

Everything you say... And do not say...: Essay on the History of Psychology of Testimony on Brazilian Criminology

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Abstract

This article presents some reflections on the theoretical *corpus* of the psychology of testimony, from an historical point of view, trying to discuss its production / reverberation in Brazil and relationship with crime investigative procedures conducted in the country. It takes as point of analysis the year 1950, as the material Chapters 8, 9 and 10 of the Handbook of Forensic Psychology by Emílio Mira y Lopez and reverberations on the media at the time about the investigation of a murder case conducted by the 25th Police District in Rio de Janeiro (RJ) in same year. The paper discusses the centripetal method of interrogation and the psychoanalytic means of proof Rosanoff Abraham-Jung, analyzing how such dispositive integrated theoretical and practical debate about the criminal investigation of the murder case and inserted in the debate the psychological knowledge as the one able to reveal the truth of the testimony. Argues, finally, the presence of the psychological knowledge in the construction of a discourse of truth of the testimony in the history of the Brazilian criminal justice system.

Introduction

"To analyze the discourse would realizing exactly that:. Historical relations, too concrete practices that are alive in the discourse (...) mean first of all try to escape the easy interpretation of what would be 'behind' the documents, seeking to explore to the maximum materials, insofar as they are an historical production, a policy, insofar as the words are also constructions;. insofar as the language is also practical constitutive "(Fischer, 2001 - free translation)

This article presents some reflections on the theoretical *corpus* of the psychology of testimony, from a historical point of view, trying to discuss its production / reverberation in Brazil and relationship with crime investigative procedures conducted in the country. It takes as point of analysis the year 1950, as the material Chapters 8, 9 and 10 of the Handbook of Forensic Psychology by Emílio Mira y Lopez and reverberations on the media at the time about the investigation of a murder case conducted by the 25th Police District in same year.

The development of the murder case and - more precisely - the procedures adopted by the police or through the media required for investigations reveal interesting relationships of forensic psychology

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with the operation of criminal justice system. We are interested in studying such reverberations on the media, not as secondary sources of the criminal act itself or its investigation, but as revealing the discourses that compose the relations of power and knowledge that psychology built on dialogue with the criminal justice system. It is not, therefore, an analysis of the criminal investigation "through" the newspaper articles, but a discourse analysis by itself, of the "thing said" in the reports of the newspaper in order to enhance relations between statements and dispositive the speech puts into operation. Let's start with the murder case, in order to form the Overview on which will be built this reflection.

The Murder Case in the neighborhood of Marechal Hermes - Rio de Janeiro, RJ²

On Sunday June 25, 1950, in the neighborhood of Marechal Hermes - Rio de Janeiro / RJ, Army Sergeant V. dies as a result of a knife cut on the left mammary region. The report of the facts realizes that the victim had been received at the Hospital Carlos Chagas still alive, claiming domestic accident. By the characteristics of injury, the doctor does not believe in the hypothesis of accident reported by the patient and reports the fact to the 25th Police District. The victim died at the hospital.



"Mystery surrounding the death of an Army Sergeant

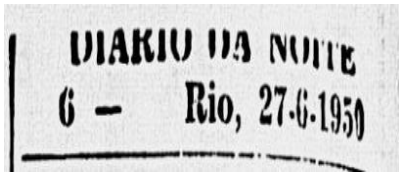
The police believes that it is a crime - Favoring this hypothesis Doctor's review - before he died stated that it had been accident - In bad situation the widow and a worker"

(Diário Carioca, Edition 06748, June 27, 1950)

The professionals of the 25th Police District, Officer Melo Moraes and Commissar Nelson, gather information about the case and request support from the Technical Police Division. Responsible for investigating process of the Technical Police, the detective Martinelli gradually suspect that the author of the crime is the widow, here called S. Initially, the detectives find themselves in front of the difficulty of

² The actual names of those involved in the investigation were changed by the initials V - victim - and S - suspect, in order to examine more the dispositive present in the situation than the people involved.

obtaining information by the widow, the only eyewitness indeed, the only one present at the crime scene. In the initial testimonies to the police, S. gives little information and contradicts herself.



“S., the only eyewitness, she did not give an enlightening testimony - leaving gaps that raise doubts. Repeatedly fell into contradiction...” (Diário da Noite, Edition 04799, June 27, 1950)

From the scarcity of information and contradictions in her speech, the technical police infers that the widow hides information and therefore takes her as a suspect. The knife that was mentioned in the newspaper would be the object with which the victim was injured. Until that time of investigations the weapon had not been found.



“S. does not talk about the knife, showing up confused when she speaks of the matter: does not explain what happened, as if she had not seen the facts that only she witnessed. Then, the assumption that she is hiding something, that she has guilt in the case. Continuing the efforts of the Technical Police” (Diário da Noite, Edition 04799, June 27, 1950)

The hypotheses are divided into intentional or negligent homicide (with or without intent to kill, respectively) perpetrated by the suspect. But there is no confirmation, nor with physical evidence - the crime scene was dismantled - nor with testimonies - particularly the testimony of the widow somewhat clarifies the facts. Detectives, meanwhile, say "S. knew more than she said" and conduct the interrogatories that she confess the crime. At that point, new data is inserted: the information that the suspect had been admitted to a mental hospital in Bahia and was mentally ill. The psychiatrist Claudio Araujo Lima cooperates with the investigation in order to determine the state of her mental faculties.



O detective Martinelli ao lado do psiquiatra Claudio Araujo Lima

EXAMINADA POR PSIQUIATRA A ESPOSA DO SARGENTO

Inovação Na Polícia Técnica, Sugerida Pelo Detective Martinelli — Entrevistada Pelo Psiquiatra Cláudio Araujo Lima

■, sobre quem pesam fortes suspeitas de haver assassinado o seu esposo, sargento ■, foi ontem submetida, na Polícia Técnica, a um teste psiquiátrico, a fim de se saber se a mesma sofre das faculdades mentais, a ponto de ter tirado, de modo tão violento, a vida daquele sargento.

Tal trabalho constitui a maior novidade em matéria de técnica policial, não sendo conhecido

em parte nenhuma do Brasil, e, quiçá, desta parte do continente americano. Foi ele sugerido pelo operoso detective Martinelli, que, apesar de se achar em férias, continua trabalhando arduamente naquele departamento.

O teste foi feito pelo dr. Claudio Araujo Lima, especialista em psiquiatria, que fez apenas uma espécie de trabalho preparatório. Conforme ele próprio declarou depois à reportagem,

desse interrogatório não pôde depreender ainda nada de positivo, pois apenas "tateou o terreno em que vai pisar" no futuro, em próximos interrogatórios.

Por isso, depreende-se que o dr. Claudio Araujo Lima, fez apenas um reconhecimento com d. ■.

ABORDARA' DEPOIS O CRIME

Disse ainda o dr. Claudio Araujo Lima, que futuramente, no próximo interrogatório, poderá abordar o problema do crime, não o particular, cometido contra a pessoa do sargento ■, mas, o crime de uma maneira geral.

Por esse intermédio, poderá chegar ao crime particular.

"S., who suspect murdering her husband, Sergeant V., was submitted in the Technical Police, to a psychiatric test to find out if she suffers of the mental faculties as to have taken away so violently, that Sergeant's life. This work constitutes the biggest news on police technique not being known in any part of Brazil, and perhaps in this part of the American continent. (...) The test was done by Dr. Claudio de Araújo Lima, an expert in psychiatry, which has made only a preparatory work. (...) Dr. Claudio also said that, in the future, on the next interrogation, can address the problem of crime, not that one particularly committed against the person of the Sergeant, but the crime in general. Through this means he can reach the particular crime." (Diário Carioca, Edition 06752, July 1, 1950)

What psychiatric test would have been that one? For what reason a psychiatrist need to surround the crime committed to determine the mental faculties of the patient? Why is the crime and not the patient's personality in concern? Why not ask directly about the fact, but to surround the subject in a "preparatory" way?

Michel Foucault's studies on the legal processes help to understand the function of the investigation conducted as a systematic procedure to answer the questions "There was crime? Who did it?". Likewise, his work denounces the use of psychiatry to answer the question "If the patient committed the crime once, will he again do it?". Thus, emerges disciplinary power as the one who performs the procedure of examination exercised from the uninterrupted surveillance and production of knowledge dedicated to the virtuality of the subject, i.e., not only what he did but what he can do, a knowledge whether that person is part or departs from the norm (FOUCAULT, 1978, 2002).

The history of Brazilian psychiatry, in its turn, echoes this recurring appeal procedure to medical knowledge to determine if the subject is imputable or unimputable, if he is dangerous, if he could be or if he had indeed been corrected by the penalty. Psychological power-knowledge articulates with the criminal justice system, based on the discourse about the sciences of crime, causes of crime and the crime control instruments (SILVA, 2012). Well, we have reasons to believe that the murder case in Marechal Hermes presents a significant difference compared on how psychological knowledge has taken part in this process. The psychiatrist did not seek - at least not only - categorize the patient facing a social norm. "S. was crazy? Was recoverable?" These do not seem to be the questions that need to be answered in the case of S., but another: "**What she knows and does not want to tell?**". Here we will take a break in reporting the case, in order to understand the ideas and theoretical-practical dispositive published by psychological knowledge at the time, with a view to organize the search for answers to the above questions.

The Psychology of Testimony of Mira y Lopez

Emilio Mira y Lopez was in the history of Brazilian criminology, and still is today, emblematic reference in forensic psychology in Brazil. The author publishes his "Handbook of Forensic Psychology" first in Spain in 1932. In 1947, he settled in the city of Rio de Janeiro and his work is translated into Portuguese by Dr. Elso Arruda and published by Editora Imprensa that same year. His work is vital in the field of Brazilian studies of forensic psychology, the first book of forensic psychology that reaches the Brazilian intellectuality. (JACÓ-VILELA, & SANTOS PEREIRA, 2005) As an illustration of his reach until in our times, the search site Scholar Google returns 117 articles with the theme of forensic psychology mentioning the manual from the files available in Portuguese³. The manual is contained in the references of various courses in forensic psychology conducted in the country.

What we intend to demonstrate with this article is that his work in the psychology of testimony offered not only to the academic community but also to the institutions related to criminal justice system, knowledge of psychology that could pretense determine the veracity of criminal evidence from the psychological evaluation of the data provided (and/or not provided, worth underline) by the witnesses. Mira y Lopez discusses in three chapters of his Handbook of Forensic Psychology the stages of the judiciary process. Initially, expresses criticism of judicial documents, chapter 8. Then, he discusses the psychology of testimony, chapter 9. And finally, examines obtaining "evidence of crime" (quotation marks in original), Chapter 10. We will discuss the chapters 9 and 10, because we have chosen as targets in this presentation to reflect on two points: **the conduction of the interrogation of the witness and the means of proof of the crime.**

Conducting the Interrogation - The Quest for Sincerity:

In relation to the first issue we are working on - the conduction of interrogation - we will outline a very specific, a very local point in the work. Mira y Lopez reviews the methods traditionally adopted by interrogators on the topic whose title is indeed curious: "9.9 Means to achieve the maximum possible

³ Research made in August, 27, 2014.

sincerity in responses." The author criticizes the traditional technique of interrogation to be based on fear. Initially the interrogator and later the judge would alert to the moral values and legal dispositions that punish perjury. Structured in this way, such technique would only have in their favor the moral conscience of declarants, his love of truth and justice, taking effect only in moral witnesses. It would remain therefore ineffective in immoral or amoral subjects because they do not react to the stimulus of severity and warnings about swearing to speak the truth.

As an alternative to this ineffective procedure, Mira y Lopez indicates the prior recognition of the personality of the witness and their position on the situation in order to determine their intent with the testimony. The author distinguishes two methods: centrifugal and centripetal. The first, centrifugal, would be the traditional interrogation, that part of the criminal act, constructs its history and follows their lead. The questions that would be asked in case we are working on are of the following type: "S., what happened?", "Did you kill your husband?", "Where is the murder weapon?", "How do you explain that the knife was not found?" According Mira y Lopez, all this questioning would turn around the crime, so that the attentive and interested in hiding the truth witness could deny the evidence for the prosecution in a logical way, denying the truth or hiding the information.

The second method, centripetal, would be the reverse procedure, based on the testimony on the periphery of the complex crime. Here, relationships, personality, moral values of the witness is which are the focus. Question of this type are those which would be made in the case: "S., how was your relationship with your husband?", "What is your opinion about your husband?", "You were sufficiently valued in your marriage?", "How customarily imagined what would be your future? ", "Have you ever wanted to change your life? ". So it goes until you can establish a **reason** for the suspect has **desired** the death of her husband.

According to the author, the centripetal method would have much more to offer as to the truthfulness of the testimony by the witness would have difficulty in establishing the relationship between the questions and the criminal fact. Minimizing the insincerity of the witness already in the farthest points of fact, it is argued that, when approaching the questions from the core of the crime, the witness can no longer deconstruct earlier and more honest information and shall retain the logic of information to get the core of the crime itself.

Is now possible to return to the statement of Dr. Claudio Araujo Lima, the psychiatrist who collaborated in the interrogation of S. Let's see again the portion of the declaration, now with greater emphasis on underlined terms

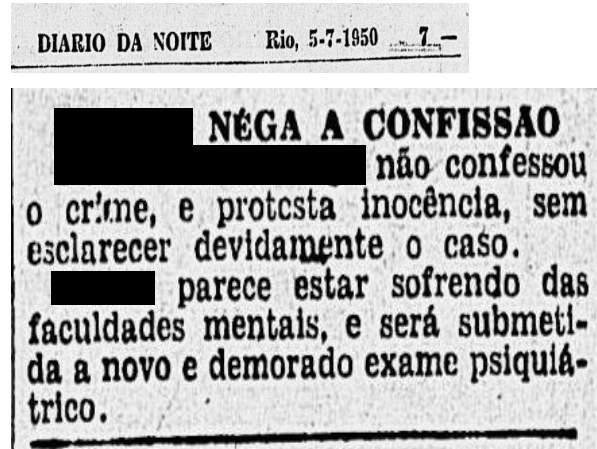
Dr. Claudio also said that, in the future, on the next interrogation, can address the problem of crime, not that one particularly committed against the person of the Sergeant, but the crime in general. Through this means he can reach the particular crime. " (Diário Carioca, Edition 06752, July 1, 1950)

The statement appears to demonstrate this procedure encircle, centripetal model, that part of the subjective content farthest to get to the heart of the offense. Then, it will seek the disposition of the subject in practice the crime, intent, desire to do so, the ability to commit it, etc.

What logic is that which is established in the case of Marechal Hermes? What fundamental idea supports this procedure in the investigation? You can see a singular link between the criminal justice and psychology, with the psychological knowledge providing a method - for which a reasoned and scientifically standardized procedure - to obtain what the subject denies say, what is only known through, for deduction, by inference. However, such inferences are credible only to the extent that there is a conceptual and practical dispositive that justifies a discourse of scientific truth. This speech, allegedly revealing the truth, it is about what we intend to reflect, to denounce its use, point the segregated character of their practice.

The Evidence of Crime – The Truth Comes First

We had stopped us the report of the case at the time the detectives are trying to solve the crime sought pointing the widow as guilty. Although detectives worked strongly with this hypothesis, there was the problem that the widow had not confessed yet.



“S. denies confession. S. not confessed to the crime and protests innocence without properly solve the case. S. seems to be suffering from mental faculties and shall be submitted to new and prolonged psychiatric exam.” (Diario da Noite, Edition 04806, July 05, 1950)

For this statement, there is disappointment around the psychiatric examination for not having been able to achieve the success of confession. Thus, it puts up a new impasse: how to determine the guilt of S. overcoming the problems of testimony so far found? To answer this question, again, are pursued methods of forensic psychology. Consider the "Evidence of Crime" column of Eptácio Timbaúba, published in Diário Carioca, on July 02, 1950 Initially, the following excerpt:

“EVIDENCE OF CRIME

– Timbaúba –

(...) According to police technicians, S. would have taken the life of her husband and had forgotten that she had committed the crime! So, instead of determining the guilt of S. obtaining evidence of the crime, sought to demonstrate the irresponsibility of the accused by proving her precarious mental state. The problem is purely of forensic psychology, not psychiatry. (...)” (We will continue along this quote) (Diário Carioca, Edition 06753, July 02, 1950 – underlined were made by the author)

In this column, the knowledge of psychiatry is taken as insufficient. The appeal to the condition of the mental injury did not respond. The suspect have forgotten the crime, an exemplary and documented case of emotional amnesia? Whatever ... Although psychiatric knowledge provides explanatory model for this phenomenon, for the purposes of the investigation, this knowledge is not enough. Another way is needed, which provides evidence, those ones that the subject denies or fails to offer for the interrogation.

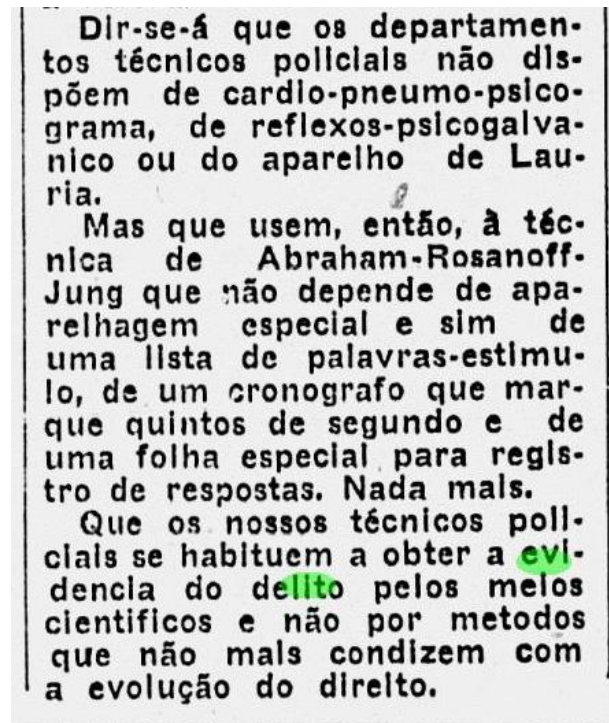
Well, the psychological knowledge responds to that call. This is achieved by adapting the method of proof of specific associations with the registration of reaction time - the psychoanalytic proof of Abraham-Rosanoff-Jung. By this technique, the interrogator establishes a list of words to association, to which the respondent should respond with another word associated spontaneously. It is inspired by the proof of Jung specific associations and is based on the following thesis

...if, in a list of words, are placed one directly or indirectly related to what the individual seeks to hide, it will be seen how he falters a bit before answering (looking for a word that serves to conceal their primitive reaction) or his response shows an abnormality. In this case, the comparison between the reactions to 'specific' stimulus words and the 'neutral' gives a basis for distinguishing the influence of general emotionality and emotion aroused by the *fear of being discovered*; the first is a constant factor that intervenes in all associations (responses) while the second one reacts in a certain number of them that we do not know *a priori* (MIRA Y LOPEZ, 2009, p. 131 – italics in original)

In Abraham-Rosanoff-Jung method for forensic purposes, the interrogated is blindfolded to avoid any distraction, the interrogator instructs the exam, says the stimulus words one by one and must register

The evidence of the crime or a confession with objective evidence will have to be tried, not by ordinary means of questioning almost always based on momentary inspiration and mental agility but in premeditated questions and clearly and accurately and coherently formulated, the stenographic or parlographic recording responses allowing reconstitute, whenever you want, the vacillations and uncertainties, pauses and voice inflections of a suspect and the evidence of sincerity or falsity of statements through certain processes. Psychoanalytic proof-Rosanoff Abraham-Jung, based on a list of stimulus words, the reactions produced by the patient questions and decimals or fifths seconds elapsed between the enunciation of the question and obtaining the response form the key elements to obtaining as the desired evidence. (Diário Carioca, Edition 06753, July 02, 1950 – underlined were made by the author)

There are more matches. Both the Handbook chapter and the newspaper article explain the Larson's "lie detector" and the Luria's method of motor expression, in that order. For reasons of focus of this work, we will pass superficially these points because the method required by Timbaúba is really the psychoanalytic evidence. Let's consider:



(...) Let our police technicians get used to obtain evidence by scientific means and not by methods that no longer correspond with the evolution of the law."

(Diário Carioca, Edition 06753, July 02, 1950 – underlined were made by the author)

"It will tell the police technical departments do not have cardio-pneumo-psicogram, reflex-psychogalvanic or Luria apparatus.

But, then, using the technique of Abraham-Jung-Rosanoff not dependent on special equipment but a list of stimulus words, a chronograph dial fifths of a second and a special sheet for recording answers. Nothing more.

Timbaúba agrees totally with the psychological discourse. Psychoanalytic proof besides being the solution, still have low cost, non-violent and would have the invincible scientific quality, evolved. Add yourself to the scenario that Eptácio Timbaúba was not only a journalist from the *Diário Carioca*. Was a former expert in the office of special examinations of the technical police, the specialist expert of the Journal. (COSTA, 2011) As a former member of the Rio de Janeiro Technical Police, Timbaúba arises as a privileged interlocutor in the case. We have reason to believe that his recommendation / request to investigators deserve prime attention because it enjoys the reputation front of the main actors in the Brazilian criminal justice system. The Timbaúba's speech is in the articulation between journalism and institutions of criminal justice, so the "public opinion" on the subject of criminal expertise is constructed from a specific place. The Timbaúba's discursive position modulates the speech quality of his newspaper article.

In this discourse, the operators of psychological knowledge - psychologists and psychiatrists - reveal the truth through signs, such as pauses, delays, stammers, smiles, tremors, among others. The discourse is covered by values based on the superiority of scientific knowledge, as a knowledge evolved more suitable to modernity, the better one. Psychoanalytic proof is based on a knowledge that proclaims itself capable of identifying evidences that are imperceptible for the most of other people, seemingly insignificant details, but they can reveal a phenomena far reaching. We allude here to the concept of indiciary paradigm, epistemological model within the humanities used to develop forms of social control, scrutinized by Carlo Ginzburg (GINZBURG, 1989). It is a knowledge by clues, therefore, able to capture behaviors as indicators of "something more", that just the theoretical and practical operators may reveal the evidence. Consequently, **a knowledge of how to built evidence of crime, negligence or fraud conviction**. The conviction of guilt is formed by this absence, by this silence, hesitancy, refuse. The proof is in what is silent, not about what is said. The psychological knowledge provides thus the flip side of criminal justice system evidence, always grounded only on the evidence given. Here, the negative to provide evidence are, by themselves, the very evidence of guilt. There is no escape for S., nor talking, nor in silence.

Final Considerations - Everything you say, and not say...

We are quite familiar with the expression "everything you say can and will be used against you in Court." The phrase alludes to USA Miranda Rights - a warning that must be given to a suspect before a question regarding the commission of a crime. Due to the massive diffusion of American film and television and the dissemination of knowledge about the American legal system, the phrase is part of a familiar discursive ensemble even in Brazil. Well, it speaks of to incriminate oneself by what one says. What I sought to outline in this work was a different dispositive: is to form a guilt not by what one says but by what one silent, hesitates, falters, mumble.

The main topic on which I sought think can be expressed as follows: whether by centripetal method of inquiry - from which we could be able to infer the subject's disposition to commit the crime - whether by means of psychoanalytic evidence-Rosanoff Abraham-Jung - with which is said to get the evidence of the crime - this conceptual and practical dispositive marks the presence of psychological knowledge in the construction of a discourse of truth of the testimony in the Brazilian criminal justice system. Such a dispositive has created new possibilities for blame, as in the case of suspicion of S. have been built around what she did not say.

The objective of this essay was to demonstrate such a link between the psychological discourse and the Brazilian criminal justice system, explain its foundations and denounce its use. We believe that the vitality of this work stays in showing the capture process of constructing this guilt by evidence supported by the discourse of truth and conceptual and practical dispositive of forensic psychology. For those who perpetuate such theses - whether by reproducing this ideas in a non-critical teaching of psychology, whether by endorsing a forensic psychological practice in which the discourse of unveiling of the truth is

operating - this historical study intended to provide the reflexive critique, pointing the segregating and perverse practice that such discourse entails.

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