Admissibility of young person's confession.
Traditionally unlawful inducements are not always strong enough to exclude.

R. v. S.E.V. (2009)[1]

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I. The Pendulum Swings

The sec. 24(2) *Charter* pendulum has not always swung fairly. The pendulum was unbalanced for years, in favour of the defense. Growing evidence shows the pendulum swing is balancing out.

II. Interrogation Reality

Among the countless interrogation challenges facing investigators, the following are three facts of reality:

1. Interrogation strategies change during interrogation, sometimes from one extreme to another.
2. Release is a prominent factor that affects a suspect's decision whether to confess or not.
3. A series of inducements do occur during most interrogations. The key is the strength of the inducment and the relationship between that strength and the decision to confess.

These issues all occurred in *R. v. S.E.V. (2009)*.

In March, 2009, The Alberta Court of Appeal upheld a conviction and the admission of a young offender's statement, making the following rulings:

1. Changing interrogation strategy from one extreme to another does not require a second caution. There is no case law that mandates a second caution when interrogation strategy changes from "coaxing to confrontational." One caution is sufficient regardless of what interrogation strategy is used and when it is used.
2. Promising release is not always a strong enough inducement to exclude a statement. In reality, the issue of release is a prominent factor in the decision to confess. In this case, the young person asked if the officer promised release. The officer promised and explained why. The trial judge acknowledged that the issue of immediate release was the strongest inducement made and had the closest proximity to the statements but the inducement was not strong enough to make the statement involuntary because: (i) the young person had been told that "he would be charged and would be going home" but was not told that if he did not confess, he would not go home. (ii) telling the young person he would be charged and would be going home is a minor inducement only, not strong enough to

[1] ABCA 108 (CanLII)

exclude *in this context/case.* (iii) telling a young person that if he does not confess, he won't go home, constitutes a quid pro quo which will exclude a confession.

3. Upon analyzing the context – the totality of the circumstances – the trial judge found that "while there were certainly elements present of factors that have traditionally led to the exclusion of statements, the overall conclusion was that these elements did not cause the [accused] to give the inculpatory statement." The reason was that the accused made "a conscious choice to give the statement in response to two strategies: (i) minimization – "you're not a bad person," and (ii) confession is good – "you'll feel better."

III. Conclusions

1. Never tell a suspect that he will **not** be released unless he confesses.

2. If a justified decision has been made to release the accused, tell him this.

3. Plan, before the questioning starts, to use more than one interrogation strategy.

4. Change the strategy to match the circumstances.

5. The primary factor that governs voluntariness is what interrogation strategy actually prompted the decision to confess.

6. Two interrogation strategies that are effective and lawful are:

    a. convincing the suspect that confessing will alleviate cognitive dissonance, the unpleasant internal conflict caused by the guilt of acting not in accordance with one's personal beliefs.
    b. minimization, including convincing the suspect that his character is not deficient despite the commission of the crime.

7. Inducements are not created equal. Some are strong, some are weak. The strength depends on the context – the big picture.

8. A strong inducement is not always a strong inducement. The same type of inducement may be minor in one case but considered major in another.