

Ghostly Collaboration: the Authorship of False Criminal Confession

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Abstract: Drawing on a body of confession scholarship, “Ghostly Collaboration” defines “coercive ghostwriting,” an authorship-inspired term for collaborative practices enacted between custodial criminal suspects and professional police interrogators resulting in coerced, potentially false confession. Within the United States, still-prominent notions of a Romantically-influenced autonomous Author problematically intersect with public perception of collaborative texts; the coercive ghostwriting label is intended to draw explicit attention to co-authorship via coercive collaboration, hopefully contributing to the ongoing efforts of researchers working to challenge inaccurate views of false confessions.

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Scholars have explored the ways in which socially constructed notions of the author as autonomous originator are reflected in regulations of copyright (Lessig; Jaszi; Venuti) and perceptions of writing and rhetorical invention (Ede and Lunsford; LeFevre). Such research builds support for the argument that Romantically-influenced values of originality and solitary creation continue to shape, to at least some extent, considerations of authorship in the United States. As a researcher interested in the intersections between public perceptions of authorship and collaborative textual productions, particularly those situated in classrooms, courtrooms, and other hierarchically-organized institutional locales, I focus here on an arena where individualized views of writing and intellectual ownership may, in tandem with other factors, critically problematize the evaluation of collaboratively authored texts: specifically, the genre of false criminal confession.

The view of confession as a narrative of legitimate guilt is a component of the American zeitgeist, and research suggests we have trouble understanding false confession as a phenomenon (Kassin; Leo; Appleby, Hasel, and Kassin). False confession expert Richard Leo speaks, for instance, of “the myth of psychological interrogation”: the mistaken belief that, in the absence of physical torture or mental illness, innocent people will not confess to something they did not do (196). The existence of this myth is consistent with a public who has internalized, to at least some degree, Romantically-influenced notions of singular authorship. Because confessions are often the product of hierarchal collaboration, as researchers including Leo, Saul M. Kassin, and Brandon Garrett show us, I wish to counter with a more appropriately named authorship construct. In cases where a custodial

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suspect's role in the authorship of a confession is subjugated¹, a coerced, potentially false confession may result. I call this process "coercive ghostwriting," an authorship-inspired label intended to publically align the confessional text with all involved collaborators.

Authorship lenses exert significant influence on the ways people view texts. By complicating individualized constructions of confession, coercive ghostwriting could add its lens to the ongoing efforts of researchers across the disciplines working to challenge inaccurate views of false confession, specifically by offering members of the US public—many of whom may one day sit on a jury—a more nuanced view of authorship.

Coercive Ghostwriting: A Definition

Coercive ghostwriting is grounded in a key element of more traditional notions of ghostwriting: the presence of an uncredited guiding force. It is further influenced by Deborah Brandt's definition of ghostwriting as "taking on substantial parts of a composing process for which someone else, not you, will be credited" (549). The critical difference between the two is the issue of shared goals. Whereas traditional ghostwriting implies mutuality, coercive ghostwriting is a highly pressurized collaborative process transacted between participants with unequal access to institutional authority: the custodial suspect and the professional investigator(s). Participants often follow different agendas, and may ultimately remain unaware of the implications—or even the existence—of their collaborative efforts. The experience of Detective Jim Trainum demonstrates this idea of unwitting partnership. After obtaining the false confession of a murder suspect later cleared through an alibi (see Trainum), he realized they had contributed accurate details, unintentionally so, "ghostwriting" content into the confession through a process researchers refer to as "contamination."²

Coercive ghostwriting can involve investigators who actively draft language in a confession or reshape and/or edit exchanges between themselves and suspects. The disputed statements of Derek Bentley may stand as an example: executed for murder in 1953, his conviction was successfully appealed decades later, helped by Malcolm Coulthard's linguistic expertise (see Coulthard). Frances Robles of *The New York Times* reports on a more recent potential example: similarities in the wording of confessions obtained by detective Louis Scarcella, specifically the phrases "you got it right" or "I was there." Robles also cites the testimony of Jabbar Washington, tried for murder in 1997, who claimed that the detective "grabbed him by the neck and testicles and forced him to sign his name to a document the detective wrote" (Washington was convicted and remains in prison). While investigations into Scarcella's work are ongoing, the allegations against him

¹ To be clear, I do not refer here to methods involving physical assault or torture.

² Leo and Richard J. Ofshe define "contamination" as "the process whereby police suggest facts to the suspect that he did not already know, or the suspect learns facts about the crime from newsmedia or information leaked, rumored or disseminated in the community" (438).

involve at least the specter of a more traditional understanding of ghostwriting: an individual writing or drafting language that is formally attributed to another.

But I do not wish to limit the scope of the coercive ghostwriting label to only those individuals who inscribe the confessional text. I seek to include as well those collaborators whose roles in any phase of the composition process of the confession—as sources of motivation and invention, as content contributors, as the providers of task language—may go unacknowledged without more broadly conceived frameworks. Paul Prior speaks to variety in the word “text,” noting that it can denote “a unique material inscription” while in other cases it might encompass a broader range of “representations of the material texts” (169). For my purposes here, the confession and the participants involved in its authorship should be understood not just as the material text and writers, but as a range of potential representations and coauthors. Prior highlights the example of teachers co-authoring student work by “taking up key roles in the production of the text through initiating and motivating it, setting important parameters (the type of text to write, the length, what kinds of sources to use, the timing of the process), and often contributing to content” (171). Just as expanded considerations of text and co-authorship yield insight into academic texts and activities, similarly expanded considerations may prove analytically useful when considering the collaborative practices enacted between interrogators and suspects.

The coercive ghostwriting label depends on this idea of confession as a collaborative act, a well-represented view within scholarship. For example, Leo describes “the postadmission portion of police interrogation” as a generative (and often coercive) collaboration between a suspect and an institutionally authorized interrogator(s) that “reveals how the interrogator and the suspect jointly create a persuasive narrative of the suspect’s culpability that transforms the fledgling admission into a full-formed confession” (166). Kassin and Lawrence S. Wrightsman’s taxonomy of false confession, initially introduced in 1985 and “used, critiqued, extended, and refined by others” (Kassin et al. 14), also fits a collaborative framework. Kassin et al. outline the three types:

- “Voluntary false confessions”: wherein an innocent person confesses in the absence of police pressure. (Kassin et al. 14)
- “Compliant false confessions”: wherein an innocent person confesses under interrogation pressure in order to “escape a stressful situation, avoid punishment, or gain a promised or implied reward” (Kassin et al. 14).
- “Internalized false confessions”: wherein “innocent but malleable suspects” are convinced through interrogation tactics to believe in the possibility of their own guilt. The suspect might even “confabulat[e] false memories in the process” (Kassin et al. 15).

The latter two clearly reflect collaborative processes: multiple parties working to create a jointly authored confession. And even a voluntary false confession is collaborative if framed

through the social end of Karen Burke LeFevre's continuum of rhetorical invention: confession as the result of a suspect's relation to the social spaces surrounding the crime (Kassin et al. use the example of the Lindbergh baby kidnapping, which produced 200 voluntary false confessions [14]).

Finally, to define coercive ghostwriting it is important to note it does not apply solely to cases of false confession. It is an act of subjugated collaboration, not a definitive determination of guilt, and it is possible to coercively author a true confession. While it is important to explore the ethical considerations of all coerced confessions, I will focus here on cases of coercively ghostwritten false confessions within the US system.

Coercive Ghostwriting as Textual Authorship

The degree to which coercive ghostwriting constitutes textual authorship is a complex issue to consider. Confession evidence takes different forms depending on context, including multimodal combinations: a signed statement and oral investigator testimony, for example. Brandon L. Garrett's study of the first 250 people to be exonerated through post-conviction DNA testing includes 40 cases of false confession (18), and his research speaks to a variety of contextual factors in the materials he was able to find and analyze (as described by Garrett, obtaining these materials was an onerous process in and of itself [7]). Of the forty cases of false confession:

- 23 involved partially recorded interrogations (fourteen audio, nine video) (32)
- 28 involved a written confession statement (295)
- Four involved interrogations lasting fewer than three hours; others ran "typically in multiple interrogations over a period of days, or interrogations lasting for more than a day with interruptions only for meals and sleep" (38)

As Garrett's data indicates, the term "confession" does not refer to a universally consistent form, and confessions are not composed via a universally consistent process—an impossible prospect, given the many factors involved. The ways confession evidence is presented in court are likewise varied, and, particularly in the absence of a complete recording of the interrogation, potentially problematic. I will briefly review here several possible components of confessions in an effort to illustrate the possibility that triers of fact may compress the multiple elements contained within coercive ghostwriting into one oversimplified construct. The risk is that they would then treat that construct like a singly-authored text.

Signatures, Statements, and Boilerplate

The process of composing a confession may involve a variety of materials and procedures depending on context and circumstances. The fifth edition of Fred E. Inbau et al.'s manual *Criminal Interrogation and Confessions* emphasizes the need to document a confession; the manual suggests a “question-and-answer format,” “narrative form,” or combination of the two (Inbau et al. 312-13). For certain forms the suspect may sign, Inbau et al. recommend language for an opening statement that establishes the suspect’s awareness of his or her rights and willingness to offer a statement (312). Inbau et al. also recommend language for a statement indicating willingness and truthfulness at the end of a confession document, ideally to be handwritten by the suspect and followed with a signature (317).

Recorded Interrogations

Procedures for recording interrogations remain inconsistent in the United States,³ so a record of the events leading up to the documenting artifact may be non-existent, incomplete, or even selectively edited, potentially obscuring the authorship roles played by investigators: no electronic record of the interrogation leaves the confession with little to no context, and an incomplete recording could create a misleading one. Leslie Crocker Snyder et al. analyze the case of Jeffrey Deskovic, a teenager convicted of rape and murder in 1990 and exonerated in 2006. His conviction seems to have stemmed in part from partially recorded (or, in some instances, unrecorded) interviews with detectives; Snyder et al. conclude “the record strongly suggests that the decision about when to press play and when to press stop was governed, at least in part, by a tactical desire to choreograph which parts of the interrogation a fact-finder would ultimately hear” (13).

Detail Contamination and Revisions

The false confession unwittingly secured by Detective Trainum illustrates the danger of ghosting accurate details into a confession. Leo speaks of “The Contamination Error” and highlights it as a dangerous component of the postadmission narrative (234-235). Garrett’s research specifically highlights “Contaminated Confessions” (Chapter 2 of *Convicting the Innocent*) with examples of confessions made more credible through detail contamination on the part of investigators, including the case of David Vasquez, a cognitively challenged

³ The Innocence Project estimates that 850 jurisdictions within the United States maintain policy regarding electronic recording (“False Confessions”). The 2010 Kassin et al. White Paper offers “a strong recommendation for the mandatory electronic recording of interrogations” (3), a call echoed by Det. Trainum in his work to safeguard against false confession (see “Trainum”).

suspect who confessed to murder. Garrett uses his partially recorded interrogation (and includes the following excerpt) as an example of interrogators revealing information to an ignorant suspect⁴:

Det. 1: Did she tell you to tie her hands behind her back?
Vasquez: Ah, if she did, I did.
Det. 2: Whatcha use?
Vasquez: The ropes?
Det. 2: No, not the ropes. Whatcha use?
Vasquez: Only my belt.
Det. 2: No, not your belt...remember being out in the sunroom, the room that sits out to the back of the house?...and what did you cut down? To use?
Vasquez: That, uh, clothesline?
Det. 2: No, it wasn't a clothesline, it was something like a clothesline. What was it? By the window? Think about the Venetian blinds, David. Remember cutting the Venetian blind cords?
Vasquez: Ah, it's the same as rope?
Det. 2: Yeah. (qtd. in Garrett 43-44)

Police investigators are trained to avoid contamination (Garrett 23). It is possible the investigators perceived their questions and contributions as accurate reminders of the crime Vasquez truly committed, and did not intend to reveal critical details. But coercive ghostwriting occurs regardless of motive; at issue is the ghosting of accurate content into a confession credited to Vasquez, who pled guilty and served five years before DNA testing exonerated him.

Accurate content may also become integrated into a false confession through acts akin to revision, further complicating considerations of authorship. Leo notes the case of Bruce Godschalk, who confessed to rape and burglary in 1987 and was exonerated in 2002. At first denying his involvement, the story of his "guilt" eventually emerged during interrogation; Leo states that, along with other problematic techniques, the detectives "had him rehearse their account before turning on the tape recorder" (182). Such revisions, difficult to detect in the absence of a complete recording, further problematize a jury's ability to fully consider acts of collaboration.

This list of confessional components is not a comprehensive review of every form a confession may take, every element it may include, or every process used to document. My

⁴ A collection of materials from exoneration cases can be found on Garrett's webpage "False Confessions: Transcripts and Testimony," linked here: http://www.law.virginia.edu/html/librarysite/garrett_falseconfess.htm. Vasquez's case provides a link to Dana Priest's 1974 *Washington Post* article "At Each Step, Justice Faltered for VA Man," which contains transcribed portions of Vasquez's interrogation.

intention is to demonstrate variety. The documented power of confession evidence is consistent with the possibility of a jury compressing disparate elements into a more unified construct. False construction of unity could allow coercive ghostwriting to participate in the same way a singly-authored text would in the shaping of decisions. Foucault's idea of the author-function offers a possible model. A key element of the author-function is its constructedness; it is "the result of a complex operation that constructs a certain being of reason that we call 'author'" (Foucault 213). But as the author-function regulates the way texts are used and valued, it also hides their constructedness, just as the idea of singly-authored confession may hide constructedness. Romantic notions of authorship may likewise constrain perception, placing importance on the creation of original material. In the case of criminal confession, "original" material might translate as unique knowledge of a crime, or accurate details only a true perpetrator could know—a dangerous assumption to make in cases of contamination.

It is overreaching to assume all juries and judges have internalized unified, individualized, or romantic constructions of authorship. It is fair to speculate some have to a certain degree, particularly in light of modern Western society's traditionally less visible appreciation of collaborative writing practices. Andrea Lunsford and Lisa Ede recount a finding from their study of collaborative writing in professionalized spaces involving a respondent who initially claimed he always wrote alone, but later revealed that he had co-authored all of his publications ("Why Write" 71). Lunsford and Ede offer an explanation: the respondent was not a liar; he was blind to the true nature of his collaborative practices. If individuals are blinded to the presence of collaborative writing to the extent they misconstrue their own practices, then it is reasonable to fear they may misconstrue or make limiting assumptions about the practices of others, particularly in high-stakes scenarios where information about the role of textual collaborators is unavailable or incomplete. Ideally, the coercive ghostwriting label could serve as a reminder of complexity in spaces where singular visions of authorship may cause great harm.

Coercive Ghostwriting as a Coercive Act

While it is impossible to account for the practices of all criminal interrogators, and inaccurate to assume all confessions are yielded problematically, any formal evaluation of confession evidence must consider the compositional role played by interrogation techniques. Cases of coercive ghostwriting involve a suspect subjugated by some element of the process, enabling felt coercion to structure the confession itself. Scholarship reflects significant research into police interrogation tactics and identifies a number of concerns; Kassin and Gisli H. Gudjonsson's "The Psychology of Confessions: A Review of the Literature and Issues" and Kassin et al.'s "Police-Induced Confessions: Risk Factors and Recommendations" offer overviews and suggest reform, including mandatory videotaping of interrogations. As a term, "coercive ghostwriting" is meant to help draw additional

attention to hierarchically collaborative practices described and problematized by researchers, such as the Reid technique of interrogation, the presentation of false evidence, and the error insertion trick, the coercive potential of which may be overshadowed by rhetorical appeals to ethos often embedded in public considerations of confessions.

For example, Garrett notes the way testifying police investigators help to create a rhetoric around confessions in court by denying the possibility of detail contamination on their own parts (23). Particularly in cases of undocumented interrogations, the rhetorical frameworks created around the resulting confessions by prosecutors and testifying investigators play a role in positioning its credibility. Coercive ghostwriting could serve as a prompt to consider coercion as well, and encourage triers of fact to actively look for evidence of coercion in the available confessional artifacts—if only to rule it out.

The Reid Technique and Presentation of False Evidence

The Reid Technique refers to a nine-step interrogation technique developed by John E. Reid and Fred Inbau. It is a registered trademark of John E. Reid and Associates, Inc., an organization that offers training programs in interview and interrogation, and the steps are presented in Inbau et al's manual *Criminal Interrogation and Confessions*. Kassin and Gudjonsson's summary highlights the technique's coercive potential:

these nine steps are essentially reducible to an interplay of three processes: *custody and isolation*, which increases stress and the incentive to extricate oneself from the situation; *confrontation*, in which the interrogator accuses the suspect of the crime, expresses certainty in that opinion, cites real or manufactured evidence, and blocks the suspect from denials; and *minimization*, in which the sympathetic interrogator morally justifies the crime, leading the suspect to infer he or she will be treated leniently and to see confession as the best possible means of “escape.” (43)

In a worst-case hypothetical scenario, an innocent individual facing the Reid technique is subjected to high-pressure rhetorical techniques such as “theme development,” a move which, as Kassin and Gudjonsson note, can be used to collaboratively generate material; it is “a process of providing moral justification or face-saving excuses” (55). Another controversial factor triers of fact must consider is the presentation of false evidence during an interrogation; as Kassin and Perillo note, *Frazier v. Cupp* permits investigators to deceptively claim they have incriminating evidence. In terms of rhetorical invention and the process of drafting a narrative statement, the presentation of false evidence is critical as a shaping force of a text. If facts are no barrier, then there is little limit on potential content, giving a great deal of textual control to the interrogator.

The Error Insertion Trick

Inbau et al. recommend the insertion of errors into the pages of a confession for the suspect to correct, initial, and/or sign. If the suspect does not catch them, the investigator should “raise a question about them” when the confession is read (Inbau et al. 317). Appleby, Hasel, and Kassin refer to this as the “‘error correction’ ploy” (117) and note that it “is designed to enhance the illusion of credibility” (118); Leo speaks of the “Error Insertion Trick” and makes a similar conclusion (176). Coming from an authorship perspective, I also wonder whether a juror may be more likely to characterize revision and proofreading as individual, autonomous activities, or even to associate these acts with (relatively) mundane pedagogical spaces or activities, such as a writing classroom or assignment—an impression that may also reinforce the aura of credibility and non-coercion.

Again, not every confession constitutes an act of coercive ghostwriting. However, many custodial confessions have elements of hierarchical collaboration, defined by Lunsford and Ede as

carefully, and often rigidly, structured, driven by highly specific goals, and carried out by people playing clearly defined and delimited roles. These goals are most often designated by someone outside of and hierarchically superior to the immediate collaborative group or by a senior member or leader of the group. Because productivity and efficiency are of the essence in this mode of collaboration, the realities of multiple voices and shifting *authority* are seen as difficulties to be overcome or resolved. (*Singular Texts/Plural Authors* 133)

Strong institutional frameworks with clearly defined authority roles are conducive environments for hierarchical collaboration—the workplace, for example, or even the writing classroom. Coercive ghostwriting is the radicalized extreme of this construct, and reflect Lunsford and Ede’s definition: confessions are typically situated in a structured space and driven by an ultimate goal (confession), and involve clearly-defined participant roles in the institutionally authorized interrogator and the custodial suspect; the roles may be shaped by outside factors like Miranda rights, institutional authority, and pre-existing assumptions of guilt; conflicts in the “voices” of the interrogator and suspect may be approached as problems to overcome. The dangers of this kind of collaboration may then be further compounded by public confusion regarding false confession itself. If, in addition to this confusion, an individual in a position of power in relation to the confession such as a juror or judge has an internalized loyalty to singular views of authorship, then it is not difficult to imagine how coercive collaboration could go unacknowledged.

Reflecting on their decades of research into collaborative writing practices, Lunsford and Ede find a challenging “view from here,” commenting: “it has proven easier [...] to theorize that writing is an inherently social process than it has been to significantly alter disciplinary and cultural assumptions and practices about writing, authorship, and intellectual property” (“Collaboration” 187). Cultural assumptions about singular authorship may very well be embedded in the problem coercive ghostwriting is meant to help address: skewed public perceptions about false criminal confessions.

Conclusion: Raising Awareness of Coercive Ghostwriting

In 2004, police questioned Charles Erickson in connection with the murder of Kent Heitholt. Videos of the interrogation (featured on CBS’s *48 Hours Mystery*) show an investigator providing details of the crime to a confused Erickson, including identification of the murder weapon—a belt and not a bungee cord. In addition to admitting to the murder Erickson also implicated a classmate named Ryan Ferguson. Ferguson, maintaining his innocence, was convicted of second-degree murder and sentenced to a forty-year prison term. Erickson exchanged a guilty plea for his testimony and was sentenced to 25 years. “They’re both killers and robbers,” prosecutor Kevin Crane stated during closing arguments. “The difference is, Chuck couldn’t take it. It was eating at his soul. Even at the cost of his youth, his own freedom, he is doing the right thing” (qtd. in Agnew). The jury convicted despite a lack of any physical evidence. Ten years later a state appeals court overturned Ferguson’s conviction, and he walked free on November 12, 2013.

I highlight his case as both an example of coercive ghostwriting in action and an illustration of the challenges faced by individuals who participate in or are implicated by it. The problematic nature of Erickson’s confession is apparent. The investigator’s revelation of critical information was caught on video and the defense played footage of the interrogation in court (“Trial Transcript 3” 651; 656). This apparently did not create sufficient reasonable doubt; at least one jury member later indicated the confession was a significant point of persuasion, asking Brennan David of the *Columbia Daily Tribune*, “‘Why would’ co-defendant Chuck Erickson ‘admit to himself being there if it was not true?’”

Defense attorneys continually negotiate confession evidence in court, and the coercive ghostwriting label may serve as a workable, cohesive term to help clarify applicable scenarios for a jury. But courtroom education alone will not eliminate resistance to or confusion over the authorship of false confession. Recent research has taken steps to better understand juror perception of confession (Appleby, Hasel, and Kassin; Costanzo, Shaked-Schroer, and Vinson; Leo and Liu). In the arena of authorship studies, it would be useful to learn more about public understanding of and attitudes toward confessions: how do people perceive texts presented in the courtroom? Whom do they identify as the author? To what extent do they account for collaborative influences? It would be useful as well to address coercive ghostwriting and other kinds of coercive collaborations in

pedagogical spaces. Analysis and critique of the confession genre itself might encourage more critical reflection about collaborative practices and textual productions, and could hypothetically be incorporated into rhetorical and critical approaches to genre in the writing classroom. As Amy Devitt notes, pedagogically situating genres as rhetorical action may teach students to “act rhetorically” (146). Pedagogical attention to the genre of criminal confession might also raise greater awareness of the role played by collaborative interrogation practices—and, given the fact that every adult American citizen can potentially serve on a jury, such extensive pedagogical attention seems not only reasonable, but necessary.

To discount all co-authored confessions would be counter-productive and impossible, because all confessions—indeed, all texts—contain degrees of outside influence. But the vision of confession as autonomously constructed truth, like the vision of the autonomous author, appears to wield control in high-stakes spaces. Ideally, the coercive ghostwriting label can function as a marker of extreme co-authorship, reflective of the body of scholarship problematizing coercive interrogation procedures. Viewing confessional texts through the lens of coercive ghostwriting might aid in the protection of the innocent by explicitly encouraging triers of fact to look for the point at which collaboration crosses the line between influence and coercion.

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