THE STRENGTH OF A WITNESS: EMPOWERMENT AND RESILIENCY
IN THE AFTERMATH OF ATROCITY

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Victims and witnesses that testify before an international criminal tribunal such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) willingly subject themselves to scrutiny and bare their wounds before the world. Does this experience cause these vulnerable individuals undue psychological harm, re-traumatization, or worse? Existing literature indicates this may be the case, however using a new dataset I find the opposite to be true. Witnesses at the ICTY report feeling more positive than negative after their experiences on the stand. As the first systematic study on witness mental well-being, these findings contradict expectations found in previous research.
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An important function of transitional justice and post-conflict peace building is the concept of truth and reconciliation between the warring parties. Establishing an historical record of events in the most thorough and impartial way possible is thought to be the first step toward healing scarred relations after war (Olsen, Payne, and Reiter). The process of documenting these events is intended to provide tools to mitigate potential denial or revisionism in future settings while creating a public record of violence and wrongdoings. For the countries that make up the former Yugoslavia, the task of establishing this record coincides with another vital aspect of transitional justice - prosecuting the individual perpetrators of war crimes committed during the conflict. The success of these two processes, creating an historical record and holding individuals accountable for war crimes, requires the action and input of many players – from international institutions to domestic facilitators. One specific group plays a fundamental role in both – the witnesses. Testimonies given by these individuals collectively establish the historical record of these events, while facilitating the mechanism to demonstrate individual accountability.

A major component of post-conflict justice for war-torn states that make up the former Yugoslavia has been the ad hoc tribunal established by the United Nations Security Council to prosecute and punish the worst offenders of the law of armed conflict. The original goal of the tribunal was “for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace” (United Nation Security Council 1993). A secondary goal for the tribunal is to contribute to the restoration of peace by establishing and recording the
truth and providing a path to reconciliation (Mandate and Crimes under ICTY Jurisdiction 1993). In this effort to establish the truth and provide justice to the victims, The International Tribunal for the Former Yugoslavia (ICTY) has been prosecuting alleged war criminals in The Hague, The Netherlands for over twenty years. In this time, the tribunal has issued indictments against 161 accused individuals for war crimes, crimes against humanity, and genocide, including high profile cases such as a sitting head of state, army chiefs of staff, and other high-ranking public and military officials. The justices that preside over these cases and decide the degree of culpability are highly qualified and sought-after adjudicators from across the globe. The prosecutors who build the cases against the accused are the brightest stars of the international law community. Further, the majority of the defense attorneys that have taken on the task of defending these alleged war criminals are well established and respected across the globe as top criminal defenders.

The only components of this trial system that are not experts in their function are the witnesses called to testify before the court. Many hundreds of individuals have taken the stand as an integral part of the trial process to establish an accurate record of events that took place in Bosnia, Croatia, Serbia and Kosovo. They accomplish this by testifying for the prosecution or the defense, and at times at the request of the Chambers about personal experiences endured during the war. Witnesses have been brought before the court to give their personal testimony to events they may have directly experienced, to corroborate the testimony of another witness, to confirm the origin of evidence, and to answer general questions that may need clarification. This project focuses specifically on these individuals who have agreed to take the witness stand at the ICTY in order to provide the missing pieces in the pursuit of justice for war crimes committed in their cities against them, their families, and their friends.
Does the task they’ve agreed to face cause undue harm and continuous trauma to these already vulnerable individuals? Some scholars and authors believe so, while other experts suggest the process could be therapeutic for these witnesses. This project aims to get to the heart of this debate. This thesis is organized as follows: first, a background of the witnesses and the tribunal services that are tasked with victim and witness oversight. Next, existing studies focused on witness experiences from truth commissions and tribunals will be examined to find support for either theory mentioned above are explored. Literature from political science, psychology, criminology and medicine are considered in the quest to establish an evolution of witness experience in international courts and tribunals over time. Next, I present the rationale for this study primarily focusing on the theoretic approach and establishing my hypothesis. To test my theory, I introduce a new dataset and lay out my research design. I will conclude with an analysis of my findings and a summary of implications of these outcomes.
CHAPTER 2
BACKGROUND

The Victims and Witnesses Section

As part of the tribunal Registry, the organizational branch of the ICTY responsible for the general oversight of the logistics and operations of the tribunal, the Victims and Witness Section (VWS) at the ICTY is tasked with protecting and supporting potential, current, and past witnesses who have agreed to share their testimony with the court.¹ This team coordinates the preparation by finding the individuals, explaining what is needed from them, and then arranges their travel to The Hague, and chaperone the witnesses once they arrive. Further, the VWS accounts for the safety and privacy of the witnesses by implementing any necessary security measures that may be required on an individual basis.

The VWS team consists of two divisions: The Support and Operational staff is comprised of trained social workers and administrative personnel who coordinate the logistics of witness identification, travel, and support services for the witnesses. The Protection Unit is staffed with highly trained security personnel who are responsible for the security requirements of the witnesses, including travel to The Hague as well as protection mechanisms in their home country. These teams work together to manage all aspects of the witness experience with the ICTY.

The Witnesses

The majority of witnesses at the tribunal are individuals who directly observed crimes, survived crimes, or have family members who were victims of war crimes. These willing individuals are called before the court on behalf of the Office of the Prosecutor (OTP),

¹ http://www.icty.org/en/about/registry/witnesses
defense counsel, or the judges’ chambers. Their testimonies range from describing first-hand experiences such as having their homes and property destroyed, being forcefully separated from family, enduring daily beatings, rape and/or torture, surviving prisoner of war camps, to verifying document origination and providing alibis to those professing innocence. Additionally, expert witnesses have often been called before the court to provide expertise on issues that reside outside the court’s resources.

Many of these witnesses – expert and amateur – who have been key elements in highly sensitive and contested proceedings may have felt their lives and the lives of their loved ones would be in danger if they provided the tribunal with the testimony asked of them (Wald 2002). Some witnesses were understandably apprehensive about traveling to The Hague - not only weary about being intimidated themselves but also concerned about the effect their testimony would have on their loved ones. (Stover 2005). Intimidation of the potential witness and their family members was a valid concern and was directly addressed in the Tribunal’s Rule of Procedure and Evidence\(^2\) which established that if security and protection is a concern for witnesses, the VWS can redact witness names and provide a code name to be used throughout the trial. Additionally, witness testimony can be done from a separate, private, room within the tribunal wherein the witness identity, facial features, and voice can be blurred for the recorded video and local broadcasts of trial sessions.

Most witnesses before the tribunal have testified in an open court, front and center of all courtroom parties, including the defendant. If witness intimidation is a potential problem or if facing the accused would be traumatic to the witness, protective measures mentioned above can be implemented by the VWS. Increasingly, requests for protective

measures became common among apprehensive witnesses as the tribunal’s docket thinned. However, this increase of protective requests comes at a cost to the tribunal. Not only does providing these measures monetarily cost the tribunal a large amount of money, but also exponentially extends the length of the trials. The testimony and information disclosed by a protected witness has the potential to expose the witness's identity through context, therefore information obtained often needs to be obfuscated and carefully disseminated to the public and opposing counsel. By applying the more opaque protections, the ICTY’s mandate of a public and open trial is tested, as well as the defendant’s right to face his/her accuser. Any problems that may arise from these scenarios are handled decided upon by the trial chambers on a case-by-case basis.

One of the chief concerns articulated by the majority of parties involved in the ICTY is the length of each trial, and subsequent appeal process (Wald 2002). Because some trials began many years after the alleged crime was committed, some witnesses were called to testify to an event witnessed twenty years prior. This time passage not only has the potential to stress the witnesses’ recall, but can also enhance the possibility of re-traumatization of the witness by having to recite painful events that happened more than a decade prior, in front of strangers (Young 2004). To complicate matters, the trial may not receive judgment for many years after the witness testified, prolonging any trial closure that a witness may be waiting to experience.

The process of testifying has come under the lens of scrutiny from many fields. Some have claimed that testifying can be re-traumatizing as the witness relives experiences before the entire world (Haslam and Dembour 2004; Koss 2000; Orth and Maercker 2004). Others claim that testifying is, or could be, a cathartic experience and therefore could be a positive experience for individuals who take the witness stand (Agger and Jensen 1990; Cienfuegos
and Monelli 1983; Van Dijk, Schoutrop, and Spinhoven 2003). Academics and social scientists have formed various opinions on what institutional expectations of these witnesses should be, and what limitations should be placed upon the witness and the testimony given at trial (Byrne 2004; Doak 2011; Gillett 2009; Haslam and Dembour 2004; Steele 2005; Wald 2002).

Only a few analyses have been done on the experiences of the victim and witness at the ICTY, although none with systematically collected data. Because these few surveys and analyses are so varied, so are their outcomes. While one study claims that witnesses from trials at the ICTY generally feel effectively silenced and overwhelmed by a confusing and alienating process (Haslam and Dembour 2004), another reported that despite a few follow-up complaints and issues, the testifying experience had overall been positive for witnesses (Stover 2005).

To fill the void of empiric findings, a systematic analysis of witness experience with the ICTY is included herein. Using a new dataset constructed from a survey of 300 randomly selected victim-witnesses who testified before the tribunal, a detailed research design is executed to test the two major theories of witness resilience – does testifying before the ICTY long term negative emotional damage, or does it provide the witness with a safe environment in which to tell their story?

This thesis is intended to establish a baseline of analysis of the victim and witness psychological and physical experiences of testifying before an international criminal tribunal. There have been many unsubstantiated claims that these witnesses will experience re-traumatization or they will find relief as a result of testifying. This project aims to add to the ongoing discussion about witness experiences and how testifying effects the emotional
wellbeing of these individuals. By creating an empirical foundation of emotional measurement, this will provide a firm starting point from which to launch future studies.

To explore these theories, literature centered on two types of testimonial processes will be examined. First, the truth commissions of South Africa and Rwanda are examined to demonstrate witness and victim experiences in a restorative setting of local justice and truth telling. The procedural elements of restorative justice mechanisms like truth commissions provide an open forum for participants to tell their story and get their experiences added to a historical record in a less formal and legal structure where they can tell their personal experiences before a panel of local officials. Next, the retributive environment of tribunals will be the backdrop for examining witness experiences in a formal and legalistic setting of a courtroom where the victim or witness most often finds himself testifying before a courtroom of strangers scrutinizing every aspect of the witness’s recall. From a transitional justice perspective, using witnesses to solidify criminal prosecutions, to establish a historical record, and to participate in a forum propagating truth and reconciliation efforts, is undeniably valuable (Jacobs et al. 2014; Orentlicher 2010) but how valuable the court process is to the witness remains to be systematically explored. Because both retributive and restorative mechanisms have different goals, the role that the witness plays in each situation similarly varies. Arguments promoting and opposing the implementation of each of these approaches will be considered and reviewed.
CHAPTER 3

LITERATURE REVIEW

The Role of the Witness

The majority of witnesses at the ICTY are what the tribunal calls “victim or survivor witnesses” - individuals who observed violent crimes, survived war crimes committed against or upon them, or have family members who were victims of heinous acts. These individuals have been called before the court on behalf of the Office of the Prosecutor, defense team, or the judges’ chambers. Testimonies range from describing first-hand experiences such as being forcefully separated from family\(^3\), enduring daily beatings\(^4\), rape\(^5\), torture\(^6\), surviving prisoner of war camps\(^7\), surviving massacres \(^8\), and medically treating victims within prison camps\(^9\). Expert witnesses have often been called before the court to provide expertise on issues outside the court’s resources; forensic pathologists who helped find and identify bodies relay their findings while political experts provide organizational details to the evidence at hand.

Each victim and witness called to testify before an international criminal tribunal or court has different experiences and individual stories to tell. The stress of answering the call to testify on behalf of or against a person on trial for committing heinous war crimes carries a burden, which manifests both physically and psychologically. Since the opening of the ICTY in 1993, little systematic research has been done on the experience of victims and

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\(^3\) Mehmed Alić in *Tadić*, Tanja Došen in *Dokmanović*, and *Mrkšić, Radić and Šljivančanin*

\(^4\) Samir Poljak in *Brđanin*.

\(^5\) Grozdana Ćećez in *Mucić, Delić, Landžo, and Delalić*

\(^6\) Nedeljko Draganić in *Mucić, Delić, Landžo, and Delalić*

\(^7\) Habiba Hadžić in *Nikolić*.

\(^8\) Witness O at Srebrenica and Abdulah Ahmić at the Ahmići massacre

\(^9\) Dr. Idriz Merdžanić in *Stakić*
witnesses who have testified before the court. The handful of investigations published focus mainly on witnesses from one specific trial (Haslam and Dembour 2004) or a narrow group of ICTY witnesses (Stover 2005).

Mental Health Considerations

Research on the psychological and psychosocial effects of testifying post-conflict provides interdisciplinary views on how victims and witnesses cope with the pressures of bearing witness in various settings. Theories of resilience follow related patterns in fields such as political science, criminology, psychology, and public health. Out of such disciplines two major theories emerge to explain and predict witness experience when testifying before an international tribunal: while some scholars and psychologists posit that testifying is an act of catharsis and could provide emotional relief (Agger and Jensen 1990; Cienfuegos and Monelli 1983; Van Dijk, Schoutrop, and Spinhoven 2003), others claim that bearing witness has the potential of re-traumatizing the individual and causing deeper psychological damage (Doak 2011; Haslam and Dembour 2004). Such theories are introduced and discussed herein, both in a transitional justice context as well as the general psychological well being of the individual.

Involving oneself in criminal justice proceedings is inherently stressful; for victims and witnesses suffering from psychological trauma as a result of violence, participating in the justice process may lead to re-traumatization and further traumatic experiences (Herman 1992). Further, these legal proceedings have goals that often clash with the mental health needs of victims and witnesses. According to Herman (2003), while victims need social acknowledgement and post-trauma support, the court asks them to subject their credibility and recall to probing challenges and complex rules and procedures. However,
despite these hurdles, participating in the criminal justice process may provide psychological benefits to witnesses who testify against their perpetrator (Clute 1993).

The theory of procedural justice (Lind and Tyler 1988) demonstrates when individuals feel they have a voice in the proceedings and they feel the process has been fair, they are more likely to feel satisfied with the justice system. Studies of criminal justice systems in the U.S. and other countries (Erez 1999) show victim satisfaction is correlated with system policies that actively include participation from the victims and witnesses. The opposite also holds true, victims who are denied participation in the legal process show higher levels of dissatisfaction in the process of seeking justice (Herman 2003).

Revealing is Healing?

Truth commissions in post-apartheid South Africa and local truth-telling panels in post-genocide Rwanda have demonstrated that survivors favor the opportunity to participate in truth-telling in the aftermath of conflict and war, believing it will bring emotional relief and ease their psychological agony (Brouneus 2010; Gibson 2006). From a transitional justice perspective, it is thought that participating in these truth-telling projects will also serve to satisfy these victims’ needs for justice (Gibson 2006; Hamber 1998).

The South African Truth and Reconciliation Commission (SATRC) was created in 1995 to help post-apartheid and newly integrated South Africans “come to terms with their past on a morally accepted basis and to advance the cause of reconciliation,” according to the former Minister of Justice Dullah Omar (Truth and Reconciliation Committee n.d.). In order to gain traction throughout South Africa, the commission employed the motto “Revealing is Healing” implying that participating in the commission would bring the contributors a feeling of catharsis.
Over time this oversimplification of emotional complexity has been criticized as downplaying the damage experienced by these survivors. (Byrne 2004; Doak 2011; Hamber 2001). What was revealed, when, and under what circumstances played determinant roles in the healing process more than merely showing up (Hamber 2001). Although the intentions of the SATRC may have been virtuous – the TRC procedures were designed to be as supportive and positive as possible for those who testified (Chambers et al 2008) - the implementation of these panels of inquiry often left victims feeling as though they were only able to tell half of their story due to the structure and process of the commissions (Byrne 2004; Doak 2011). In the Commission’s Final Report, the chapter titled “Reconciliation” admits that not all who testified found the process to be therapeutic - not because of any short-coming of the commission, rather the inability of the witness to embrace the potential to achieve catharsis (Young 2004). Thomson’s 1999 findings support this assertion – albeit in a different causal direction. In his survey of 12 victims who testified at the Truth Commission, the victims reported “anticipatory anxiety” and secondary traumatization during testimony. According to his survey, any therapeutic outcome realized were by those willing to forgive after hearing a confession of their aggressor.

Even those who advocate the use of truth commissions are quick to recognize that any claims of using these panels as a therapeutic process are unsupported (Brouneus 2010; David Mendeloff 2009). While the assumption of therapeutic testimony may seem to be a reasonable expectation, Brouneus (2010) found that those who went before the gacaca – local or tribal courts in Rwanda following the Rwandan genocide were more likely to suffer from depression and posttraumatic stress from the experience. Further, the Trauma Centre for Victims of Violence and Torture in Cape Town, South Africa reported between 50-60 percent of those who cooperated with the SATRC either experienced
psychological problems after testifying or regretted their participation in the commission (Daley 1997). Frustrations stemmed from the lengthy processes, questions of fairness, and the physical and mental burden of testifying. Several victims who agreed to participate in these open forums in exchange for the opportunity to hear their perpetrator concede his/her statement of guilt felt that they did not get the same level of truth back as they provided. Many of these perpetrators who agreed to admit their accountability in exchange for amnesty, only provided half-truths or incomplete liability for their actions (Byrne 2004).

Given these reported grievances, not all of the experiences of those who participated with the SATRC were negative. Victims and survivors reported being grateful for the opportunity to tell their story publicly, to be able to gain information about other victims’ experiences, and learn new insights into the integrative process (Byrne 2004). The majority of witnesses (Backer 2007) indicated even knowing what they know now, they would still testify again if asked.

Ongoing research provides truth commissions with evidence of the emotional fragility of victims and witnesses and has been able to advise policymakers to enact better emotional and psychological safeguards for future accountability forums. Examples include the establishment of mental health support personnel and services within the creation of tribunals or local courts, and tribunal services following up with witnesses after they have testified to inquire of their mental and physical health or security concerns that may have developed as a result of testifying.

Taking the Stand

While truth commissions exist as an avenue to give victims and survivors a platform to tell their story and establish a record of their experience in order to promote reconciliation,
courts and tribunals are established to hold perpetrators legally accountable for their actions and to punish them for their crimes (Stepakoff, Reynolds, Henry, et al. 2015). Although both truth commissions and tribunals purport to seek the truth and establish a historical record, tribunals do so in an adversarial courtroom setting with structural constraints where juridical processes dictate the procedure.

Early Tribunals

After World War II, the Allied forces created the military tribunal at Nuremberg to prosecute the most prominent perpetrators of heinous war crimes in Europe, specifically The Holocaust. After victory in the pacific in 1946, General MacArthur issued a proclamation to establish an International Military Tribunal for the Far East, known better as the Tokyo Trials, in order to prosecute 28 high-level Japanese defendants for committing war crimes while waging war in the Pacific theater. These two tribunals created specifically to try individuals indicted for war crimes were the first attempts by a global community to hold perpetrators accountable for violating the laws of armed conflict. In neither of these two tribunals were witnesses the crux of establishing the truth or culpability (Wald 2002). These tribunals relied heavily on documented evidence of command responsibility, detailed records and executed orders. During these trials, particular care or acknowledgment of victim psychological wellbeing was not given paramount attention – the victors simply needed to hold these perpetrators accountable for their atrocities in the most efficient manner at the time in order to be able to move the world forward (Moffett 2012). Attention to victimology and emotional stability was not a focus in this type of setting until the *ad hoc* tribunals created in the 1990’s took lessons from their predecessors.
Healing by Revealing?

As a stage in the recovery process, trauma psychologists promote an active recitation of fact of the victim’s experiences in order to normalize the event in the mind of the victim (Herman 1992). While not set in the safety of a therapist’s presence, testifying can be seen as a form of recitation, and the opportunity for the victim’s experience and memory to be legitimized. The past does not always stay in the background and trauma always has the ability to creep back into the forefront of an individual’s mind. Psychological repair and the chance to heal occur through providing a safe environment for survivors to be heard (Biggar 2001). In Cook and Bosley’s (1995) interview of bereaved individuals who had participated in a survey about funeral studies, the vast majority of participants viewed the survey experience as positive and appreciated the opportunity to be able to express their feelings in their moments of grief.

The approach of “testimony therapy” was utilized with a measurable amount of success for political prisoners of Chile’s oppressive dictatorship in the last quarter of the 20th century. Van Dijk, et al. (2003) devised this twelve-session process to aid victims and survivors through the healing process. Sessions 5, 6, and 7 of this program include recounting parts or all of the traumatic experience. One Bosnian refugee referred to Van Dijk said of his treatment, “...I didn’t have any hope. Now, during the testimony therapy I can open my heart. It is quite a relief. I don’t know yet what I will do with the document, I will see. I want everybody to know what has happened to us; how bad people can be, what are capable of...” (Van Dijk, Schoutrop, and Spinhoven 2003). Often, in the context of testimony, the shame or guilt associated with the trauma experienced by the witness can be ‘confessed’ and reframed in a manner that transfers the power from the victimizer to the victim, legitimizing the victim’s feelings (Agger and Jensen 1990). In a 2002 case report,
Neuner, et al. applied narrative exposure treatment (NET) – a hybrid treatment that includes testimony therapy - to two Kosovar refugees who, under clinical supervision, reported considerable relief after just three sessions (Neuner et al. 2002).

Not all scholars find testifying to be a therapeutic endeavor. Doak (2011) alleges that trials are only concerned with punishing the alleged perpetrator and the victim’s role is to provide the prosecution with the narrative that best supports the allegations or the defense needs with an alibi. He maintains the symptoms of victimization – fear, depression, anxiety, post-traumatic stress, etc... - cannot be addressed by a process that prioritizes different objectives such as punishment or reconciliation over the mental well-being of participants.

While confronting the past, witnesses are at the mercy of the rules of procedure of the particular tribunal. As previously discussed, a courtroom is an overwhelming environment with the potential to increase anxiety levels of nearly everyone who enters (Koss 2000). Scholars have alleged that victims and witnesses are basically silenced instead of given the opportunity to share their story when invited to testify (Haslam and Dembour 2004). The authors suggest that the cavalier approach of the justices in the Krstic case downplayed the suffering of the witnesses by asking insensitive questions during testimony. While transcripts from this case were included in the article, it should be noted that this was a specifically chosen case and is not a systematic exploration of overall testimony or the general experience of witnesses at the ICTY.

Trusting the Memory of the Victimized

As trials continued decades after the alleged crimes were committed, the accuracy of victim and witness memory has become a concern in the courtroom (Sparr and Bremner 2005). The recall of victims suffering from PTSD is often scrutinized by the defense, alleging
a deficiency in memory as caused by traumatic experiences as well as the toll time can take on normal memory. In the ICTY trial Prosecutor v. Anto Furundizija a female victim’s recall was called into question by the defense, alleging her memory was negatively affected by her traumatic experiences. After hearing from medical and legal experts, the Chambers found that the although inconsistencies in the witness’s testimony was most likely caused by PTSD, the psychiatric experts had demonstrated that individuals remember traumatic events better than daily occurrences, and this victim’s recall of being victimized was found admissible (Sparr and Bremner 2005).

Re-traumatization

There is no question that bearing witness at any trial, especially when the perpetrator is present, can lead to psychological and physical stress in victims and witnesses. Many studies have shown a high prevalence of PTSD among victims and witnesses of violent crimes (Kessler, et al. 1995). Re-traumatization is defined as a significant increase in the experience and frequency of post-traumatic stress reactions to the original trauma, thereby it can be seen as an aggravation of PTSD (Orth and Maercker 2004). Trials also have the potential to cause other negative psychological effects such as loss in self-esteem, loss in social trust, or rumination on events from the trial – effects that Orth and Maercker say are separate from actual re-traumatization.

Existing studies on re-traumatization are anecdotally robust but empirically thin and inconsistent. For example, in a book about Bosnian women who had been victims of wartime rape Allen (1996) reports the victims became reluctant to speak about their experiences because of the potential of re-traumatization, shame, lack of trust, or fear of reprisal. She claims several women described feeling exploited by the many organizations and media
interviewing them to further study rape in the context of war. However, two empirical studies by Orth and Maercker found no support for the hypothesis that testifying causes re-traumatization, perpetuating this debate.

Motivation

The evolution of international criminal trials has included the increasing reliance on victim-witness testimony, both because detailed reports and records were generally not kept as well as in Germany in World War II, and also because of the availability of victims-witnesses. The ICTY would not be able to provide the expected justice without these individuals, but is this enough reason to motivate the victims and witnesses to take the stand? Until recently, limited research was published on witnesses’ motivation to testify or the emotional consequences of taking the stand.

The first empirical study of ICTY witness experiences (Stover 2005) was based on survey data of 87 prosecution witnesses from one or more of the seven high profile trials that had been completed at the ICTY at the time. Motivation for testifying was consistent across all witness nationalities – 90% of all participants reported their moral duty to testify was the driving force behind testifying. Even those who had a difficult time with the process reported they would take the stand again if it meant the opportunity to remind the world of what happened to their friends and family (Stover 2005). Moreover, many indicated they travelled to The Hague to testify in order to face the perpetrator and plead to find out why he committed these crimes and to make him face the survivors. By setting these expectations, these witnesses risked placing substantial reliance on the court to provide the closure they sought – given the judicial constraints and legal focus of war crimes trials, a courtroom has limited ability to provide an environment of catharsis (Stover 2005).
In more recent studies of witness motivation (Stepakoff et al. 2014; Stepakoff, Reynolds, Charters, et al. 2015) victim-witnesses at the Special Court for Sierra Leone (SCSL) indicated they were motivated to testify in order to be able to tell the public about the wrongdoings committed against them during the war, as well as to contribute to the general knowledge about the war. Overall, the research suggests individuals were primarily focused on helping oneself and others by getting their versions of the truth on the historical record and speaking for those who no longer could (Jacobs et al. 2014).

Further, in a survey given to witnesses in the first two trials at the International Criminal Court (ICC), the participants indicated similar motivations to testify (Cody et al. 2014). Generally, these 109 witnesses felt it was their duty to testify for three main reasons: they wanted the Court to hear their accounts of the facts, they wanted to confront the accused face to face, and they wanted an opportunity to tell their story.

Experience

No two experiences are the same, and each witness is likely to process their appearance before the tribunal in a different manner. Psychological research suggests that being the focus of attention from courtroom personnel can have a negative impact on the average person’s performance on the stand. (Fielding, 2013, Keitner and Busell 1997) The stress of testifying on an international stage under the scrutiny of friend and foe, and often despite threats and tampering can only add to this anxiety. Furthermore, for victims, testifying signifies another confrontation with the perpetrator (Orth and Maercker 2004) – creating an opportunity for empowerment or triggering regressive emotional well being.

Expectations of how witnesses will be effected by the experience of testifying range from the presumption of a cathartic release as a result of being able to tell their story
(Hamber 2001) to expecting re-traumatization from being forced to relive the horror of tragedy (Brouneus 2010). As a facilitator of truth and reconciliation, the ICTY has come under criticism by scholars and experts who claim that the tribunal has not provided a sufficient forum for witnesses to tell their side of the story, and when they are given the chance to speak, they are constrained by a narrow scope of judicial procedure. (Dembour and Haslam 2004). However, most witnesses claimed they had not fully thought about how testifying at the ICTY would affect their future psychosocial well being (Stover 2005), indicating witnesses generally did not agree to testify expecting to be affected one way or another.

Having felt their suffering was sufficiently acknowledged and fulfilling a moral obligation to speak on behalf of the victims, 74% of the ICTY prosecution witnesses in Stover’s (2005) study reported positive experiences when testifying before the court. Twelve of these respondents reported their feelings could be described as cathartic, and most left the stand in a “highly charged” mood (Stover 2005). These feelings often were delineated along trial lines: while 77% of all witnesses said that on average testifying had been a positive experience, witnesses who testified in a case that resulted in acquittal reported they felt betrayed or tricked by the court. However, some respondents felt they could have been better prepared for the overall process and were let down by the amount of communication post-testimony (Stover 2005).

Witnesses interviewed after testifying at the SCSL reported experiencing nearly three times more positive aspects of testifying than negative (Stepakoff et al 2015b). Self-reported positive characteristics identified by the majority of these men and women were rooted in empowerment and gratification. Further, nearly 20% of these witnesses reported noticing a reduction in sadness, anxiety, or other PTSD symptoms (Stepakoff et al., 2015b)
after testifying before the SCSL. The negative aspects of bearing witness that were reported indicated anxiety for their personal safety and the reactions of others to their testimony, as well as emotional pain from reliving the experience. The SCSL survey participants did not report feeling emotionally damaged or experiencing long-term negative emotional effects as a result of testifying before the court.

At the ICC, witnesses reported an overall positive experience during and after their testimony (Cody et al. 2014). Nearly 95% of all respondents of their study indicated that knowing what they know post-testimony they would testify again. Most of the negative experiences reported were based on witness preparation and managing the expectations of the individuals.

These summaries of witness experiences at trials and tribunals show a sequential evolution in witness satisfaction with the process of seeking justice. From the ICTY, the SCSL has learned lessons of involvement and communication with witnesses - especially following up with them after they have returned home; from those two tribunals, the ICC is adapting procedures to make witnesses more comfortable with the overall process of confronting the past.
CHAPTER 4
THEORY

Since its establishment in 1993, the ICTY has indicted 161 individual perpetrators of genocide, crimes against humanity, war crimes, and grave breaches of the Geneva Conventions. Of these 161 indicted individuals, 80 have been convicted and sentenced, 18 have been acquitted, and 13 transferred to national courts to be tried locally. In these collective cases over 4,000 witnesses have taken the stand to provide details regarding these cases in one manner or another.

As a result of agreeing to testify on this global stage, these individuals braved potential tensions in their community, stood up to potential witness intimidation, and were forced to recall horrifying experiences of loss and tragedy in front of strangers in a strange country. In spite of the obvious negative reasons for these witnesses to turn down the request of the court, 4,000 Bosnians, Serbians, Croatians, and Kosovars answered the call to provide a voice for those who could not speak for themselves.

How has the experience testifying before an international tribunal affected the overall well being of these victims and witnesses? I argue that it is extremely important to know the answer to this question and the status of these individuals’ emotional and physical well being, after all they have shouldered a burden that no professional could take on. In addition to simply collecting and making this information available, the results from studies like this will be able to influence how future courts or tribunals view witnesses and establish support services accordingly.

In order to properly measure witness experience and resiliency, it is necessary to first identify the mindset of academics and others who weigh-in on the normative discussion of how witnesses should feel about their experience, and what these individuals ought to
expect from the process. Generally speaking, the majority of the victims and witnesses are testifying about a traumatic event that they survived and would be understandably painful to recall. Below, I review the effects that trauma has on an individual, and then introduce what the field has, until now, purported these effects to be.

The Traumatized Witness

Undisputedly, war is a collection of traumatic events. Individual lives are forever marked by one or more of these devastating incidents. According to the Comprehensive Textbook of Psychiatry, “the common denominator of psychological trauma is a feeling of intense fear, helplessness, loss of control and the threat of annihilation” (Herman 1992). These events have been shown to produce deep and lasting physiological changes in emotional, cognitive and memory functions in individuals who have experienced one or more traumatic event. Post-trauma, survivors have shown to suffer from generalized anxiety as well as specific fears that are not always related to the original traumatizing experience. Even well after the incident, the moment can become encoded into subconscious memory causing the survivor to experience flashbacks both while awake or asleep (Herman 1992). It has been documented by notable psychologists such as Freud, Kardiner, Herman, and Janet that trauma disrupts the course of normal development caused by the repetitive imposition into the individual’s daily life (Herman 1992).

Similar to other courts, in nearly all cases before the ICTY, witnesses have played an important role in establishing a timeframe, identifying perpetrators, describing personal experience, or recalling devastating events – all tasks that can trigger post-traumatic anxiety or other psychological and physical symptoms. But without this personal commitment made by these witnesses to provide intimate details of their lives, trials and proceedings would not
be able advance the court’s directives. But what burden does recalling trauma cast upon these individuals?

The Effects of Testifying

Academically and normatively, two overarching theories dominate the discussion of how testifying before an international tribunal effects witnesses’ psychological wellbeing. Both of these viewpoints not only consider the victims’ or witnesses’ initial traumatic experience, but also take into account individual psychological well-being during testimony, and continues well after the witness has been excused to resume daily life, however each theory predicts how the witness will be effected by the experience.

The first theory, what I will refer to as the “re-traumatizing” theory, appeals to the need to protect these individuals’ emotional well being because of the possibility of re-traumatization. Those who back this theory emphasize these witnesses have survived a horrific event, and asking them to recall every detail on the witness stand before dozens of strangers – usually including the alleged perpetrator – will cause re-traumatization in the victim or witness. The overwhelming atmosphere of the courtroom can be exasperated by the knowledge that their testimony is most likely being broadcast and dissected by the media in his or her home country, and picked apart by opposing legal teams in order to dispute the given testimony.

Those who support the need to protect these potentially fragile witnesses from further trauma believe subjecting victims and witnesses to the judgmental and adversarial environment found in the courtroom will cause the witness to emotionally regress and possibly experience post-traumatic psychological reactions. This view is not without merit. For instance, Brouneus (2010) found that witnesses who went before the gacaca trials in
Rwanda were 20% more likely to suffer from depression and 40% more likely to experience posttraumatic stress. Furthermore, the relative risk that these witnesses had or would develop depression was 60% higher than those who did not bear witness, and among those who had appeared in the gacaca in the immediate presence of their neighbors, the risk of developing PTSD was 75% higher compared to those who had not testified at all.

Still others find the treatment witnesses are subjected to in the courtroom is intimidating and overwhelming (Haslam and Dembour 2004; Koss 2000). Claiming the legalistic nature of the proceedings overwhelms these individuals and testimony is often taken out of context in order to craft a response that suits the needs of the court, they argue the international courtroom is potentially a toxic environment for these incredibly vulnerable individuals (Steele 2005). Because those inherent elements of a criminal trial are bound to take place regardless of steps taken to ease the emotional burden, activists have warned that when these tribunals and truth commissions require or request participation, they are asking these witnesses to expose raw details of a very emotional experience. Experts warn that exposing such vulnerabilities without proper mental support available has the ability to exacerbate the trauma. For instance, watchers of the South African Truth Commission have warned that once these wounds have been opened, “you cannot open them...and leave them gaping” (Young 2004).

Existing general courtroom research supports the basis of this argument. Studies suggests that being the focus of this type of attention from juridical personnel can have a negative impact on the average person’s performance on the stand (Fielding 2013 Keitner and Busell 1997). Examples of this impact include becoming easily confused, experiencing increased anxiety, difficult with memory, among other issues with recall and descriptive vernacular. The stress of testifying on an international stage in a formal courtroom under the
scrutiny of friend and foe, and often despite threats and tampering, can only compound this anxiety.

The counter argument to the above comes from those who advocate that the act of testifying has the potential to be cathartic or even therapeutic to the individual. This theory, which I will refer to as the “therapeutic” theory, is based on the restorative nature of ‘talk therapy’. Based on psychological research of trauma and healing, the power of restorative therapy claims to promote cathartic empowerment. Reconstructing the traumatic event as a “recitation of fact” (Herman 1992) is an important element in a path to recovery and wellbeing for the individual. For example, while documenting stories of oppression from the dictatorial regime in Chile in the early 1980’s, psychologists Cienfuegos and Monelli found that the act of giving testimony seemed to be helping the former prisoners’ mental health (Cienfuegos and Monelli 1983). This concept has been expanded into a formal treatment and given the moniker ‘testimony therapy’, which has also been used successfully with refugees from various countries (Agger and Jensen 1990), Holocaust survivors (Fellow et al. 2005) Bosnian refugees who fled to the United States (Weine et al. 1998), and Kosovar refugees seeking asylum in Macedonia (Neuner et al. 2002). This concept is the foundation for the theory that witnesses can potentially experience a therapeutic catharsis from telling their experiences in the courtroom.

This outlook should be met with a measure of caution, as to not interpret the prospect that testifying before an international tribunal as akin to formal therapeutic treatment or a form of counseling. Rather, the benefits of being given the opportunity to speak out and give their side of the story can promote steps toward healing. It has been shown that witnesses find a level of satisfaction and closure by being able to confront the individual responsible for their loss or suffering. Seeing these defendants standing trial and
being held accountable for their actions brings tangible gratification to those who have suffered such atrocities. Further, being given the opportunity to testify to their experiences and trauma legitimizes ongoing emotional angst and reframes the narrative of their experience in a manner that transforms emotional pain into political and cultural dignity (Agger and Jensen 1990). Viktor Frankl, a Holocaust survivor claims he wrote his book, “Experiences in a Concentration Camp” because he felt a responsibility to write down what he experienced in hopes that other who read it would have hope, also noting that being able to articulate his experiences helped give purpose to his life. (Frankl 1988)

Leveling the Expectations

Indeed, international criminal tribunals are political and legal instruments that have been created to establish an accurate history of the conflict, to find individual accountability, and attempt to create a path to foster reconciliation. As such, the adversarial nature of the courtroom and trials within this mechanism does not cultivate an environment for healing and therapy, nor should it be expected to. These legal institutions are tasked with heavy case loads and the delicate nature with which the tribunal is mandated with conducting itself; providing mental health services are not assumed to be a focus or presumed task of the overall tribunal itself (Young 2004).

Although the argument of re-traumatization and negative effects of testifying appears to be valid reasoning to limit victim and witness participation in war crimes trials, there is no evidence in the literature to suggest the involvement in the process is psychologically damaging (Orth and Maercker 2004). Existing literature discussing witness displeasure with the tribunal processes and procedures, including overall dissatisfaction with the witnessing experience, does not indicate that the act of testifying before tribunals or
international courts generally causes undue emotional damage. Studies mentioned earlier from the gacaca trials in Rwanda and the truth commissions in South Africa found witnesses experienced harmful effects as a result of participating in those processes. However, those two specific tribunals lacked the structure of a legal institution such as the ICTY with backing from a major international organization such as the United Nations, two important factors which I discuss in greater depth later in this thesis. In Stover’s (2005) survey, many of the witnesses stated that although they felt physically and mentally drained by the process, some witnesses from his survey even indicated they felt cathartic after their testimony. Most witnesses surveyed by Stover agreed that they would be willing to testify again, and a large majority of individuals– having had time to digest the process and reflect - indicated that testifying had been a positive experience.

I expect that although witnesses likely do not experience a catharsis of relief upon completion of testimony, victims and witnesses are more resilient and steadfast than cautious observers give them credit for. I anticipate that victims and witnesses are steady in their determination to bear witness to their war-time experiences and generally do not experience a re-traumatization upon doing so before an international criminal court. Courtroom and psychological research has indicated that witnesses’ involvement in the justice process by being given a platform to share their experiences provides an environment that validates their experiences (Agger and Jensen 1990).

Further evidence has shown although courtrooms cannot be compared to the psychiatrist’s couch in terms of therapeutic value, the ability for victims and witnesses to recall and share their story has been shown to improve the psychological well being through exercises such as ‘testimony theory’ and other talk therapies.

Therefore, my hypothesis is the following:
H1 – witnesses before an international criminal court do not experience damaging emotional or psychosocial effects as a result of testifying.

In most of the surveys reviewed herein and witness feedback discussed throughout the existing literature, witnesses felt apprehensive at the thought of testifying, they indicated anxiety leading up to taking the stand, and reported feeling mentally and physically strained as a result of enduring examination. These feelings are all common emotions expected of any individual testifying before a court. The important variable for my theory is what the witnesses report after testifying – do they feel by testifying before the ICTY, they have suffered any additional trauma to what they had already endured? In other words, do they feel that the act of bearing witness caused them more harm? It is prudent to note this hypothesis does not minimize or dismiss any type of trauma experienced – emotional or physical – during the conflict itself, nor does it propose that testifying is a great equalizer of pain. At this stage, I am testing if the act of testifying is psychosocially damaging to the witness.

Based on contemporary surveys of witnesses from the SCSL, ICC, and ICTY, I expect the data to demonstrate that witnesses do not experience long-term emotional damage. Although cases exist that find the opposite, these examples are anecdotal in nature and either suffer selection bias or are simply not generalizable. The empirical analyses of groups of witnesses from these tribunals indeed demonstrate a different perspective.
CHAPTER 5
RESEARCH DESIGN

Because there have been no prior systematic studies on the psychological effects of testifying before an international tribunal, this thesis begins at the foundational level of analysis. In the following section I introduce a new dataset, review the operationalization of the dependent variable ‘psychological affect’, and detail the model I use to test my hypothesis.

Since its first trial in 1996, the ICTY has heard testimony from more than 4,650 witnesses in trials for 161 indicted individuals. My hypothesis focuses specifically on the psychological effects experienced by these individuals as a result of testifying at these trials. Using a new dataset created with the ICTY’s facilitation, I operationalize the emotions reported by these witnesses by categorizing the emotions the individuals reported feeling before they testified and the emotions felt following the last time they testified before the tribunal.

Data

To test the hypothesis of witness resiliency, I utilize survey data from the Victims and Witnesses Database, a joint project of the ICTY Victims and Witnesses Unit and the Castleberry Peace Institute at The University of North Texas. This survey is the first systematic and scientific sampling process of war crimes victims and witnesses called before a tribunal by all branches of the court: Office of the Prosecutor, Defense, and The Chambers in cases from 1998-2014. Consisting of three hundred men and women from Bosnia, Croatia, Kosovo, and Serbia this survey was given to willing participants by social workers and therapists from the ICTY Victims and Witnesses Unit in their native language, in
a comfortable setting of their choosing, and without time limits. The participants - who remained anonymous in the survey - were asked a wide range of questions ranging from the personal: basic demographic information, and their physical and emotional well being; to specific trial-related experiences, reasons for testifying, any security concerns, and their individual opinion of the ICTY and justice in general. The entire survey instrument was given at one time, there was no pre-trial surveying of the witnesses, the responses were reported based on witness recollection at the time of the survey.

The data collection used random and quota sampling to assure a proportionate balance of witness gender, ethnicity, and age. After a sample of 1116 anonymous witness codes was supplied to the VWS unit (excluding witnesses from the active cases at the time), the VWS personnel began contacting witnesses to ask if they would participate. Because of this sampling process, respondents to this survey may be more resilient and healthy than those not sampled. The breakdown of participating witnesses demonstrates the diversity achieved: 47 women and 253 men, ages ranging from 28-94; 163 Bosnian, 62 Croatian, 26 Kosovar, and 49 Serbian. Because several witnesses testified in more than one, or even several trials, the total number of witness appearances is much higher (448) than the total number of respondents (300). Surveyed witnesses appeared on behalf of the defense 151 times, the Office of the Prosecutor was 293 times, and the Chambers required 4 total appearances.

The majority of the survey instrument is comprised of questions with ordinal or scale responses, allowing for systematic coding. Additionally, each participant was given the opportunity to answer open-ended questions of their opinions, suggestions, and observations to which systematic content analysis was applied. The unit of analysis is
therefore the individual (anonymous) respondent, with several control and dependent variables available for analysis in my models.

Dependent Variable

The measurement of witness resilience is established as the difference in reported emotional well-being from before the first time a witness testified and the last time the individual appeared before the court. In the physical and psychological health section of the survey, participants were asked “Please indicate all of the emotions on the following list which describe how you felt about your testimony right before you entered the courtroom to testify for the very first time at the ICTY”\(^{10}\), followed by thirty-five specific emotions identified by the survey creation team; respondents could select as many emotions as they wished. Immediately following, the participants were asked, “Please indicate all of the emotions on the following list which describe how you felt about testifying immediately after you testified for the very last time” – from which the participants had the same thirty-five emotions from which to choose. Because there is no specific resilience variable, I create a custom measurement from the difference of reported emotions from before and after. I created a new variable from the difference of emotions reported before the first time testifying and after the last time testifying for both positive and negative categories of emotions reported by the witnesses. These are the two main dependent variables used in my model.

Model

To assess the measurement of witnesses’ well-being and emotional stability I compare how the witness felt before testifying with how they reported feeling after testifying.

\(^{10}\) Complete list of selection options available in survey is found in the Appendices
Two categories of emotions were created out of the 35 available to the participant, “Positive” and “Negative” categories\(^{11}\) establish the key variables used to compare overall emotional wellbeing. From these selections, a raw count of positive emotions for both time periods (before testifying and after testifying) was collected, as well as a count of the negative emotions from both time periods. The difference in the reported emotions from each category establishes the primary answer to my hypothesis. The emotions that the respondents reported feeling before testifying establishes a baseline of their emotional wellbeing prior to the trial, while the emotions reported after testifying gives a glimpse of the changes in emotional well being as a result of testifying.

**Explanatory Influences**

After establishing the difference between the two categorized emotions at the two different time periods, I then turn my analysis to identify any trends in witness responses. Using OLS regression, I examine if gender, ethnicity, or age have any effect on the responses. Looking past basic demographic variables, I also create models to examine effects of feeling intimidated at the prospect of appearing before the court and/or being worn out from the arduous task of testifying before an international tribunal. To examine these effects, a model is created each for positive emotions reported before testifying, positive emotions reported after testifying, negative emotions reported before testifying, and negative emotions reported after testifying. The independent variables for these are gender, age, and ethnicity variables for each of the self-reported ethnicities: Bosniak, Bosnian Croat, Bosnian Serb, Serbian, Albanian and Croatian.

\(^{11}\) The categorical breakdown of each available emotion selection is found in the Appendices
Physical Effects

In addition to examining the psychological effects experienced by testifying before the tribunal, I also seek to find any physical symptoms that a witness may have experienced while testifying. The survey asks, “Did you experience any of the following during any of the times you testified when you were on the witness stand?” followed by fourteen options such as fainting, headache, hearing problems, nausea, or heart palpitations. All of the physical symptoms included in the survey are focused on finding any negative physical affect that may be associated with testifying, therefore there is no ‘positive’ or ‘negative’ categorical breakdown to determine ongoing physical effects. Immediately following is a question for those witnesses who testified in more than one trial, aimed at finding if these physical symptoms increased or decreased over time, or if they changed at all.

I include a brief discussion of the results of these models through descriptive analysis, looking for patterns of physical symptoms among the respondents. If witnesses feel re-traumatized as a result of testifying, I would expect these feelings to be represented by, or coincide with corresponding physical symptoms.
CHAPTER 6

DESCRIPTIVE ANALYSIS

Before applying statistical models to this data, I first summarize the information and establish a high-level synopsis. To do this, I first review the characteristics of the respondents as well as their responses; I then categorize the emotions into the two distinct classifications and provide an overview analysis of these categorized delineations.

Demographic Data

To detail the data introduced in the Research Design section of this thesis, the following is a demographic breakdown of the witnesses:

- Gender: 47 female, 253 male
- Ages: range from 28-94.
  - The average age of female witnesses: 54.3 years
  - The average age of male witnesses: 60.3 years
- Ethnicities: 163 Bosnian, 62 Croatian, 26 Kosovar, and 49 Serbian
- Number of appearances of all trials at which the respondents appeared: 448
- Number of different trials at which respondents appeared: 41
- Witnesses appeared on behalf of:
  - Defense: 151
  - Office of the Prosecutor: 292
  - Chambers: 4

Total Emotions Reported

Below, categorical charts represent the direct comparisons of the emotions reported by the 300 survey respondents. Each emotion option available to the respondents was assigned a category – Positive or Negative – to establish a primary baseline of reported emotions. The following charts represent comparisons from before and after testifying.
Table 1 All Emotions Reported in the Survey

Positive emotions before testifying: 1037
Positive emotions after testifying: 1202

Negative emotions before testifying: 510
Negative emotions after testifying: 332
Table 1 shows complete list and frequency of all reported emotions by all survey participants, both before testifying for the first time (grey bars) and after testifying for the last time (orange bars). Positive emotions were reported at a greater frequency (2239 total) than negative emotions (842 total), outnumbering nearly every emotion in the negative category. Participants generally felt most confident, cooperative, obligated and tense before testifying, and felt fulfilled, relieved, satisfied, and vindicated after completion of their testimony.

Table 2 Positive Emotions Reported Overall

*Positive emotions witnesses reported feeling before the first time they testified compared to positive emotions reported after the last time appearing (n=300)*

The table demonstrates witness emotions mirror expected behavior before and after testifying. Before testifying for the first time, witnesses reported feeling confident, cooperative, courageous, energetic and hopeful of the prospect of appearing at a higher frequency than after testifying. After testifying, respondents indicated they felt more fulfilled, happy, positive, powerful, proud, relieved, satisfied and vindicated for having played their part in the process.
Table 3 Negative Emotions Reported Overall

Negative emotions witnesses reported feeling before the first time they testified compared to negative emotions reported after the last time appearing (n=300)

As seen in existing literature, witnesses from past surveys of witnesses in war crimes trials indicated that they felt “anticipatory anxiety” before testifying (Thomson 1999). Table 3 above confirms that the ICTY witnesses experienced similar effects. Symptoms commonly associated with anxiety - anxiousness, panicked, scared, and tension (Arikian and Gorman 2001) included in this survey within the “Negative” category, show a marked decrease in the ICTY witness responses after testimony is completed.

Subsequently, negative emotions commonly linked to experiencing a strenuous event (exhausted, overwhelmed, tired) are the emotions that were reported at a higher rate as a result of testifying at the ICTY. Symptoms such as sleeplessness, anger, anxiety, helplessness, and loss of self-confidence are common signs of distress, leading to what Gutheil et al. (2000) refer to as “resource burnout”. Having undergone a distressing or unsettling event such as testifying before an international tribunal, or simply having to recall
difficult trauma drains an individual’s energy and distracts from their normal daily routine, causing uneasiness and weariness. (Gutheil et al. 2000)

Table 4 Negative Emotions Reported - Excluding Anxiety-Related

<table>
<thead>
<tr>
<th>Emotion</th>
<th>Pre-Testimony</th>
<th>Post-Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angry</td>
<td>28</td>
<td>26</td>
</tr>
<tr>
<td>Ashamed</td>
<td>14</td>
<td>9</td>
</tr>
<tr>
<td>Betrayed</td>
<td>49</td>
<td>14</td>
</tr>
<tr>
<td>Confused</td>
<td>25</td>
<td>11</td>
</tr>
<tr>
<td>Embarrassed</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Guilty</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Indifferent</td>
<td>16</td>
<td>113</td>
</tr>
<tr>
<td>Lonely</td>
<td>16</td>
<td>61</td>
</tr>
<tr>
<td>Obligated</td>
<td>9</td>
<td>111</td>
</tr>
<tr>
<td>Powerless</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Regretful</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Sad</td>
<td>16</td>
<td>21</td>
</tr>
<tr>
<td>No Response</td>
<td>10</td>
<td>4</td>
</tr>
</tbody>
</table>

When the common symptoms associated with anxiety are filtered out from the negative responses reported, the results above indicate a consistent decline in the negative emotions felt after testimony was complete. Two exceptions stand out from the group: the emotions of betrayal and powerlessness. Overall, ‘betrayed’ was selected 11 times before testifying and 14 times after testifying the last time, and ‘powerless’ was reported 4 times before testifying and 9 times after testifying. Because this portion of the survey did not request the respondents explain their choices, it will be up to future studies to examine the reasons witnesses felt betrayed or powerless as a result of testifying. One possible explanation for witnesses feeling betrayed may be associated with feeling as though courtroom personnel - perhaps opposing counsel or the judges - questioned the witnesses’ testimony or credibility on the stand.
Anticipatory Anxiety and Resource Burnout

To parse out the expected effects that anticipatory anxiety and “resource burnout” may have produced, the charts below summarize the results with anxiety variables isolated as well as the variables identified in the literature that represent fatigue and emotional and/or physical drain.

Table 5 Isolated Anxiety Symptoms

*Emotions directly related to the anxiety of testifying in court – as reported by witnesses before the first time they testified and after the last time they appeared (n=119)*

Table 5 demonstrates witnesses generally felt higher levels of anxiety before testifying than they did after. This confirms what Thomson (1999) referred to as “anticipatory anxiety”, the witnesses felt anxious, panicked, scared and tense – all common emotions for individuals to feel prior to tackling a stressful task. The emotions reported at a higher rate after testifying - exhaustion and tired - are addressed next.

I have parsed out the symptoms identified in the literature as emotions and feelings commonly associated with having participated in a distressing situation. As indicated in the chart below, the anger and anxiety symptoms decreased, and exhaustion, feeling powerless
and being tired markedly increased, while the feeling of being overwhelmed stayed consistent. Although experience exhaustion and being tired can be construed as similar emotions, I interpret the selection of ‘Exhausted’ to include mental exhaustion, while ‘Tired’ indicates physically worn out. All of the emotions in this chart that were reported at a higher rate after testifying are associated with resource burnout, a side effect considered normal and even to be expected by the psychiatric and medical community (Gutheil et al. 2000).

Table 6 Emotions Related to Resource Burnout

*Emotions directly related to the physical and psychological drain of testifying in court – as reported by witnesses after the last time they testified*

![Bar chart showing emotions related to resource burnout before and after testifying.]

The above charts demonstrate foundational support for my hypothesis: witnesses did not report an increased amount of negative psychological effects caused by testifying before the ICTY. Moreover, positive emotions were reported at a higher rate both before and after testifying, while negative emotions were reported at lower rate after completion of testimony. The negative emotions that were reported are generally associated with anxiety and mental fatigue.

Obligation

The highest negative emotion reported by the witnesses who participated in this
survey was ‘Obligated’. While this emotion is categorized with the negative emotions, this particular sentiment is a unique selection, one that warrants a brief discussion.

Within the survey, several questions challenged the motivation of the witnesses to testify at the ICTY. Using a 5 level ordinal scale ranging from “Strongly Agree to Strongly Disagree”, including “Not Sure”, the questions asked respondents if they felt it was important to testify to help the judges reach an accurate decision, to confront the defendant, to tell their story, to put the events behind them, to speak for the dead, to prevent future similar events, or out of a duty to all victims of the war. Three of these questions, and the results from each are highlighted below.

Table 7 Witness-Reported Motivations for Testifying

“I believe it was important for me to testify because I had an obligation to speak for the dead”

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Not Sure</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td>82</td>
<td>18</td>
<td>41</td>
<td>10</td>
<td>2</td>
</tr>
</tbody>
</table>

“I believe it was important for me to testify because I do not want the war events in the former Yugoslavia to ever happen to anyone else”

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Not Sure</th>
<th>Disagree</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>240</td>
<td>53</td>
<td>2</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>
“I believe it was important to testify as a moral duty towards all victims of the war”

These responses support an explanation for the negative emotions selected at the highest frequency: that although the emotion ‘Obligated’ is in the negative category because of the mental drain it can cause, I argue that the obligation the witnesses at the ICTY felt was that of a sense of duty to honor those who were killed, those who lived through the atrocity, and those who might otherwise face a similar situation if history were to repeat itself. These findings also corroborate similar responses provided by witness participants of prior surveys of the ICTY, SCSL, and ICC (Cody et al. 2014; Jacobs et al. 2014; Stepakoff, Reynolds, Henry, et al. 2015) who echoed the same or similar motivations for testifying before a war crimes court or tribunal.

Physical Symptoms

Next, I further examine if witnesses experienced somatic symptoms caused by testifying before the ICTY. One of the arguments identified in my thesis claims that testifying can be harmful and can cause negative long-term issues, including re-traumatization and PTSD. The follow-up question to the psychological symptoms in the survey asks respondents about any physical effects experienced as a result of testifying at the ICTY more than once.
Available responses are physical symptoms commonly associated with psychological stress, seen below in the summarized charted results of responses selected by witnesses:

Table 8 Physical Symptoms Reported as a Result of Testifying

From the table above, the most reported physical issues were the somatic symptoms of emotional stress and anxiety manifesting as a physical experiences; with heart palpitations and dry mouth as the next two most noticeable physical effects – also commonly associated with anxiety. As discussed earlier, the usual symptoms of anxiety (fear, nervousness, worry, among others) physical symptoms such as heart palpitations, sweating, gastrointestinal problems, fainting and chronic pain, are just as common in individuals experiencing high amounts of anxiety. (Arikian and Gorman 2001).

Some of the witnesses called before the ICTY testified on more than one occasion, in more than one trial. 67 of the 300 total witnesses in this survey had testified on more than one occasion, 69% of these witnesses (n=46) reported no change in the physical symptoms they experienced while testifying in subsequent trials. A smaller group (n=14) reported physical effects of testifying decreasing the more times the witness testified, while a handful
(n=7) of respondents felt more physical side effects of testifying the more they were testified.

Table 9 Physical Symptoms Reported By Witnesses Who Testified in More Than One Trial

By taking a high-level view of the data from the survey, I’ve established initial relationships between the emotions reported by the witnesses and the timing of the testimony process. From this cursory look, I can clearly identify a trend in the emotions reported before testifying compared to after the completion of testimony: witnesses who participated in the survey reported over twice as many positive emotions than negative emotions before testifying for the first time, and over three-and-a-half times as many positive emotions than negative, indicating they felt more positive about their experience and did not feel emotionally damaged as a result of testifying. While these descriptive analyses provide a visual explanation of the emotions reported, I now try to extend these explanatory factors in greater detail.
CHAPTER 7
EMPIRICAL ANALYSIS

I now take a more granular look into what the data tells us about these victims and witnesses’ experiences testifying at the ICTY. While the previous section gave a thorough view of the overall basic patterns, this section attempts to identify any explanatory variables to determine any patterns or relationships in the survey response selection.

To confirm my findings from the categories of emotions in the previous section, difference in means tests are performed to determine the empirical differences between the positive and negative emotions reported after testifying, and any changes in the collective categorical selections from before and after testifying. Next, OLS regression models are used to explore which groups of individuals respond under particular circumstances.

Differences, Before and After Testifying

The changes in positive and negative emotions are measured by the count of responses to the survey. To normalize the distribution of these emotions, a difference in means test is used to find the true differences between the two categories. To do this, a t-test is applied to the total count of positive and negative tallies, to compare the means from each category. First, to measure the variables that directly relate to my hypothesis, which posits that testifying does not generally cause long-term damaging effects, I test the emotions reported after completion of testimony.

Table 10 shows that there is a mean difference of nearly 3 emotions, indicating a strong and irrefutable preponderance of positive emotions after testifying over negative emotions. While the above table shows the overall difference in how witnesses felt after testifying, I next run a similar model to examine the differences between the two categories
reported before and after testifying. These models will demonstrate any changes the
witnesses reported first in positive emotions, and then in negative emotions. This will
demonstrate any changes that may be caused by the testifying process.

Table 10 Differences in Mean Values Between Positive and Negative Emotions After
Completion of Testimony

<table>
<thead>
<tr>
<th>Variable</th>
<th>Obs</th>
<th>Mean</th>
<th>Std. Err.</th>
<th>Std. Dev.</th>
<th>95% Conf. Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Emotions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post-Testimony</td>
<td>300</td>
<td>4.006</td>
<td>0.21</td>
<td>3.65</td>
<td>3.59 to 4.42</td>
</tr>
<tr>
<td>Negative Emotions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post-Testimony</td>
<td>300</td>
<td>1.073</td>
<td>0.10</td>
<td>1.73</td>
<td>0.87 to 1.27</td>
</tr>
<tr>
<td>Difference in Means</td>
<td></td>
<td>2.93</td>
<td>0.23</td>
<td></td>
<td>2.47 to 3.39</td>
</tr>
</tbody>
</table>

\[ t=12.56 \]

Table 11 Differences In Mean Responses for Emotions Reported Before and After Testifying

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>S.E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive Emotions After Testifying</td>
<td>4.007</td>
<td>0.21</td>
</tr>
<tr>
<td>Positive Emotions Before Testifying</td>
<td>3.533</td>
<td>0.2</td>
</tr>
<tr>
<td>Difference in Means</td>
<td>0.4733</td>
<td>0.13</td>
</tr>
<tr>
<td>[ t=3.76 ]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Negative Emotions After Testifying</td>
<td>1.073</td>
<td>0.1</td>
</tr>
<tr>
<td>Negative Emotions Before Testifying</td>
<td>1.686</td>
<td>0.11</td>
</tr>
<tr>
<td>Differences in Means</td>
<td>-.613</td>
<td>0.1</td>
</tr>
<tr>
<td>[ t=-6.09 ]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As seen in the descriptive bar charts in the previous section, positive emotions are
shown to be experienced at a higher rate after testifying than before taking the stand and
negative emotions are shown to have decreased after testifying, as compared to how the witnesses felt before taking the stand. This is further support for my hypothesis, demonstrating the witness respondents did not feel re-traumatized or experience lasting negative emotional affects as a result of testifying before the ICTY.

Who responds, Under What Conditions?

Now that I have established that there are indeed demonstrable differences between the number of positive and negative emotions reported both before and after testifying, I next turn attention to explaining who (generally) responds, in what ways. For instance, does gender or age influence how the participants responded? Or does the ethnicity of the witness determine which responses are selected in the survey? I use basic OLS regression models to determine if any of these questions can be answered.

Demographics

First, I attempt to establish if there are any basic demographic determinants driving the responses to the survey, including gender, ethnicity, or age.

My demographic model aims to explore the effect of gender, age, and/or ethnicity has on the likelihood of reporting positive or negative emotions. Bosniak witnesses represented the largest ethnic group of respondents (n=78); therefore the Bosniak ethnicity variable is left out of the model to use as the comparison variable.

The table below shows that when all else remains the same, women reported 1.17 more negative emotions before testifying than men, and .70 more negative emotions after testifying than male witnesses. The age range of respondents is 28-94, however the age of the witness at the time of the survey seems to have had no influence over the emotions they
reported. Bosnian Croats reported 1.46 fewer positive emotions before testifying, while Bosnian Serbs and Serbians were less likely to report experiencing positive emotions either before or after testifying. Albanian witnesses reported nearly 3 more positive emotions than the control group (Bosniak before testifying as well as after completing testimony. Croatian witnesses reported experiencing .89 more negative emotions after testifying than the other ethnicities.

Table 12 Demographic Analyses

<table>
<thead>
<tr>
<th></th>
<th>Positive Emotions Reported Before Testifying</th>
<th>Positive Emotions Reported After Testifying</th>
<th>Negative Emotions Reported Before Testifying</th>
<th>Negative Emotions Reported After Testifying</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>300</td>
<td>.567 (.54)</td>
<td>.240 (.58)</td>
<td>1.17*** (.30)</td>
</tr>
<tr>
<td>Age</td>
<td>300</td>
<td>.003 (.02)</td>
<td>.010 (.02)</td>
<td>-0.013 (.01)</td>
</tr>
<tr>
<td>Bosnian Croat</td>
<td>30</td>
<td>-1.46** (.68)</td>
<td>-1.12 (.72)</td>
<td>.526 (.38)</td>
</tr>
<tr>
<td>Bosnian Serb</td>
<td>42</td>
<td>-2.74*** (.60)</td>
<td>-2.17*** (.64)</td>
<td>-.364 (.33)</td>
</tr>
<tr>
<td>Serb</td>
<td>46</td>
<td>-1.21** (.58)</td>
<td>-1.28** (.62)</td>
<td>0.045 (.33)</td>
</tr>
<tr>
<td>Croat</td>
<td>51</td>
<td>-0.278 (.56)</td>
<td>-0.533 (.60)</td>
<td>.445 (.31)</td>
</tr>
<tr>
<td>Albanian</td>
<td>23</td>
<td>2.66*** (.76)</td>
<td>2.78*** (.81)</td>
<td>.779 (.43)</td>
</tr>
<tr>
<td>_cons</td>
<td>3.77*** (1.1)</td>
<td>3.83** (1.2)</td>
<td>2.14*** (.64)</td>
<td>1.57*** (.59)</td>
</tr>
</tbody>
</table>

Standard error in parenthesis. ***P>.005, **P>.010

The findings of this model indicate, *cerebus paribus*, that females generally reported more negative emotions after testifying than their male counterparts regardless of age, but there is no distinct ethnic trend that stands out above others. Generally, ethnic Serbians were less optimistic or positive before testifying, but did not report negative emotions in a statistically significant manner. Albanian witnesses, who reported the strongest significant findings for positive emotions seemingly remained consistent with their positive experiences overall, but did not demonstrate a downward of negative emotions.
Anticipatory Anxiety and Resource Burnout

In the descriptive statistics section, I highlighted what the literature calls “anticipatory anxiety”, a common reaction to anticipating a stressful situation. As a recap, the symptoms of this type of anxiety include being anxious, panicked, scared, and tense. For this analysis, I created a new variable called “PreAnxiety” to represent this ‘anticipatory anxiety’, and added the values for each of the following individual emotions: anxious, exhausted, panicked, scared, tense, and tired to compose this measurement as a dependent variable and create an OLS regression model to determine which witnesses were more inclined to experience this anxiety, if any.

Experiencing mental and physical fatigue is also a common reaction to having completed an unnerving and stressful task. To explore this resource burnout as described earlier in this thesis, I have created a new variable called “PostBurnout”, comprised of the values from the symptoms identified in this category: exhaustion, overwhelmed, powerless and tired and applied the same OLS regression model as above.

The only definite demographic trend that can be clearly identified for anticipatory anxiety was based on gender. According to this regression analysis, women reported .23 more anxiety-related emotions than men, regardless of ethnic identification or age of the witness. Bosnian Croats also indicated a slightly significant tendency to experience anticipatory anxiety symptoms than the control group, Bosniaks.

No discernable demographic trend is readily identifiable for burnout symptoms. While the descriptive analysis demonstrates that individuals have experienced these effects, there is no statistically significant pattern of findings that can be extracted by specifically analyzing the gender, age, or ethnicity of the survey respondents. This does not negate the findings
from the descriptive analysis, rather suggests that no specific group or type of individuals experienced burnout more than any other in a significant manner.

Table 13 Anticipatory Anxiety and Resource Burnout

<table>
<thead>
<tr>
<th>Anticipatory Anxiety</th>
<th>Coefficient</th>
<th>S.E.</th>
<th>P&gt;t</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>0.253***</td>
<td>0.08</td>
<td>0.001</td>
</tr>
<tr>
<td>Age</td>
<td>-0.003</td>
<td>0.003</td>
<td>0.245</td>
</tr>
<tr>
<td>Bosnian Croat</td>
<td>0.2**</td>
<td>0.1</td>
<td>0.043</td>
</tr>
<tr>
<td>Bosnia Serb</td>
<td>-0.121</td>
<td>0.09</td>
<td>0.165</td>
</tr>
<tr>
<td>Serbian</td>
<td>-0.011</td>
<td>0.08</td>
<td>0.894</td>
</tr>
<tr>
<td>Croatian</td>
<td>0.095</td>
<td>0.08</td>
<td>0.242</td>
</tr>
<tr>
<td>Albanian</td>
<td>-0.031</td>
<td>0.111</td>
<td>0.782</td>
</tr>
<tr>
<td>_cons</td>
<td>0.526***</td>
<td>0.167</td>
<td>0.002</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resource Burnout</th>
<th>Coefficient</th>
<th>S.E.</th>
<th>P&gt;t</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>0.103</td>
<td>0.07</td>
<td>0.126</td>
</tr>
<tr>
<td>Age</td>
<td>-0.003</td>
<td>0.002</td>
<td>0.156</td>
</tr>
<tr>
<td>Bosnian Croat</td>
<td>0.026</td>
<td>0.08</td>
<td>0.757</td>
</tr>
<tr>
<td>Bosnia Serb</td>
<td>-0.091</td>
<td>0.07</td>
<td>0.221</td>
</tr>
<tr>
<td>Serbian</td>
<td>-0.071</td>
<td>0.07</td>
<td>0.324</td>
</tr>
<tr>
<td>Croatian</td>
<td>0.122</td>
<td>0.07</td>
<td>0.078</td>
</tr>
<tr>
<td>Albanian</td>
<td>0.039</td>
<td>0.1</td>
<td>0.682</td>
</tr>
<tr>
<td>_cons</td>
<td>0.389**</td>
<td>0.142</td>
<td>0.007</td>
</tr>
</tbody>
</table>

Obligation

As discovered in the descriptive analysis, ‘Obligation’ was the highest reported negative emotion both before testifying and again after the witness had testified. While this is categorized as a negative emotion, I argued earlier that those who indicated they felt obligated, did so not because they felt compelled by the ICTY appear, but out of a sense of duty and to honor to speak for the victims and all victims of war crimes.

To test this idea, I’ve created a new variable called “Obligated” and used the survey responses from the question that asks, “I believe it was important for me to testify because I had an obligation to speak for the dead”. The available responses were “Strongly Agree”, 
“Agree”, “Disagree”, “Not Sure” or “Strongly Disagree”. If the respondent answered “Strongly Agree” or “Agree” I interpreted their responses to indicate these witnesses felt obligated to testify to speak on behalf of the victims of the wars. To better understand the negative emotion ‘Obligated’, the following model was created to determine the relationship (if any) between those who responded that they Strongly Agreed or Agreed they felt obligated to speak for the dead, and those who responded that they felt ‘Obligated’ on the survey.

**Table 14 Witness Obligation to Speak for the Dead**

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Coefficient</th>
<th>S.E.</th>
<th>P</th>
<th>t</th>
<th>l</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felt obligated before testifying</td>
<td>0.016</td>
<td>0.053</td>
<td>0.771</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Felt obligated after testifying</td>
<td>0.134**</td>
<td>0.064</td>
<td>0.037</td>
<td></td>
<td></td>
</tr>
<tr>
<td>_cons</td>
<td>0.784</td>
<td>0.029</td>
<td>0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Recall that witnesses reported feeling ‘Obligated’ more than any other negative emotion, both before and after their testimony was complete. The results from this analysis above indicate a positive relationship between those who reported feeling ‘Obligated’, and those who felt it was their duty to speak for the dead. If a witness who generally felt a sense of duty and honor to testify still felt the obligation after having testified, this can be interpreted that they still felt a heavier obligation than simply responding a court’s request to appear. While this seems to be a reasonable explanation for “Obligated”, I compared those who selected “Obligated” both before and after testifying, with other positive emotions, to explore any existing relationships between positivity and feeling Obligated.

As indicated in the regression results in Table 15, respondents who felt the sense of duty to speak on behalf of the dead (“Obligated”) were more likely to feel more “Proud” but less “Confident” before testifying. This could identify a deeper sense of duty the witnesses
felt than what is displayed on the surface. After having completed testimony, witnesses who
reported having a sense of duty to testify at the tribunal also indicated feeling confident and
cooperative. These results confirm that although the variable “Obligated” has been
categorized as a negative emotion, it is not necessarily an indication of mental anguish or a
negative emotional affect.

Table 15 Positive Emotions Associated with Feeling Obligated

| Obligated Before Testifying | Coefficient | Standard Error | P>|t| |
|-----------------------------|-------------|----------------|------|
| Pre-Testimony Confident     | -0.1564     | 0.531          | 0.004|
| Pre-Testimony Cooperative   | 0.0128      | 0.05           | 0.799|
| Pre-Testimony Fulfilled     | 0.02974     | 0.075          | 0.695|
| Pre-Testimony Inspired      | -0.0994     | 0.0863         | 0.251|
| Pre-Testimony Positive      | 0.0398      | 0.0653         | 0.543|
| Pre-Testimony Proud         | 0.1251**    | 0.0573         | 0.03 |
| _cons                       | 0.821       | 0.0388         | 0    |

| Obligated After Testifying  | Coefficient | Standard Error | P>|t| |
|-----------------------------|-------------|----------------|------|
| Post-Testimony Confident    | -0.115***   | 0.058          | 0.049|
| Post-Testimony Cooperative  | 0.135***    | 0.053          | 0.011|
| Post-Testimony Fulfilled     | 0.028       | 0.051          | 0.608|
| Post-Testimony Inspired     | 0.047       | 0.097          | 0.628|
| Post-Testimony Positive     | -0.04       | 0.056          | 0.472|
| Post-Testimony Proud        | 0.0123      | 0.057          | 0.829|
| _cons                       | 0.805       | 0.034          | 0    |

Further, Table 15 also provides support for my hypothesis. If witnesses at the ICTY
were further victimized or re-traumatized by testifying, we would not expect to see reports of
feeling confident and cooperative after completion of testimony, especially from those who
had reported already feeling negative emotions before testifying. From the summation of
these regression analyses and the descriptive results, the data overwhelmingly confirms my hypothesis that witnesses at the ICTY do not experience negative psychological effects from testifying before the tribunal.
CHAPTER 8

VALIDATING ANALYSIS

As a separate, earlier endeavor prior to the witness impact pilot project that produced the survey and data used in my empirical analysis, the Victims and Witnesses Section at the ICTY conducted their own survey of witnesses as they concluded testimony from 2009-2014. I utilize these data in an attempt to validate my and verify my findings.

The questions from this survey with direct relevance to my research were questions 17 and 18 of this survey – specifically stated: “Indicate how you felt BEFORE your testimony” and “Indicate how you felt AFTER your testimony” respectively. The witnesses were given 21 options to indicate their emotional and psychological status at the time of testifying and were also encouraged to select as many options as they found appropriate. From their selections, I then broke the options into three categories: positive, negative and neutral.

This survey was given to 677 witnesses over the course of five years after completion of testimony or other direct contact with the VWS. This was a comprehensive sampling process as the VWS attempted to survey each witness as they completed testimony, when they had cause to reach out to VWS for safety or health concerns, or other contact with the tribunal’s witness services unit. The following is a discussion of the results from just two questions from the VWS-implemented survey.

While witnesses reported feeling a higher amount of positive emotions (366) than negative emotions (347) before testifying, the gap between the two widens dramatically after the witness completed testimony (a difference of 350 reported emotions). Participants

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12 A complete list of emotions is found in the Appendices
13 A categorical breakdown of these options is found in the Appendices
in this survey reported feeling 127 more positive and 35 more neutral emotions and 223 fewer negative emotions overall. This is a strong indication that according to participants themselves, testifying was not an overall negative experience, which provides further validation for my hypothesis.

Table 16 Summaries of Reported Differences in Emotions, Validating Analysis

<table>
<thead>
<tr>
<th></th>
<th>Before Testifying</th>
<th>After Testifying</th>
<th>Difference Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Positive Emotions</strong></td>
<td>366</td>
<td>493</td>
<td>+127</td>
</tr>
<tr>
<td><strong>Negative Emotions</strong></td>
<td>347</td>
<td>124</td>
<td>-223</td>
</tr>
<tr>
<td><strong>Neutral Emotions</strong></td>
<td>85</td>
<td>120</td>
<td>+35</td>
</tr>
</tbody>
</table>

Table 17 Total Count of Emotions Reported - Before and After Testifying

Table 18 Differences in Emotions Reported Before and After Testifying
This does not provide evidence to completely exclude the possibility that individuals experience re-traumatization or endured emotional damage as a result of testifying before the ICTY. However, generally speaking neither this validating experiment nor the survey data from the Victims and Witnesses Database provides evidentiary support that lasting negative emotions resulting from testifying at the ICTY is a generalized or common experience.
CHAPTER 9

CONCLUSION

The results from both the descriptive and empirical analyses provide support for my hypothesis. There is no indication in the data that establishes witnesses at the ICTY have generally experienced negative emotional effects as a result of testifying before the tribunal. Through new survey data, I demonstrated not only do witnesses seem more positive about their personal experience – both before and after testifying – but the negative emotions that were reported at the highest frequency correspond with symptoms and side effects of having to relive traumatic experiences and recall difficult events before the court. None, however, demonstrate indications of generalized re-traumatization or re-victimizing of the witnesses.

As discussed in the literature, any witness called to testify in a court or tribunal normally finds themselves experiencing anticipatory anxiety at the prospect of participating in a contentious process. As a witness anticipates taking the stand - possibly in front of the perpetrator that caused them harm during the war – he or she is bound to feel some level of apprehension. According to existing studies, individuals are equally likely to experience the effects of resource burnout- the effects of being physical and emotionally drained as the result of enduring such a mentally laborious experience such as testifying before an international tribunal. The results of my regression models and the descriptive charts all confirm the witnesses at the ICTY reported feeling anticipatory anxiety as well as resource burnout, as would be expected.

It is contended that witnesses experience re-traumatization, re-victimization and even PTSD as a result of testifying before an international tribunal that may place a higher importance on the legal structure and mandate than they do the witness mental health and
emotional well being. Considering the results of the basic analysis of emotions reported by witnesses themselves as well as the regression analysis of particular symptoms, these contentions are not empirically supported. Further, the negative emotions that were reported correlate to apprehension and fatigue than re-traumatization.

These findings do not negate the possibility that witnesses experience overwhelming emotional side effects, even re-traumatization from the experience of testifying before the tribunal. There have been specific examples detailed in case studies and anecdotal examples of instances when a witness or victim has felt violated or re-victimized as a result of testifying before the ICTY or other tribunals, but these instances are outlier cases, not a generalized representation of witness experience overall.

Additionally, as the findings within this thesis contradict a few empirical studies and surveys of victims and witnesses from Rwanda and South Africa, this incongruity does not invalidate the findings in these related research agendas that found participants in the Rwanda gacaca trials and the South African Truth and Reconciliation Commission had a higher likelihood of experiencing PTSD after testifying. Rather, I would argue these differences in findings accentuate the contrast in the structure and mandate of the different mechanisms. Where the ICTY is a retributive legal system with the structure and binding capabilities of an international tribunal with the backing of the United Nations, which also has a formal mandate to find accountability for war crimes, the Rwandan and South African approaches consisted of restorative processes that offered amnesty for perpetrators who confessed and repented, leaving the witnesses to continue living among the perpetrators with no real sense of accomplished justice.

It seems likely that the ICTY learned lessons from mistakes made by the South African Truth Commission while establishing and evolving the tribunal’s practices, while the
The forum in which Rwanda implemented its local trials was starkly different than the structured protocols found in The Hague. The formality and structure surrounding the ICTY’s conduct, while most will argue was the cause of lengthy trials and drawn-out hearings, appears to have also provided a reliable framework of consistency for everyone involved.

One remarkable finding that opens the door for further exploration is the witnesses’ sense of duty to speak on behalf of their fallen loved ones. While I only skimmed the surface of this phenomenon through my high-level brief analysis, there is much more to be discovered about this motivation found in nearly all war crimes tribunal and court studies. Other reasons for feeling obligated outside of being compelled to speak for the dead were just as altruistic, such as helping establish the truth and to contribute to the reconciliation efforts. These individuals more often than not are driven to testify by reasons outside themselves, possibly being subjected to painful recall of traumatic and heartbreaking experiences. Knowing of this potential, these witnesses still subjected themselves to the scrutiny of an international tribunal, demonstrating remarkable courage in the face of atrocity.

The findings of this project also have the potential to provide direct implications on best practices for emotional and psychological services available to witnesses before, after, and during testimonial timeframes. Current and future tribunals will have the opportunity to examine the outcomes and trends identified in this study to use as a guideline when creating protocols for victims and witnesses. Already, changes made within the ICTY as a result of early witness experience have been made standard procedure at newer courts such as the International Criminal Court where the Victims and Witness Unit adapted new procedures to follow up with witnesses after testifying to ensure their expectations were met and to ensure the witnesses remain secure and healthy.
Further, my results demonstrate that although testifying before a court of law may be intimidating and draining, the long term psychological feelings associated with being a part of the process of finding justice outweighs short-term anxiety. This information can be used to help build the confidence of potential witnesses that may be asked to share their experiences in a future tribunal. Victims and Witnesses services personnel can show apprehensive witnesses that although their anxiety is very common, most witnesses have reported feeling positive about the overall process of testifying, and the negative emotions that they may feel before testifying will most likely be replaced by positive emotions or at least diminish after their testimony is complete.
APPENDIX A

QUESTIONS FROM SURVEY INSTRUMENT
“Please indicate all of the emotions on the following list that describe how you felt about your testimony right before you entered the courtroom to testify for the very first time at the ICTY. (check all that apply)”

And

“Please indicate all of the emotions on the following list which describe how you felt about testifying immediately after you testified for the very last time (check all that apply).“

<table>
<thead>
<tr>
<th>Angry</th>
<th>Lonely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anxious</td>
<td>Obligated</td>
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<td>Positive</td>
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<tr>
<td>Confident</td>
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<td>Powerless</td>
</tr>
<tr>
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<td>Proud</td>
</tr>
<tr>
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<td>Regretful</td>
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<tr>
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<td>Scared</td>
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<tr>
<td>Fulfilled</td>
<td>Strong</td>
</tr>
<tr>
<td>Guilty</td>
<td>Tense</td>
</tr>
<tr>
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<td>Tired</td>
</tr>
<tr>
<td>Hopeful</td>
<td>Vindicated</td>
</tr>
<tr>
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APPENDIX B

CATEGORY ASSIGNMENTS
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<td>Powerful</td>
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APPENDIX C

VALIDATING ANALYSIS

VWS IMPLEMENTED SURVEY 2009-2014 EMOTIONS AND CATEGORIES
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<td>Other</td>
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That Someone Guilty Be Punished.  


