

In *Montejo v. Louisiana*,³⁸⁰ the Court overruled *Michigan v. Jackson*, finding that the Fifth Amendment's "*Miranda-Edwards-Minnick* line of cases" constitutes sufficient protection of the right to counsel. In *Montejo*, the defendant had not actually requested a lawyer, but had stood mute at a preliminary hearing at which the judge ordered the appointment of counsel. Later, before *Montejo* had met his attorney, two police detectives read him his *Miranda* rights and he agreed to be interrogated. *Michigan v. Jackson* had prohibited waivers of the right to counsel after a defendant's assertion of the right to counsel, so the Court in *Montejo* was faced with the question of whether *Michigan v. Jackson* applied where an attorney had been appointed in the absence of such an assertion.

The Court in *Montejo* noted that "[n]o reason exists to assume that a defendant like *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."³⁸¹ But, to apply *Michigan v. Jackson* only when the defendant invokes his right to counsel "would be unworkable in more than half the States of the Union," where "appointment of counsel is automatic upon a finding of indigency" or may be made "*sua sponte* by the court."³⁸² "On the other hand, eliminating the invocation requirement would render the rule easy to apply but depart fundamentally from the *Jackson* rationale," which was "to prevent police from badgering defendants into changing their minds about their rights" after they had invoked them.³⁸³ Moreover, the Court found, *Michigan v. Jackson* achieves little by way of preventing unconstitutional conduct. Without *Jackson*, there would be "few if any" instances in which "fruits of interrogations made possible by badgering-induced involuntary waivers are ever erroneously admitted at trial. . . . The principal reason is that the Court has already taken substantial other, overlapping measures toward the same end. . . . 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,

³⁸⁰ 556 U.S. ___, No. 07-1529, slip op. at 15 (2009).

³⁸¹ 556 U.S. ___, No. 07-1529, slip op. at 10.

³⁸² 556 U.S. ___, No. 07-1529, slip op. at 13, 4.

³⁸³ 556 U.S. ___, No. 07-1529, slip op. at 13, 10.