

JESSE JAY MONTEJO, PETITIONER v. LOUISIANA

No. 07-1529

SUPREME COURT OF THE UNITED STATES

129 S. Ct. 2079; 173 L. Ed. 2d 955; 2009 U.S. LEXIS 3973; 21 Fla. L. Weekly Fed. S
863

January 13, 2009, Argued
May 26, 2009, Decided

OPINION

JUSTICE SCALIA delivered the opinion of the Court.

We consider in this case the scope and continued viability of the rule announced by this Court in *Michigan v. Jackson*, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (1986), forbidding police to initiate interrogation of a criminal defendant once he has requested counsel at an arraignment or similar proceeding.

I

Petitioner Jesse Montejo was arrested on September 6, 2002, in connection with the robbery and murder of Lewis Ferrari, who had been found dead in his own home one day earlier. Suspicion quickly focused on Jerry Moore, a disgruntled former employee of Ferrari's dry cleaning business. Police sought to question Montejo, who was a known associate of Moore.

Montejo waived his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and was interrogated at the sheriff's office by police detectives through the late afternoon and evening of September 6 and the early morning of September 7. During the interrogation, Montejo repeatedly changed his account of the crime, at first claiming that he had only driven Moore to the victim's home, and ultimately admitting that he had shot and killed Ferrari in the course of a botched burglary. These police interrogations were videotaped.

On September 10, Montejo was brought before a judge for what is known in Louisiana as a "72-hour hearing" -- a preliminary hearing required under state law.¹ Although the proceedings were not transcribed, the minute record indicates what transpired: "The defendant being charged with First Degree Murder, Court ordered N[o] Bond set in this matter. Further, Court ordered the

Office of Indigent Defender be appointed to represent the defendant." App. to Pet. for Cert. 63a.

1 [omitted]

Later that same day, two police detectives visited Montejo back at the prison and requested that he accompany them on an excursion to locate the murder weapon (which Montejo had earlier indicated he had thrown into a lake). After some back-and-forth, the substance of which remains in dispute, Montejo was again read his *Miranda* rights and agreed to go along; during the excursion, he wrote an inculpatory letter of apology to the victim's widow. Only upon their return did Montejo finally meet his court-appointed attorney, who was quite upset that the detectives had interrogated his client in his absence.

At trial, the letter of apology was admitted over defense objection. The jury convicted Montejo of first-degree [**961] murder, and he was sentenced to death.

The Louisiana Supreme Court affirmed the conviction and sentence. 06-1807 (1/16/08), 974 So. 2d 1238 (2008). As relevant here, the court rejected Montejo's [**2083] argument that under the rule of *Jackson*, *supra*, the letter should have been suppressed. 974 So. 2d, at 1261. *Jackson* held that "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid." 475 U.S., at 636, 106 S. Ct. 1404, 89 L. Ed. 2d 631.

We granted certiorari. 554 U.S. ___, 129 S. Ct. 30, 171 L. Ed. 2d 931 (2008).

II

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Under the rule adopted by the Louisiana Supreme Court, a criminal defendant must request counsel, or otherwise "assert" his *Sixth Amendment* right at the preliminary hearing, before the *Jackson* protections are triggered. If he does so, the police may not initiate further interrogation in the absence of counsel. But if the court on its own appoints counsel, with the defendant taking no affirmative action to invoke his right to counsel, then police are free to initiate further interrogations provided that they first obtain an otherwise valid waiver by the defendant of his right to have counsel present.

This rule would apply well enough in States that require the indigent defendant formally to request counsel before any appointment is made, which usually occurs after the court has informed him that he will receive counsel if he asks for it. That is how the system works in Michigan, for example, Mich. Ct. Rule 6.005(A) (2009), whose scheme produced the factual background for this Court's decision in *Michigan v. Jackson*. Jackson, like all other represented indigent defendants in the State, had requested counsel in accordance with the applicable state law.

But many States follow other practices. In some two dozen, the appointment of counsel is automatic upon a finding of indigency, e.g., *Kan. Stat. Ann. § 22-4503(c)* (2007); and in a number of others, appointment can be made either upon the defendant's request or *sua sponte* by the court, e.g., *Del. Code Ann., Tit. 29, § 4602(a)* (2003). See App. to Brief for National Legal Aid & Defender Assn. et al. as *Amici Curiae* 1a-21a. Nothing in our *Jackson* opinion indicates whether we were then aware that not all States require that a defendant affirmatively request counsel before one is appointed; and of course we had no occasion there to decide [*2084] how the rule we announced would apply to these other States.

The Louisiana Supreme Court's answer to that unresolved question is troublesome. The central distinction it draws -- between defendants who "assert" their right to counsel and those who do not -- is exceedingly hazy when applied to States that appoint counsel absent request from the defendant. How to categorize a defendant who merely asks, prior to appointment, whether he will be appointed counsel? Or who inquires, after the fact, whether he has been? What treatment for one who thanks the court after the appointment is made? And if the court asks a defendant whether he would object to appointment, will a quick shake of his head count as an assertion of his right?

To the extent that the Louisiana Supreme Court's rule also permits a defendant to trigger *Jackson* through the "acceptance" of counsel, that notion is even more mysterious: How does one affirmatively accept counsel appointed by court order? An indigent defendant has no

right to choose his counsel, *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006), so it is hard to imagine what his "acceptance" would look like, beyond the passive silence that Montejo exhibited.

In practice, judicial application of the Louisiana rule in States that do not require a defendant to make a request for counsel could take either of two paths. Courts might ask on a case-by-case basis whether a defendant has somehow invoked his right to counsel, looking to his conduct at the preliminary hearing -- his statements and gestures -- and the totality of the circumstances. Or, courts might simply determine as a categorical [***12] matter that defendants in these States -- over half of those in the Union -- simply have no opportunity to assert their right to counsel at the hearing and are therefore out of luck.

Neither approach is desirable. The former would be particularly impractical in light of the fact that, as *amici* describe, preliminary hearings are often rushed, and are frequently not recorded or transcribed. Brief for National Legal Aid & Defender Assn. et al. 25-30. The sheer volume of indigent defendants, see *id.*, at 29, would render the monitoring of each particular defendant's reaction to the appointment of counsel almost impossible. And sometimes the defendant is not even present. E.g., *La. Code Crim. Proc. Ann., Art. 230.1(A)* (West Supp. 2009) (allowing court to appoint counsel if defendant is "unable to appear"). Police who did not attend the hearing would have no way to know whether they could approach a particular defendant; and for a court to adjudicate that question *ex post* would be a fact-intensive and burdensome task, even if monitoring were possible and transcription available. Because "clarity of . . . command" and "certainty of . . . application" are crucial in rules that govern law enforcement, *Minnick v. Mississippi*, 498 U.S. 146, 151, 111 S. Ct. 486, 112 L. Ed. 2d 489 (1990), this would be an unfortunate way to proceed. See also *Moran v. Burbine*, 475 U.S. 412, 425-426, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986).

The second possible course fares no better, for it would achieve clarity and certainty only at the expense of introducing arbitrary distinctions: Defendants in States that automatically appoint counsel would have no opportunity to invoke their rights and trigger *Jackson*, while those in other States, effectively instructed by the court to request counsel, would be lucky winners. That sort of hollow formalism is out of place in a doctrine that purports to serve as a practical safeguard for defendants' rights.

[*2085] III

But if the Louisiana Supreme Court's application of *Jackson* is unsound as a practical matter, then Montejo's

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solution is untenable as a theoretical and doctrinal matter. Under his approach, once a defendant is *represented* by counsel, police may not initiate any further interrogation. Such a rule would be entirely untethered from the original rationale of *Jackson*.

A

It is worth emphasizing first what is *not* in dispute or at stake here. Under our precedents, once the adversary judicial process has been initiated, the *Sixth Amendment* guarantees a defendant the right to have counsel present at all "critical" stages of the criminal proceedings. *United States v. Wade*, 388 U.S. 218, 227-228, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967); *Powell v. Alabama*, 287 U.S. 45, 57, 53 S. Ct. 55, 77 L. Ed. 158 (1932). Interrogation by the State is such a stage. *Massiah v. United States*, 377 U.S. 201, 204-205, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964); see also *United States v. Henry*, 447 U.S. 264, 274, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980).

Our precedents also place beyond doubt that the *Sixth Amendment* right to counsel may be waived by a defendant, so long as relinquishment of the right is voluntary, knowing, and intelligent. *Patterson v. Illinois*, 487 U.S. 285, 292, n. 4, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (1988); *Brewer v. Williams*, 430 U.S. 387, 404, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977); *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). **The defendant may waive the right whether or not he is already represented by counsel; the decision to waive need not itself be counseled.** *Michigan v. Harvey*, 494 U.S. 344, 352-353, 110 S. Ct. 1176, 108 L. Ed. 2d 293 (1990). And when a defendant is read his *Miranda* rights (which include the right to have counsel present during interrogation) and agrees to waive those rights, that typically does the trick, even though the *Miranda* rights purportedly have their source in the *Fifth Amendment*:

"As a general matter . . . an accused who is admonished with the warnings prescribed by this Court in *Miranda* . . . has been sufficiently apprised of the nature of his *Sixth Amendment* rights, and of the consequences of abandoning those rights, so that his waiver on this basis will be considered a knowing and intelligent one." *Patterson*, *supra*, at 296, 108 S. Ct. 2389, 101 L. Ed. 2d 261.

The only question raised by this case, and the only one addressed by the *Jackson* rule, is whether courts must presume that such a waiver is invalid under certain circumstances. 475 U.S., at 630, 633,

106 S. Ct. 1135, 89 L. Ed. 2d 410. We created such a presumption in *Jackson* by analogy to a similar prophylactic rule established to protect the *Fifth Amendment* based *Miranda* right to have counsel present at any custodial interrogation. *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), decided that once "an accused has invoked his right to have counsel present during custodial interrogation . . . [he] is not subject to further interrogation by the authorities until counsel has been made available," unless he initiates the contact. *Id.*, at 484-485, 101 S. Ct. 1880, 68 L. Ed. 2d 378.

The *Edwards* rule is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights," *Harvey*, *supra*, at 350, 110 S. Ct. 1176, 108 L. Ed. 2d 293. It does this by presuming his postassertion statements to be involuntary, "even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards." *McNeil v. Wisconsin*, 501 U.S. 171, 177, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991). This prophylactic rule thus "protect[s] a [*2086] suspect's voluntary choice not to speak outside his lawyer's presence." *Texas v. Cobb*, 532 U.S. 162, 175, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001) (KENNEDY, J., concurring).

Jackson represented a "wholesale importation of the *Edwards* rule into the *Sixth Amendment*." *Cobb*, *supra*, at 175, 121 S. Ct. 1335, 149 L. Ed. 2d 321. The *Jackson* Court decided that a request for counsel at an arraignment should be treated as an invocation of the *Sixth Amendment* right to counsel "at every critical stage of the prosecution," 475 U.S., at 633, 106 S. Ct. 1135, 89 L. Ed. 2d 410, despite doubt that defendants "actually inten[d] their request for counsel to encompass representation during any further questioning," *id.*, at 632-633, 106 S. Ct. 1135, 89 L. Ed. 2d 410, because doubts must be "resolved in favor of protecting the constitutional claim," *id.*, at 633, 106 S. Ct. 1135, 89 L. Ed. 2d 410. Citing *Edwards*, the Court held that any subsequent waiver would thus be "insufficient to justify police-initiated interrogation." 475 U.S., at 635, 106 S. Ct. 1135, 89 L. Ed. 2d 410. In other words, we presume such waivers involuntary "based on the supposition that suspects [***17] who assert their right to counsel are unlikely to waive that right voluntarily" in subsequent interactions with police. *Harvey*, *supra*, at 350, 110 S. Ct. 1176, 108 L. Ed. 2d 293.

B

With this understanding of what *Jackson* stands for and whence it came, it should be clear that *Montejo's* interpretation of that decision -- that no *represented* defendant can ever be approached by the State and asked to consent to interrogation -- is off the mark. When a court

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appoints counsel for an indigent defendant in the absence of any request on his part, there is no basis for a presumption that any subsequent waiver of the right to counsel will be involuntary. There is no "initial election" to exercise the right, *Patterson*, 487 U.S., at 291, 108 S. Ct. 2389, 101 L. Ed. 2d 261, that must be preserved through a prophylactic rule against later waivers. No reason exists to assume that a defendant like [*2087] Montejo, who has done *nothing at all* to express his intentions with respect to his *Sixth Amendment* rights, would not be perfectly amenable to speaking with the police without having counsel present. And no reason exists to prohibit the police from inquiring. *Edwards* and *Jackson* are meant to prevent police from badgering defendants into changing their minds about their rights, but a defendant who never asked for counsel has not yet made up his mind in the first instance.

The dissent's argument to the contrary rests on a flawed *a fortiori*: "If a defendant is entitled to protection from police-initiated interrogation under the *Sixth Amendment* when he merely *requests* a lawyer, he is even more obviously entitled to such protection when he has *secured* a lawyer." *Post*, at 3. The question in *Jackson*, however, was not whether respondents were entitled to counsel (they unquestionably were), but "whether respondents validly waived their right to counsel," 475 U.S., at 630, 106 S. Ct. 1404, 89 L. Ed. 2d 631; and even if it is reasonable to presume from a defendant's *request* for counsel that any subsequent waiver of the right was coerced, no such presumption can seriously be entertained when a lawyer was merely "secured" on the defendant's behalf, by the State itself, as a matter of course. Of course, reading the dissent's analysis, one would have no idea that Montejo executed any waiver at all.

In practice, Montejo's rule would prevent police-initiated interrogation entirely once the *Sixth Amendment* right attaches, at least in those States that appoint counsel promptly without request from the defendant. As the dissent in *Jackson* pointed out, with no expressed disagreement from the majority, the opinion "most assuredly [*966] [did] *not* hold that the *Edwards per se* rule prohibiting all police-initiated interrogations applies from the moment the defendant's *Sixth Amendment* right to counsel attaches, with or without a request for counsel by the defendant." 475 U.S., at 640, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (opinion of Rehnquist, J.). That would have constituted a "shockingly dramatic restructuring of the balance this Court has traditionally struck between the rights of the defendant and those of the larger society." *Ibid*.

Montejo's rule appears to have its theoretical roots in codes of legal ethics, not the *Sixth Amendment*. The American Bar Association's Model Rules of Professional Conduct (which nearly all States have adopted into law

in whole or in part) mandate that "a lawyer shall not communicate about the subject of [a] representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Model Rule 4.2 (2008). But the Constitution does not codify the ABA's Model Rules, and does not make investigating police officers lawyers. Montejo's proposed rule is both broader and narrower than the Model Rule. Broader, because Montejo would apply it to all agents of the State, including the detectives who interrogated him, while the ethical rule governs only lawyers. And narrower, because he agrees that if a defendant initiates contact with the police, they may talk freely -- whereas a lawyer could be sanctioned for interviewing a represented party even if that party "initiates" the communication and consents to the interview. Model Rule 4.2, Comment 3.

Montejo contends that our decisions support his interpretation of the *Jackson* rule. We think not. Many of the cases he cites concern the substantive scope of the *Sixth Amendment* -- *e.g.*, whether a particular interaction with the State constitutes a "critical" stage at which counsel is entitled [*2088] to be present -- *not* the validity of a *Sixth Amendment* waiver. See *Maine v. Moulton*, 474 U.S. 159, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985); *Henry*, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115; *Massiah*, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246; see also *Moran*, 475 U.S. 412, 106 S. Ct. 1135, 89 L. Ed. 2d 410. Since everyone agrees that absent a valid waiver, Montejo was entitled to a lawyer during the interrogation, those cases do not advance his argument.

The upshot is that even on *Jackson's* own terms, it would be completely unjustified to presume that a defendant's consent to police-initiated interrogation was involuntary or coerced simply because he had previously been appointed a lawyer.

IV

So on the one hand, requiring an initial "invocation" of the right to counsel in order to trigger the *Jackson* presumption is consistent with the theory of that decision, but (as Montejo and his *amici* argue, see Part II, *supra*) would be unworkable in more than half the States of the Union. On the other hand, eliminating the invocation requirement would render the rule easy to apply but depart fundamentally from the *Jackson* rationale.

Which brings us to the strength of *Jackson's* reasoning. When this Court creates a prophylactic rule in order to protect a constitutional right, the relevant "reasoning" is the weighing of the rule's benefits against its

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costs. "The value of any prophylactic rule . . . must be assessed not only on the basis of what is gained, but also on the basis of what is lost." *Minnick*, 498 U.S., at 161, 111 S. Ct. 486, 112 L. Ed. 2d 489 (SCALIA, J., dissenting). We think that the marginal benefits of *Jackson* (viz., the number of confessions obtained coercively that are suppressed by its bright-line rule and would otherwise have been admitted) are dwarfed by its substantial costs (viz., hindering "society's compelling interest in finding, convicting, and punishing those who violate the law," *Moran*, supra, at 426, 106 S. Ct. 1135, 89 L. Ed. 2d 410).

What does the *Jackson* rule actually achieve by way of preventing unconstitutional conduct? Recall that the purpose of the rule is to preclude the State from badgering defendants into waiving their previously asserted rights. See *Harvey*, supra, at 350, 110 S. Ct. 1176, 108 L. Ed. 2d 293; see also *McNeil*, 501 U.S., at 177, 111 S. Ct. 2204, 115 L. Ed. 2d 158. The effect of this badgering might be to coerce a waiver, which would render the subsequent interrogation a violation of the *Sixth Amendment*. See *Massiah*, supra, at 204, 84 S. Ct. 1199, 12 L. Ed. 2d 246. Even though involuntary waivers are invalid even apart from *Jackson*, see *Patterson*, 487 U.S., at 292, n. 4, 108 S. Ct. 2389, 101 L. Ed. 2d 261, mistakes are of course possible when courts conduct case-by-case voluntariness review. A bright-line rule like that adopted in *Jackson* ensures that no fruits of interrogations made possible by badgering-induced involuntary waivers are ever erroneously admitted at trial.

But without *Jackson*, how many would be? The answer is few if any. The principal reason is that the Court has already taken substantial other, overlapping measures toward the same end. Under *Miranda*'s prophylactic protection of the right against compelled self-incrimination, any suspect subject to custodial interrogation has the right to have a lawyer present if he so requests, and to be advised of that right. 384 U.S., at 474, 86 S. Ct. 1602, 16 L. Ed. 2d 694. Under *Edwards*' prophylactic protection of the *Miranda* right, once such a defendant [*2090] "has invoked his right to have counsel present," interrogation must stop. 451 U.S., at 484, 101 S. Ct. 1880, 68 L. Ed. 2d 378. And under *Minnick*'s prophylactic protection of the *Edwards* right, no subsequent interrogation may take place until counsel is present, "whether or not the accused has consulted with his attorney." 498 U.S., at 153, 111 S. Ct. 486, 112 L. Ed. 2d 489.

These three layers of prophylaxis are sufficient. Under the *Miranda-Edwards-Minnick* line of cases (which is not in doubt), a defendant who does not want to speak to the police without counsel present need only say as much when he is first approached and given the *Miranda* warnings. At that point, not only must the immediate contact end, but "badgering" by later requests is prohib-

ited. If that regime suffices to protect the integrity of "a suspect's voluntary choice not to speak outside his lawyer's presence" before his arraignment, *Cobb*, 532 U.S., at 175, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (KENNEDY, J., concurring), it is hard to see why it would not also suffice to protect that same choice after arraignment, when *Sixth Amendment* rights have attached. And if so, then *Jackson* is simply superfluous.

It is true, as *Montejo* points out in his supplemental brief, that the doctrine established by *Miranda* and *Edwards* is designed to protect *Fifth Amendment*, not *Sixth Amendment*, rights. But that is irrelevant. What matters is that these cases, like *Jackson*, protect the right to have counsel during custodial interrogation -- which right happens to be guaranteed (once the adversary judicial process has begun) by two sources of law. Since the right under both sources is waived using the same procedure, *Patterson*, supra, at 296, 108 S. Ct. 2389, 101 L. Ed. 2d 261, doctrines ensuring voluntariness of the *Fifth Amendment* waiver simultaneously ensure the voluntariness of the *Sixth Amendment* waiver.

Montejo also correctly observes that the *Miranda-Edwards* regime is narrower than *Jackson* in one respect: The former applies only in the context of custodial interrogation. If the defendant is not in custody then those decisions do not apply; nor do they govern other, noninterrogative types of interactions between the defendant and the State (like pretrial lineups). However, those uncovered situations are the *least* likely to pose a risk of coerced waivers. When a defendant is not in custody, he is in control, and need only shut his door or walk away to avoid police badgering. And noninterrogative interactions with the State do not involve the "inherently compelling pressures," *Miranda*, supra, at 467, 86 S. Ct. 1602, 16 L. Ed. 2d 694, that one might reasonably fear could lead to involuntary waivers.

Jackson was policy driven, and if that policy is being adequately served through other means, there is no reason to retain its rule. *Miranda* and the cases that elaborate upon it already guarantee not simply noncoercion in the traditional sense, but what Justice Harlan referred to as "voluntariness with a vengeance," 384 U.S., at 505, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (dissenting opinion). There is no need to take *Jackson*'s further step of requiring voluntariness on stilts.

On the other side of the equation are the costs of adding the bright-line *Jackson* rule on top of *Edwards* and other extant protections. The principal cost of applying any exclusionary rule "is, of course, letting guilty and possibly dangerous criminals go free . . ." *Herring v. United States*, 555 U.S. ___, ___, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009) (*slip op.*, at 6). *Jackson* not only "operates to invalidate a confession given by the free choice

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of suspects who have received proper advice of their *Miranda* rights but waived them nonetheless," *Cobb*, [*2091] *supra*, at 174-175, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (KENNEDY, J., concurring), but also deters law enforcement officers from even trying to obtain voluntary confessions. The "ready ability to obtain uncoerced confessions is not an evil but an unmitigated good." *McNeil*, 501 U.S., at 181, 111 S. Ct. 2204, 115 L. Ed. 2d 158. Without these confessions, crimes go unsolved and criminals unpunished. These are not negligible costs, and in our view the *Jackson* Court gave them too short shrift. ⁵ [footnote 5 omitted]

Notwithstanding this calculus, Montejo and his *amici* urge the retention of *Jackson*. Their principal objection to its elimination is that the *Edwards* regime which remains will not provide an administrable rule. But this Court has praised *Edwards* precisely because it provides "'clear and unequivocal' guidelines to the law enforcement profession," *Arizona v. Roberson*, 486 U.S. 675, 682, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988). Our cases make clear which sorts of statements trigger its protections, see *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994), and once triggered, the rule operates as a bright line. Montejo expresses concern that courts will have to determine whether statements made at preliminary hearings constitute *Edwards* invocations -- thus implicating all the practical problems of the Louisiana rule we discussed above, see Part II, *supra*. That concern is misguided. "We have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation'" *McNeil*, *supra*, at 182, n. 3, 111 S. Ct. 2204, 115 L. Ed. 2d 158. What matters for *Miranda* and *Edwards* is what happens when the defendant is approached for interrogation, and (if he consents) what happens during the interrogation -- not what happened at any preliminary hearing.

In sum, when the marginal benefits of the *Jackson* rule are weighed against its substantial costs to the truth-seeking process and the criminal justice system, we readily conclude that the rule does not "pay its way," *United States v. Leon*, 468 U.S. 897, 907-908, n. 6, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). *Michigan v. Jackson* should be and now is overruled.

V

Although our holding means that the Louisiana Supreme Court correctly rejected Montejo's claim under *Jackson*, we think that Montejo should be given an opportunity to contend that his letter of apology should still have been suppressed under the rule of *Edwards*. If Montejo made a clear assertion of the right to counsel when the officers approached him about accompanying them on the excursion for the murder weapon, then no interro-

gation should have taken place unless Montejo initiated it. *Davis*, *supra*, at 459, 114 S. Ct. 2350, 129 L. Ed. 2d 362. Even if Montejo subsequently agreed to waive his rights, that waiver would have been invalid had it followed an "unequivocal election of the right," *Cobb*, 532 U.S., at 176, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (KENNEDY, J., concurring).

Montejo understandably did not pursue an *Edwards* objection, because *Jackson* served as the *Sixth Amendment* analogy to *Edwards* and offered broader protections. Our decision today, overruling *Jackson*, [*2092] changes the legal landscape and does so in part based on the protections already provided by *Edwards*. Thus we think that a remand is appropriate so that Montejo can pursue this alternative avenue for relief. Montejo may also seek on remand to press any claim he might have that his *Sixth Amendment* waiver was not knowing and voluntary, e.g., his argument that the waiver was invalid because it was based on misrepresentations by police as to whether he had been appointed a lawyer, cf. *Moran*, 475 U.S., at 428-429, 106 S. Ct. 1135, 89 L. Ed. 2d 410. These matters have heightened importance in light of our opinion today.

* * *

The judgment of the Louisiana Supreme Court [***36] is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, and with whom JUSTICE BREYER joins, except for footnote 5, dissenting.

Today the Court properly concludes that the Louisiana Supreme Court's parsimonious reading of our decision in *Michigan v. Jackson*, 475 U.S. 625, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (1986), is indefensible. Yet the Court does not reverse. Rather, on its own initiative and without any evidence that the longstanding *Sixth Amendment* protections established in *Jackson* have caused any harm to the workings of the criminal justice system, the Court rejects *Jackson* outright on the ground that it is "untenable as a theoretical and doctrinal matter." *Ante*, at 6. That conclusion rests on a misinterpretation of *Jackson*'s rationale and a gross undervaluation of the rule of *stare decisis*. The police interrogation in this case clearly violated petitioner's *Sixth Amendment* right to counsel.

I

The *Sixth Amendment* provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to

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have the Assistance of Counsel for his defence." The right to counsel attaches during "the initiation of adversary judicial criminal proceedings," *Rothgery v. Gillespie County*, 554 U.S. ___, ___, 128 S. Ct. 2578, 171 L. Ed. 2d 366 (2008) (*slip op.*, at 5) (internal quotation marks omitted), and it guarantees the assistance of counsel not only during in-court proceedings but during all critical stages, including postarrest interviews with law enforcement officers, see *Patterson v. Illinois*, 487 U.S. 285, 290, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (1988).

In *Jackson*, this Court considered whether the *Sixth Amendment* bars police from interrogating defendants who have requested the appointment of counsel at arraignment. Applying the presumption that such a request constitutes an invocation of the right to counsel "at every critical stage of the prosecution," 475 U.S., at 633, 106 S. Ct. 1404, 89 L. Ed. 2d 631, we held that "a defendant who has been formally charged with a crime and who has requested appointment of counsel [**974] at his arraignment" cannot be subject to uncounseled interrogation unless he initiates "exchanges or conversations with the police," *id.*, at 626, 106 S. Ct. 1404, 89 L. Ed. 2d 631.

Our decision in *Jackson* involved two consolidated cases, both arising in the [*2095] State of Michigan. Under Michigan law in effect at that time, when a defendant appeared for arraignment the court was required to inform him that counsel would be provided if he was financially needy and he requested representation. Mich. Gen. Ct. Rule 785.4(1) (1976). It was undisputed that the *Jackson* defendants made such a "request" at their arraignment: one by completing an affidavit of indigency, and the other by responding affirmatively to a question posed to him by the court. See App. in *Michigan v. Jackson*, O. T. 1984, No. 84-1531, p. 168; App. in *Michigan v. Bladel*, O. T. 1984, No. 84-1539, pp. 3a-4a. In neither case, however, was it clear that counsel had actually been appointed at the arraignment. Thus, the defendants' requests for counsel were significant as a matter of state law because they served as evidence that the appointment of counsel had been effectuated even in the absence of proof that defense counsel had actual notice of the appointments.

If a defendant is entitled to protection from police-initiated interrogation under the *Sixth Amendment* when he merely requests a lawyer, he is even more obviously entitled to such protection when he has secured a lawyer. Indeed, we have already recognized as much. See *Michigan v. Harvey*, 494 U.S. 344, 352, 110 S. Ct. 1176, 108 L. Ed. 2d 293 (1990) (acknowledging that "once a defendant obtains or even requests counsel," *Jackson* alters the

waiver analysis); *Patterson*, 487 U.S., at 290, n. 3, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (noting "as a matter of some significance" to the constitutional analysis that defendant had "not retained, or accepted by appointment, a lawyer to represent him at the time he was questioned by authorities" (emphasis added)).¹ Once an attorney-client relationship has been established through the appointment or retention of counsel, as a matter of federal law the method by which the relationship was created is irrelevant: The existence of a valid attorney-client relationship provides a defendant with the full constitutional protection afforded by the *Sixth Amendment*.

1 In *Patterson v. Illinois*, we further explained, "[o]nce an accused has a lawyer," "a distinct set of constitutional safeguards aimed at preserving the sanctity of the attorney-client relationship takes effect." 487 U.S., at 290, n. 3, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (citing *Maine v. Moulton*, 474 U.S. 159, 176, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985)). "Indeed," we emphasized, "the analysis changes markedly once an accused even requests the assistance of counsel." 487 U.S., at 290, n. 3, 108 S. Ct. 2389, 101 L. Ed. 2d 261.

II

Today the Court correctly concludes that the Louisiana Supreme Court's holding is "troublesome," *ante*, at 4, "impractical," *ante*, at 5, and "unsound," *ante*, at 6. Instead of reversing the decision of the state court by simply answering the question on which we granted certiorari in a unanimous opinion, however, the majority has decided to change the law. ... A more careful reading of *Jackson* and the *Sixth Amendment* [*2096] cases upon which it relied reveals that the rule announced in *Jackson* protects a fundamental right that the Court now dishonors.

The majority's analysis flagrantly misrepresents *Jackson*'s underlying rationale and the constitutional interests the decision sought to protect. While it is true that the rule adopted in *Jackson* was patterned after the rule in *Edwards*, 451 U.S., at 484-485, 101 S. Ct. 1880, 68 L. Ed. 2d 378, the *Jackson* opinion does not even mention the anti-badgering considerations that provide the basis for the Court's decision today. Instead, *Jackson* relied primarily on cases discussing the broad protections guaranteed by the *Sixth Amendment* right to counsel -- not its *Fifth Amendment* counterpart. *Jackson* emphasized that the purpose of the *Sixth Amendment* is to "protect the unaided layman at critical confrontations with his adversary," 475 U.S., at 631, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (quoting *United States v. Gouveia*, 467 U.S. 180, 189, 104 S. Ct. 2292, 81 L. Ed. 2d 146 (1984)), by giving

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him "the right to rely on counsel as a 'medium' between him[self] and the State," 475 U.S., at 632, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (quoting *Maine v. Moulton*, 474 U.S. 159, 176, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985)). Underscoring that the commencement of criminal proceedings is a decisive event that transforms a suspect into an accused within the meaning of the *Sixth Amendment*, we concluded that arraigned defendants are entitled to "at least as much protection" during interrogation as the *Fifth Amendment* affords unindicted suspects. See, e.g., 475 U.S., at 632, 106 S. Ct. 1404, 89 L. Ed. 2d 631 ("[T]he difference between the legal basis for the rule applied in *Edwards* and the *Sixth Amendment* claim asserted in these cases actually provides additional support for the application of the rule in these circumstances" (emphasis added)). Thus, although the rules adopted in *Edwards* and *Jackson* are similar, *Jackson* did not rely on the reasoning of *Edwards* but remained firmly rooted in the unique protections afforded to the attorney-client relationship by the *Sixth Amendment*.²

2 [omitted]

[*2097] Once *Jackson* is placed in its proper *Sixth Amendment* context, the majority's justifications for overruling the decision crumble.

[*2098] In a supplemental brief submitted by lawyers and judges with extensive experience in law enforcement and prosecution, amici Larry D. Thompson et al. argue persuasively that *Jackson's* bright-line rule has provided law enforcement officers with clear guidance, allowed prosecutors to quickly and easily assess whether confessions will be admissible in court, and assisted judges in determining whether a defendant's *Sixth Amendment* rights have been violated by police interrogation. See generally Thompson Supplemental Brief 6. While amici acknowledge that "*Jackson* reduces opportunities to interrogate defendants" and "may require exclusion of evidence that could support a criminal conviction," they maintain that "it is a rare case where this rule lets a guilty defendant go free." *Ibid.* Notably, these representations are not contradicted by the State of Louisiana or other amici, including the United States. See United States Brief 12 (conceding that the *Jackson* rule has not "resulted in the suppression of significant numbers of statements in federal prosecutions in the past").⁴ In short, there is substantial evidence suggesting that *Jackson's* rule is not only workable, but also desirable from the perspective of law enforcement.

4 Further supporting the workability of the *Jackson* rule is the fact that it aligns with the professional standards and norms that already govern the behavior of police and prosecutors. Rules of

Professional Conduct endorsed by the American Bar Association (ABA) and by every State Bar Association in the country prohibit prosecutors from making direct contact with represented defendants in all but the most limited of circumstances, see App. to Supplemental Brief for Public Defender Service for the District of Columbia et al. as *Amici Curiae* 1a-15a (setting forth state rules governing contact with represented persons); ABA Model Rule of Professional Conduct 4.2 (2008); 28 U.S.C. § 530B(a) (making state rules of professional conduct applicable to federal attorneys), and generations of police officers have been trained to refrain from approaching represented defendants, both because *Jackson* requires it and because, absent direction from prosecutors, officers are reticent to interrogate represented defendants. See United States Brief 11-12; see also Thompson Supplemental Brief 13 (citing Federal Bureau of Investigation, Legal Handbook for Special Agents § 7-4.1(7) (2003)). Indeed, the United States concedes that a decision to overrule the case "likely w[ill] not significantly alter the manner in which federal law enforcement agents investigate indicted defendants." United States Brief 11-12.

6 The majority leaves open the possibility that, on remand, *Montejo* may argue that his waiver was invalid because police falsely told him he had not been appointed counsel. See *ante*, at 18. While such police deception would obviously invalidate any otherwise valid waiver of *Montejo's* *Sixth Amendment* rights, *Montejo* has a strong argument that, given his status as a *represented* criminal defendant, the *Miranda* warnings given to him by police were insufficient to permit him to make a knowing waiver of his *Sixth Amendment* rights even absent police deception.

The majority's cursory treatment of the waiver question rests entirely on the dubious decision in *Patterson*, in which we addressed whether, by providing *Miranda* warnings, police had adequately advised an indicted but unrepresented defendant of his *Sixth Amendment* right to counsel. The majority held that "[a]s a general matter . . . an accused who is admonished with the warnings prescribed . . . in *Miranda*, . . . has been sufficiently apprised of the nature of his *Sixth Amendment* rights, and of the consequences of abandoning those rights." 487 U.S., at 296, 108 S. Ct. 2389, 101 L. Ed. 2d 261. The Court recognized, however, that "because the *Sixth Amendment's* protection of the attorney-client relationship . . . extends beyond *Miranda's* protection of the *Fifth Amendment* right to counsel, . . . there will be cases where a waiver which would be valid under *Miranda*

will not suffice for *Sixth Amendment* purposes." *Id.*, at 297, n. 9, 108 S. Ct. 2389, 101 L. Ed. 2d 261. This is such a case.

As I observed in *Patterson*, the conclusion that *Miranda* warnings ordinarily provide a sufficient basis for a knowing waiver of the right to counsel rests on the questionable assumption that those warnings make clear to defendants the assistance a lawyer can render during post-indictment interrogation. See 487 U.S., at 307, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (dissenting opinion). Because *Miranda* warnings do not hint at the ways in which a lawyer might assist her client during conversations with the police, I remain convinced that the warnings prescribed in *Miranda*,⁷ while sufficient to apprise a defendant of his *Fifth Amendment* right to remain silent, are inadequate to inform an unrepresented, indicted defendant of his *Sixth Amendment* right to have a lawyer present at all critical stages of a criminal prosecution. The [*2101] inadequacy of those warnings is even more obvious in the case of a *represented* defendant. While it can be argued that informing an indicted but unrepresented defendant of his right to counsel at least alerts him to the fact that he is entitled to obtain something he does not already possess, providing that same warning to a defendant who has *already* secured counsel is more likely to confound than enlighten.⁸ By glibly assuming that the *Miranda* warnings given in this case were sufficient to ensure Montejo's waiver was both knowing and voluntary, the Court conveniently avoids any comment on the actual advice Montejo received, which did not adequately inform him of his relevant *Sixth Amendment* rights or alert him to the [***61] possible consequences of waiving those rights.

7 [omitted]

8 With respect to vulnerable defendants, such as juveniles and those with mental impairments of various kinds, *amici* National Association of Criminal Defense Lawyers et al. assert that "[o]verruling *Jackson* would be particularly detrimental . . . because of the confusing instructions regarding counsel that they would receive. At the initial hearing, they would likely learn that an at-

torney was being appointed for them. In a later custodial interrogation, however, they would be informed in the traditional manner of 'their right to counsel' and right to have counsel 'appointed' if they are indigent, notwithstanding that counsel had already been appointed in open court. These conflicting statements would be confusing to anyone, but would be especially baffling to defendants with mental disabilities [***62] or other impairments." Supplemental Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 7-8.

A defendant's decision to forgo counsel's assistance and speak openly with police is a momentous one. Given the high stakes of making such a choice and the potential value of counsel's advice and mediation at that critical stage of the criminal proceedings, it is imperative that a defendant possess "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it," *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986), before his waiver is deemed valid. See *Iowa v. Tovar*, 541 U.S. 77, 81, 124 S. Ct. 1379, 158 L. Ed. 2d 209 (2004); *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). Because the administration of *Miranda* warnings was insufficient to ensure Montejo understood the *Sixth Amendment* right he was being asked to surrender, the record in this case provides no basis for concluding that Montejo validly waived his right to counsel, even in the absence of *Jackson's* enhanced protections.

IV

The Court's decision to overrule *Jackson* is unwarranted. Not only does it rest on a flawed doctrinal premise, but the dubious benefits it hopes to achieve are far outweighed by [***63] the damage it does to the rule of law and the integrity of the *Sixth Amendment* right to counsel. Moreover, even apart from the protections afforded by *Jackson*, the police interrogation in this case violated Jesse Montejo's *Sixth Amendment* right to counsel.

I respectfully dissent.