

## [The Practice of Reintegrative Shaming in Mental Health Court](#)

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### **Abstract:**

Scholars and practitioners have renewed their interest in recognizing and designing restorative justice programs. Although these programs often provide successful outcomes, we know relatively little about why they work. Reintegrative shaming theory provides a lens by which to explain successful outcomes. This study uses over three years of direct observations to examine the practice of reintegrative shaming in a mental health court (MHC). We organize our findings around four primary components of reintegrative shaming outlined by Makkai and Braithwaite: respectful disapproval, disapproving the behavior rather than the individual, rejecting deviance as a master status, and ceremonial decertifications of deviance. Our data demonstrate that reintegrative shaming in MHC is largely accomplished through interactions with the judge, although the unique organization of the MHC, including their small caseloads, use of separate dockets, and pre-court team meetings, advance the court's use of reintegrative shaming.

**Keywords:** reintegrative shaming | mental health court | restorative justice | problem-solving courts | theory

### **Article:**

Restorative justice programs, though far from normative, have received renewed attention and implementation in recent decades (Braithwaite, 2002). These programs often demonstrate beneficial outcomes, including feelings of satisfaction among the parties involved and decreased recidivism among participating offenders; however, focusing on outcomes hinders our developing an understanding about *why* these successes occur, which is crucial to advancing our knowledge and understanding about how these programs operate.<sup>1</sup>

Braithwaite's reintegrative shaming theory helps explain the successes of restorative justice programs (Ahmed, Harris, Braithwaite, & Braithwaite, 2001; Braithwaite, 1989, 1999, 2004; Weitekamp & Kerner, 2002). The theory suggests that shaming can either be stigmatizing or reintegrative. Stigmatizing shame, which often occurs in the traditional criminal

justice practices, involves labeling offenders as deviant and isolating them from the law-abiding community. In contrast, reintegrative shaming focuses on condemning the deviant behavior without condemning the individual. Furthermore, the reintegrative shaming process is finite and includes efforts to respect the offender throughout the process, and to ultimately accept her or him back into the community through words or gestures of forgiveness. When shaming is reintegrative, offenders are less likely to recidivate because feelings of community and responsibility are strengthened (Braithwaite, 1989; Braithwaite & Mugford, 1994).

Restorative justice programs are varied and include a wide range of practices such as family conferences, victim–offender mediations, healing and sentencing circles, victim-impact panels, and community reparative boards. In this article, we identify mental health court (MHC) as a restorative justice effort practicing reintegrative shaming. The MHC is a post-booking diversion program that utilizes the treatment and services available in a given community to divert mentally ill defendants out of the cycle of incarceration by motivating them to connect with treatment or services (Almquist & Dodd, 2009). Although MHCs vary in their specific organization, including the type of dismissal program used, types of criminal offenses permitted, and acceptance of clients with co-occurring conditions, these courts are generally organized around the belief that legal responses should emphasize healing and treatment (Menkel-Meadow, 2007; Strang & Braithwaite, 2000) and treat offenders respectfully so as to minimize subsequent criminal acts (King, 2008; Nolan, 2009). To implement these efforts, MHCs rely on a team of persons from differing specialties and encourage the participants to maintain supportive, prosocial relationships.

Relying on observational data, we find that MHC personnel use techniques of reintegrative shaming that reflect restorative justice principles and practices. Below, we review reintegrative shaming theory and discuss the theory's link to restorative justice. Next, we detail the organization and processes underlying MHC proceedings generally before more specifically describing the MHC setting that is the subject of this research. Finally, we present findings from our observational data, and conclude by discussing how the MHC model might further adopt restorative justice practices.

## **Conceptual Framework**

### **Reintegrative Shaming Theory**

Reintegrative shaming theory merges several criminological traditions around the concept of shame and, in doing so, attempts to explain crime and criminal recidivism by focusing on the degree and form of social disapproval. The theory distinguishes between two forms of shame—stigmatizing (disintegrative) and reintegrative—and predicts that, stigmatizing shame increases the likelihood of crime, while reintegrative shame reduces criminal behavior recidivism (Ahmed et al., 2001; Braithwaite, 1989).

Stigmatizing shame involves labeling offenders as deviant and isolating them from social ties and community. When this occurs, the deviant label becomes a master status, legitimate opportunities are blocked, and offenders may seek out similarly labeled individuals and continue their deviant behaviors. In contrast, reintegrative shaming distinguishes the criminal or offensive

behavior from the individual. Although reintegrative shaming can be harsh and degrading, the behavior is punished or condemned without subjugating the individual. Reintegrative shaming, then, allows for the expression of disappointment for the behavior (shaming), while simultaneously expressing respect for the individual offender to assure that social ties to others are not severed (Ahmed et al., 2001; Braithwaite, 1984). Importantly, reintegrative shaming is also finite, and it ceases with words and/or gestures of reconciliation, forgiveness, and inclusion. Once punishment is completed, ceremonial decertification of the deviant act encourages the individual to acknowledge her or his acceptance back into the community.

### The Use of Reintegrative Shaming in Restorative Justice Practices

The principles of restorative justice have been central to the development of numerous criminal justice programs, but the perspective does not clarify any particular mechanism(s) to explain how restorative programs work. Although restorative justice processes predate Braithwaite's work (Van Ness & Strong, 2006), restorative justice practices employ components of reintegrative shaming theory (Braithwaite, Ahmed, & Braithwaite, 2006). Thus, in describing the relationship between reintegrative shaming and restorative justice programs, it is most accurate to suggest, as Braithwaite and others have, that the theory offers an explanation for *why* these practices work (Ahmed et al., 2001; Braithwaite, 2004).

Restorative justice practices encourage the parties involved in a criminal act to express their perspectives in the hopes that the offender will realize the consequences of their behavior and relationships within the community can be restored (McCold, 2000; Zehr, 1995). Facilitators guide the process so that the victim and offender have opportunities to voice their concerns. This dialogue is essential to implementing restorative justice (Presser & Van Voorhis, 2002) and is a means by which the offender's behavior is shamed. Shaming, then, acts as a sanction whereby the offender is held accountable for criminal acts, which supports others' arguments that restorative justice and reparative responses are not entirely mutually exclusive (e.g., Daly, 2002; Walgrave, 2000, 2013). Still, because this shaming occurs in the presence of family, friends, or other supporters who offer words or gestures of forgiveness, the offender's perception of shame functions to encourage him or her to recognize the gravity and consequences of offending. Following this shaming process, reintegration of the offender to the community ensues (Braithwaite, 1989).

By juxtaposing restorative efforts observed in juvenile court conferences with Garfinkel's (1956) concept of the degradation ceremonies, Braithwaite and Mugford (1994) identify several characteristics associated with successful reintegration ceremonies. Although the characteristics illustrate various observed practices, four components are particularly salient in linking reintegrating shaming to restorative justice efforts: using language and gestures to signify respectful disapproval of criminal behavior, emphasizing a disapproval of the criminal behavior rather than the individual, encouraging a rejection of deviance as a master status, and carrying out ceremonial decertifications of deviance.

**MHC**

MHCs are a type of problem-solving court and have grown tremendously—from only three courts in 1990s to nearly 400 MHCs in the United States today (Goodale, Callahan, & Steadman, 2013). These courts offer an alternative to traditional court processes. Their goal is to divert offenders out of the criminal justice system and link them with treatment or services that will alter the underlying social or psychological problems associated with the criminal behavior. The court personnel use the authority of the court to provide sanctions and incentives that encourage positive changes in the offender's life, including improving mental health functioning.

MHCs vary in organization and implementation (Almquist & Dodd, 2009). Some courts utilize deferred adjudication whereby defendants are required to plea guilty or *nolo contendere* prior to enrolling in the court, but following satisfactory completion of court mandates, the charges are dismissed. Other courts operate on pretrial diversion, which removes the defendant from traditional criminal prosecution prior to entering a plea. In addition, some MHCs accept offenders charged with only certain types of crimes. For example, the Court may decide to restrict enrollment to individuals with misdemeanor charges, while others may admit offenders charged with more serious offenses, including felonies and violent crimes. Finally, MHCs differ in the degree to which they accept participants who are comorbid for substance use disorders. Although participants with co-occurring conditions are not uncommon in MHC, courts do vary in their standard for such admissions.

Despite some differences across MHCs, the courts have some similar characteristics that distinguish them from traditional criminal courts (Almquist & Dodd, 2009; Porter, Rempel, & Mansky, 2010). First, MHCs rely on a non-adversarial team approach. Criminal justice and mental health practitioners work collaboratively to develop and monitor treatment plans for each participant and encourage the participant to progress through the program. Although the exact composition of the court team varies across courts, MHC teams generally include a judge, a prosecuting attorney, a defense attorney, and treatment service professionals. Second, MHCs maintain a separate docket and select cases that are eligible for enrollment. As mentioned above, the eligibility criteria may differ across courts, but selection of participants is determined by the court team members. Third, each participant must agree to comply with enhanced judicial supervision, including following an individualized treatment regimen. Individualized treatment plans may include attending a treatment program, meeting with a mental health professional, submitting to drug screenings, conforming to a medication regimen, or offering some form of restitution. Finally, participants who are compliant with court mandates for a specified period of time successfully complete the court process (i.e., graduate). Noncompliant participants are terminated from the MHC and either have a judgment of guilt entered against them or are returned to traditional criminal court for adjudication, depending on which type of dismissal program the MHC uses.

A fundamental goal of MHC is to reduce criminal recidivism, and some research suggests that MHCs effectively reduce rates of re-offending (e.g., Dirks-Linhorst & Linhorst, 2012; Herinckx, Swart, Ama, Dolezal, & King, 2005; Hiday & Ray, 2010; McNiel & Binder, 2007; Moore & Hiday, 2006). However, because of ethical issues surrounding the denial of treatment and services to those who need it, evaluations of MHCs have relied on quasi-experimental research

designs by comparing MHC participant outcomes to those of a matched group of defendants not enrolled in MHC (e.g., Christy, Poythress, Boothroyd, Petrila, & Mehra, 2005; McNiel & Binder, 2007), by examining defendants who were eligible but not referred or enrolled in MHC (e.g., Moore & Hiday, 2006; Steadman, Redlich, Callahan, Robbins, & Vesselinov, 2011), and by investigating changes in arrests or jail days before and after MHC participation (e.g., Dirks-Linhorst & Linhorst, 2012; Frailing, 2010; Herinckx et al., 2005; Hiday & Ray, 2010; Trupin & Richards, 2003). Although the link between court participation and recidivism reduction is not definitive, Sarteschi, Vaughn, and Kim's (2011) meta-analysis concludes that MHCs are a moderately effective intervention on criminal behavior.

Assessments of MHCs across various spatial and temporal contexts and that apply varying services and treatments reveal some consistency in successful outcomes leaving researchers interested in identifying common mechanisms that may be able to explain why these successes occur. With regards to this line of inquiry, researchers have discovered that MHC participants perceive high levels of procedural justice (Poythress, Petrila, McGaha, & Boothroyd, 2002; Wales, Hiday, & Ray, 2010), especially as compared with defendants in traditional court (Poythress et al., 2002). Procedural justice explains that persons who perceive legal decision making and treatment as fair will be motivated toward self-regulation in the future (Tyler, 2006). Although conceptually distinct, this perspective is consistent with several components of reintegrative shaming theory, including the notion of respectful disapproval (Braithwaite, 2004; Braithwaite & Braithwaite, 2001).

## **The Current Study**

Knowledge about MHC processes is crucial to developing an understanding about the successes (and failures) of the program, and although such examinations may be useful for subsequent research on the causes of successful reentry and recidivism, observational assessments of court interactions is worthy of separate investigation. The current study details the use of reintegrative shaming in MHC using over three years of observational data. By focusing on the practices and interactions that take place within the court rather than criminal justice outcomes, we reveal MHC as a restorative justice program that uses four primary components of reintegrative shaming: respectful disapproval, disapproving the behavior rather than the individual, rejecting deviance as a master status, and ceremonial decertifications of deviance.

## **Method**

### **Observational Setting**

The MHC we observe is located in a midsized city in the southeastern United States and was established through collaboration with advocacy groups, treatment providers, and local court personnel. The court had been in operation for nearly a decade when we began our study. Earlier evaluations of this court find that participation in this MHC is associated with reduced criminal recidivism during court participation and after exit (Hiday & Ray, 2010; Moore & Hiday, 2006) and the MHC proceedings contain more elements of reintegrative shaming than traditional court in the same area, even when the same judge was observed presiding in both court contexts (Ray, Dollar, & Thames, 2011).

The MHC accepts criminal misdemeanor and non-violent felony cases and relies on pretrial diversion, so while participating in MHC, arrest charges are placed in abeyance. Nine court personnel make up the court team. They include a presiding judge, an assistant district attorney (ADA), two defense attorneys, two mental health case managers, two probation officers, and a court administrator. Most of the cases handled in this court are referred by a judge or the ADA; however, law enforcement, attorneys, or treatment providers can also refer a case to this MHC.

The ADA initially determines whether or not the offender will be accepted into the MHC, but following this acceptance, the offender undergoes a diagnostic assessment at a community mental health center. Persons deemed eligible for this MHC must have a mental health diagnosis. Most participants have Axis 1 disorders such as schizophrenia, bipolar, anxiety, or depression, but the court also accepts some offenders with developmental disabilities and a “dual diagnosis” of mental illness and substance abuse.

If the defendant is deemed appropriate for enrollment and agrees to participate, she or he is added to the court’s docket. A treatment plan is individually developed for each participant. The plan, which is reviewed and approved by all team members, details the services, medical treatment, and expectations for each defendant, including requirements regarding the participant’s attendance at medical appointments and group sessions, complying with medication regimes, avoiding additional criminal behaviors, retaining stable housing, and participating in school or work-related activities.

Participants are ordered to return to open court sessions each month for compliance audits. These court proceedings last approximately 2 to 3 hours and are used to publicly evaluate each participant’s compliance with treatment, service, and other court mandates. To successfully complete or graduate from the program, the defendant must remain compliant with the court’s mandates for a specified amount of time, usually 6 to 12 months depending on the participant’s treatment needs and severity of criminal charge(s).

### Analytic Strategy

Our preliminary interest was to openly observe the routine operations and interactions of the court to identify patterned behaviors and responses of any and all parties involved in the court processes. Each author attended each monthly court session. We used a grounded approach in our initial observations (Charmaz, 2001; Strauss & Corbin, 1998) noting our initial impressions, sensory details, verbal and gesturing expressions, and reactions to events (Emerson, Fretz, & Shaw, 1995). Approximately three months into our observations, we reviewed our field notes and collectively agreed that our observations were strikingly consistent with Braithwaite’s reintegrative shaming.

Each author continued to attend monthly MHC sessions for approximately three years. No structured observation guide or checklist was utilized. Rather, we recorded individual notes primarily centering on observations of shaming but including other observations as well. On-site field notes were kept relatively brief in order to maximize our ability to watch and listen to court interactions. Immediately following each court session, we separately created expanded field notes, which included analytically based reflections. After these elaborated notes were

completed, we jointly reviewed specific notations and general observations. Our observations were highly comparable. There were instances, however, where one author may have noted an exchange not captured in the other author's notes. In these cases, the researcher who had not originally noted the exchange verbalized her or his conceptualization of the event. In each instance, it mirrored the other observer's reflection. The high degree of comparability among the researchers is likely due to our familiarity with extant theoretical and empirical work on reintegrative shaming.

## **Findings**

In the following section, we organize and present our findings around four components of reintegrative shaming identified by Makkai and Braithwaite (1994). Although these components are highly interrelated and often overlap, our observations emphasize particular instances that most embody these characteristics of reintegrative shaming. We cite examples of MHC proceedings that illustrate (a) respectful disapproval of criminal behavior, (b) disapproval of the criminal behavior rather than the individual, (c) rejecting deviance as a master status, and (d) using ceremonial decertifications of deviance (Makkai & Braithwaite, 1994).

### **Respectful Disapproval**

Respect of the participant is embedded in the MHC's organization and atmosphere. The non-adversarial team approach and maintaining a relatively small caseload allows the MHC personnel to devote time to each participant, and monthly status hearings help the court personnel become familiar with each participant as a person rather than a case or docket number. The MHC also operates in a relatively organized and predictable manner. 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.

Decision-making about the court's reactions to the participant's progress or retreat is largely handled in a pre-court team meeting that takes place prior to the public court proceedings, so the judge uses open court time to develop rapport, engage participants in conversations, and offer words of praise, encouragement, or admonishment. Speaking directly to the participant, the judge forgoes the use of legal jargon and focuses on conversing with the participant about personal matters, including stability or changes in the participant's residence, job, and/or relational status.

The MHC experience can last a year or more, and MHC team members often demonstrate mutual relationships of caring and respect with participants. This is important to recognize since Braithwaite proposes that reintegrative shaming is more effective when it comes from those whom the participant respects (Braithwaite, 1989, 2004). Wales and colleagues (2010) suggest that procedural justice is largely the result of respectful interactions between the MHC judge and the participant. Our observations consistently reveal the presence of such respectful interactions. We regularly note that the judge engaging participants in polite conversation, especially when explaining court decisions, asking the participant about her or his own decision to participate in court, and when listening to the participant's concerns about court mandates. In fact, the judge usually starts the court session with words of encouragement, saying, for example,

Each one of you are [*sic*] unique and deserve a quality life. There are no failures in this courtroom. There is an opportunity to hold your own outcome. We are here to balance accountability and support. Accountability means that you need to make your group meetings, follow the law, respect yourself and others, and be honest. Support means that you have to continue coming here for help, so that you can have the life you deserve. And what you deserve is to be safe, sober, and happy.

We further observe that after each participant spoke with the judge, the judge thanks the participant for coming to court at the end of the exchange. Even when done briefly, this expression articulates a level of gratitude for the participant's attendance.

When a participant was compliant with court mandates, the judge congratulates and speaks to her or his positive achievements. In a particular instance when referring to a participant's progress and commitment to treatment, the judge states:

I hear you've had a really good month. You've been attending your meetings and doing really well, and got a new place to live. You should respect yourself for that. You should certainly be proud of yourself. You deserve it.

The exchange not only indicates that the judge is pleased with the past month compliance but also suggests that the participant should respect and be proud of his progress.

#### Disapproving the Behavior, Not the Individual

The judge often expresses disapproval of behavior, albeit respectfully, to the participants rather than expressing disapproval or condemnation of the individual. Expressions of behavioral disapproval are particularly notable when the participants are noncompliant with the court's orders, and since very few clients are consistently compliant throughout the MHC process, we frequently noted the judge communicating such disapproval. Our data indicate that the MHC team recognizes that they are trying to change longstanding patterns of criminal, antisocial, or otherwise resistant behavior and thus allow for some degree of noncompliance. In fact, during MHC hearings the judge acknowledges that they do not expect "perfection" and that they "expect some slip-ups" early on in the process (Ray et al., 2011).

Even though the judge is aware of noncompliant behaviors because of discussions with MHC team members prior to the monthly court proceedings, the judge asks the participant questions about her or his progress and activities. Rather than accusing the participant of noncompliant behavior outright, then, the judge provides the participant an opportunity to voice her or his past month's experience(s). In nearly all cases we observe, most participants move their head down or to the side or look at their attorney suggesting the participant is ashamed and embarrassed to tell the judge of their troubled month in open court (i.e., in the presence of all other participants and court personnel). The judge often replies by telling the participant that she or he "needs to get serious" and "stay focused," or gives verbal warnings that the participant may be sent back to traditional criminal court and relinquish the support services provided through MHC ("This is your last chance," "We can't keep you in here if you don't want to get healthy"). The judge follows these statements of disapproval with statements of acceptance. For example, in one



instance, the judge tells a participant who had been noncompliant for two consecutive months, “If you mess up again, you’re out,” but follows by saying “We don’t expect you to be perfect, but we do expect you try your hardest and to let us know what we can do to help you.” Following this exchange, the judge requests that those in the court room join in applauding the participant for encouragement.

One of the most apparent examples of disapproval of behavior happened when one participant, who had been enrolled in the court for nearly a year, registered a positive drug screen. The judge states, “I hate your behavior. I hate that you used drugs. But I still love you.” Similar messages of hating behavior but not the person are frequent in the court and clearly support how behavior—but not the individual—is the subject of disapproval. The judge also regularly tells participants that they “deserve better.” For example, in talking with a noncompliant participant the judge states, “We are here because we want to help you. We can accept some mistakes because we believe that you deserve a better life.”

Interestingly, the judge attempts to identify with participant noncompliance as a way to relate to the behavior. For example, one judge often told 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 illustrate ways that the MHC judge uses dialogue to point out the participant’s noncompliance but also recognizes that the individual should have an opportunity to move beyond this behavior(s). Consistent with reintegrative shaming, the sanctioning does not focus on controlling behaviors but on building encouragement so that the individual sees themselves as something other than an offender, because doing so allows him or her to discontinue such behaviors in the future.

### Rejecting Deviance as a Master Status

Our observations indicate that the MHC team avoids the use of stigmatizing labels related to crime and mental health. The team never refers to individuals on the court docket as criminals, offenders, or defendants, but rather as participants. In addition, the judge uses several common discussion points that minimize participant’s identification as a deviant status. For example, rather than discuss the nature of any past criminal behavior, the judge often reports being proud of accomplishments and positive life changes, such as a new residence or job, then takes the time to discuss these events in open court. The judge commonly took notes on these conversations and would follow up with the participant about them in future court sessions. In addition, the birth date of each participant is noted on the court docket, and we observed the judge use this information several times to openly acknowledge birthdays and ask participants how they planned to celebrate. While such an exchange is brief, it indicates that the participant is seen as a whole person, not merely a criminal offender.

Another method of rejecting deviance as a master status is the judge's attention to the participant's other status attributes. The judge consistently asks participants about family or romantic relationships, school, work, or even engages them in conversations about hobbies. When a participant's family or friends attend court sessions, the judge explicitly acknowledges the attendance of the supporters, thanks them for their support, and brings them up to the front of the courtroom with the participant. In a few instances, the judge reviews the participant's monthly report and asks the supporter if they had any words to add. We interpret the presence of supporters and the judge's attention toward them as a contextualizing feature that recognizes the participant as part of a larger social unit. Even when friends and family did not attend, the judge often asks participants, "How does [name of loved ones] feel about your progress?" By continually calling attention to positive changes, social relationships, and a life outside of the courtroom, the judge is able to highlight status attributes that are not related to the deviant behavior that resulted in MHC participation.

### Ceremonial Decertifications of Deviance

According to Braithwaite (1989), "[r]eintegrative 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" (p. 101). The MHC graduation ceremony represents a clear example of reintegrative shaming.

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 presenting the participant with a graduation certificate and shaking hands. The judge verbally congratulates the participant and gives a brief description of the progress she or he has made during the time with the court. Because the MHC participant is notified of graduation in the prior month court's session, she or he is often accompanied by family and friends. In such cases, the judge acknowledges the attendance of the supporters, requests that they come to the front of the courtroom with the participant, and thanks them for their support. The judge then gives the supporters an opportunity to publicly congratulate the participant. Following this, the participant is asked whether she or he would like to address the court. The participant commonly thanks the judge and other team members, and sometimes gives words of advice to other participants in the audience. After the judge and participant completes their exchange, the ADA stands and publicly informs the participant and other observers that her or his criminal charges have been dropped. The judge follows by announcing that the participant is allowed to leave the courtroom. This is not a small gesture as it is the only time that the participant is not required to stay for the entire court session.

The MHC graduation ceremony is a public display of support in that community representatives (i.e., the judge, court team, other participants and observers) recognize and applaud prosocial progress and forgive past deviance by disposing of criminal charges. Forgiveness is an important aspect of reintegrative shaming because it helps to create mutual bonds of respect between the offender and enforcer (Braithwaite, 1989, p. 140) as the participant learns that the MHC team is not there to simply monitor and sanction, but to help them reintegrate back into the community

as an accepted law-abiding member. The MHC ceremony 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). MHC graduation also represents a 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.

## **Discussion and Conclusion**

Restorative justice principles promote healing the harms associated with criminal offending. Problem-solving courts, such as MHC, encourage a restorative response to criminal offending. Rooted in the belief that mental illness may contribute to criminal offending, these courts take a non-adversarial approach emphasizing treatment and relationship (re)development. Although the ideology of MHCs is consistent with restorative justice principles, direct observations are necessary to identify the mechanisms that contribute to program success (or lack thereof).

Our observations suggest that the MHC practices reintegrative shaming in ways that are consistent with the definitions set forth by Braithwaite and colleagues (Ahmed et al., 2001; Braithwaite, 1989; Braithwaite & Mugford, 1994; Makkai & Braithwaite, 1994). Consistent with prior research, we find that respect is largely accomplished during the interactions between the participant and judge (see Poythress et al., 2002; Ray et al., 2011; Wales et al., 2010) but that the organization of the MHC process also encourages instances of respectful disapproval. Specifically, 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, which could explain extant research findings that all MHC personnel are vital parts in how defendants perceive of the process (see Canada & Gunn, 2013; Canada & Watson, 2013; Castellano, 2011). Disapproving the behavior rather than the individual is consistently accomplished through interactions between the MHC judge and the participant. While the MHC team collectively determines noncompliance and sanctions prior to open court sessions, it is the judge who publicly delivers messages that recognize behaviors as deviant without labeling the offender. The court's avoidance of stigmatizing labels and focus on positive present associations and relationships rather than past criminal acts and specific medical issues encourages a rejection of deviance as a master status. Finally, the MHC graduation ceremony signifies the end of the shaming process and incorporates expressions of forgiveness and acceptance back into the community.

Our findings support Presser and Van Voorhis's (2002) suggestion that dialogue, relationship building, and delivery of "moral" messages are crucial components to restorative justice programs. The MHC team members' use of respectful language and gestures is a form of dialogue common in other restorative programs and functions to communicate the psychological, social, and material harms of criminal offending in an effort to encourage behavioral change among the participants. In addition, our observations reveal that the MHC is organized and implemented in a way that encourages the defendant to (re)build relationships with their family, friends, and other support networks, including the court personnel. Presser and Van Voorhis

(2002) report that relationships are often established when one person offers concrete assistance to another. Such exchanges are a primary component of MHC as the court team members offer, provide, and monitor the participants' health and well-being. What is more, the court team encourages participants to develop and maintain prosocial attitudes, which are expected to help them realize a deserving quality of life and commit to non-offending.

Emphasizing these courts' restorative justice potential could offer new directions for MHC operations. For example, the courts may consider more explicitly organizing proceedings around restorative justice principles, including centrally involving a "person-victim" (as opposed to the ADA acting as the state-victim representative) as well as the parties' family, friends, or other supporters. Such inclusion could encourage looking beyond the criminal act, which may provide new opportunities to voice and experience a full range of emotions, promote acknowledgment, healing, and forgiveness, and ultimately successful reintegration back into the community.

Although the present study contributes much to our understanding about the practice of reintegrative shaming within the restorative context of MHCs, some limitations should be noted. First, these findings are based on a single MHC setting and while this setting has the essential components of other MHCs, we do not suggest that all MHCs practice reintegrative shaming. Second, while reintegrative shaming may explain the reduced recidivism previously identified in this particular MHC setting (see Hiday & Ray, 2010; Moore & Hiday, 2006), we do not examine the extent to which reintegrative shaming techniques actually reduce recidivism, so this study cannot provide any authoritative conclusions about the effectiveness of reintegrative shaming. It could be that the participant's access to treatment, services, monitoring, and other support measures are actually more influential in reducing recidivism than experiencing reintegrative shaming, and subsequent research should empirically inquire about this issue.

Regardless of these limitations, the present study contributes to our knowledge and understanding about the processes and routine interactions in a MHC. Restorative justice is more than principles and beliefs; it is practice. Our data suggest that MHC's restorative justice efforts are accomplished through reintegrative shaming. Additional studies using direct observation are crucial to continuing to advance our knowledge about restorative processes, and we hope that other researchers will employ this methodological technique to further examine mental health and other problem-solving courts.

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#### **Notes**

1. Scholars have also noted some of the limitations of restorative justice programs (e.g., Daly, 2002, 2005; Van Ness, 1993; Weisberg, 2003; Young, 1990), but process-based investigations are important in uncovering these issues as well.

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