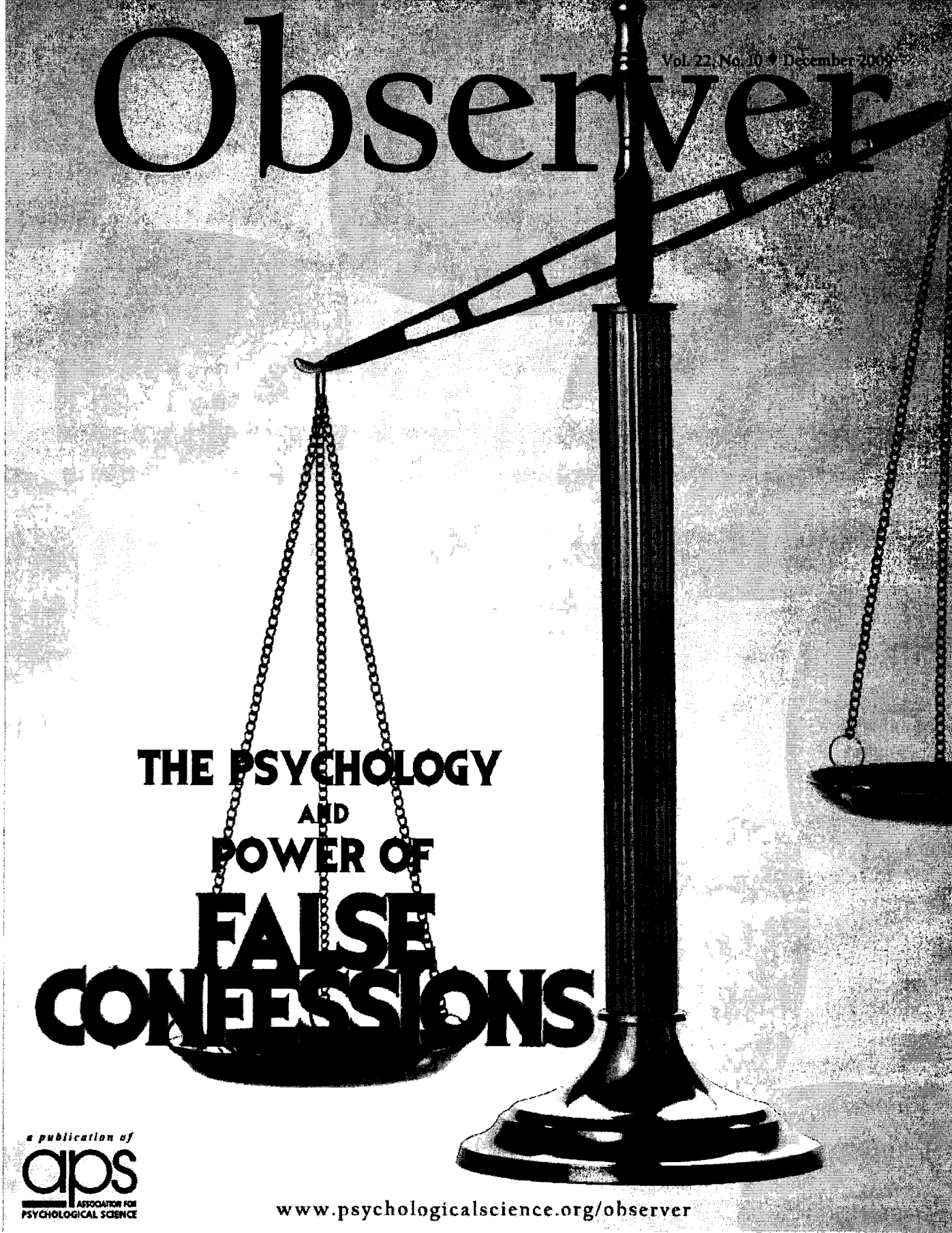


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AND
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THE PSYCHOLOGY AND POWER OF FALSE CONFESSIONS

BY IAN HERBERT

On July 8, 1997, Bill Bosko returned to his home in Norfolk, Virginia, after a week at sea to find his wife murdered in their bedroom. A few hours later, Bosko's neighbor, Danial Williams was asked to answer questions at the police station. And after eight hours there, Williams confessed to the rape and murder of Michelle Moore-Bosko.

Five months later, because of inconsistent physical evidence, the Norfolk police became convinced that Williams did not act alone and turned their attention to Joseph Dick, Williams' roommate. Dick confessed as well. He later pled guilty, testified against two other co-defendants, named five more accomplices who were never tried, and publicly apologized to the victim's family. "I know I shouldn't have done it," Dick said just before the judge gave him a double life sentence. "I have got no idea what went through my mind that night — and my soul."

Dick now says that all of that is untrue, and he has a team of lawyers who believe him. In 2005, the Innocence Project filed a petition on behalf of Williams, Dick, and the other two members of the group called the "Norfolk Four." They petitioned Virginia Governor Tim Kaine for clemency on the basis of new physical evidence, and in August 2009, the outgoing governor issued conditional pardons, which set the men free but forced them to be on parole for the next 20 years. It was a decision that Kaine struggled with, and he granted conditional pardons because he said the men failed to fully prove their innocence. "They're asking for a whole series of confessions ... to all be discarded," Kaine said on a radio show in the fall of 2008. "That is a huge request."

We know that false confessions do happen on a fairly regular basis. Because of advances in DNA evidence, the Innocence Project has been able to exonerate more than 200 people who had been wrongly convicted, 49 of whom had confessed to the crime we now know they didn't commit. In a survey of 1,000 college students, four percent of those who had been interrogated by police said they gave a false confession.

BUT WHY?

False confessions seem so illogical, especially for someone like Joseph Dick of the Norfolk Four, who got a double life sentence after confessing. Why do people confess to crimes they didn't commit? Some do it for the chance at fame (more than 200 people confessed to kidnapping Charles

Lindbergh's baby), but many more do it for reasons that are far more puzzling to the average person. In the November 2004 issue of *Psychological Science in the Public Interest*, APS Fellow Saul Kassin looked at the body of research and described how the police are able to interrogate suspects until they confess to a crime they didn't commit.

Generally, it starts because people give up their Miranda rights. In fact, Richard A. Leo found that a majority of people give up the right to remain silent and the right to an attorney. In fact, according to self-report data, innocent suspects gave up their rights more often than guilty suspects (most told Leo either that this was because they felt that they didn't have anything to hide because they were innocent or that they thought it would make them look guilty).

Once a suspect starts talking, the police can use a variety of techniques to make the accused feel as though they are better off confessing than continuing to deny (these include promises of leniency and threats of harsher interrogation or sentences). If a suspect feels like a conviction is inevitable no matter what he or she says, confessing may seem like a good idea.

But, in some cases, the accused comes to believe that he or she actually did commit the crime. It's been shown repeatedly that memory is quite malleable and unreliable. Elizabeth Loftus has repeatedly shown that the human brain can create memories out of thin air with some prompting. In a famous series of experiments, Loftus, APS Past President, was able to help people create memories for events that never happened in their lives simply through prompting. She helped them "remember" being lost in a shopping mall when they were children, and the longer the experiment went on, the more details they "remembered." The longer police interrogate a suspect, emphatic about his guilt and peppering their interrogation with details of the crime, the more likely a suspect is to become convinced himself.

Joseph Dick claims that this is what happened to him. His confession, testimony, and apology to the family were not lies, he maintains, but rather the product of a false memory. "It didn't cross my mind that I was lying," he said. "I believed what I was saying was true."

'CORRUPTING THE OTHER EVIDENCE'

Despite the evidence that false confessions are a regular occurrence, most jurors struggle with the concept just like Kaine did with the Norfolk Four. Confessions are difficult to

discount, even if they appear to be coerced. Years ago, Kassir noticed that cases with confessions have an unusually high conviction rate, and since then he has dedicated his life to studying why that happens and what can be done about it.

In a 1997 study, Kassir and colleague Katherine Neumann gave subjects case files with weak circumstantial evidence plus either a confession, an eyewitness account, a character witness, or no other evidence. Across the board, prospective jurors were more likely to vote guilty if a confession was included in the trial, even when they were told that the defendant was incoherent at the time of the confession and immediately recanted what he said.

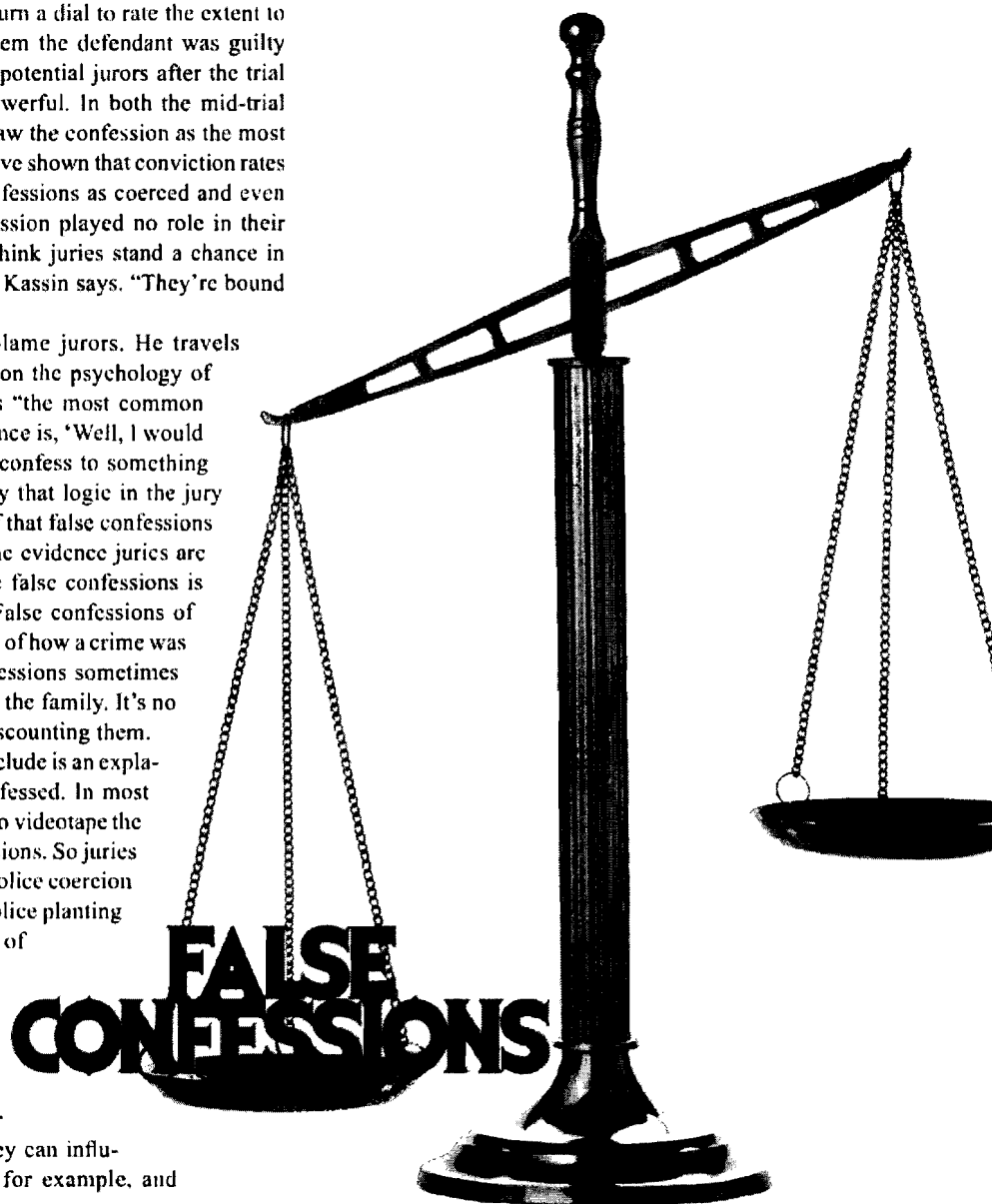
Kassir and Neumann also did two simultaneous studies to further explore the power of confessions. In one, they had people watch a trial and turn a dial to rate the extent to which evidence convinced them the defendant was guilty or innocent. The other asked potential jurors after the trial which evidence was most powerful. In both the mid-trial and post-trial ratings, jurors saw the confession as the most incriminating. Other studies have shown that conviction rates rise even when jurors see confessions as coerced and even when they say that the confession played no role in their judgment. "I don't honestly think juries stand a chance in cases involving confessions," Kassir says. "They're bound to convict."

Kassir says he doesn't blame jurors. He travels around the country lecturing on the psychology of false confessions and he says "the most common reaction I get from a lay audience is, 'Well, I would never do that. I would never confess to something I didn't do.' And people apply that logic in the jury room. It's just that basic belief that false confessions don't occur." What's more, the evidence juries are given in conjunction with the false confessions is very damning, Kassir says. False confessions of guilt often include vivid details of how a crime was committed — and why. Confessions sometimes even come with an apology to the family. It's no wonder jurors have trouble discounting them.

What confessions rarely include is an explanation of why the person confessed. In most states, police are not required to videotape the interrogations, just the confessions. So juries don't get to see any potential police coercion and they don't get to see the police planting those vivid details in the minds of the suspects.

And that may be just the tip of the iceberg. Kassir believes that confessions can have a dramatic impact on trials even if they never make it into a courtroom. They can influence potential eyewitnesses, for example, and taint other kinds of evidence.

Kassir recently teamed up with psychologist Lisa Hasel to test the effect of confessions on eyewitnesses. They brought subjects in for what was supposed to be a study about persuasion techniques. The experimenter briefly left the room and, during that time, someone came in and stole a laptop off the desk. The subjects were then shown a lineup of six suspects, none of whom was the actual criminal, and they were asked to pick out which member of the lineup, if any, committed the crime. Two days later, the witnesses were brought back for more questioning. Those who had identified a suspect were told that the person they identified had confessed, another person had confessed, all suspects continued to deny their



involvement, or that the identified suspect had continued to deny his involvement. Those who had (correctly) said none of the people in the lineup committed the crime were told either that all suspects denied the crime, that an unspecified suspect had confessed, or that a specific suspect had confessed.

The results show that confessions can have a powerful effect on other evidence. Of the people who had identified a subject from the original lineup, 60 percent changed their identification when told that someone else had confessed. Plus, 44 percent of the people who originally determined that none of the suspects in the lineup committed the crime changed their mind when told that someone had confessed (and 50 percent changed when told that a specific person had confessed). When asked about their decision, "about half of the people seemed to say, 'Well, the investigator told me there was a confession, so that must be true.' So they were just believing the investigator," Hasel said. "But the other half really seemed to be changing their memory. So that memory can never really be regained once it's been tainted." What's more, people who were told that the person they wrongly pinpointed as the culprit had confessed saw their confidence levels soar. After that confirmation, they remembered the crime better and were more sure about details. The implications for inside the courtroom are obvious if eyewitnesses who incorrectly picked someone out of a lineup can become so sure of their choice after learning that the person confessed. "It is noteworthy that whereas physical evidence is immutable (once collected and preserved, it can always be retested), an eyewitness's identification decision cannot later be revisited without contamination," Kassin and Hasel write.

Kassin and Hasel suspect that false confessions may also affect the memories of people who are potential alibis for defendants. Kassin worked on the actual case of John Kogut, who was accused of raping and murdering a 16-year-old girl. Kogut was at a party for his girlfriend at the time the crime was committed, and he had multiple alibi witnesses. But after 18 hours of interrogation, Kogut confessed to the grisly crime. "After he confessed to the crime, [the witnesses] started dropping off one-by-one," Hasel said. "You know, maybe I saw him earlier in the night but not later; maybe I saw him later in the night but not earlier; it must have been a different night, I must be wrong." Kassin and Hasel are currently working on an experiment similar to their eyewitness study to test this theory on a broad basis.

This phenomenon may be explained by the same Loftus research about creating false memories that may have led to the false confession in the first place. So it is plausible that eyewitnesses or alibi witnesses might begin to remember things differently when told about something as powerful as a confession. But what about scientific evidence? At least confessions can't change something as concrete as DNA evidence or fingerprints, right? Even that belief may be untrue.

In 2006, University College London psychologist Itiel Dror took a group of six fingerprint experts and showed them samples that they themselves had, years before, determined

either to be matches or non-matches (though they weren't told they had already seen these fingerprints). The experts were now given some context: either that the fingerprints came from a suspect who confessed or that they came from a suspect who was known to be in police custody at the time the crime was committed. In 17 percent of the non-control tests, experimenters changed assessments that they had previously made correctly. Four of the six experts who participated changed at least one judgment based on the new context. "And that's fingerprint judgments," Kassin said. "That's not considered malleable. And yet there was some degree of malleability and one of the ways to influence it was to provide information about the confession."

The practical importance of this research extends well beyond the laboratory. In a white paper set to be published in *Law and Human Behavior* in 2010, Kassin and four other prominent confession experts make recommendations, including, most notably, mandatory taping of all interrogations in capital cases. Kassin has begun to research this idea. His preliminary data illustrates that, shown two versions of known false confessions (one that just included the confession or another that included the entire interrogation), subjects were significantly less likely to vote guilty when shown the entire interrogation. "The information that the jury doesn't have and needs is how did this guy come to confess and then, when he did confess, how did he know all this information about the crime if he in fact wasn't there," Kassin says. "So yes, I think videotaping is probably the single best protection to be afforded to a defendant."

That would help defendants who were coerced into confessing by police, but would do nothing to help those who lost alibi witnesses or were convicted with the help of eyewitness testimony because of knowledge of a confession. To combat that problem, Hasel and much of the scientific community argues for double-blind testing when handling evidence, meaning that the police officer handling the lineup doesn't know which of the member of the lineup is the suspect. "So they can't consciously or unconsciously direct [witnesses] to a particular person," she says.

And she wants to investigate whether judges and jurors can understand this topic of evidence dependence — the idea that a confession contaminates other evidence. If jurors are told that a false confession may have tainted other evidence, are they able to look at it objectively and make their own judgment? Can judges grasp its ramifications on appeals? Kassin believes that, because of the persuasive potency of confessions and evidentiary dependence, it's not good enough for judges to look at the other evidence and determine that a jury would have convicted even without the coerced confession.

"If it turns out that the confession corrupted the other evidence, then there is no such thing as harmless error," Kassin said. "I don't think you can look at that other evidence once there is a confession out of the box because once the confession is out there, it corrupts all that other evidence." ♦