SUPREME COURT OF THE UNITED STATES

No. 07–1529

JESSE JAY MONTEJO, PETITIONER *v.*
LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

[May 26, 2009]

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 (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 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. ___, ___ (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 postarraignment interviews with law enforcement officers, see *Patterson* v. *Illinois*, 487 U. S. 285, 290 (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, we held that "a defendant who has been formally charged with a crime and who has requested appointment of counsel at his arraignment" cannot be subject to uncounseled interrogation unless he initiates "exchanges or conversations with the police," *id.*, at 626.

In this case, petitioner Jesse Montejo contends that police violated his Sixth Amendment right to counsel by interrogating him following his "72-hour hearing" outside the presence of, and without prior notice to, his lawyer. The Louisiana Supreme Court rejected Montejo's claim. Relying on the fact that the defendants in *Jackson* had "requested" counsel at arraignment, the state court held that *Jackson*'s protections did not apply to Montejo because his counsel was appointed automatically; Montejo had not explicitly requested counsel or affirmatively accepted the counsel appointed to represent him before he submitted to police interrogation. 06–1807, pp. 28–29 (1/16/08), 974 So. 2d 1238, 1261.

I agree with the majority's conclusion that the Louisiana Supreme Court's decision, if allowed to stand, "would lead either to an unworkable standard, or to arbitrary and anomalous distinctions between defendants in different States," *ante*, at 3. Neither option is tolerable, and neither is compelled by *Jackson* itself.

Our decision in *Jackson* involved two consolidated cases,

both arising in the 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.

Unlike Michigan, Louisiana does not require a defendant to make a request in order to receive court-appointed counsel. Consequently, there is no reason to place constitutional significance on the fact that Montejo neither voiced a request for counsel nor affirmatively embraced that appointment *post hoc*. Certainly our decision in *Jackson* did not mandate such an odd rule. See *ante*, at 4 (acknowledging that we had no occasion to decide in *Jackson* how its rule would apply in States that do not make appointment of counsel contingent on affirmative request). 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 (1990) (acknowledging that "once a defendant obtains or even requests counsel," *Jackson* alters the waiver analysis); *Patterson*, 487 U. S.,

at 290, n. 3 (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.

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. Acting on its own initiative, the majority overrules *Jackson* to correct a "theoretical and doctrinal" problem of its own imagining, see *ante*, at 6. A more careful reading of *Jackson* and the Sixth Amendment cases upon which it relied reveals that the rule announced in *Jackson* protects a fundamental right that the Court now dishonors.

The majority's decision to overrule *Jackson* rests on its assumption that *Jackson*'s protective rule was intended to "prevent police from badgering defendants into changing their minds about their rights," *ante*, at 10; see also *ante*,

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[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 (citing *Maine* v. *Moulton*, 474 U. S. 159, 176 (1985)). "Indeed," we emphasized, "the analysis changes markedly once an accused even *requests* the assistance of counsel." 487 U. S., at 290, n. 3.

at 13, just as the rule adopted in *Edwards* v. *Arizona*, 451 U. S. 477 (1981), was designed to prevent police from coercing unindicted suspects into revoking their requests for counsel at interrogation. Operating on that limited understanding of the purpose behind *Jackson*'s protective rule, the Court concludes that *Jackson* provides no safeguard not already secured by this Court's Fifth Amendment jurisprudence. See *Miranda* v. *Arizona*, 384 U. S. 436 (1966) (requiring defendants to be admonished of their right to counsel prior to custodial interrogation); *Edwards*, 451 U. S. 477 (prohibiting police-initiated interrogation following defendant's invocation of the right to counsel).

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, 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 "'protec[t] the unaided layman at critical confrontations with his adversary,'" 475 U. S., at 631 (quoting *United States* v. *Gouveia*, 467 U. S. 180, 189 (1984)), by giving him "'the right to rely on counsel as a 'medium' between him[self] and the State,'" 475 U. S., at 632 (quoting *Maine* v. *Moulton*, 474 U. S. 159, 176 (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 ("[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]

Once *Jackson* is placed in its proper Sixth Amendment context, the majority's justifications for overruling the decision crumble. Ordinarily, this Court is hesitant to disturb past precedent and will do so only when a rule has proven "outdated, ill-founded, unworkable, or otherwise legitimately vulnerable to serious reconsideration." *Vasquez* v. *Hillery*, 474 U. S. 254, 266 (1986). While *stare decisis* is not "an inexorable command," we adhere to it as "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial proc-

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[2]The majority insists that protection from police badgering is the only purpose the *Jackson* rule can plausibly serve. After all, it asks, from what other evil would the rule guard? See *ante*, at 9. There are two obvious answers. First, most narrowly, it protects the defendant from any police-initiated interrogation without notice to his counsel, not just from "badgering" which is not necessarily a part of police questioning. Second, and of prime importance, it assures that any waiver of counsel will be valid. The assistance offered by counsel protects a defendant from surrendering his rights with an insufficient appreciation of what those rights are and how the decision to respond to interrogation might advance or compromise his exercise of those rights throughout the course of criminal proceedings. A lawyer can provide her client with advice regarding the legal and practical options available to him; the potential consequences, both good and bad, of choosing to discuss his case with police; the likely effect of such a conversation on the resolution of the charges against him; and an informed assessment of the best course of action under the circumstances. Such assistance goes far beyond mere protection against police badgering.

ess." *Payne* v. *Tennessee*, 501 U. S. 808, 827–828 (1991).

Paying lip service to the rule of *stare decisis*, the majority acknowledges that the Court must consider many factors before taking the dramatic step of overruling a past decision. See *ante*, at 12. Specifically, the majority focuses on four considerations: the reasoning of the decision, the workability of the rule, the reliance interests at stake, and the antiquity of the precedent. The Court exaggerates the considerations favoring reversal, however, and gives short shrift to the valid considerations favoring retention of the *Jackson* rule.

First, and most central to the Court's decision to overrule *Jackson*, is its assertion that *Jackson*'s "'reasoning'"—which the Court defines as "the weighing of the [protective] rule's benefits against its costs," *ante*, at 14—does not justify continued application of the rule it created. The balancing test the Court performs, however, depends entirely on its misunderstanding of *Jackson* as a rule designed to prevent police badgering, rather than a rule designed to safeguard a defendant's right to rely on the assistance of counsel.[3]

Next, in order to reach the conclusion that the *Jackson*

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[3] Even accepting the majority's improper framing of *Jackson*'s foundation, the Court fails to show that the costs of the rule are more than negligible or differ from any other protection afforded by the right to counsel. The majority assumes, without citing any empirical or even anecdotal support, that any marginal benefits of the *Jackson* rule are "dwarfed by its substantial costs," which it describes as harm to "'society's compelling interest in finding, convicting, and punishing those who violate the law.'" *Ante*, at 14 (quoting *Moran* v. *Burbine*, 475 U. S. 412, 426 (1986)). That assumption is highly dubious, particularly in light of the fact that several *amici* with interest in law enforcement have conceded that the application of *Jackson*'s protective rule rarely impedes prosecution. See Supplemental Brief for Larry D. Thompson et al. as *Amici Curiae* 6 (hereinafter Thompson Supplemental Brief); Brief for United States as *Amicus Curiae* 12 (hereinafter United States Brief).

rule is unworkable, the Court reframes the relevant inquiry, asking not whether the *Jackson* rule as applied for the past quarter century has proved easily administrable, but instead whether the Louisiana Supreme Court's cramped interpretation of that rule is practically workable. The answer to that question, of course, is no. When framed more broadly, however, the evidence is overwhelming that *Jackson*'s simple, bright-line rule has done more to advance effective law enforcement than to undermine it.

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 sug-

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[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

gesting that *Jackson*'s rule is not only workable, but also desirable from the perspective of law enforcement.

Turning to the reliance interests at stake in the case, the Court rejects the interests of criminal defendants with the flippant observation that any who are knowledgeable enough to rely on *Jackson* are too savvy to need its protections, and casts aside the reliance interests of law enforcement on the ground that police and prosecutors remain free to employ the *Jackson* rule if it suits them. See *ante*, at 12. Again as a result of its mistaken understanding of the purpose behind *Jackson*'s protective rule, the Court fails to identify the real reliance interest at issue in this case: the public's interest in knowing that counsel, once secured, may be reasonably relied upon as a medium between the accused and the power of the State. That interest lies at the heart of the Sixth Amendment's guarantee, and is surely worthy of greater consideration than it is given by today's decision.

Finally, although the Court acknowledges that "antiquity" is a factor that counsels in favor of retaining precedent, it concludes that the fact *Jackson* is "only two decades old" cuts "in favor of abandoning" the rule it established. *Ante*, at 13. I would have thought that the

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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.

23-year existence of a simple bright-line rule would be a factor that cuts in the other direction.

Despite the fact that the rule established in *Jackson* remains relevant, well grounded in constitutional precedent, and easily administrable, the Court today rejects it *sua sponte*. Such a decision can only diminish the public's confidence in the reliability and fairness of our system of justice.[5]

III

Even if *Jackson* had never been decided, it would be clear that Montejo's Sixth Amendment rights were violated. Today's decision eliminates the rule that "any waiver of Sixth Amendment rights given in a discussion initiated by police is presumed invalid" once a defendant has invoked his right to counsel. *Harvey*, 494 U. S., at 349 (citing *Jackson*, 475 U. S., at 636). Nevertheless, under the undisputed facts of this case, there is no sound basis for concluding that Montejo made a knowing and valid waiver of his Sixth Amendment right to counsel before acquiescing in police interrogation following his 72-hour hearing. Because police questioned Montejo without notice to, and outside the presence of, his lawyer, the

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[5] In his concurrence, JUSTICE ALITO assumes that my consideration of the rule of *stare decisis* in this case is at odds with the Court's recent rejection of his reliance on that doctrine in his dissent in *Arizona* v. *Gant*, 556 U. S. ___ (2009). While I agree that the reasoning in his dissent supports my position in this case, I do not agree with his characterization of our opinion in *Gant*. Contrary to his representation, the Court did not overrule our precedent in *New York* v. *Belton*, 453 U. S. 454 (1981). Rather, we affirmed the narrow interpretation of *Belton*'s holding adopted by the Arizona Supreme Court, rejecting the broader interpretation adopted by other lower courts that had been roundly criticized by judges and scholars alike. By contrast, in this case the Court flatly overrules *Jackson*—a rule that has drawn virtually no criticism—on its own initiative. The two cases are hardly comparable. If they were, and if JUSTICE ALITO meant what he said in *Gant,* I would expect him to join this opinion.

interrogation violated Montejo's right to counsel even under pre-*Jackson* precedent.

Our pre-*Jackson* case law makes clear that "the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." *Moulton*, 474 U. S., at 176. The Sixth Amendment entitles indicted defendants to have counsel notified of and present during critical confrontations with the state throughout the pretrial process. Given the realities of modern criminal prosecution, the critical proceedings at which counsel's assistance is required more and more often occur outside the courtroom in pretrial proceedings "where the results might well settle the accused's fate and reduce the trial itself to a mere formality." *United States* v. *Wade*, 388 U. S. 218, 224 (1967).

In *Wade*, for instance, we held that because a post-indictment lineup conducted for identification purposes is a critical stage of the criminal proceedings, a defendant and his counsel are constitutionally entitled to notice of the impending lineup. Accordingly, counsel's presence is a "requisite to conduct of the lineup, absent an intelligent waiver." *Id.*, at 237 (internal quotation marks omitted). The same reasoning applies to police decisions to interrogate represented defendants. For if the Sixth Amendment entitles an accused to such robust protection during a lineup, surely it entitles him to such protection during a custodial interrogation, when the stakes are as high or higher. Cf. *Spano* v. *New York*, 360 U. S. 315, 326 (1959) (Douglas, J., concurring) ("[W]hat use is a defendant's right to effective counsel at every stage of a criminal case if, while he is held awaiting trial, he can be questioned in the absence of counsel until he confesses?").

The Court avoids confronting the serious Sixth Amendment concerns raised by the police interrogation in this

case by assuming that Montejo validly waived his Sixth Amendment rights before submitting to interrogation.[6] It does so by summarily concluding that "doctrines ensuring voluntariness of the Fifth Amendment waiver simultaneously ensure the voluntariness of the Sixth Amendment waiver," *ante*, at 15–16; thus, because Montejo was given *Miranda* warnings prior to interrogation, his waiver was presumptively valid. Ironically, while the Court faults *Jackson* for blurring the line between this Court's Fifth and Sixth Amendment jurisprudence, it commits the same error by assuming that the *Miranda* warnings given in this case, designed purely to safeguard the Fifth Amendment right against self-incrimination, were somehow adequate to protect Montejo's more robust Sixth Amendment right to counsel.

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. The Court recognized, however, that "because the Sixth Amendment's protection of the attorney-client relationship

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[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.

. . . 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. 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 (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 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 that the *Miranda*

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[7] Under *Miranda*, a suspect must be "warned prior to any questioning that he has the right to remain silent, that anything he says may be used against him in court of law, that he has the right to the presence of any attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires." 384 U. S., at 479.

[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 instruc-

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 possible consequences of waiving those rights.

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 (1986), before his waiver is deemed valid. See *Iowa* v. *Tovar*, 541 U. S. 77, 81 (2004); *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (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 rests on a flawed doctrinal prem-

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tions regarding counsel that they would receive. At the initial hearing, they would likely learn that an attorney 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 or other impairments." Supplemental Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 7–8.

ise, but the dubious benefits it hopes to achieve are far outweighed by 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.