

## **MR. BIG: EXPOSING UNDERCOVER INVESTIGATIONS IN CANADA**

by Kouri T. Keenan and Joan Brockman. Winnipeg, Manitoba: Fernwood Publishing, 2010. \$19.95, CAN., paper. ISBN: 978-1-5526-6376-9. Pages 1-133.

*Reviewed by Allison Wallis<sup>1</sup>*

This book presents a critical evaluation of the “Mr. Big” investigative technique, a tool used by the Royal Canadian Mounted Police (RCMP) for obtaining incriminating evidence from key suspects in murder investigations. Easily located in legal, sociological, and criminological research on the topic of wrongful conviction, the book would be most useful to those with an academic background or interest in the social sciences, particularly in the disciplines of criminology and criminal justice, law and legal studies, and sociology. Although the book is written plainly enough for engagement and understanding by a reader of any discipline, some of the legal and other specialized jargon might limit the reach of this critical evaluation of investigative practices in the Canadian criminal justice system.

Keenan and Brockman do three things: 1) they present the reader with a thorough account of the Mr. Big investigative technique, its prominence, and its general script; 2) they relate the tactics employed during Mr. Big operations to the rate and risk of erroneous convictions; and 3) they draw on a number of procedural, legal, ethical, and moral issues that arise through its use. The study draws on 81 documented Canadian Mr. Big operations and relevant journalistic reports as their supplements, analyzing transcripts, court documents, and journalistic reports through coding and content analysis.

The authors begin by providing an effective illustration of the Mr. Big investigative technique by detailing three notorious operations, with varying outcomes, in order to provide the reader with an understanding of this increasingly common police tactic. The Mr. Big investigative technique is a tool employed by the RCMP to elicit incriminating information from targets – suspects in criminal investigations. Generally, the technique follows a standard script, staged by undercover officers who

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purport to be figureheads in a criminal organization. The target is groomed by undercover operatives and is encouraged to become involved in the criminal organization. Once the target has become involved in the fabricated criminal organization, undercover operatives, posing as crime bosses, suggest that criminal charges or suspicions of guilt can be disappeared under the condition that she or he fully discloses to Mr. Big the details of her or his involvement in the crime.

Providing verbatim transcriptions of interactions between Mr. Big operatives and their targets, Keenan and Brockman identify important moral and ethical questions arising from the Mr. Big method of investigation, noting particularly the role played by deception to elicit incriminating information from a target. The Mr. Big investigative technique comes with a high risk of wrongful conviction, the authors argue: the targets of investigation are not only subject to threats of violence, intimidation, and manipulation, but also face incentives such as opportunities for financial gain, recognition and status distinction within an esteemed criminal organization, which may significantly increase the likelihood of obtaining a false confession. The Mr. Big tactic also opens up moral and ethical questions about Canada's criminal justice system when, for example, public funds are used to enable the elaborate schemes and lavish lifestyles of these fabricated criminal syndicates. The use of "derogatory statements about women and children" and the psychological impact of such investigative tactics are further cited by the authors as evidence of the "moral decay" of our criminal justice system (94).

Keenan and Brockman present a number of legal issues that arise through reliance on the Mr. Big investigative technique. First, there is the question of whether the technique infringes upon the Section 7 *Charter* rights of an individual to remain silent in the presence of an authority. Here, it is unclear whether the definition of "person in authority" is applicable to the Mr. Big undercover operatives who pose as criminal figureheads, and whether ignorance of an individual's authoritative status negates a target's *Charter* right to silence (65). Second, Canadian common law requires that in order to be considered admissible as evidence in court, out-of-court admissions of guilt to a person in authority must be voluntary, and therefore not induced. Again, definitions of "person in authority" become blurred when one is presenting him- or herself otherwise (68). Finally, the authors establish that in Canada hearsay – a statement made out-of-court – is bound by the requirement to establish necessity and reliability prior to its admission as evidence in court. In the context of self-incriminating information provided to Mr. Big, it is unclear whether such information should be governed according to

the hearsay rule when being admitted as evidence in court. This results in inconsistency in the use of evidence obtained through this investigative technique (75). As the authors note, “no legal safeguards or mechanisms are in place to regularly challenge the reliability of a suspect’s out-of-court statement in a Mr. Big operation” (76).

Setting aside questions of ethics and morality in relation to the use of deception and manipulation in obtaining an admission of guilt, we have an investigative technique – sometimes successful in obtaining rightful convictions, but likely to induce false confessions – and a legal system that is not equipped to safeguard against the risks it presents. Keenan and Brockman conclude that the procedural, legal, moral, and ethical issues that arise, as well as the undue risk of false confession presented as a result of the theatrics and dupery key to the Mr. Big investigative technique, require that its use be significantly curtailed or discontinued entirely (115). The authors present and analyze several recommendations to reform the laws applicable to the Mr. Big technique, which they suggest might mitigate its negative effects. They recommend that: 1) the RCMP should be required to obtain judicial authorization prior to commencing a Mr. Big operation; 2) self-incriminating statements made to Mr. Big operatives be considered ‘hearsay’ and subject to tests for necessity and reliability prior to admission as evidence in court; 3) self-incriminating evidence should be supported by evidence; 4) jurors should be informed of the potential for false admissions of guilt; 5) expert testimony or evidence should “assist the trier of fact”; 6) the *Charter* right to silence should be applicable to the Mr. Big technique; and 7) Mr. Big operatives should be considered “persons in authority,” which would require tests for the voluntariness of admissions of guilt (98). Taken together, these recommendations for legal reform might curtail the risk of wrongful conviction. However, as Keenan and Brockman acknowledge, constraining the Mr. Big investigative technique through legal reform, while curtailing the risk of erroneous convictions, might also restrict the Mr. Big investigative technique to the point of ineffectuality.

Keenan and Brockman offer a thorough critical analysis of the Mr. Big investigative technique, its relation to wrongful convictions, and the procedural, legal, moral, and ethical issues that arise from its use. Keenan and Brockman provide a number of constructive and potentially useable suggestions for ameliorating methods of interrogation used in the Canadian criminal justice system. Their call for change will further contribute to the continuing conversation about the accountability of Canadian law enforcement. While the authors have established the undue risk of wrongful conviction presented by this investigative technique and

have acknowledged its utility in securing rightful convictions *sometimes*, and given Keenan and Brockman's call for legal reform or an ultimate discontinuation of the investigative technique, the book might benefit from entertaining the question "If not Mr. Big, then what?"