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Shocking the Conscience: Public Responses to Police Use of the "Mr. Big" Technique

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ABSTRACT

The Mr. Big technique is an elaborate Canadian undercover approach used to elicit confessions from suspects. The process involves befriending the suspect, involving him or her in a (fake) criminal gang, and through enticement, bribes, promises of future employment, threats of abandonment and (often) violence, eliciting a confession to the crime of interest. At Canadian law, evidence procured through police tactics that "shock the conscience" of the community must be ruled inadmissible. Our research explored the extent to which Mr. Big tactics are perceived as shocking. A sample of 120 participants rated vignettes of seven real Mr. Big cases as to how shocking the procedures were. Results indicated that the degree to which participants viewed the police procedures as atypical, or involving a potential breach of suspect rights, were related to increased shock.

KEYWORDS

Mr. Big technique; undercover; interrogation; false confessions; jury decision-making

In 2002, a 25-year-old man named Robert LeVoir was reported as a missing person. Shortly after his disappearance, a man named Jay Love came forward to police indicating he had important information about the missing man. Love informed police that a friend of his, Dax Mack, had confessed to him that he had killed LeVoir. At the time of his disappearance, LeVoir had been living with Mack as a roommate. Police questioned Mack about the disappearance of LeVoir, but were unable to obtain a confession or inculpatory statements from him. With a lack of forensic evidence, police were unable to charge Mack for the crime (*R. v. Mack*, 2014). Time progressed, and the case became cold.

Roughly two years later, in January of 2004, Mack was working as a disc jockey at a nightclub where he met a new acquaintance named Ben.[1] Mack and his new acquaintance quickly became friends. Within a week of meeting Ben, Mack had been asked to help his new friend repossess a vehicle, and was paid $200 for his assistance. Shortly after, Mack was offered employment in a large criminal organization, which Ben was part of, headed by a man named Liam.[2]

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[1]It should be noted that the names of the operatives were not really Ben and Liam; however, these are the names used by the Supreme Court of Canada in *R. v. Mack* (2014) as per the publication ban.

[2]See above.

Over the subsequent months, Mack participated in approximately 30 crimes, and was paid $5,000 for his work. In mid-March of 2004, Mack was sent to meet with Liam and discuss moving up in the ranks of the criminal organization. Liam informed Mack that unless he was willing to discuss his involvement in the disappearance of his roommate, Robert LeVoir, he would not advance in the organization. Unbeknownst to Mack, both Ben and Liam were undercover police officers, working in an elaborate undercover operation, called a "Mr. Big" sting, to elicit a confession from Mack for the murder of Robert LeVoir. All of the criminal activities he participated in with the gang had been staged as part of the sting.

Less than a month later, Mack again met with his friend Ben. During this meeting, Mack confessed to Ben that he had shot LeVoir five times with a rifle, and burned his body. Mack brought Ben to the site of the victim's burned remains located in a fire pit on his father's property. A week later, Mack met with Liam, the leader of the criminal organization, for a second time. During this second meeting with Liam, Mack again confessed to killing LeVoir, unknowing that the whole meeting had been surreptitiously video recorded by the undercover officers. A search of the fire pit led to police finding gunshot casings matching a gun that had been seized from Mack's apartment, and bone and teeth fragments of LeVoir. A week later, Mack was arrested and charged with first-degree murder, and the confession he gave to the undercover officers was used against him as evidence during his trial (R. v. Mack, 2014).

The Mr. Big technique

When a crime is committed, and the police cannot gather enough evidence to convict a suspect, undercover police work is often employed (Moore, Copeland, & Schuller, 2009). In most jurisdictions there are substantial limits to what undercover police can do, but in Canada police have created the Mr. Big technique as a means to avoid traditional interrogative constraints (Keenan & Brockman, 2010; Milward, 2013; Puddister & Riddell, 2012; Smith, Stinson, & Patry, 2009, 2010). The Mr. Big technique was conceived in the early 1990s by the Royal Canadian Mounted Police (RCMP; Moore et al., 2009; RCMP, 2011), and is currently considered part of their Major Crime Homicide Undercover Techniques (MCHUT; *R. v. Balbar*, 2014). Although it is a Canadian-born technique, Mr. Big operations have been employed a handful of times in Australia (Goldsworthy, 2014; *Tofilau v. The Queen*, 2007) and New Zealand (Glazebrook, 2015; *R. v. Cameron*, 2007, 2009), and confession evidence from a Canadian Mr. Big sting has been used once in an American trial (*United States of America v. Burns*, 2001).

The Mr. Big technique involves undercover police officers posing as gang members who attempt to entice the suspect to become involved within the

"criminal" organization. Though each Mr. Big case is complex, and tailored to a specific suspect and crime, there is a general procedure that is followed. This procedure normally begins with surveillance of an identified suspect. Undercover officers follow the suspect for a period of time to discover information about character, habits, and social or financial situation. Targets of this technique may be socially isolated or in dire need of financial assistance (*R. v. Hart*, 2014). Therefore, an opportunity to gain financial security and social contacts can be highly appealing to the target. After the period of surveillance, undercover officers attempt to engage the suspect, often referred to as the "bump" (*R. v. Balbar*, 2014), through a hobby or venue the suspect frequents (Smith et al., 2009). Once initial contact has been established, the primary undercover officer works to build a close relationship with the suspect (Luther & Snook, 2016) in order to get the suspect to join the criminal gang. Over time the suspect is involved in sham criminal activities ranging from minor infractions (e.g., counting large sums of money or delivering packages; *R. v. Hart*, 2014; *R. v. Mack*, 2014) to highly violent crimes (e.g., staged beatings or threatening individuals; *Dix v. Canada*, 2002; *R. v. Bonisteel*, 2008).

Throughout the operation, the suspect is provided with entertainment, companionship, gifts, and paid employment (Smith et al., 2009, 2010). Suspects are normally exposed to expensive cars, all-expense-paid trips (e.g., hotel costs, flight costs, food costs), and large sums of money (e.g., *R. v. Hart*, 2014; *R. v. Mack*, 2014). The undercover officers work to gain the trust of suspects, and instill the importance of being loyal and honest to the organization. During this process, suspects are exposed to various scams and threats, which are used to highlight the benefits of joining and being honest with the gang. Suspects are also graphically told, and shown, the potential consequences of disobeying the organization, or falling out of favor (Moore et al., 2009).

As the operation progresses, the suspect is pressured to reveal involvement in past criminal acts in order to prove loyalty. The operation culminates when the suspect is introduced to the boss of the crime organization, Mr. Big, who interviews the suspect for a possible promotion (e.g., to earn higher-paying jobs), or to evaluate whether the suspect is even permitted to remain working for the organization. During this interview, pressures to be honest, to provide information, and subsequently to confess become intensified, and various inducements are offered. The purpose of this final interview is to elicit a confession. Inducements may take various forms such as (a) convincing the suspect that someone dying of cancer in prison is willing to confess to the specific crime in the suspect's place, (b) informing the suspect that they have corrupt police officers that are willing to destroy evidence, or (c) telling the suspect that the organization will help him or her to sue the police for harassment (*R. v. Boudreau*, 2009; *R. v. Hart*, 2014; *R. v. Mentuck*, 2000).

This meeting with the crime boss, Mr. Big, is videotaped, and if the suspect confesses, he or she is arrested and charged with the crime (Moore et al., 2009). In many Mr. Big cases, the confession obtained through the operation has been the only form of evidence that the legal system has against the suspect (Smith et al., 2009, 2010).

Perhaps not surprisingly, Mr. Big defendants often recant their confessions, maintaining that they only confessed due to the inducements they were provided or from feeling fearful, coerced, and threatened (e.g., *R. v. Allgood*, 2015; *R v. Bonisteel*, 2008; *R. v. Hart*, 2014). In addition, researchers and legal scholars have raised concerns over the Mr. Big technique eliciting false confessions from a suspect (Gudjonsson, 2003; Hunt & Rankin, 2014; Luther & Snook, 2016; Moore et al., 2009; Moore & Keenan, 2013; Poloz, 2015; Smith et al., 2009, 2010). False confessions can fall into three categories: coerced-compliant false confessions, coerced-internalized false confessions, and voluntary false confessions (Kassin et al., 2010). Although the number of false confessions resulting from Mr. Big investigations is unknown (Keenan & Brockman, 2010), there are at least two cases where false confessions have been a concern (see *R. v. Bates*, 2009; *R. v. Unger*, 1993). Case evaluations of custodial interrogations have demonstrated that a large proportion of wrongful convictions occur as a result of false confessions (Appleby et al., 2013; Kassin et al., 2012), and that people who have falsely confessed have spent years in jail for crimes they did not truly commit before becoming exonerated.

Legally, the Supreme Court of Canada (SCC) has determined that Mr. Big confessions do not fall under the *voluntariness confessions rule*, as a suspect in a Mr. Big case is not considered to be confessing to a person in authority (*R. v. Grandinetti*, 2005; *R. v. Hodgson*, 1998). Compared to the high standard of proof required for confessions obtained during custodial interrogations, where voluntariness is required to be proven beyond a reasonable doubt (*R. v. Oickle*, 2000; *R. v. Singh*, 2007), Mr. Big confessions do not have to meet this standard (*R. v. Grandinetti*, 2005; *R. v. Hart*, 2014). In determining admissibility, confessions procured through Mr. Big investigations have only been subjected to the *shock* analysis. The shock analysis is based primarily on whether the conduct of police, including the use of trickery, intimidation, or coercion, to elicit the confession, was egregious enough to shock the conscience of the community (*R. v. McIntyre*, 1994; *R. v. Oickle*, 2000; *Rothman v. The Queen*, 1981).

In *Rothman v. The Queen* (1981) the SCC stated that police officers posing as either a legal aid lawyer or a chaplain would shock the community. Beyond this, there is no documented legal specification of what police misconduct or trickery would shock the conscience of the community (Khoday, 2013). There is also no evidence to suggest the Courts have relied on any social science to support their decisions of community shock when

determining Mr. Big evidence admissibility. The baseline for community shock regarding the Mr. Big technique appears to stem from the *R. v. McIntyre* (1994) ruling, which has been cited in multiple Mr. Big cases (*R. v. Bonisteel*, 2008; *R. v. Hart*, 2012; *R. v. Osmar*, 2007). For example, when evaluating the police trickery and conduct in *R. v. Osmar* (2007), the Supreme Court cited the McIntyre (1994) ruling as a basis for community shock. McIntyre (1994) was again cited alongside Osmar (2007) in the *R. v. Bonisteel* (2008) ruling for determining whether the police conduct and elements of the operation would be considered to shock the community conscience.

Recently the Supreme Court of Canada recognized the high risk of eliciting false confessions associated with the Mr. Big technique. As a result, the SCC introduced a new two-pronged analysis for judicial evaluation of Mr. Big evidence in *R. v. Hart* (2014). Post-*Hart*, evidence from a Mr. Big sting (including the confession) is now presumed inadmissible, and the onus is on the Crown to demonstrate admissibility based on a balance of probabilities. Analysis of evidence admissibility now requires that (a) Mr. Big evidence must be shown to have probative value that outweighs its prejudicial impact, and (b) police conduct is subject to an abuse-of-process analysis.

In the *Hart* (2014) ruling, the Supreme Court of Canada acknowledged that elements of the Mr. Big technique, including the conduct of the undercover officers, could be considered an *abuse of process*. Under the abuse-of-process doctrine, there can be no conduct on behalf of the undercover police officers involved in the operation that would invoke an abuse of power overcoming the will of the accused. Overcoming the will of the suspect may include such actions as (a) threatening, or instilling fear in, the suspect, (b) offering high levels of monetary or other inducements, or (c) preying upon vulnerabilities of the suspect (such as age, mental health, or substance abuse issues; *R. v. Hart*, 2014). The new framework for evaluating *abuse of process* in police conduct includes the *shock* analysis, that is, the extent to which the Mr. Big technique, now specifically with a focus on police conduct throughout the operation, could "shock the conscience" of the community. Legal procedures that are deemed to shock the conscience of the public are seen as deliberately unfair to the accused, and may lead to inadmissible evidence. When shocking procedures are used to elicit inadmissible evidence, the procedures are not benefiting the justice system, the victims, or the defendants.

To our knowledge, no empirical research has sought to evaluate what the public would perceive as "shocking" police conduct, or whether the public would be "shocked" by Mr. Big stings. Theoretically, several different tactics employed during a Mr. Big operation could create high levels of shock due to the use of trickery, confrontation, deception, manipulation, and coercion of

the suspect. The purpose of the present research was to determine the extent to which the tactics used in actual Mr. Big cases are deemed by a subsample of the Canadian public to be shocking. Further, we explored the extent to which the use of such tactics were perceived to be more or less likely to elicit false confessions from innocent suspects.

Method

Participants

A total sample of $N = 120$ participants between the ages of 17 and 51 (age, $M = 23.2$, $SD = 6.2$) participated in this study. The participants consisted of 35 male participants, and 85 female participants. The vast majority (95%) of participants identified their ethnicity as White. Participants were recruited through various avenues. Student participants ($n = 102$) were recruited through an online bonus system within the Psychology Department at an Eastern Canadian university. Students were compensated with extra credit toward an available psychology class of their choosing. Community participants ($n = 18$) were recruited via advertisements posted on social media websites (e.g., Facebook), and were not provided with any compensation. Community participants were collected from cities in three Canadian Provinces: Halifax Regional Municipality (Nova Scotia), Moncton (New Brunswick), and Toronto (Ontario).

Measures

Case summary vignettes

Seven separate vignettes outlining different scenarios from real Mr. Big cases were created. The length of the vignettes ranged from 165 to 248 words. The vignettes included a short summary of the case and the main elements of the Mr. Big technique that were used, according to the transcript of each case (specifically, see: *Dix v. Canada*, 2002; *R v. Bonisteel*, 2008; *R v. Boudreau*, 2009; *R v. Grandinetti*, 2005; *R. v. Hart*, 2014; *R. v. Mentuck*, 2000; *United States of America v. Burns*, 2001). For example, one scenario was (based on *R. v. Hart*, 2014):

> H was convicted of two counts of first-degree murder for the drowning of his two three-year-old daughters. Originally H told RCMP that his daughters fell off the wharf and drowned. Later, he reported that he had a seizure and when he woke up he found his daughters in the lake. An undercover officer befriended H and formed a close relationship with him and his wife, and brought him into the criminal organization, which was actually deployed by RCMP. H viewed them as family. Prior to joining the organization, H was socially isolated and extremely poor. He began earning large sums of money by performing specific driving tasks,

which later led to his involvement in illegal activities such as forged passports and fake casino chips. Undercover officers enacted scenarios in front of H that suggested that violence was used within the organization to keep the members in line. In order to establish his ability within the organization, and to be promoted to higher paying jobs, H confessed to the murders of his two daughters to a member within the organization.

Dependent measures

Each vignette was accompanied by four corresponding questions to the vignette: (a) "Do you think the (suspect's) confession may have been false?" with a Yes/No response,[3] (b) "Do you think there was a breach of the (suspects) legal rights?" with a Yes/No response, (c) "How typical do you think it is for Canadian police to treat a suspect this way?" rated on a 7-point bipolar response scale ranging from 1 (Not at all typical) to 7 (Completely typical), and (d) "Are you shocked by the police treatment of (suspect) in this situation?" rated on a 7-point bipolar response scale from 1 (Not at all shocked) to 7 (Completely shocked).

Demographic questions

A basic demographic survey was created to determine the sex and age of all participants, as well as their race or ethnic background.

Procedure

An online survey methodology was employed for this study through Qualtrics online survey software. The study spanned a winter and spring semester, and took approximately 30 min to complete. After providing informed consent (approx. 2–3 min) participants were presented with the seven vignettes in a randomized order (approx. 25 min). Participants read through the vignettes and responded to each scenario. Participants also completed the demographics questions (approx. 2–3 min), and were then provided a feedback form.

Results

Participant ratings of their shock at the police's behavior exhibited considerable variance across the seven Mr. Big vignettes (see Table 1): all of the mean scores on a scale of 1–7 were around mid-scale, ranging from 3.31 to 4.07, with standard deviations ranging from 1.65 to 2.01. A similar pattern was true for ratings of the typicality of the police behavior across the seven Mr.

[3]It should be noted that in the Burns & Rafay case (*USA v. Burns*, 2001) there were two defendants; the "false confession" question was asked once per defendant. This was not the case for the other dependent measures, which were asked once per case.

Table 1. Linear regression analyses of the three measured variables (typicality, breach of rights, false confession) predicting shock in the seven scenarios.

Scenario	*Beta*	*t*	R^2
1. Mentuck			.46
Typicality	−.63	−9.03***	
Breach of Rights	.08	1.04	
False Confession	.16	2.13*	
2. Boudreau		.	.21
Typicality	−.28	3.26***	
Breach of Rights	.25	2.71***	
False Confession	.07	.74	
3. Grandinetti			.34
Typicality	−.48	−5.98***	
Breach of Rights	.20	2.41*	
False Confession	.02	.24	
4. Burns [B] & Rafay [R]			.19
Typicality	−.33	−3.84***	
Breach of Rights	.19*	2.17*	
False Confession	.02 [B] .09 [R]	.23 [B] .97 [R]	
5. Dix		.	.34
Typicality	−.53	−6.89***	
Breach of Rights	.03	.37	
False Confession	.18	2.24*	
6. Hart			.26
Typicality	−.41	−5.10***	
Breach of Rights	.24	2.92**	
False Confession	.02	.26	
7. Bonisteel			.33
Typicality	−.52	−6.64***	
Breach of Rights	.19	2.28*	
False Confession	.07	.85	

Note. $N = 10$. *$p < .05$, **$p < .01$, ***$p < .001$.

Big vignettes, with means ranging from 3.43 to 3.92 and standard deviations of 1.74 to 1.84. Across the seven Mr. Big vignettes, judgments that the suspects' rights may have been breached, and that their confessions may have been false, both measured on a binary yes–no basis, ranged from 58% to 75%, and 35% to 84%, respectively.

For each of the seven vignettes, ratings of participant shock at the police treatment were regressed onto three of the dependent measures: (a) participant ratings of the typicality of the police behavior, (b) participant perceptions of whether there has been a breach of the suspect's rights, and (c) whether participants believed the suspect's confession may have been false (see Table 1). Simple linear regression accounted from around 20% to over 45% of the variance in ratings of shock. Though there was some variance across the vignettes, the general pattern of findings shows that low ratings of the typicality of the police behavior were related strongly to shock across all seven vignettes. Similarly, beliefs that the suspects' rights had been breached were generally related to shock (five vignettes), and beliefs that the suspect may have confessed falsely were usually unrelated to shock (except for two vignettes).

Discussion

Summary and implications

In the Canadian legal system, evidence can be excluded if the trial judge determines that a particular police action, approach, or procedure rose to a level of trickery that would "shock the community conscience" and therefore be deemed an abuse of process (*R v. Hart*, 2014; *Rothman v. The Queen*, 1981). This study is the first to explore the role of laypeople's beliefs about police procedure in the extent to which they find police behavior shocking, and in particular in the context of the Mr. Big technique. Despite innumerable references to shocking the conscience of the Canadian judiciary, little evidence exists that empirically examines what this means to the community. Social science evidence can be brought to bear on this legal question. Although the Court may believe that processes and procedures allowed are not shocking, and it may seek to base its decisions about community shock on prior legal precedent, it is possible that empirical assessments would be of value.

In our work, shock was consistently, and strongly, related to perceptions of the typicality of the police behavior—the less typical, the more shocking. Importantly, these findings were based on techniques currently used (or at least used in the recent past) in actual Mr. Big operations. Similarly, we found that the more participants perceived police procedures to violate suspects rights, the more shocking the procedures were viewed.

What about Mr. Big?

Legal and psychological scholars have assessed the *Hart* framework for Mr. Big evidence that was provided by the SCC in 2014 (Dufraimont, 2014, 2015; Hunt & Rankin, 2014; Kaiser, 2014; Poloz, 2015; Tannovich, 2014). In recent reviews of the decision, some legal scholars have argued that by creating a new admissibility rule for Mr. Big evidence, the court has over-complicated the rule of evidence. Instead of providing an entirely new legal framework, it has been suggested that the Supreme Court should have altered the preexisting confessions rule, to exclude the "person in authority" component (Hunt & Rankin, 2014; Kaiser, 2014). Luther and Snook (2016) have forewarned that this technique may still be eliciting false confessions due to its powerful social influence on the suspect.

Arguably, there are significant risks of false confessions in Mr. Big-type undercover investigations (see, e.g., Gudjonsson, 2003; Luther & Snook, 2016; Smith et al., 2009, 2010). Our research shows that the general public is concerned with the specific tactics used within Mr. Big operations. Our work suggests that, regardless of the admissibility decision made by the presiding justice, to the extent that police use techniques that are considered atypical or have the appearance of violating a suspect's rights, the public will find those procedures to be shocking. Triers of fact should consider these

issues when arriving at their judgments about the admissibility of Mr. Big evidence.

Is shocking the conscience common sense?

It is of course necessary for the courts to make decisions regarding the admissibility of evidence. However, the legal system makes its decisions based on case law and precedent, and does not necessarily rely on empirical data to decide on the admissibility of evidence (however, most forensic evidence is an obvious exception to this generalization). For example, during voir dire, courts regularly decide on the need to allow experts to testify. In the Canadian system, especially compared to the U.S. system, expert testimony on eyewitness evidence is rare (e.g., Yarmey, 2003); knowledge about the reliability of eyewitnesses is seen to be common sense, and jurors or judges will know how to accurately assess eyewitness accuracy. This belief is broadly accepted, despite the fact that over 30 years of empirical data suggest that the general public (and the judiciary) is very bad at understanding when and how eyewitnesses make errors, or understanding what factors result in mistaken identifications (e.g., Wells et al., 2000).

Limitations and directions for future research

Our study is novel in that we have explored how shock may be related to Mr. Big cases in one sample of Canadian respondents. However, it is clear that this sample is not necessarily representative of the Canadian general public, as this sample was mainly composed of students from a mid-sized Eastern Canadian university. Furthermore, the student sample was from the psychology department, and it is possible students may have heard about the Mr. Big technique through a psychology course. Thus, the present results should be interpreted with some caution; however, it is arguable that the students may have had decreased levels of shock if they had previous knowledge of the technique. It would be valuable, not only to explore a more stratified and community representative sample, but also to explore the differences in terms of perceived shock amongst varied groups. For example, do laypeople's perceptions differ from police, judges, or other legal professionals? Does age, ethnicity, or personality have an impact? Undoubtedly there would be differences, and it would be useful to understand how these manifest in order to understand their impact on Canadian jurisprudence.

It is also worth noting that *R v. Hart* (2014) changed the legal landscape—the Supreme Court of Canada has drawn lines around when confessions elicited from the Mr. Big technique can be admissible. Although the shock analysis first described by the SCC in *Rothman v. The Queen* (1981), and later applied to Mr. Big cases beginning with *R. v. McIntyre* (1994), is no longer a stand-alone admissibility analysis, it is still relevant under the abuse-of-process doctrine (*R. v. Hart*, 2014).

It is plausible that the public may be more shocked by past trickery used in the Mr. Big technique than what is now allowed (or more accurately, what the police may now choose to employ). However, a more formal assessment of this will have to wait until further post-*Hart* cases come to the fore. Perhaps more immediately, it would be valuable to explore in greater detail how specific strategies employed during Mr. Big stings (and indeed, other police strategies employed elsewhere) result in shock. It is reasonable to suspect that some techniques would be perceived as more shocking than others, and the courts should take these matters into consideration.

Conclusion

The results of our research provide a preliminary glimpse into how procedures used during Mr. Big-style investigations can be viewed as shocking by the general public. Procedures that "shock the conscience" should be ruled inadmissible. Therefore, the judiciary would be well advised to heed the results of empirical work about community shock in rendering their judgements about admissibility of evidence obtained through Mr. Big investigations. The present study represents the first step toward a comprehensive empirical understanding of community shock about police procedures in Mr. Big investigations.

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