trained to think in terms of therapeutic remedies rather than legal punishments. It is possible that not all

\(^{14}\) Deference to mental health professions may not always lead to reintegration. In fact, it has been linked to paternalistic practices that led to neglect in large remote institutions (Hiday 1983).
problem-solving court teams recognize the case managers’ authority and might in fact, draw more on legal punishments that are more in line with stigmatizing shaming.\textsuperscript{15}

\textit{Ceremonies that decertify deviance}

The MHC practice that most clearly embodies reintegrative shaming is the graduation ceremony. The graduation ceremony begins when the judge calls the name of each graduating participant at the beginning of the court session. As each participant approaches the bench the judge leads the MHC team and others in the courtroom in applause before giving the graduation certificate and shaking hands. The judge verbally gives congratulations and gives a brief description of the progress the participant has made during the time with the court. Sometimes family members accompany the participant on ‘graduation day’ and are recognized for their support. The participant is then given an opportunity to address the court. Participants commonly thank the judge and other team members, and sometimes give words of advice to the audience. After each has finished speaking, the assistant district attorney stands, informs the participant that criminal charges have been dropped, and the judge allows him/her to leave the courtroom while all other participants must remain until the docket is completed.

Graduation from MHC is the pinnacle of the reintegrative shaming process.

According to Braithwaite,

\textsuperscript{15} I have observed legal dominance in a MHC team meeting in other jurisdiction. In that particular court the case managers reported the behavior of the participants to the judge but did not give any recommendations on sanctions.
“Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding and respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant.”

The ceremony includes “words or gestures of forgiveness”, in that the community representative (i.e. the judge and court team) recognizes and applauds non-deviant progress and forgives past deviance by disposing of criminal charges or reducing the sentence and he participant is welcomed back into the community of law-abiding citizens. Graduation from MHC signifies the end of the formal shaming process and the decertification of deviance.

Braithwaite and Mugford (1994) identified the characteristics of successful reintegration ceremonies from observing juvenile restorative court conferences in Australia and New Zealand, and contrasting these observations to TCC processing. In outlining what a reintegrative ceremony should look like, they juxtapose it with the concept to Garfinkel’s “status degradation ceremony” (1956). According to Garfinkel, a successful degradation ceremony results when the offender and the offense are made to be one and the same, and when the offender undergoes a transformation of her or his total identity into an identity lower than the relevant group's scheme of social types (i.e. the criminal). Moreover, Garfinkel identifies criminal courts as ideal examples of status degrading organizations because the degradation ceremony is public and is carried out in a public forum by individuals who represent the collective values of the law-abiding group (Garfinkel 1956).

There are elements of the restorative conference that Braithwaite and Mugford (1994) outline as reintegrative, which are not always present in the MHC process. For example, family members and victims are always present in a restorative conference; but in MHC only
sometimes do family members attend (usually only for graduation) and at no time did I observe a victim attending. My observations suggest that there are several reintegrative elements in the MHC graduation process that are absent in a restorative conference. In MHC there is an actual ceremony that ends the period of shaming, a ceremony that is reminiscent of Garfinkel's degradation ceremony. In the RISE study of juveniles arrested for drinking and driving in which the victims were family members and a police officer. At the end of the conference all the parties simply left the room. With no ceremony the offender may not feel that the shame has been resolved or may not be certain that the process has ended. Moreover, the conference is not carried out in as public a forum as MHC and is conducted by representatives who arguably have less status than a judge. Furthermore, one of the findings from the RISE study is that conference participants had mixed feelings of respect from the police moderator (Harris and Burton 1998). Finally, the frequency and duration of the MHC process may be more reintegrative. The restorative conference is a single event, while MHC graduation is the culmination of a series of reintegrative events over several months. And while reintegrative shaming is primarily communicated to the participant by the judge, over these months the participant has received words of praise and encouragement and support from all of the MHC team members. Attorneys, case managers and probation officers service providers, are focused on supporting them and helping them. Over the time that participants are in the MHC process one can see changes in their self-esteem such that after a few months they approach the bench with confidence, standing up straight and smiling. Participants become more talkative and self-congratulatory as they are excited to tell the judge about any achievements they have made. These months of reintegrative events ultimately serve to
increase participants’ confidence in themselves which, according to Braithwaite, is exactly what reintegrative shaming should accomplish. He suggests that there are times when conscience fails all of us. At such times if we are punished, we feel there is a lack of confidence in our morality. However, when our conscience fails, reintegrative shame can reaffirm our morality as we learn that people are disappointed in our behavior, rather than our character, at that they are satisfied when our character is restored. This satisfaction in the restored character is exactly what the MHC team is communicating to the MHC participant. RST holds that building up one's conscience through reintegrative shame is superior to formal punishment because punishment by our own conscience is much more potent than punishment by the criminal justice system (1989: 72). It is exactly this conscience building effect of the MHC process, which takes places over several months, that reduces the participant’s likelihood to commit crimes in the future.

I do not mean to suggest that MHC is more reintegrative than restorative conferences.16 Rather the comparison of MHCs to reintegrative conferences points out that there are other criminal justice contexts whereby reintegrative shaming may occur and while different in form, both the restorative conference and MHC follow a sequence of disapproval-nondegradation-inclusion that is consistent with reintegrative shaming rather than disapproval-degradation-exclusion that is consistent with stigmatizing shame (Braithwaite and Mugford 1994).

16 Future empirical work should be done to examine whether these additional indicators lead to more observed reintegrative shaming in the MHC context.
5.2 Summary of Qualitative Observations

This chapter gives examples of reintegrative shaming in MHC and in doing so links the components of reintegrative shaming to specific aspects of the MHC process. I suggest that respect is accomplished through the role of the judge and the organization of the MHC process. By managing the flow of cases on the docket and making decisions prior to court proceedings, court officers use their time in court to develop relationships with the participants. This relationship of respect is tied to perceived procedural justice which has been found in other MHC settings (Poythress, Petrila, McGaha, and Boothroyd 2002; Wales, Hiday, and Ray 2010). Separating the offense from the offender is accomplished through interactions between the MHC judge and the participant. While the MHC team determines noncompliance and sanctions, it is the judge who delivers these sanctions in a way that either labels the participant as a criminal or labels the act as deviant without labeling the offender. I find that avoiding the use of stigmatizing labels is part the MHC team’s working culture and may be influenced by the team’s willingness to incorporate mental health practitioners' ideals. Finally, the ceremony that de-certifies the deviant status is graduation from MHC. This ceremony signifies the end of the shaming process and incorporates elements of forgiveness and acceptance back into the community.

Findings of this qualitative observation study suggest the MHC practices reintegrative shaming in way that is consistent with the definitions set forth by Braithwaite and colleagues (Ahmed, Harris, Braithwaite, and Braithwaite 2001; Braithwaite 1989; Braithwaite and Mugford 1994; Makkai and Braithwaite 1994). In comparing these observations of reintegrative shaming in the criminal justice process, I find them to be similar
to those of restorative court conferences (Braithwaite and Mugford 1994). Clearly more research needs to be done to examine whether reintegrative shaming is present in other criminal justice contexts. In doing so researchers should not only establish whether reintegrative shaming is present but what elements are present, how they are tied to the program, whether participants experience reintegrative shaming, and ultimately whether experiencing reintegrative shaming leads to criminal desistance.

5.3 Incongruent Observations

There were some observations that do not fit into the reintegrative shaming framework described above. First, like TCC, the MHC has developed a system that allows them to go through the cases on the docket in a timely and efficient manner. As such, many of the participants have short interactions with the judge and team (1-2 minutes). The participant’s name is called, s/he stands before the judge, and the judge asks how s/he is doing or whether there is anything s/he would like to discuss. If the participant has nothing to say and is compliant, the judge says something like “keep up the good work” and moves to the next case on the docket. Such processing illustrates that experiences in MHC may be neutral in terms of reintegration and stigmatization.

There are also some situations in which MHC processes are quite stigmatizing. One example is the use of “lock up” as a sanction. If a participant is continually non-compliant, the team may decide to use incarceration for one or more days as punishment rather than send the participant back to TCC. When this happens, the judge tells the participant s/he is being punished for noncompliance and how long s/he will be locked up—during court, for a
day, or in some rare cases, a week—and the bailiff escorts the participant out of the court into a holding cell located behind a door in the rear of the court house. The judge intentionally gives this order at the beginning of the court session to make an example of the participant. The judge generally discusses the participant's noncompliance in open court and then tells him or her that s/he is being locked-up to “think about” the behavior. If a participant is only locked up during the court session, the judge pressures him or her into discussing any thoughts in open court when s/he rejoins the court after the sanctioning period.

Another example of stigmatization is when the judge verbally sanctions participants saying “it’s time to start taking responsibility” and they “need to get serious” or “make some real changes.” Such statements might also be perceived as the judge’s belief that participants can change, given that they are not kicked out of the MHC process. There are also cases in which the judge discusses a participant’s children, stating that the parent needs to be a “better role model”, that the child “doesn’t deserve this”, or that s/he needs to “take better care of” the children. Again, these verbal sanctions may be perceived as stigmatizing because the judge is indicating poor parenting or they may be seen as encouraging change. Such acts of stigmatizing shame are not necessarily counter to the reintegrative shaming process.

According to Braithwaite “Reintegrative shaming is not necessarily weak; it can be cruel, even vicious. It is not distinguished from stigmatizing shame by its potency but by (a) a finite rather than open ended duration which is terminated by forgiveness; and by (b) efforts to maintain bonds of love or respect throughout the finite period of suffering shame.” According to the theory, it would therefore depend on whether the judge attempts to maintain bonds of love and respect and whether these bonds were perceived by MHC participants.
When a participant is terminated from MHC and the charges are sent back to TCC, the situation can be stigmatizing; but the context in which the termination occurs plays a role in how stigmatizing it is. Most terminations occur outside the courtroom and are not stigmatizing. When participants are terminated because they are re-arrested or miss a MHC court session, the case manager or lawyer notifies them of the rescheduled TCC date and they do not return to MHC. Of terminations that occur in MHC, many are with participants who have only been in the court for a couple of months. The individuals are generally told that they are “not a good fit” or that “things are not working out;” thus, they are not stigmatized. Terminations in court are stigmatizing when participants have been in the court for several months and have gotten to know the team members. Even when previously warned of possible termination for noncompliance, participants always show surprise and plead with the judge and lawyers to remain in the court. These terminations are uncomfortable to observe and sometimes take several minutes as participants argue with the judge and other team members. For one termination, the deputy sheriff brought the participant directly from jail in an orange jumpsuit and in shackles. She had been arrested the night before and appeared to be still intoxicated. Rather than inform her privately that she was being sent back to TCC (as is commonly the case), the team brought her back into the court in this manner to tell her in front of the other MHC participants that she was being terminated. Another participant, who had been through MHC two times and who was well known by several of the team member, called the public defender at home multiple times and made harassing statements to her in the week prior to court. When the judge told her that she was being terminated, she immediately began to argue, became upset, pointed her finger at the public defender and yelled.
Eventually the bailiff had to physically remove her from the court room. These examples of stigmatizing shame are infrequent in MHC and should be noted as incongruent with a “typical” day in MHC.

5.4 Cross Court Observations

Since my initial observations in the Orange County, NC, MHC I have done brief observations in the Orange County, NC, drug treatment court, and in MHCs in Flint, MI, Traverse City, MI and Atlanta, GA. This dissertation is not meant to be a cross court comparison; however, I should point out that observing in these various settings has led me to conclude that despite any similarities in the organization and legal framework of problem-solving court models, these courts vary significantly in terms of shaming.

In the drug court, stigmatizing shaming was common. For example, participants who are non-compliant are asked to write about their struggle with addiction and in some cases these essays are read aloud while the participants stand before the judge.\textsuperscript{17} Organization of the drug court was much different from MHC in being less conducive to reintegrative shaming than MHC. First, the process of determining compliance in the drug court is much less subjective and more frequent. In MHC, compliance is determined through discussions in monthly pre-court team meetings; however, in drug court compliance is primarily achieved through drug screenings. Weekly or more frequent drug tests allow the court to determine compliance more frequently during the time between court sessions. Second, the drug court

\textsuperscript{17} Judge A sometimes requires the MHC participants to write an essay; however, they have never been read aloud in open court.
had a structured sanctioning system for non-compliance with regular use of incarceration: one positive drug screen resulted in a minimum stay of 24 hours in jail. Griffin, Steadman and Petrila (2002) suggest that MHCs may be reluctant to use jail as a sanction because they handle less serious offenses (typically misdemeanors) and the perceived cause of non-compliance is mental illness (Griffin, Steadman, and Petrila 2002). Finally, there is more formality and adherence to rules. A good example of this last difference was in how one of our study’s judges interacted with the drug court participants. She was much more likely to discuss their drug addiction and to treat them like criminals. The court started with her telling all of the participants to stand up and then told those without their shirts tucked in to leave the court and reenter looking more “presentable”. In MHC where almost none of the participants have their shirts tucked in, they were never told to leave to make themselves presentable. In this drug court the participants who are non-compliant are asked to write about their struggle with addiction and in some cases these essays are read aloud while the participants stand before the judge. The formality in drug court is likely due to what Haimowitz (2002) noted as the basic distinction between MHC and drug court: that being mentally ill and not complying with treatment is not a crime, whereas possessing or using illegal drugs is (Haimowitz 2002). In terms of reintegrative shaming theory, drug court participants may be more likely to be labeled according their criminal offenses and experience the stigmatizing shame of that label.

In Flint, MI, MHC graduation ceremonies were much more reintegrative than those in the NC MHC with the relationship between the MHC judge and the participants being almost familial. The judge invites the participants to stand facing the court while each team member
takes a turn to talk about his or her accomplishments. The judge who originally saw the participant in TCC joined the team in commenting about how much each had changed since last seeing her or him. This original judge then presented each participant with a certificate and tells them their charges were dismissed. Then the MHC judge ends the ceremony by talking about her time with each participant. She told a story about how the first graduate was afraid to go to the doctor’s office so she went with him to reduce his anxiety. At the doctor’s office they both had blood work done. At the end of the story she asked him “are you remembering to eat breakfast?” and he answered “Yes. Are you avoiding candy?” She also presented each participant with an individualized gift. She gave the first graduate a dress shirt to help him look professional at his new job. She talked about her experience going on a jog with the second graduate and gave him a medal from a race she ran.

My brief observations of other problem-solving court contexts suggest that while they have similar elements (i.e. direct interaction with the judge, team, supervision, etc.), the atmosphere and interactions can be much different. As such, researchers should not conclude that all MHCs or problem-solving courts practice reintegrative shame but rather we should attempt to establish empirically whether it is the case. This is the goal of the next chapter. I use observational and self-report items from the RISE study to examine the degree to which the MHC practices reintegrative shame, and whether those who complete the MHC process experience this type of shame.
CHAPTER 6: EMPIRICALLY EXAMINING REINTEGRATIVE SHAMING IN MENTAL HEALTH COURT

6.1 Prologue

In this chapter I present the results of two studies. The first study examines data coded from systematic observations of MHC court sessions and the second examines data from interviews with MHC participants. The goal is to examine whether reintegrative shaming is occurring both objectively and subjectively in the MHC setting. Both of these studies use modified items created for use in the RISE study (Ahmed, Harris, Braithwaite, and Braithwaite 2001a). The conceptualization of reintegrative and stigmatizing shame used in the RISE study focuses on the underlying concepts of respect, forgiveness, and disapproval. For reintegrative shaming, there should be respect for the participant during the MHC process, disproval aimed at the offense without labeling the person, and words, gestures or ceremonies indicating forgiveness at the end of the process. Stigmatizing shame comes from disrespect and disapproval of the person that results in negative labeling and being punished via ceremonies that certify him/her as a deviant person.

The RISE study examined the objective and subjective nature of reintegrative shame in restorative conferences. The selection of this criminal justice program was driven by the observations of Braithwaite and Mugford (1994) who suggested restorative conferences successfully practice reintegrative shaming. Objective and subjective measures from the RISE study suggest that the restorative conferences are more likely to practice reintegrative
shaming compared to TCC proceedings. To date, no study has used these items to examine the presence of reintegrative shaming in any other context.

6.2 Systematic Observations of Reintegrative Shaming in Mental Health Court

To examine whether the practice of reintegrative shaming differs by court context, systematic observations were conducted in both MHC and TCC settings. Items from RISE’s Global Observational Ratings Instrument were used to examine differences in reintegrative and stigmatizing shaming by court context (Ahmed, Harris, Braithwaite, and Braithwaite 2001; Harris and Burton 1998). The instrument captures differences in shaming types by asking observers directly about reintegrative and stigmatizing shame, and separately about respect, disapproval, and forgiveness, concepts that tap into the underlying process of the two shaming types (see Table 1).

In order to examine whether multiple observers would rate MHC and TCC settings similarly, I recruited two other researchers to code observations of the courts. Three researchers took part in these court observations, with at least two of the three observers attending each court session. Ideally I would have had three observers for each session; however, observer availability was an issue. Observer 1 (myself) attended all court sessions (N= 16), observer 2 attended twelve court sessions, and observer 3 attended four court sessions. There were 87 cases observed in TCC and 91 cases observed in MHC, over a 6-month period (October 2009 to March 2010). The TCC was a misdemeanor criminal court

18 The findings from this study have since been published; see Ray, Bradley, Cindy Brooks Dollar, and Kelly M. Thames. 2011. "Observations of reintegrative shaming in a mental health court." International Journal of Law and Psychiatry 34:49-55.
that was in the same country from which MHC participants were referred. As such, the types of charges in each court were similar. Only TCC cases involving formal dispositions were recorded and analyzed in the present analysis. In other words, dispositions arranged with a prosecutor informally outside of the court room were excluded. Five judges presided over the observed cases. Two of these judges were observed in both the TCC and MHC settings, while the remaining three were only seen in TCC. We used 11 items from the Global Observational Ratings Instrument, each of which is scored on an eight point scale (see Table 1). The instrument requires observers to code activities and statements during court hearings, such as attendance of defendant supporters, verbal exchanges between judges, attorneys, and defendants, and non-verbal behaviors of team members, participants and persons accompanying them. Before observing in MHC and TCC, observer 2 and observer 3 were not familiar with the MHC setting or the predictions of reintegrative shaming theory. However, definitions of each of the shaming types – reintegrative and stigmatizing – were presented to both researchers to provide clarity for items 1 and 2.

**Observational Findings**

Given that this is the only study to use the Global Observational Ratings Instrument, besides the original RISE, and that it was used in a different criminal justice setting, I begin by examining the findings of the inter-rater reliability statistics. Following the methods used by Harris and Burton (1998), which examined inter-rater reliability between observations of restorative court conferences and TCC cases, I use the Pearson Product Moment Correlation
statistic and percent of agreement reliability statistic for each of the observational items. The agreement reliability statistic is calculated using the following formula:

\[
\% \text{ of agreement} = \frac{n \text{ of cases where the absolute value of (observer 1 - observer 2)} < 2}{\text{total n of cases}}
\]

This formula calculates the percentage of cases in which the observers' scores are within 1 unit of each other. Harris and Burton (1998) state that a difference of 1 is both realistic and stringent for measuring differentiation between observers on an eight point scale.

All of the items were statistically significant (p=.001) according to the Pearson correlation statistic, indicating statistical strength in the agreement between observers scores. All of the percents of agreement, ranging from 98 percent (item 8) to 71 percent (item 4), were higher than those previously reported for all of the items except item 9 (83 percent vs. 84 percent). High reliability on some of the items was due to the large number of low response values for both observers. For example, item 8 asks, “How often were stigmatizing labels used”. These occurrences were so rare in both TCC and MHC that the mean value was 1.4 for both observers.

Table 1 presents mean scores and t-tests for each of the observational items by court type. Item 1 asks about the expression of reintegrative shaming toward the defendant. The MHC mean is above the scale mean (M=5.26; SD=2.20), showing a high level of reintegrative shaming, and is significantly higher than the TCC mean, which is below the scale mean (M=3.15; SD=1.81). Table 1 shows that for each of the respect and forgiveness
items (items 3, 4 & 5 and items 10 & 11, respectively), the MHC values are above the mean, indicating high levels of respect and forgiveness. MHC values on these items are significantly higher than the TCC values, all of which are below the scale mean. The respect items’ mean values are two and half points higher in the MHC than in the TCC; while the two forgiveness items are twice as high in MHC. For example, the means of item 4 which asks, “How much approval of the offender as a person was expressed”, are 5.26 for MHC and 2.29 for TCC.

While the MHC was more likely to practice reintegrative shaming, the TCC was not as stigmatizing as expected. TCC is significantly higher in value than the MHC on Item 2 which asks about the expression of stigmatizing shame; however, it is roughly the same value as the scale’s mean score (M=4.08; SD=1.57). More notable is the significantly lower stigmatizing value of the MHC (M=2.41; SD=1.75). On Item 7 that asks, “To what extent was the offender treated as a criminal”, the MHC has a mean value of 2.77 while TCC has a significantly higher mean (4.13) but approximates the mean of the scale. We believe that the lack of observed stigmatization in the TCC may be due to what Braithwaite refers to as the “uncoupling of shame and punishment” (1989: 59). The bureaucratic nature of the criminal justice system may cause offenders not to experience any shame—be it reintegrative or stigmatizing—as they are quickly processed in and out of the system.

Table 2 shows the mean values and standard deviations for each of the observational items by judge in TCC as well as F-values from an ANOVA test across judges. For nearly all of the items, there are significant differences across judges. Judge 3 scored highest on the
overall reintegrative shaming item as well as the respect and forgiveness items suggesting a
more reintegrative judicial style.

To tease out the separate impact of judicial style and court context, Table 3 examines
differences in shaming types between court contexts for judges 2 and 3 who were observed in
the both MHC and TCC contexts. If there is no significant difference between TCC and
MHC for each judge, we might conclude that reintegrative shaming is purely dependent on
judicial style. To the contrary, as illustrated in Table 3, both judges are significantly more
reintegrative in MHC than in TCC. They have significantly higher values in MHC on all of
the items measuring respect and forgiveness. For example, on item 3 Judge 3 has a mean that
is twice as high in MHC (M=6.93; SD=1.17) as in TCC (M=3.39; SD=1.50). Thus, while
these judges are more likely to shame reintegratively, the findings suggest that they are ever
more likely to use reintegrative shaming over stigmatizing shame in MHC.

The above analysis indicates the MHC contains more elements of reintegrative
shaming than TCC proceedings do. These findings are similar to the RISE study which found
that the restorative conferences were more likely to practice reintegrative shaming than TCC
(Ahmed, Harris, Braithwaite, and Braithwaite 2001). The style of the restorative conference
moderator was not examined in the RISE study; however, the findings of the present study
suggest that the presence of these reintegrative elements is not only linked to the MHC
context but also to the particular styles of the judges. Judicial style was taken into account in
the present analysis to account for the extent of reintegration used by two judges who were
observed in both TCC and MHC. Findings suggest that the level of reintegration may only be
partially dependant on individual judicial style as their use of shame varied across court contexts (i.e., the adjudication style of each judge was different in TCC than it was in MHC).

A second finding similar to the RISE study was in the observation of stigmatizing shame in TCC; neither study found particularly high values of stigmatizing shame in TCC settings. TCC proceedings rely heavily on efficient case processing. The number of cases on the TCC docket alone restricts the opportunity to provide shaming in any form. According to Braithwaite (1989), stigmatizing shaming results when disapproval of the offender is expressed, negative labels are attached to the offender, or degradation ceremonies are carried out. It is likely that given the minimal time spent on each case in open court and the frequency of plea bargaining in TCC, there is not adequate opportunity to stigmatize a defendant.

6.3 Self-Reported Experiences of Reintegrative Shaming in Mental Health Court

In an effort to triangulate the results from the observational study of reintegrative shaming in MHC proceedings, interviews were conducted with the MHC participants to capture their subjective experiences of shame. The goal of these interviews was to examine whether those who completed the MHC perceived the process to be reintegrative or stigmatizing. The survey consists of items from the RISE study that were designed to measure the underlying factors that make up reintegrative and stigmatizing shame: respect, forgiveness, labeling, and master status.

Over a nine month period (June 2011 to January 2012), 34 MHC participants were interviewed. Only those who completed the MHC process and received a graduation
ceremony were interviewed (3 to 5 participants each month).\textsuperscript{19} During the nine month interview period only one participant who graduated from the court declined to be interviewed and two others were not interviewed because they left after signing the consent form but before the interview could be conducted.

In obtaining permission from the court team to conduct interviews, Judge A was adamant that the time to complete the interviews not be too long, stating that “graduation is done at the beginning of the court session so that they [the graduates] can leave early while the other participants have to stay.” Therefore, the MHC team requested that the interviews be short enough so that when the court session ended graduates were still able to leave before everyone else. To accommodate this request the survey was kept short enough to be completed in approximately 10 minutes. To determine which items were essential, I used the findings from the confirmatory factor analysis of the items in the RISE study. Based on 16 items that were administered in the conference and court settings, Ahmed et al. (2001) found five items that measure the underlying construct of reintegrative shame and four items that measure stigmatizing shame (146). I modified these items slightly to ask about the MHC experience rather than the restorative conference. The survey items were read word-for-word and answers were recorded by the researcher. This was done to alleviate any discomfort for those who may have been illiterate or not comfortable being recorded. Participants were asked to think about the overall time they spent in the MHC: "I'm going to ask you some

\textsuperscript{19} The initial design was to interview those who were terminated from the MHC process as well as graduates; however, only one participant who was terminated during this period came to MHC on the day of her or his termination. Termination was often the result of multiple noncompliance events and missing court or having a new arrest, in which case the participant was informed outside of court that the charges were sent to TCC and her or she need not attend.
questions about your experiences in MHC and how you were treated by the MHC staff. When I ask about how people treated you during MHC, I am referring to your experiences with the MHC staff.” Responses were coded on a five-point scale ranging from 'strongly agree' to 'strongly disagree'.

Each of the 34 graduate interviews occurred immediately after the participant completed the graduation ceremony. The interviews were conducted in a small meeting room directly outside the courtroom. As participants exited the courtroom after graduation, they were approached by one of two researchers and asked if they would be willing to take part in a research study on the MHC. If they agreed then informed consent was read aloud and they were given a copy to take with them. The second researcher waited outside the courtroom to obtain informed consent from any other participants who graduated and waited with them until they could be interviewed. This procedure was followed after the second month, when both researchers attempted to interview participants and two participants who were waiting left after signing the consent form. From this point forward only one of the researchers conducted the interviews while the other waited with the participants. Given the low frequency of court completion each month, it was important to survey as many graduates as possible. As part of the informed consent the participants were reminded that their answers were entirely confidential and that none would be shared with MHC staff. They were also told that the answers would have no bearing on disposition of their criminal charges and that they would not affect any treatment they were receiving.
**Self-Report Findings**

The question is whether participants who complete the MHC process are more likely to experience reintegrative or stigmatizing shame. Table 4 presents the mean scores and standard deviation for each of the survey items. All of the items are organized according to the type of shaming they are designed to capture. Items were re-coded so that higher values indicate more of each type of shame. According to RST, those who experience reintegrative shame should feel as though they were respected during the shaming process and forgiven at the end (Braithwaite 1989). To capture this, items measuring respect prompt respondents to think about their feelings during the process while the forgiveness items refer to the end of the process. Items 1 and 2 measure respect and ask respondents their level of agreement with the following statements, "During MHC people often told me things that they liked about me" (M=4.18; SD=0.67) and "During MHC I learned that there are people who care about me" (M=4.24; SD=0.78). Both of these items’ mean values were above the midpoint (2.5) as were the mean values of the two forgiveness items (items 3 & 4; M=4.44; SD=0.50 and M=4.06; SD=1.07 respectively). For items 1 through 3, none of the respondents answered with a negative opinion (i.e. disagreed with the statement); however, three respondents disagreed with the statement that people at MHC indicated they were forgiven.

Following the predictions of labeling theory, RST posits that stigmatizing shame involves labeling offenders as deviant and allowing that label to become a master status. When this happens the deviant behaviors are likely to continue. Reintegrative shame involves labeling and condemning the offense, not the offender. When this occurs, it can build the offender’s consciousness as she/he sees him/herself as better than committing deviant acts.
Item 5 captures this reintegrative shaming labeling process with the statement "During MHC people told me that it is not like me to something wrong" (M=3.68; SD=0.98). Among the reintegrative shaming items, this one had the lowest value. While its modal response was positive, 24 percent of respondents had neutral feelings about it. This neutrality might be due to misunderstood wording as this item frequently required repeating.

Items 6 and 7 capture the stigmatizing component of labeling. As Table 4 illustrates, the mean values of these items are on the opposite end of the distribution from the reintegrative shaming items. Item 6 states, "The people at MHC treated me like I was going to commit another crime" (M=1.14; SD=0.92) and item 7 states "During MHC people made negative judgments about the kind of person I am" (M=1.59; SD=0.50). Items 8 and 9 capture the master status component of the stigmatizing label. Again, mean values for these items (M=2.15; SD=0.93 and M=1.65; SD=0.60) are on the opposite side of the distribution from the reintegrative shaming items. Only two respondents indicated that they were treated as bad persons (item 9); however, 32 percent of the respondents stated that they were treated like criminals (item 8). The results of items 5 and 8 may be a result of the MHC judge commonly telling the participants that they expect slip-ups. The judge states this in the context of telling the participants that the MHC does not expect perfection; however, participants might perceive this as the judge as suggesting that it is like them to commit crimes.

Table 5 compares mean scores and standard deviations for each of the survey items for males and females. Female respondents have higher average values for all of the reintegrative items and lower values for all the stigmatization items; however, none of the
differences is statistically different. Table 6 looks at the differences in self-reported reintegrative and stigmatizing shame between whites and nonwhites. The table shows that whites have significantly higher values on items 1 and 3, suggesting that whites were more likely to have perceived MHC as reintegrative compared to nonwhites. Item 7 shows a similar difference, with nonwhites more likely to indicate that they are more likely to feel that the MHC made negative judgments about the kind of person they are (whites M=1.50; SD=0.51 and nonwhites M=1.80; SD=0.42).

To examine whether the items are reliably measuring the latent variables of reintegrative shame and stigmatizing shame Cronbach's alpha was conducted for each scale. Items 1 through 5 of the reintegrative scale had a Cronbach's alpha coefficient of 0.65. The stigmatization scale, compromised of items 6 through 9, had Cronbach's alpha coefficient of 0.78. These alphas are similar to those reported in the RISE study. Among the conference case sample they reported coefficients of 0.70 for the reintegrative and stigmatizing scales (Ahmed et al. 2001: 147). Both the reintegrative and stigmatizing scales range from 1 to 5, and have means of 4.12 (SD=0.54) and 1.83 (SD=0.59) respectively. The reintegrative scale is skewed to the high end while the stigmatizing scale is only slightly skewed to towards lower values. While there were significant differences by race on items 1, 3, and 7 (see Table 6), there were no significant differences by sex or race on either the reintegrative or stigmatizing scales.
6.4 Empirically Validating Reintegrative Shaming in MHC

To examine empirically whether reintegrative shaming is practiced in MHC, two studies were conducted: an observational study of MHC proceedings and a survey with MHC participants. The results of the observational study indicate that MHC proceedings contain more elements of reintegrative shaming than TCC proceedings do and that the presence of these elements is likely a result of MHC organization as well as the particular styles of the judges. The results of the self-report study suggest that participants who complete the MHC process are more likely to have experienced reintegrative shaming than stigmatizing shaming. Moreover, the findings also suggest that participants who are female or white are more likely to have perceived the MHC as reintegrative rather than stigmatizing.

There are several shortcomings in these two studies, many of which were beyond the scope of this dissertation, that speak to the need for further research of reintegrative shaming in problem-solving court contexts. First, both studies have low sample sizes. More observations in MHC context, and coding them relative to participant time in court, would have allowed for examination of reintegrative shaming over time. The number of survey respondents is (N=34) is the result of the MHC case load, not a low response rate; 92 percent of all participants who completed the MHC during the nine month observation period were surveyed. Also, I was unable to administer the surveys to participants after they were terminated from the MHC process or defendants in the TCC setting. Future work needs to address this. Because of the praise and encouragement common in MHC, participants may perceive MHC to be reintegrative even when they were terminated. Second, the observations and surveys are not in reference to the same MHC participants; as such the results speak
more to the MHC model rather than individual defendants in MHC. In the RISE study researchers were able to examine each court case and conference session objectively and subjectively and were able to determine whether their observations correlated with defendants’ subjective experiences. In the present analysis observations were conducted during one period in time and interviews, at a later period so such analysis could not be conducted. Finally, the observational instruments did not include questions on the participant’s characteristics (such as age, race or gender) so it is not possible to determine whether judges communicate shame differently by these characteristics. Future research will need to focus on examining possible differences in the shaming process by participant characteristics.

Despite the shortcomings, the studies suggest a theoretical mechanism that might operate in problem-solving court contexts that can help explain their lower rates of recidivism; and they contribute to the literature on problem-solving courts and reintegrative shaming. Moreover, the findings suggest that problem-solving courts may be an ideal setting to test the predictions of RST.

It is important to note that all the above studies took place in the same MHC and ultimately represent a case study of reintegrative shaming as it occurs in this particular court’s process. Each year approximately 75 people experience this reintegrative process. As such, this MHC can be used to examine indirectly whether reintegrative shaming leads to lower rates of recidivism which is the goal of the next chapter.
7.1 Prologue

Much of the research that uses societal process to test RST indirectly does not validate its measures of reintegrative and stigmatizing shame (Baumer, Wright, Kristinsdottir, and Gunnlaugsson 2001; Lu 1999; Makkai and Braithwaite 1994; Miethe, Lu, and Reese 2000; Schaible and Hughes 2011; Vagg 1998; Zhang and Zhang 2004; Zhang 1995). The problem with using an invalid measure is highlighted by the Miethe et al. (2000) study of a drug court. The authors purport that the stated goals of the court are ideologically similar to the concept of reintegrative shaming; therefore, it follows that defendants in the drug court should be less likely to recidivate than those in a control group who are in TCC. They found just the opposite; drug court participants were actually more likely to recidivate. Only when they later conducted brief field observations of the drug court did they discover “a clear preponderance of stigmatizing rather than reintegrative comments directed at most offenders” and that “the individual defendant, not the act itself, was clearly the focal point of the judge’s common ‘tongue lashings’” (Miethe et al. 2000: 537). This study illustrates that if researchers are going to use a societal process or social setting as an indirect measure of shaming they must first establish that it is consistent with the conceptualizations of reintegrative and stigmatizing shame put forth in the theory.
One of the goals of the RISE study was to operationalize reintegrative and stigmatizing shame and provide researchers with the tools to measure these concepts empirically (Ahmed et al. 2001). The previous chapters in this dissertation have used these tools to examine reintegrative shaming in a MHC setting. Findings suggest that reintegrative shaming is more likely to occur in the MHC setting than in the TCC setting and that those who graduate from the MHC are likely to have experienced reintegrative rather than stigmatizing shame. Given that this particular MHC practices reintegrative shaming, the goal of this chapter is to use MHC participant’s exit status from MHC or TCC as indirect measures of reintegrative and stigmatizing shame. A similar design was used by Chiricos and colleagues (2007) to test the effects of labeling on recidivism. The study used felony offenders in Florida where judges have the option of “withholding adjudication” of guilt for convicted felons who are being sentenced to probation” (Chiricos, Barrick, Bales, and Bontrager 2007: 548); thus, an offender who may be equivalent in terms of factual guilt may not be labeled a “felon.” The researchers suggest that this “unique labeling event” is an opportunity to test the predictions of RST as persons not labeled do not face the structural impediments of being convicted felons (i.e. they lose no civil rights and are able to tell potential employers that they have not been convicted of a felony). The study found that those who were labeled felons were significantly more likely to recidivate during a two year follow up than those who were not labeled (Chiricos, Barrick, Bales, and Bontrager 2007).

20 Although “withholding adjudication’ of guilt for convicted felons” appears to be contradictory, a Florida law allows judges to withhold the official label of “convicted felon” for individuals who have been found guilty of a felony who are sentenced to probation.
In MHC, graduation is the pinnacle of reintegrative shaming. This ceremony marks the successful end of the criminal justice process, as the participant is welcomed back into the community of law-abiding citizens by persons who represent that community. However, not all MHC participants complete the process; many of them are sent back to TCC and may experience a very different ceremony that has the opposite purpose. The TCC setting gives representatives of the community an opportunity to confront the offender and pronounce judgment about his or her act (Erikson 1962). According to Garfinkel, such “degradation ceremonies” in TCC are meant to bring about feelings of shame in offenders by publicly calling attention to their deviant behavior. The TCC process is consistent with Braithwaite’s stigmatizing shame in that defendants go through a degradation ceremony, with no attempt to reconcile the offender with the community, where the deviant label is allowed to become a master status (Braithwaite and Mugford 1994; Braithwaite 1989).

In this chapter I use exit statuses from these uniquely different court contexts as indirect measures of reintegrative and stigmatizing shame experiences to test the key prediction of reintegrative shaming theory: those who have a reintegrative shaming experience are less likely to commit subsequent acts of crime and those who have stigmatizing shaming experiences are more likely to commit subsequent acts of crime. In this chapter I first describe how data were collected and how the variables are constructed. I then give a description of these variables by shaming experiences and finally present results from Cox regression survival analysis predicting re-arrest post exit status.
7.2 Data Collection Procedures

At the end of each fiscal year the court administrator produces a document with information on all of the participants who exited the study MHC that year. This document includes name, race, sex, and date of birth of each participant (demographics); the court docket number and a description of the criminal charges that were handled in the MHC (i.e. the key arrest offense that resulted in the individual being accepted into MHC which is dropped upon successful completion of the court); and each of the dates that the MHC participant was scheduled to appear in court. On the final MHC date the court administrator notes whether the participant had his or her charges dismissed or whether they were sent back to regular court.

The demographic, criminal, court dates and exit statuses were coded for 468 individuals who exited the study MHC from 2000 to 2006. Each of these participants was then searched in the Automated Criminal Infraction System (ACIS)—a database that contains information about all criminal infractions in the state of North Carolina—to obtain a state identification number (SID). Initial searches were done by name, date of birth, race and sex; however a large number of names did not match. To address this, docket numbers were used as a second search criterion. All docket numbers were searched and linked to the name, race, sex and age associated with the number. The docket number was also used to get court disposition for the case (i.e. guilty, dismissed, etc.). Once a full list of names was compiled they were searched on the ASIC system for their corresponding (SID) number which was then used to search for criminal history. Using the above methodology resulted in criminal
records for 449 of the 468 individuals listed on the court administrator’s MHC dockets. Each of the docket numbers was also searched using the North Carolina Department of Corrections Offender Public Information database which contains information on incarceration dates (i.e. entry date and exit date from jail or prison). If a docket number resulted in incarceration then the sentence beginning and release dates were coded.

**Dependent Variable**

The dependent variable in this analysis is time to first re-arrest (a dichotomous variable) post exit status. Data collection on this variable occurred between October 3, 2011 and October 19, 2011, providing a follow-up period of over a decade for those participants who left the court in 2000 and over five years for those who left in the end of 2006. Long-term recidivism studies in criminology have examined how long a follow-up period is necessary before an offender’s risk of re-arrest declines to a point where it is the same as an individual with no criminal record (Blumstein and Nakamura 2009; Kurlychek, Brame, and Bushway 2007; Kurlychek, Bushway, and Brame 2012). Findings suggest that this occurs anywhere from six (Kurlychek, Brame, and Bushway 2007) to ten years (Blumstein and Nakamura 2009). To date, the longest follow-up of a MHC is two years post exit (Hiday and Ray 2010). Long term recidivism studies of the MHC model are necessary to consider

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21 For the sake of organization, the name associated with the docket number was referred to as the “docket name”. 42 percent of the names listed on the MHC administrators docket were different from the docket name. This was due to spelling errors, alternate spellings, or name changes (i.e. maiden names). 16 percent of the final sample had more than one name that needed to be searched.

22 For this study data were not collected on the frequency of re-arrest as two studies of this court have found that the MHC participants have fewer arrests after court entry (Moore and Hiday 2006) and after court exit (Hiday and Ray 2010).
whether reductions in crime are sustained in the years following court exit. With a minimum of 5 years follow-up and a maximum of 11 years, this study represents the longest follow-up of a MHC to date.

Over half (53.9 percent) of the sample was re-arrested during the follow-up period; of these, 16 percent were charged with felonies. Most of the recidivating offenses were property crimes with the most common property crimes being larceny and second degree trespassing.

Table 8 shows the rate of re-arrest by follow-up year. The largest portion of re-arrests occurred in year two; 20.5 percent of the sample was re-arrested in the second year but the difference is small between years one and two. By the end of year two nearly 40 percent of the sample had been re-arrested; however after year two the percent of re-arrests decreases. Only 8 percent of the sample was re-arrested in year three; 3.3 percent in year four; and 3.6 percent after the fourth exit year. This is consistent with earlier long term recidivism research that reports a turning point in the risk of recidivism with the majority of those who recidivate doing so in the first two years (Kitchener, Schmidt, and Glaser 1977). Table 8 shows that researchers who want to examine re-arrest after MHC should follow participants at least two years post exit as a large portion of re-arrests happen during the second year. Moreover, the table shows that very few individuals are arrested beyond year three (less than 7 percent).

An important note about the measure of recidivism used in this study is the methodological treatment of those participants who left MHC, recidivated, and came back into the MHC. Eighteen percent of those who were re-arrested (53 of 242) were accepted back into MHC, 60 percent of whom were MHC graduates. Thus, 18 Methodological treatment of these repeat participants is rarely discussed in evaluations of MHCs (see Christy
et al. 2005 for exception). This study uses the participant’s first instance in MHC, which means that each of these participants is counted only once and each is coded as having recidivated only once.\textsuperscript{23}

\textit{Shaming experience measures}

The key independent variable in this study is exit status that is an indirect measure of type of shaming experience. Three categories of shaming experiences were created. The first category, \textit{reintegrative experience}, consists of those individuals who graduated from MHC and had their criminal charges dismissed. Graduation is the pinnacle of reintegrative shaming in MHC and is a ceremony that marks the end of the criminal justice process, as the participant is welcomed back into the community of law-abiding citizens by persons who represent that community (Braithwaite 1989). The reintegrative shame group compromises 59.0 percent of the sample. The minimum amount of time that a participant can be in the study's MHC to graduate is 6 months. One quarter (24.5 percent) of those who graduated completed the court in 6 months while the average time of graduates in MHC was 10 months (SD=4.8).

Not all of those who begin the MHC process complete it; 41.0 percent of those that started the MHC process eventually had their criminal charges sent back to TCC. Of this 41.0 percent, 88.6 percent were terminated from the MHC process and 11.4 percent decided to opt out. Those who opted out averaged approximately 4 months in the MHC (SD =2.6) with a

\textsuperscript{23} Future analysis will examine these participants in greater depth to see whether legal or demographic characteristics predict reacceptance back into the MHC.
third (33.3 percent) opting out in the second month and one participant opting out in month 10. Those who were terminated from the MHC spent an average of 7 months (SD=5.2) in the court. Approximately half (51.8 percent) of those who were terminated spent less than 6 months in the court process. Although the charges associated with the key arrests of those terminated and who opted out were sent back to TCC for disposition, not all of these charges resulted in judgments of guilt. In many cases, criminal charges were dismissed if the prosecutor decided not to go forward with the charges or the judge decided to dismiss the charges. Among the 41.0 percent whose cases were adjudicated in TCC, 37.0 percent eventually had their criminal charges dismissed and received no further monitoring or punishment. These individuals make up 15.1 percent of the sample and represent the second shaming category, the *shame experience*.

In Braithwaite's original formulation of RST he suggests that all shame ultimately results in either reintegration or stigmatization (1989: 102), and so shame can be measured along a continuum from reintegrative to stigmatizing (Makkai and Braithwaite 1994). However, Tittle and colleagues (Botchkovar and Tittle 2005; Botchkovar and Tittle 2008; Tittle, Bratton, and Gertz 2003) point out that in other instances Braithwaite's suggests that shame alone, not necessarily stigmatizing shame, can deter crime (Braithwaite 1989: 81). As such, they suggest that "researchers might set out to measure shaming per se and then examine its effects under conditions of stigmatization or reintegration" (Tittle et al. 2003).

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24 In some instances Braithwaite suggests that shame will always end up being either reintegrative or stigmatizing while in others he suggests that shame might sometimes be neither.

25 The exploratory factor analysis of self-reported items in the RISE study found that reintegrative and stigmatizing shame are discrete concepts and not part of a continuum as originally stated Ahmed, Eliza, Nathan
The use of the *shame experience* category takes this approach by suggesting that those defendants who go through the TCC process, but are *not* found guilty, are shamed, but they receive neither reintegrative shame (forgiven and accepted back into the community) nor stigmatizing shame (officially labeled and removed from the community). This is not to say that there is no shame, or that the shame is neutral. As Braithwaite suggests, shame is any process of expressing disapproval which has the intention of invoking remorse (1989:100). Arrest and criminal adjudication are intended to bring about feelings of guilt and remorse in offenders. For the individuals in the TCC dismissed group the shaming experience ends at dismissal and is not stigmatizing.

The use of this category is supported by the present study and the RISE studies’ observational findings that suggest that the TCC process is not necessarily stigmatizing. TCC proceedings rely heavily on the need for efficient case processing. The number of cases on the docket alone restricts the opportunity to provide shaming in any form. For example, in the observational study presented above many of the case proceedings observed in TCC were heard and adjudicated in as little as five (5) minutes. It is likely that given the minimal time spent on each case in open court there is not adequate opportunity to stigmatize the defendant.

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Harris, John Braithwaite, and Valerie Braithwaite. 2001. *Shame Management through Reintegration*. Cambridge: Cambridge University Press. This led Braithwaite to suggest that that future empirical work should measure reintegrative and stigmatizing shame separately; however, he does not speak the measurement of shame as a separate construct Braithwaite, John and Valarie Braithwaite. 2001. "Shame, Shame Management and Regulation." in *Shame Management through Reintegration*, edited by E. Ahmed, N. Harris, J. Braithwaite, and V. Braithwaite. Cambridge: Cambridge University Press.
The final category, *stigmatizing experience*, consists of those individuals who were sent back to TCC and found guilty of the key arrest.\(^{26}\) This exit status is consistent with Garfinkel’s (1956) description of a degradation ceremony, as it transforms the offender’s identity by communicating that he/she is now in a lower category in society (i.e. criminals) and is an outsider. Moreover, this shaming experience is consistent with Braithwaite’s stigmatizing shame in that there is no attempt to reconcile the offender with the community, the individual is labeled according the deviant act, and this deviant label becomes a master status (1989:101). Of those who were sent back to TCC, 63.0 percent were found guilty. Of these, 33.6 percent were sent to jail, 58.6 percent were put on probation, and 6.9 percent received a monetary fine. The average amount of time spent in jail was slightly under 6 months (M=5.85; SD=7.23). Of the sample, 25.8 percent were found guilty of the key arrest and had a stigmatizing experience.

**Independent Variables**

Three demographic variables are used in the following analysis: age, race and sex. Age at MHC entry is the difference between a participant’s first day in MHC and his or her date of birth. Average age is 34.7 (SD=11.94). More than half (60.4 percent) of the population is white, 37.0 percent is Black, 1.6 percent is Hispanic, and 1.1 percent is Asian. Given the proportions of these categories, a nonwhite variable (39.6 percent) was created for use in statistical models. Just over two thirds (68.4 percent) of the sample are males. Two

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\(^{26}\) Ideally I would have liked to have used those who were sent to jail as the most stigmatized category; however, given that a jail sentence was given in so few of the cases (8 percent of the sample), it was not a feasible shaming category. Future research should focus on using more nuanced exit statuses.
variables are used to control for differences in the MHC process. A dummy variable indicates whether a participant opted out of the process (4.7 percent opted out) and a continuous variable indicates time in MHC in months (M=8.57; SD=5.14).

The three legal variables are dummy variables that indicate whether the key arrest was a felony (12.5 percent), whether the participant was re-arrested during the time in MHC (27.8 percent), and whether the participant had a prior arrest that was a felony (35.2 percent). A fourth legal variable is a continuous measure of the number of lifetime arrests prior to the participant’s first date in MHC (M=8.16; SD=9.28). This prior arrest count variable is highly skewed, ranging from 0 to 49 priors. Half of the sample had 4 or fewer arrests (17.4 percent had one arrest and 15.1 percent had two arrests). To adjust for this variation a second prior arrests variable was created using the natural log of the original variable.

Analytic Procedures

The focus of this chapter is testing the predictions of reintegrative shaming theory using the shaming categories described above. There are two general hypotheses: (1) those who had the reintegrative experience are less likely to recidivate than those who had the shame and stigmatizing experiences, and (2) those who had the stigmatizing experience are more likely to recidivate than those who had the shame and reintegrative experience. The risk period for re-arrest begins at the last date of MHC except in those cases when the participant's criminal charges were sent back to TCC. If the participant was sentenced to be incarcerated the risk period begins after being released from jail or prison. For those who
were not found guilty in TCC the risk period begins on the date that key arrest was disposed of.\textsuperscript{27}

Cox regression (also known as Cox proportional hazards modeling or Cox duration models) was used to examine post shaming recidivism. Cox regression is a type of survival analysis (also known as event history) that uses proportional hazard models to examine the time to an event occurring. It is commonly used when studying recidivism because the method is able to handle right censored data (i.e. have not recidivated during the duration of the available follow time). This is the major advantage of using survival analysis over logistic regression. With logistic regression researchers have to censor the data based on the minimum length of follow-up period. For example, if there are two years of follow-up for some cases and only a year on other cases, correct logistic regression modeling would require the researcher to limit all of the cases to a one year follow-up, and data on re-arrests in year two would be right censored. In survival analysis right censored cases are considered to have survived as long as the duration of the follow up time. For example, an individual who left the court on October 1, 2000 who had not recidivated by October 1, 2011 is right censored as having survived for 132 months. Cox regression uses the censored and uncensored (i.e. those that did recidivate) cases to calculate the probability of surviving (i.e. not recidivating) for each time point (Box-Steffensmeier and Jones 2004). Covariates can be added to the Cox regression equation to predict the hazard ratio (also called the relative risk). This ratio is

\textsuperscript{27} The mean time between MHC termination and TCC disposition was 4.7 months and ranged from 1 to 17 months.
based on the hazard rate, which is the probability of the event (recidivism) occurring in a given time period given survival through prior time periods.

### 7.3 Comparing Shaming Categories

Table 9 presents an overview of the three shaming categories by the demographic, legal and recidivism measures described above. The rates of re-arrest vary according to the predictions of reintegrative shaming theory; those who had the reintegrative experience were less likely to recidivate than those who had the stigmatizing experience (39.6 percent vs. 81.0 percent respectively) and those who had a shame experience (39.6 percent vs. 63.2 percent respectively); while those who had the stigmatizing experience were more likely to recidivate than those who had the shame experience (81.0 percent and 63.2 percent respectively). The columns on the right side of Table 9 show the results of significance tests between each of the independent variables by the shaming categories. A general overview of these columns shows that there are more significant differences between those who graduate from the MHC and those who do not (reintegrative vs. stigmatizing and reintegrative vs. shame) than there are between those who are found guilty in TCC and those who are not (shame vs. stigmatizing). The shame and stigmatizing experience only differ significantly by prior felony and recidivism. The reintegrative experience groups differs from the two other groups on race, sex, time in MHC, arrest during MHC, prior felony arrest and number of prior arrests. Males and nonwhites are significantly less likely to have the reintegrative experience.

It should be noted that 87.5 percent (35 out of 40) of those who were sent to jail were re-arrested post release.
The relationship between participant sex and shaming experience is consistent with reintegrative shaming theory’s framework. Braithwaite (1989) suggests males are less likely to be interdependent and that the higher one’s interdependency the more likely s/he is to anticipate and experience reintegrative shaming (100). Table 9 also shows that those who had the reintegrative experience are in the court for longer which is due to the fact that graduates must be in the court for a minimum amount of time, and that a large portion of those who opt out and are terminated leave MHC before the minimum time for graduation. The reintegrative experience group is also less likely to have been re-arrested while they were in court, to have a prior felony arrest, and to have fewer prior arrests than those in the shamed and stigmatizing groups.

7.4 Heckman Control Factor

The purpose of this study is not to examine who completes the MHC process or whether completion is the result of the team’s decisions or the participant’s efforts. However, whether or not a MHC participant completes the process may be the result of uncontrolled factors that might also be associated to their likelihood to recidivate. This refers to a potential “treatment effect”: all the members of the population are present in the data, yet some are selected out of the treatment group (i.e. out of MHC and back into TCC) (Berk 1983; 

29 The present analysis does not examine whether the participant's likelihood to have the reintegrative experience is the result of the effort they put into the court or the MHC teams perceptions of their effort. This is discussed further in conclusion.
To address this treatment effect, a Heckman two-step method is employed. The Heckman procedure uses the residuals of a Probit selection model to construct a control factor (i.e., an Inverse Mill’s Ratio). This control factor is a ratio that is based on the variables that might predict selection into the treatment group and is essentially a weight that is added to subsequent statistical models to produce unbiased parameter estimates when predicting the outcome of interest; in this case, recidivism.

The Heckman control ratio that was calculated for this study uses age, race, sex, months in MHC, and a dummy variable that measures whether the participant was re-arrested during their time in MHC, to predict non-completion. The Heckman method requires the use of an exclusion variable that is predicted to affect the selection process but not the substantive variable of interest (Bushway, Johnson, and Slocum 2007). Given the available data, arrest during MHC is used to predict non-competing but not recidivism. As described above, re-arrest does not automatically result in termination from the MHC; however, 63 percent of those who were re-arrested during their time in MHC did not complete the process. The results of the Probit model that was used to construct the Heckman control ratio are presented in Table 10. The results shows that nonwhite participants are more likely to be non-completers as are those who had an arrest during the time their time in MHC. The selection of variables in creating a Heckman control factor is a subjective process. The variables used in creating this weight are based largely on the available data and my observations of the MHC team meetings and proceedings. Several other sets of variables were used that included the prior arrest variables to create alternate Heckman control factors; however, the use of these alternate control factors did not affected the Cox regression results in any significant way.

Interaction effects between these measures were examined but were not found to be significant.

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30 Chiricos et al. 2007 used the Heckman two-step method in a similar way. In their study they were looking at recidivism rates among those labeled as felon and those who were not and created a inverse mills ratio to control for the judge’s decision to adjudicate the offender as a felon.

31 The selection of variables in creating a Heckman control factor is a subjective process. The variables used in creating this weight are based largely on the available data and my observations of the MHC team meetings and proceedings. Several other sets of variables were used that included the prior arrest variables to create alternate Heckman control factors; however, the use of these alternate control factors did not affected the Cox regression results in any significant way.

32 Interaction effects between these measures were examined but were not found to be significant.
model also shows a significant negative association between months in the court and non-completion.

### 7.5 Cox Regression Survival Analysis

The dependent variable, time to first re-arrest, was examined using Cox regression models. Whether or not the event occurs is dichotomous (1=yes; 0=no) and time is measured in months. Among those who did recidivate, the time to first re-arrest ranged from 9 days to 81 months. Like logistic regression modeling, the inclusion of control variables holds the effect of these variables constant which allows the model to make predictions as though the cases are alike when they are not (Box-Steffensmeier and Jones 2004). In Cox regression the exponentiation of the beta coefficient, exp(B), is a hazard ratio (also called the relative risk). So rather than describing the coefficients effect on the log odds—as logistic regression does—a coefficient in Cox regression describes the effect of the covariate on the hazard ratio. The hazard ratio is based on the probability of the event (in this case, recidivism) occurring in a given time period given survival through prior time periods.

In the subsequent analysis, clusters of variables were added to each of the models to determine how they affect the hazard of re-arrest. Shaming experiences are the main focus in these analyses so Model 1 shows the results for time to re-arrest by shaming experiences and includes the Heckman control variable. Model 2 introduces the demographic control variables of age, race and sex. Model 3 introduces the length of time spent in MHC and whether the key arrest was a felony and Model 4 adds measures of prior arrests and whether any of these prior arrests are a felony.
Survival analysis findings

Table 11 presents the results of Cox regression models predicting time to recidivism. Model 1 includes the Heckman control and the three shaming experiences. The reference category shamed experience; i.e. those individuals who were terminated from MHC but did not receive a guilty verdict in TCC. As the theory would suggest, Model 1 shows the hazard of re-arrest is 2.2 times less (Exp(B)=.449; p<.000) for those who had the reintegrative experience compared to those who had the shame experience. Also consistent with the predictions of reintegrative shaming theory is that the hazard of re-arrest for those who had the stigmatizing experience is 1.5 times greater than those who had the shame experience. Again, these results are net of the Heckman control variable.

In predicting the hazard of recidivism we are not only looking at the likelihood of re-arrest but also the time to re-arrest. To examine the latter, survival analysis also produces a “life table”. The life table is a descriptive table that presents duration distributions for the full sample or separately by variable levels. Table 12 shows a life table by the three shaming experiences. One way to examine the life table to see at what point the half of the population has experienced the event. Of the full sample, half had been re-arrested by month 36, but of those who had the stigmatizing experience almost half (47.0) had been re-arrested by month 10 and of those who had the shamed experience half were re-arrested by month 14. Examining the life table shows that not only do groups with different shaming experiences differ on the likelihood of being re-arrested but they also differ significantly on the time to re-arrest.
Another way to illustrate time to re-arrest differences by shaming experiences is to plot the survival function of each of these groups. Figure 1 plots the survival function of each of shaming experience while controlling for the Heckman weights. Those who had the reintegrative experience go the longest until being re-arrested while those who had the stigmatizing experience are the soonest to be re-arrested.

Model 2 in Table 11 adds the demographic control variables. The addition of these variables slightly decreases the effect of stigmatization on the hazard of re-arrest while only slightly increasing the effect of the reintegrative experience. Of these demographic variables only age is significant; for each additional year the hazard of re-arrest decreases by 1.2 percent. Neither race nor sex is significant in predicting re-arrest while controlling for shaming experiences. Interactions between race and sex were tested but were also not significant.33

Model 3 adds a continuous variable measuring the number of the months the participant was in MHC and nominal variables indicating whether the key arrest was a felony and whether the participant opted-out of the court. While the number of months a participant spent in MHC was associated with the shaming experience (see Table 10), not finding a significant effect net of shaming experience, as shown in Table 11, suggests that higher “doses” of MHC do not affect re-arrest. Table 11 shows that months in MHC, a felony key arrest, nor opting out is significant in predicting the hazard of recidivism net of the demographic variables and shaming experience.

33 In separate analysis a model was run with these demographic variables and no shaming experiences. In this model the measure of nonwhites was significant. Controlling for age and sex, the hazard of recidivisms was 1.3 times higher for nonwhites than whites.
Finally, Model 4 includes variables measuring any prior felony arrest and a logged measure of the number of prior arrests. Age remains significant in predicting re-arrest, moreover, by adding these two criminal history variables sex becomes significant. This model shows that net of other variables in the model, the hazard of recidivism for males is 1.3 times less than females. The model also shows that when measures of prior criminal behavior are controlled there is no longer a significant difference between the stigmatizing and shame experiences. The number of prior arrests may influence sentencing outcomes in TCC (i.e. found guilty or not) but might also be tapping into a measure of underlying criminality. The finding is not surprising as criminal history is one of the best predictors of future criminal behavior among offenders with and without mental illness (Bonta, Law, and Hanson 1998; Ulmer 2001). While priors moderate the effect of the stigmatizing experience on recidivism, the effect of the reintegrative experience remains significant. Model 4 shows that that net of other variables, those who had the reintegrative experience have a hazard of re-arrest that is 2 times less than those who had the shame experience.

Figure 1 illustrates the cumulative survival time to re-arrest by shaming experience without including any covariates. This figure is essentially a graphical representation of the life table (Table 12) and displays the cumulative number of respondents surviving to each month. The left hand side of the figure shows that at 0 months all of the participants survived, i.e. did not recidivate. As the months increase the cumulative proportion recidivating increases. The lines in the figure represent the cumulative proportions who were

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34 Separate analysis found that with or without prior felonies, logged or not, there is no longer a significant difference between the stigmatizing and shame experience once a count of prior arrests is added into the model.
re-arrested of each of the shaming experiences. Figure 2 plots the cumulative survival time to re-arrest by shaming experiences net of the covariates in the Model 4. Comparing Figure 1 to Figure 2 illustrates how controlling for the other variables reduces the difference to non-significance between the shame and stigmatizing experience in predicting time to re-arrest and increases the difference between reintegrative shaming and shame.
CHAPTER 8: DISCUSSION AND CONCLUSION

This dissertation has presented four studies that were conducted to examine reintegrative shaming in MHC. The collective results from these studies suggest that the MHC practices reintegrative shaming in a manner that is consistent with Braithwaite’s conceptualization (Chapter 4); that the MHC is more likely to practice reintegrative shaming and less likely to practice stigmatizing shame compared to TCC (Chapter 5); that those who complete the MHC process are more likely to have experienced reintegrative shame than stigmatizing shame (Chapter 6); and that those who have an exit status consistent with a reintegrative experience are less likely to recidivate than those who have a shame or stigmatizing experience (Chapter 7). In this chapter, I discuss the findings and limitations for each of these studies, and directions for future research. I end with a general discussion of testing RST in a MHC context.

8.1 Qualitative Observations of Reintegrative Shaming

The qualitative observations presented in this dissertation investigated how specific aspects of the MHC structure were linked to the elements of RST. This work followed Braithwaite and Muggford (1994) who identified the characteristics of successful reintegration ceremonies when they observed restorative court conferences. The observations of the MHC found that the unique structural elements of the MHC are tied to respect and procedural justice (Tyler 1990). The interactions between the MHC judge and participant are linked to disapproval without labeling and several examples were provided to describe how
judges reintegratively shame participants. The MHC team and their ability to incorporate the expertise and ideals of mental health practitioners as case manager are linked to avoiding the use of stigmatizing labels. Finally, graduation from MHC was linked to the ceremony that decertified the deviant status.

The purpose of Chapter 4 was twofold. First was to add to the RST literature which needs more ethnographic studies describing societal processes where reintegrative shaming is practiced and experienced. In *Crime, Shame and Reintegration*, Braithwaite stated that ethnographies were the first step in testing a theory. Braithwaite and Mugford (1994) took this step in their ethnography of restorative conferences when they outlined the conditions of a successful reintegrative ceremony. The qualitative observations presented in this dissertation are a similar first step; however, in linking RST to the MHC process, it drew on the structural elements of the court as they pertained to the practice of reintegrative shaming. This was done in hopes that researchers observing other MHCs or problem-solving courts will consider how these structural factors affect the courtroom practices they observe.

The second purpose of Chapter 4 was to introduce reintegrative shaming as a theoretical mechanism that could help explain how the MHC leads to reduced crime. For example, studies that examined MHC proceedings in the past found that MHC judges were likely to engage in conversation with the participants (Boothroyd et al. 2008, Wales et al. 2010) and that this dialog was non-accusatory, informal, supportive and contained remarks of praise and encouragement (Boothroyd et al. 2003; Frailing 2010; Hiday et al. 2005). Rather than simply describing the MHC process, this study interpreted the descriptions in terms of RST, which offer an explanatory mechanism for reduced recidivism, namely that
reintegratively shaming participants should build their confidence and make them feel welcomed back into the community of law-abiding citizens.

8.2 Systematic Observations of Reintegrative Shaming

The systematic observational study presented in this dissertation was the first to use Global Observation Items from the RISE study in a setting other than a restorative conference. The study compared elements of reintegrative and stigmatizing shaming in MHC and TCC. Analysis indicated that the MHC proceedings contained more elements of reintegrative shaming than TCC did; and although TCC proceedings contained a higher level of stigmatizing shame than MHC (item 2), the proceedings observed revealed fewer elements of stigmatizing shame than expected. Specifically, in neither court context was there disappointment in the offender (item 6) or disapproval of the offender as a person (item 9). The low values among the stigmatizing shame items in TCC and nonsignificant differences with the MHC context are similar to the findings in the RISE study (see Ahmed et al. 2001). These findings can be explained by the restricted opportunity to stigmatize a defendant in TCC because of the large number of cases on the docket, the minimal time spent on each case in open court, and the frequency of plea bargaining. With this being said, there were certainly cases observed in TCC where stigmatizing shame was present, particularly when a defendant was found guilty and taken into custody.

This observation study also examined whether the likelihood of practicing reintegrative shaming differed by judges and found that the level of reintegrative shame may only partially depend on individual judicial style as the adjudication style of a single judge.
was different in TCC than it was in MHC. While the RISE study did not examine differences across the restorative conference moderators, it is possible that some moderators were more reintegrative than others.

8.3 Self-Reports of Reintegrative Shaming

The self-report study in this dissertation found that participants who completed the MHC process were more likely to have experienced reintegrative shaming than stigmatizing shaming. With the exception of the RISE study, this self report study was the only one that attempted to measure self-reports of reintegrative shame in a criminal justice context and was only the third study to examine a theoretical mechanism operating in MHC by surveying participants (Poythress et al. 2002; Wales et al. 2010). The values for each of the reintegrative shaming items were higher than their means, while the values for each of the stigmatizing shame items were lower than their means. Factor analysis found that the survey items reliably measured the latent constructs of reintegrative shame and stigmatizing shame and that the Cronbach alphas were similar to those reported in the RISE study (Ahmed et al. 2001: pp 147). When the reintegrative and stigmatizing shame items were added into a scale there was no significant difference by race; however, there were some differences among some of the items that indicated African American participants perceived the MHC as less reintegrative than white participants (see Table 6).
8.4 Shaming Experiences and Criminal Recidivism

The final study in this dissertation drew on the findings of reintegrative shaming in MHC from the observational and survey studies to use exit statuses as indirect measures of reintegrative and stigmatizing shaming experiences. I employed Cox regression survival analysis to test the association between these shaming experiences and criminal recidivism using statewide arrest data. Consistent with the predictions of RST the analysis found that those who had the reintegrative experiences were least likely to recidivate and those who had the stigmatizing experience were most likely to recidivate. The relationships between the reintegrative and stigmatizing experiences with re-arrest remained consistent with the predictions of RST net of demographic controls. The relationship between the reintegrative experience and recidivism remained significant when prior arrests were controlled; however, there was no longer a significant difference between the shame and stigmatizing experiences.

The strong association between the number of prior arrests and re-arrest was not surprising as multiple studies have found prior crimes to be the best predictor of future criminal behaviors. Unfortunately these data cannot tell whether prior arrests might be tapping into an underlying construct that is predicting the likelihood of completing MHC as well as the likelihood to recidivate. Two other studies of this MHC have found that prior arrests are significantly associated with recidivism (Hiday and Ray 2010; Moore and Hiday 2006), one of which compared MHC participants to a matched group of defendants who were eligible but not enrolled (Moore and Hiday 2006).

This dissertation research improved on the RST literature in several ways. First, the only research besides the RISE experiments to look at reintegrative shaming in a criminal
justice context was the Miethe et al. (2002) study of a Las Vegas drug court; and like much
of the RST literature, the researchers did not validate their indirect measures of shaming
types (see also Baumer et al. 2001; Vagg 1998; Zhang 1995). This dissertation validated
empirically that the MHC practiced reintegrative shaming and that TCC did not with a
systematic observation study; and with a survey of graduates who perceived the court as
reintegrative rather than stigmatizing.

A second improvement was that this dissertation research considered how exit
statuses might affect the experience of reintegrative or stigmatizing shame. Miethe et al.
(2000) noted that some participants in their study’s drug court graduated but they did not
consider this exit status in their analysis; and neither Miethe et al. (2000) nor Tyler et al.
(2007) differentiated between TCC exit statuses and how they might relate to stigmatizing
shame. Considering these exit statuses (i.e. graduation, guilt and incarceration) could alter
findings of their studies.

Finally, this dissertation used Cox regression to examine the likelihood of and time to
re-arrest, and was the longest follow-up of a MHC to date. It found that participants who had
the reintegrative experience were less likely to recidivate and that those who did recidivate
grew much longer until re-arrest than those who had the stigmatizing experience.

8.5 Limitations and Future Research

In interpreting the above results some limitations should be kept in mind. This study
examined only one MHC located in a unique setting (two geographically rural small towns
with a highly educated population, one of which has a major university). Several aspects of
this court’s structure and process may be different from other MHCs, ultimately limiting the
generalizability of these findings to other courts. The observed MHC accepts mostly pre-
adjudicated cases so participants’ criminal charges are not severe enough to warrant that they
remain in jail and they have not pled guilty, so the court does not have a jail or prison
sentence that can be used for leverage. The court also differs in terms of eligibility; for
example, this court accepts defendants with either a felony or misdemeanor arrest while some
only accept those with one type. Many other MHCs use reductions in court supervision—
from weekly, to bi-weekly, to monthly—as incentives or include them as part of a phased
process (i.e. completion of a phase comes with less frequent supervision) but this MHC does
not. Participants come to monthly status hearings and must be compliant for six consecutive
months in order to graduate. There are also a variety of differences across MHCs in the
treatments, services, and community resources (e.g. housing and employment assistance)
available to the MHC team in developing individualized treatment plans. For example, this
study’s court is not able to offer services like assertive community treatment or in-house
treatment to all who could benefit whereas some MHCs offer these services to all participants
(Cosden et al. 2003; Cosden et al. 2005).

Despite these differences the observed MHC has all the essential elements of a MHC
that are hypothesized to reduce criminal recidivism: a specialized voluntary court docket that
employs a problem-solving approach; judicial supervision and individualized community-
based treatment plans designed by a court team that includes mental health professionals;
regular status hearings to review compliance and offer incentives and sanctions based on
adherence to court mandates; and a written document that defines the court mandates and the
positive legal outcome that comes from completing the program (Council of State Governments 2008). However, this is not to suggest that a court that has these elements will necessarily practice reintegrative shaming; Miethe and colleagues (2000) study illustrates the problem of assuming a court is reintegrative based on such written descriptions of the process. Rather, future work should continue to use qualitative observations of the court process and the Global Observational Instrument to analyze MHCs and other problem-solving court models to see whether reintegrative shaming operates in these courts and how the practice of shaming types differs by the structural and procedural elements of the court.

Another limitation is that this study did not have a randomized control group; thus, participants were not randomly referred to, accepted for, or accepting of MHC. It is unknown whether the MHC team informally or unconsciously selected defendants into the court whom they felt were less likely to recidivate. There may have also been a self-selection process by participants who accepted and/or completed the MHC process being those more ready or able to change. These types of selection biases may call into question this dissertation’s interpretation of differences between those who had the reintegration experience in MHC and those who did not, raising the question of whether those who did not recidivate post exit may have done so regardless of MHC participation and graduation.

While the study was not designed to evaluate the MHC model, it nonetheless suggested MHC uses reintegration shaming and reduces offending. Yet it was impossible to know the extent to which reintegrative shaming above other components of MHC (treatment, services, monitoring, support) reduced recidivism. Ideally, each of these components should be measured and those who enter the MHC should be compared to a randomly selected
control group of mentally ill defendants who receive all needed treatment and services but do not get the mental health court’s structure, monitoring, support, sanctions and reintegrative shaming.

These studies are also limited in the measures available to examine differences in reintegrative and stigmatizing shame and subsequent criminal recidivism. The observational study considered different court contexts and judges while the survey study considered race and sex; however, this research did not fully examine whether shaming types differed by the offender’s legal and demographic characteristics (i.e. criminal charges, age, race, gender), their length of time in MHC, or exit status. In terms of predicting criminal recidivism, variables such as employment, housing, mental health, global functioning, substance abuse, deviant peer groups, social supports, or the appropriateness of the treatments and services before participants come into the MHC, during the MHC process, at exit, and after they exit the court should be measured and taken into account.

The recidivism study relied on official records to measure the main independent variables—reintegrative and stigmatizing experiences—as well as criminal recidivism. By using exit statuses as indirect measures of shaming, the recidivism study was unable to capture the variation in experiences of reintegrative and stigmatizing shame that the self-report survey found. Future research should link participant perceptions of reintegrative and stigmatizing shame to self-reported criminal behaviors and official arrest records to test directly the predictions of RST and subsequent criminal behaviors.

A research design of this type is needed in both the RST and MHC literature. Researchers have made few attempts to interview participants about their experiences in
MHC. As described above, two studies asked about perceived procedural justice (Poythress et al. 2002; Wales et al. 2010) and one asked about perceived coercion (Poythress et al. 2002; see also Hiday, Wales and Ray 2011). A study by Boothroyd and colleagues (2005) used a Brief Psychiatric Rating Scale to examine changes in clinical status and the receipt of treatments and services (see also Broner et al. 2009 and Cosden et al. 2005). However, none of these studies linked the responses to these items to future criminal behaviors. Moreover, the only direct test of RST (i.e. self-reported shaming types) and recidivism in a criminal justice context was the Tyler et al. (2007) analysis of the RISE study data.

The sample of the self-report survey in this dissertation was small (N=34) and consisted only of graduates. Future research needs to sample larger numbers of participants and assess reintegrative and stigmatizing shame across a range of possible court exits (graduation, termination, or opt-out from MHC and dismissed, found guilty, or sent to jail in TCC) and examine whether these experiences vary by legal factors and social or demographic characteristics. Such self-reports could more directly examine the association between shaming types and subsequent criminal behaviors using self-reported criminal behaviors, projected criminal behaviors, or official arrests.

8.5 Future Research on Criminological Theory in Problem-Solving Courts

In this dissertation, as in my two past studies of MHCs, I was surprised when I analyzed the data and saw that there were numerous cases with dozens of arrests prior to entering the MHC and none in the years following. This observation is consistent with the extant literature which suggests MHCs can be effective in reducing crime; however, there
have been few attempts in this literature to explain what exactly is happening at the individual level to cause such a drastic behavioral change. This dissertation is an attempt to explain that change. I argue that defendants who participated in, but especially who graduated from MHC, have a reintegrative shaming experience that reminds them—or perhaps taught them for the first time—that they are not simply defined by their deviant behaviors, that they are respected and that they have been forgiven and welcomed back into the community. When they leave the MHC process their morality has been reaffirmed. They gain or renew confidence in themselves that reduces the likelihood that they will commit a crime.

RST has become a “zombie theory” in criminology: research on the theory is not lively but has not died out completely (Felson 2011). I hope the findings from this dissertation will stimulate new research on problem solving courts and this theory as problem-solving courts may be ideal venues for testing the predictions of RST. I hope it will stimulate research addressing some of the ambiguities in the theory’s framework, and explaining why some problem-solving courts reduce crime more than others. To date the only theories that have been offered as explanations for the behavioral changes that occur during and after MHC are procedural justice and coercion (Poythress et al. 2002; Wales et al. 2010). These theories share a common mechanism with RST which is the role of respect and subsequent compliance with the law (Braithwaite 2002). In a MHC, respect comes from allowing the defendants a choice in participating in the MHC process (non-coercive), and the respectful interpersonal and fair treatment they receive during the process. What RST adds is the respect that comes from feeling forgiven and the acceptance back into the community.
despite past behavior. Imagine a MHC where participants receive treatments, services and supervision but it is the role of the judge to explain respectfully to each participant that he or she has violated the law and must go to jail. This court could be voluntary (defendants might participate for the treatment and interpersonal services) and over a period of time the judges could fully explain to the participants that they need to do their time in jail to learn a lesson. Such a process could be procedurally just and non-coercive but it would not be reintegrative. It may be the ability of MHCs to encourage respectfully voluntary participation and compliance with court mandated treatment plans (non-coercive and procedurally just) — in exchange for dismissed charges or a reduced sentence (forgives, acceptance, and reintegrative shaming) — that is key to their ability to reduce subsequent criminal recidivism. Criminal justice diversion programs that do not offer fairness, respect, forgiveness and acceptance may not be as successful as those that do.

While this dissertation focuses on reintegrative shaming in MHC, there are several other theories that can help explain how these problem-solving courts in general reduce crime: participants might learn non-deviant adaptations to strains (Strain); the positive incentives and negative sanctions based on regular compliance audits could be a form of operant conditioning that leads to behavior modification (Social Learning); participants might develop greater stakes in conformity that strengthen social ties or increase external or internal controls (Social Bonds); the greater autonomy offered in problem-solving courts relative to TCC might help participants develop a greater sense of control over their lives (Control Balance); problem-solving courts might integrate participants into group relationships that offer emotional, material or social assistance (Social Support); the fair
decisions and respectful relationship between the MHC team and participants might lead to increased compliance with court mandates and the law (Procedural Justice). It might also be a combination of participants feeling that the MHC treated with respect via procedural justice, and forgiven and accepted via reintegrative, as well as feeling strongly bonded to society and the sanctioning parties (Defiance). Trait based theories in criminology could help explain who completes the court process as well as who recidivates. For example, some participants may be short sighted about the long term benefits of completing the process and be prone to impulsive or risk-seeking behaviors that lead to crime (Self-Control); or they may have a greater criminal propensity that is the result of neuropsychological deficits that make it difficult to comply with court mandates and the law (Life Course Persistent).

These are just some of the mechanisms that can be applied to the problem-solving court model in explaining reduced recidivism after graduation. The ultimate endeavor for criminological research in problem-solving courts is to examine these types of theoretical mechanisms against a range of social, demographic, clinical and criminal justice variables, across multiple court contexts, over the duration of the participant’s time in court after exit. Such a research design could examine why some individuals complete the court process, what changes during the participants time in court, whether it differs by court type, and whether these changes are associated with subsequent criminal desistence.
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Table 1. Observational Items for Traditional and Mental Health Court Cases

<table>
<thead>
<tr>
<th>Observation Items</th>
<th>TCC mean (SD)</th>
<th>MHC mean (SD)</th>
<th>t-value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reintegrative shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. How much reintegrative shaming was expressed?</td>
<td>3.15 (1.81)</td>
<td>5.26 (2.20)</td>
<td>7.01 ***</td>
</tr>
<tr>
<td><strong>Stigmatizing shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. How much stigmatizing shaming was expressed?</td>
<td>4.08 (1.57)</td>
<td>2.41 (1.75)</td>
<td>6.72 ***</td>
</tr>
<tr>
<td><strong>Respect for offender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. How much support was the offender given during the court?</td>
<td>3.20 (1.64)</td>
<td>5.73 (1.86)</td>
<td>9.63 ***</td>
</tr>
<tr>
<td>4. How much approval of the offender as a person was expressed?</td>
<td>2.29 (1.74)</td>
<td>5.26 (2.27)</td>
<td>9.85 ***</td>
</tr>
<tr>
<td>5. How much respect for the offender was expressed?</td>
<td>3.29 (1.57)</td>
<td>5.78 (1.74)</td>
<td>10.03 ***</td>
</tr>
<tr>
<td><strong>Disapproval of the offender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. How much disappointment in the offender was expressed?</td>
<td>2.41 (1.76)</td>
<td>2.47 (1.95)</td>
<td>0.21 NS</td>
</tr>
<tr>
<td>7. To what extent was the offender treated as a criminal?</td>
<td>4.13 (1.47)</td>
<td>2.77 (1.83)</td>
<td>5.46 ***</td>
</tr>
<tr>
<td>8. How often were stigmatizing names and labels used to describe the offender?</td>
<td>1.62 (0.72)</td>
<td>1.16 (0.60)</td>
<td>4.58 ***</td>
</tr>
<tr>
<td>9. How much disapproval of the offender as a person was expressed?</td>
<td>2.06 (1.54)</td>
<td>2.05 (1.65)</td>
<td>0.01 NS</td>
</tr>
<tr>
<td><strong>Forgiveness of the offender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. How clearly was it communicated to the offender that they could put their actions behind them?</td>
<td>3.41 (2.21)</td>
<td>5.58 (2.09)</td>
<td>6.72 ***</td>
</tr>
<tr>
<td>11. How much forgiveness of the offender was expressed?</td>
<td>2.20 (1.75)</td>
<td>4.70 (2.34)</td>
<td>8.13 ***</td>
</tr>
</tbody>
</table>

* N = 87, ** p < .01, *** p < .001
Table 2. Observational Items by Judge

<table>
<thead>
<tr>
<th>Observation Items</th>
<th>Judge 1 mean (SD)</th>
<th>Judge 2 mean (SD)</th>
<th>Judge 3 mean (SD)</th>
<th>Judge 4 mean (SD)</th>
<th>Judge 4 mean (SD)</th>
<th>F-value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reintegrative shame</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. How much reintegrative shaming was expressed?</td>
<td>4.14 (2.04)</td>
<td>4.20 (2.27)</td>
<td>4.94 (2.32)</td>
<td>2.70 (1.95)</td>
<td>3.00 (1.48)</td>
<td>3.34 **</td>
</tr>
<tr>
<td><strong>Stigmatizing shame</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. How much stigmatizing shaming was expressed?</td>
<td>5.57 (1.51)</td>
<td>3.33 (1.76)</td>
<td>2.29 (1.73)</td>
<td>3.60 (1.78)</td>
<td>4.42 (1.44)</td>
<td>8.42 ***</td>
</tr>
<tr>
<td><strong>Respect for offender</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. How much support was the offender given during the court?</td>
<td>3.57 (2.30)</td>
<td>4.32 (2.07)</td>
<td>5.60 (2.16)</td>
<td>3.50 (1.58)</td>
<td>2.83 (1.11)</td>
<td>6.71 ***</td>
</tr>
<tr>
<td>4. How much approval of the offender as a person was expressed?</td>
<td>3.14 (1.86)</td>
<td>3.72 (2.47)</td>
<td>4.81 (2.61)</td>
<td>2.00 (1.41)</td>
<td>2.42 (1.88)</td>
<td>4.64 ***</td>
</tr>
<tr>
<td>5. How much respect for the offender was expressed?</td>
<td>2.86 (1.46)</td>
<td>4.61 (1.99)</td>
<td>5.33 (2.11)</td>
<td>3.00 (1.63)</td>
<td>3.33 (1.56)</td>
<td>5.92 ***</td>
</tr>
<tr>
<td><strong>Disapproval of the offender</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. How much disappointment in the offender was expressed?</td>
<td>6.00 (1.00)</td>
<td>2.32 (1.73)</td>
<td>2.33 (1.81)</td>
<td>2.60 (1.96)</td>
<td>1.75 (1.14)</td>
<td>8.22 ***</td>
</tr>
<tr>
<td>7. To what extent was the offender treated as a criminal?</td>
<td>6.00 (2.00)</td>
<td>3.57 (1.69)</td>
<td>2.31 (1.48)</td>
<td>4.60 (0.97)</td>
<td>4.25 (1.29)</td>
<td>12.79 ***</td>
</tr>
<tr>
<td>8. How often were stigmatizing names and labels used to describe the offender?</td>
<td>1.57 (0.79)</td>
<td>1.37 (0.66)</td>
<td>1.38 (0.84)</td>
<td>1.40 (0.52)</td>
<td>1.50 (0.52)</td>
<td>0.22 NS</td>
</tr>
<tr>
<td>9. How much disapproval of the offender as a person was expressed?</td>
<td>4.86 (1.86)</td>
<td>1.98 (1.56)</td>
<td>1.83 (1.34)</td>
<td>2.10 (1.60)</td>
<td>1.92 (1.38)</td>
<td>6.43 ***</td>
</tr>
<tr>
<td><strong>Forgiveness of the offender</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. How clearly was it communicated to the offender that they could put</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>their actions behind them?</td>
<td>5.14 (2.54)</td>
<td>4.50 (2.28)</td>
<td>5.15 (2.61)</td>
<td>3.00 (2.11)</td>
<td>3.08 (1.78)</td>
<td>3.15 *</td>
</tr>
<tr>
<td>11. How much forgiveness of the offender was expressed?</td>
<td>3.43 (2.23)</td>
<td>3.26 (2.23)</td>
<td>4.50 (2.72)</td>
<td>2.20 (1.81)</td>
<td>2.33 (1.92)</td>
<td>3.98 ***</td>
</tr>
<tr>
<td>TCC = 7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MHC = 0</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
* p < .05, ** p < .01, *** p < .001
Table 3. Observational Items by Judge and Court Context

<table>
<thead>
<tr>
<th>Observation Items</th>
<th>Judge 2</th>
<th></th>
<th></th>
<th>Judge 3</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reintegrative shame</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. How much reintegrative shaming was expressed?</td>
<td>3.43 (2.00)</td>
<td>4.70 (2.31)</td>
<td>-2.87 **</td>
<td>2.50 (1.20)</td>
<td>6.40 (1.40)</td>
<td>-9.82 ***</td>
</tr>
<tr>
<td>Stigmatizing shame</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. How much stigmatizing shaming was expressed?</td>
<td>4.05 (1.32)</td>
<td>2.85 (1.85)</td>
<td>3.54 ***</td>
<td>3.61 (1.82)</td>
<td>1.50 (1.07)</td>
<td>5.07 ***</td>
</tr>
<tr>
<td>Respect for offender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. How much support was the offender given during the court?</td>
<td>3.08 (1.76)</td>
<td>5.13 (1.86)</td>
<td>-5.55 ***</td>
<td>3.39 (1.50)</td>
<td>6.93 (1.17)</td>
<td>-9.12 ***</td>
</tr>
<tr>
<td>4. How much approval of the offender as a person was expressed?</td>
<td>2.38 (1.98)</td>
<td>4.61 (2.38)</td>
<td>-4.92 ***</td>
<td>1.83 (1.04)</td>
<td>6.60 (1.25)</td>
<td>-13.59 ***</td>
</tr>
<tr>
<td>5. How much respect for the offender was expressed?</td>
<td>3.48 (1.78)</td>
<td>5.36 (1.77)</td>
<td>-5.22 ***</td>
<td>3.17 (1.10)</td>
<td>6.63 (1.35)</td>
<td>-9.2 ***</td>
</tr>
<tr>
<td>Disapproval of the offender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. How much disappointment in the offender was expressed?</td>
<td>2.05 (1.22)</td>
<td>2.49 (1.99)</td>
<td>-1.26 NS</td>
<td>2.17 (1.72)</td>
<td>2.43 (1.89)</td>
<td>-0.49 NS</td>
</tr>
<tr>
<td>7. To what extent was the offender treated as a criminal?</td>
<td>3.95 (1.30)</td>
<td>3.33 (1.88)</td>
<td>1.83 NS</td>
<td>3.44 (1.38)</td>
<td>1.63 (1.07)</td>
<td>5.09 ***</td>
</tr>
<tr>
<td>8. How often were stigmatizing names and labels used to describe the offender?</td>
<td>1.65 (0.74)</td>
<td>1.18 (0.53)</td>
<td>3.72 ***</td>
<td>1.78 (0.88)</td>
<td>1.13 (0.73)</td>
<td>2.74 **</td>
</tr>
<tr>
<td>9. How much disapproval of the offender as a person was expressed?</td>
<td>1.73 (1.22)</td>
<td>2.15 (1.73)</td>
<td>-1.34 NS</td>
<td>1.78 (1.11)</td>
<td>1.87 (1.48)</td>
<td>-0.22 NS</td>
</tr>
<tr>
<td>Forgiveness of the offender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. How clearly was it communicated to the offender that they could put their actions behind them?</td>
<td>3.83 (2.35)</td>
<td>4.95 (2.13)</td>
<td>-2.49 **</td>
<td>2.28 (1.49)</td>
<td>6.87 (1.25)</td>
<td>-11.45 ***</td>
</tr>
<tr>
<td>11. How much forgiveness of the offender was expressed?</td>
<td>2.33 (1.77)</td>
<td>3.87 (2.31)</td>
<td>-3.59 ***</td>
<td>1.33 (0.97)</td>
<td>6.40 (1.22)</td>
<td>-14.98 ***</td>
</tr>
</tbody>
</table>

*p < .05, ** p < .01, *** p < .001
<table>
<thead>
<tr>
<th>Observation Items</th>
<th>Mean (SD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reintegrative shame</strong></td>
<td></td>
</tr>
<tr>
<td>1. During MHC people often told me things that they liked about me.</td>
<td>4.18 (0.67)</td>
</tr>
<tr>
<td>2. During MHC I learned that there are people who care about me.</td>
<td>4.24 (0.78)</td>
</tr>
<tr>
<td>3. The people at MHC think that I’ve learned my lesson and I deserve a second chance.</td>
<td>4.44 (0.50)</td>
</tr>
<tr>
<td>4. At the end of MHC, people indicated that I was forgiven.</td>
<td>4.06 (1.07)</td>
</tr>
<tr>
<td>5. During MHC people told me that it is NOT like me to something wrong.</td>
<td>3.68 (0.98)</td>
</tr>
<tr>
<td><strong>Stigmatizing shame</strong></td>
<td></td>
</tr>
<tr>
<td>6. The people at MHC treated me like I was going to commit another crime.</td>
<td>1.94 (0.92)</td>
</tr>
<tr>
<td>7. During MHC, people made negative judgments about the kind of person I am.</td>
<td>1.59 (0.50)</td>
</tr>
<tr>
<td>8. During MHC, people treated me like I am a criminal.</td>
<td>2.15 (0.93)</td>
</tr>
<tr>
<td>9. During MHC, people treated me like I am a bad person.</td>
<td>1.65 (0.60)</td>
</tr>
</tbody>
</table>
Table 5. Self-Reported Reintegrative and Stigmatizing Shame by Sex

<table>
<thead>
<tr>
<th>Observation Items</th>
<th>Males Mean (SD)</th>
<th>Females Mean (SD)</th>
<th>t-value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reintegrative shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. During MHC people often told me things that they liked about me.</td>
<td>4.11 (0.58)</td>
<td>4.25 (0.77)</td>
<td>-0.58 NS</td>
</tr>
<tr>
<td>2. During MHC I learned that there are people who care about me.</td>
<td>4.17 (0.71)</td>
<td>4.31 (0.87)</td>
<td>-0.53 NS</td>
</tr>
<tr>
<td>3. The people at MHC think that I've learned my lesson and I deserve a second chance.</td>
<td>4.39 (0.50)</td>
<td>4.50 (0.52)</td>
<td>-0.63 NS</td>
</tr>
<tr>
<td>4. At the end of MHC, people indicated that I was forgiven.</td>
<td>3.78 (1.31)</td>
<td>4.38 (0.62)</td>
<td>-1.73 NS</td>
</tr>
<tr>
<td>5. During MHC people told me that it is NOT like me to something wrong.</td>
<td>3.56 (1.04)</td>
<td>3.81 (0.91)</td>
<td>-0.77 NS</td>
</tr>
<tr>
<td><strong>Stigmatizing shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. The people at MHC treated me like I was going to commit another crime.</td>
<td>1.94 (1.00)</td>
<td>1.94 (0.85)</td>
<td>0.02 NS</td>
</tr>
<tr>
<td>7. During MHC, people made negative judgments about the kind of person I am.</td>
<td>1.61 (0.50)</td>
<td>1.56 (0.51)</td>
<td>0.28 NS</td>
</tr>
<tr>
<td>8. During MHC, people treated me like I am a criminal.</td>
<td>2.17 (0.99)</td>
<td>2.13 (0.89)</td>
<td>0.13 NS</td>
</tr>
<tr>
<td>9. During MHC, people treated me like I am a bad person.</td>
<td>1.72 (0.67)</td>
<td>1.56 (0.51)</td>
<td>0.79 NS</td>
</tr>
</tbody>
</table>

NS= no significant difference
Table 6. Self-Reported Reintegrative and Stigmatizing Shame by Whites and Nonwhites

<table>
<thead>
<tr>
<th>Observation Items</th>
<th>Whites Mean (SD)</th>
<th>Nonwhites Mean (SD)</th>
<th>t-value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reintegrative shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. During MHC people often told me things that they liked about me.</td>
<td>4.38 (0.65)</td>
<td>3.70 (0.48)</td>
<td>3.34 ***</td>
</tr>
<tr>
<td>2. During MHC I learned that there are people who care about me.</td>
<td>4.38 (0.77)</td>
<td>3.90 (0.74)</td>
<td>1.69 NS</td>
</tr>
<tr>
<td>3. The people at MHC think that I've learned my lesson and I deserve a second chance.</td>
<td>4.54 (0.51)</td>
<td>4.20 (0.42)</td>
<td>2.02 *</td>
</tr>
<tr>
<td>4. At the end of MHC, people indicated that I was forgiven.</td>
<td>4.00 (1.22)</td>
<td>4.20 (0.63)</td>
<td>-0.63 NS</td>
</tr>
<tr>
<td>5. During MHC people told me that it is NOT like me to something wrong.</td>
<td>3.58 (0.93)</td>
<td>3.90 (1.10)</td>
<td>-0.80 NS</td>
</tr>
<tr>
<td><strong>Stigmatizing shame</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. The people at MHC treated me like I was going to commit another crime.</td>
<td>1.96 (1.00)</td>
<td>1.90 (0.74)</td>
<td>0.19 NS</td>
</tr>
<tr>
<td>7. During MHC, people made negative judgments about the kind of person I am.</td>
<td>1.50 (0.51)</td>
<td>1.80 (0.42)</td>
<td>-1.77 *</td>
</tr>
<tr>
<td>8. During MHC, people treated me like I am a criminal.</td>
<td>2.25 (1.03)</td>
<td>1.90 (0.57)</td>
<td>1.26 NS</td>
</tr>
<tr>
<td>9. During MHC, people treated me like I am a bad person.</td>
<td>1.58 (0.65)</td>
<td>1.80 (0.42)</td>
<td>-1.15 NS</td>
</tr>
</tbody>
</table>

* p < .05, ** p< .01, *** p< .001, NS = no significant difference
Table 7. Characteristics of MHC Participants (2000-2006) and North Carolina Arrests, 2005

<table>
<thead>
<tr>
<th></th>
<th>MHC</th>
<th>North Carolina</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Total</td>
<td>449</td>
<td>100.0</td>
<td>523,040</td>
<td>100.0</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>307</td>
<td>68.37</td>
<td>390,218</td>
<td>74.6</td>
</tr>
<tr>
<td>Female</td>
<td>142</td>
<td>31.63</td>
<td>132,822</td>
<td>25.4</td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>271</td>
<td>60.36</td>
<td>281,888</td>
<td>53.9</td>
</tr>
<tr>
<td>Black</td>
<td>166</td>
<td>36.97</td>
<td>230,633</td>
<td>44.1</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>2.67</td>
<td>10,519</td>
<td>2.0</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24 and under</td>
<td>115</td>
<td>25.61</td>
<td>192,874</td>
<td>36.9</td>
</tr>
<tr>
<td>25-34</td>
<td>123</td>
<td>27.39</td>
<td>145,396</td>
<td>27.8</td>
</tr>
<tr>
<td>35-44</td>
<td>119</td>
<td>26.50</td>
<td>112,649</td>
<td>21.5</td>
</tr>
<tr>
<td>45-54</td>
<td>61</td>
<td>13.59</td>
<td>55,022</td>
<td>10.5</td>
</tr>
<tr>
<td>55 and up</td>
<td>30</td>
<td>6.68</td>
<td>17,099</td>
<td>3.3</td>
</tr>
</tbody>
</table>
Table 8. First Re-Arrest by Follow-Up Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Number Entering Year</th>
<th>Number Re-Arrested During that Year</th>
<th>% of Total Re-Arrested During that Year</th>
<th>Cumulative Proportion Re-Arrested by Year End</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>449</td>
<td>83</td>
<td>18.5</td>
<td>18.5</td>
</tr>
<tr>
<td>2</td>
<td>366</td>
<td>92</td>
<td>20.5</td>
<td>39.0</td>
</tr>
<tr>
<td>3</td>
<td>274</td>
<td>36</td>
<td>8.0</td>
<td>47.0</td>
</tr>
<tr>
<td>4</td>
<td>238</td>
<td>15</td>
<td>3.3</td>
<td>50.3</td>
</tr>
<tr>
<td>5+</td>
<td>223</td>
<td>16</td>
<td>3.6</td>
<td>52.3</td>
</tr>
</tbody>
</table>

N=242 persons were re-arrested
### Table 9. Shaming Experiences by Demographic, Legal and Criminal Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Reintegrative N=265</th>
<th>Shame N=68</th>
<th>Stigmatizing N=116</th>
<th>t-value and sig</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recidivism</td>
<td>N 105 % 39.6 Mean 43 % 63.2 SD</td>
<td>94 % 81.0</td>
<td>*** vs Shamed *** vs Stig. ** vs Stig.</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>N 34.8 % 36.4 Mean 36.2 % 33.6 SD</td>
<td>11</td>
<td>NS vs Stig. NS vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Nonwhite</td>
<td>N 81 % 30.6 Mean 35 % 51.5 SD</td>
<td>62 % 53.4</td>
<td>*** vs Stig. *** vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>N 173 % 65.3 Mean 45 % 66.2 SD</td>
<td>89 % 76.7</td>
<td>NS vs Stig. NS vs Stig.</td>
<td></td>
</tr>
<tr>
<td>Opt Out</td>
<td>N 10 % 14.7 Mean 10 % 14.7 SD</td>
<td>11 % 9.5</td>
<td>NS</td>
<td></td>
</tr>
<tr>
<td>Key Arrest Felony</td>
<td>N 29 % 10.9 Mean 14 % 20.6 SD</td>
<td>13 % 11.2</td>
<td>NS vs Stig. NS vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Arrest During MHC</td>
<td>N 47 % 17.7 Mean 23 % 33.8 SD</td>
<td>55 % 47.4</td>
<td>** vs Stig. *** vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Months in MHC</td>
<td>N 10 % 4.8 Mean 6.3 % 4.9 SD</td>
<td>6.5 % 4.9</td>
<td>*** vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Prior Felony</td>
<td>N 65 % 24.5 Mean 27 % 39.7 SD</td>
<td>66 % 56.9</td>
<td>** vs Stig. ** vs Stig. NS</td>
<td></td>
</tr>
<tr>
<td>Prior Arrests</td>
<td>N 9.9 % 7.14 Mean 9.59 % 9.17 SD</td>
<td>12.1 % 10.6</td>
<td>*** vs Stig. NS</td>
<td></td>
</tr>
</tbody>
</table>

* p < .05, ** p < .01, *** p < .001, NS = no significant difference
Table 10. Probit Model Predicting Mental Health Court Non-Completion

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Estimate</th>
<th>SE</th>
<th>Z</th>
<th>95% CI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>0.506</td>
<td>0.003</td>
<td>0.006</td>
<td>-0.01 - 0.014</td>
</tr>
<tr>
<td>Nonwhite</td>
<td>4.159 ***</td>
<td>0.561</td>
<td>0.135</td>
<td>0.297 - 0.825</td>
</tr>
<tr>
<td>Male</td>
<td>1.383</td>
<td>0.199</td>
<td>0.144</td>
<td>-0.08 - 0.481</td>
</tr>
<tr>
<td>Months in MHC</td>
<td>-8.34 ***</td>
<td>-0.126</td>
<td>0.015</td>
<td>-0.16 - 0.096</td>
</tr>
<tr>
<td>Arrest During MHC</td>
<td>7.001 ***</td>
<td>1.105</td>
<td>0.158</td>
<td>0.795 - 1.414</td>
</tr>
<tr>
<td>Intercept</td>
<td>0.159</td>
<td>0.043</td>
<td>0.270</td>
<td>-0.23 - 0.313</td>
</tr>
</tbody>
</table>

* p < .05, ** p < .01, *** p < .001
Table 11: Cox Regression Model Predicting Re-Arrest Post Shaming Experience

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Model 1</th>
<th></th>
<th>Model 2</th>
<th></th>
<th>Model 3</th>
<th></th>
<th>Model 4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SE</td>
<td>Hazard Rate</td>
<td>SE</td>
<td>Hazard Rate</td>
<td>SE</td>
<td>Hazard Rate</td>
<td>SE</td>
<td>Hazard Rate</td>
</tr>
<tr>
<td>Reintegrative Experience</td>
<td>0.18</td>
<td>0.45 ***</td>
<td>0.19</td>
<td>0.44 ***</td>
<td>0.20</td>
<td>0.43 ***</td>
<td>0.20</td>
<td>0.49 ***</td>
</tr>
<tr>
<td>Shame Experience</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Stigmatizing Experience</td>
<td>0.19</td>
<td>1.53 *</td>
<td>0.19</td>
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*p < .05, ** p< .01, *** p< .001
Table 12. Life Table of Months to Re-Arrest by Shaming Experience

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Figure 1. Survival Time to Re-Arrest by Shaming Experience
Figure 2. Survival Time to Re-Arrest by Shaming Experiences Net of Covariates