The Proper Invocation of One's Miranda Rights

The case of *Miranda v. Arizona* (1966) very clearly demonstrates the possibility of convicting a criminal suspect with witness testimony and other evidence, and more importantly, without a confession. Thus, I believe it is decidedly imbalanced that the Supreme Court remains "breathtakingly expansive" on judicial considerations of waivers of Miranda rights, yet "extremely stingy" regarding the invocation of said rights (Ainsworth 18) as spoken or written components of a confession are not absolutely necessary to properly incriminate an arrestee. While completely unmodified imperative statements like "Give me a lawyer," or "I want a lawyer," certainly do qualify as an invocation of one's Miranda rights as demonstrated by the Supreme Court (Ainsworth 11) and because those statements are direct speech acts that fulfill all of the felicity conditions and Gricean conversational maxims, I also argue for softened demands to be included as a valid form of invocation as we must take some human factors into account—the mental wellbeing and legal knowledge of an arrestee.

Considering the fact that those under arrest are faced with "extreme power asymmetry" and "physically restrained… [and] cannot choose when to eat or sleep or smoke or use the bathroom (Ainsworth 7)," we should take into account the mental condition of the arrestees as this type of stress is likely to cause a great deal of unnecessary anxiety and trepidation and may result in their softening language as a byproduct of their fear. In addition, most people view police as figures of authority and therefore feel inclined to make themselves smaller due to the perceived power imbalance, which may also lead to cushioning

their demands with words like “think,” “seems,” and more. Despite the fact that we see the Miranda rights read throughout media, especially in television and film, those portrayals are often incorrect or incomplete, and we are not taught and never will be taught the exact, scripted words to say in order to properly invoke our rights which means that the common population likely has a lack of knowledge on this subject, which furthers my claim that softened demands should still be considered a valid invocation of one’s Miranda rights since they may be hesitant on what they should say. For example, softer statements like, “I think I will talk to a lawyer,” “It seems like I should speak to my lawyer,” or “I should call my lawyer,” should be valid invocations of one’s Miranda rights. Although these statements lean on the borderline of the maxim of manner, they do not violate the maxim of relevance, quality, and quantity; the fact that these statements do not explicitly violate any Gricean conversational maxims or felicity conditions also strengthen its validity as a proper statement of invocation.

Imagine this: an 18-year-old has just been falsely arrested for the first time in his life and has probably never been in a police station before, yet, the police officers question him relentlessly and keep him confined within the small interrogation room for hours, denying him of “normal human activities (Ainsworth 7).” He trembles in his seat and utters: “I think I would like to talk to a lawyer.” He has not invoked his right to counsel, but he does not know that. First and foremost, we can assume that the teenager is probably terrified at being restrained against his will, and his mind is probably spinning or just completely blank. He hesitates, likely because he is scared that if he says something wrong, he will offend an officer or, worse, be falsely incriminated. Second, we can reasonably assume that he has probably never been taught his Miranda rights in school, and where else would he learn? It is important for us to consider the educational context of the general population and power

imbalance in the interrogation room when determining the validity of one's invocation of his or her Miranda rights.

In the examples given in Ainsworth 2008, the softened language should not be detrimental to the validity of the invocation. In *Clark v. Murphy* (2003), the defendant stated, "I think I would like to talk to a lawyer," which does not explicitly violate any of the felicity conditions even though it uses a cushioned statement, making it a valid speech act that is sufficient to bring about the Constitutional protections intended. In *Oliver v. Runnels* (2006), the defendant stated, "It seems like what I need is a lawyer… I do want a lawyer." The fact that the second part of his statement firmly declares his desire for legal counsel should be enough to satisfy the felicity conditions and render this a valid speech act that properly invokes his Miranda rights (Ainsworth 9). While the requirements for a valid invocation of one's rights are much stricter these years, the defendant in the 1994 case of *Davis v. United States* stated "Maybe I should talk to a lawyer," and then followed later with "I think I want a lawyer before I say anything else," with the former considered an invalid invocation and the latter considered valid (Ainsworth 5). The first statement is mere pondering, which does not satisfy the felicity condition that the statement has to be able to be executed; however, the second statement does not explicitly violate any of the felicity conditions despite the word "think" causing some hesitation—though, again, considerations of human factors should be plausible components in allowing a speech act to bring about proper Constitutional protections. Considering the fact that the "think" successfully invoked the defendant's Miranda rights in 1994, we should continue that leniency with regard to softened language, especially since conviction rates remained unchanged even with the enforcement of the Miranda rights.

On the other hand, I agree with the Supreme Court that interrogative syntactic forms should not be considered a valid invocation of one's Miranda rights. When the police read

out your rights to counsel, they've already answered your question and there is no purpose in asking questions that have already been answered. While many people will try to be polite with words and phrases like "May," "Do you mind," and "Could," there are other ways to be polite without using an interrogative inquiry. By asking a question, in a sense, you also hand your authority and right to counsel to the police as you are asking for their permission, violating the felicity condition that the speaker has to have the power to perform a speech act. Statements such as, "I wish to speak to a lawyer," or "I would like to speak to my lawyer," can also be considered polite, so phrasing an invocation as a question due to politeness should be invalid as there are other statement alternatives that can be used. In addition, combining a refusal to answer a question with a condition that they have a lawyer should not be considered a valid invocation of one's Miranda rights because they are more often unclear, which also violates the felicity condition and maxim of manner that states that the speech act has to be unambiguous, and they are speaking on the assumption that their default presumption is that they have access to a lawyer; however, to the Supreme Court, the waiver of Miranda rights is default presumption.

Once again, based on the cases in Ainsworth 2008, we can see that many examples of invalid attempted invocations actually do not satisfy the felicity conditions for speech acts. In *Dormire v. Wilkinson* (2001), *State v. Nixon* (1996), *State v. Payne* (2001), and *Taylor v. Carey* (2007), the defendants all asked for legal counsel through interrogative statements (Ainsworth 8), which do not actually cause anything to be executed on their order. Without an imperative being uttered, there is technically no speech act to execute; thus, the questions of these defendants are not sufficient to bring about the intended Constitutional protection. In the case of *Midkiff v. Commonwealth* (1995), the defendant stated, "I'll be honest with you. I'm scared to say anything without talking to a lawyer (Ainsworth 10)." These statements do not actually satisfy the felicity condition of being able to be executed and being clear and

unambiguous. The defendant is merely stating a constative that he is scared to speak without legal counsel; he does not actually request for a lawyer; therefore, these statements are not sufficient to invoke his Miranda rights. In *Baker v. State* (2005), the defendant noted that "I don't feel like I can talk with you without an attorney sitting right here to give me some legal advice (Ainsworth 10)," which again, does not satisfy the felicity condition of execution and unambiguity—the defendant simply states a constative about his feeling and does not request for legal counsel, meaning that his invocation of his Miranda rights is invalid. In these instances where statements and questions explicitly violate felicity conditions, we cannot consider them a sufficient speech act that can result in the invocation of Constitutional protection.

With how often ineffective invocations occur, a reasonable method to reduce that number could simply be to spend one class in high school to teach students about their Miranda rights and explicitly tell them the exact, scripted words to say to properly invoke their Constitutional rights to protection. Although not everyone will end up getting questioned in a police station, it is still crucial information for self-protection and a precaution for the unexpected. In addition, governments can require television and film portrayals of the reading of the Miranda rights and invocation of the Miranda rights to be more accurate and complete as most people have access to media and often learn through watching others. This would help the general population have a better grasp on what to say if they were ever arrested one day.

Although looking at and understanding language objectively sounds fair and unprejudiced, we must take human emotion and knowledge into consideration when evaluating cases regarding proper invocation of one's Miranda rights while still maintaining certain regulations that preserve the integrity and purpose of those Constitutional rights and allow for police to continue their enforcement of justice. Instead of listening for statements of

invocation that explicitly adhere to the felicity conditions and Gricean conversational maxims, we should be listening for statements that explicitly violate those rules in order to give defendants a chance at their Constitutional rights under the pressure of being arrested. By granting more leniency with softer language and cushioned statements, the ideal is that one's Miranda rights, despite being "perilously easy to waive," will no longer be "nearly impossible to invoke (Ainsworth 19)."