



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL PROCEDURE

### Police-initiated interrogation after appointment of counsel

In *Montejo v. Louisiana*, the defendant was arrested for robbery and murder. After waiving his *Miranda* rights, he confessed to the crimes. He later appeared at a preliminary hearing where the judge appointed counsel to represent him.

After the hearing, but before the defendant met with his attorney, police visited the defendant in jail and again advised him of his *Miranda* rights, which he again waived. Police asked him to accompany them to find the murder weapon and the defendant agreed. While traveling to find the weapon, the defendant wrote an incriminating letter of apology to the victim's family. The letter was admitted as evidence at trial and the defendant was convicted.

#### *The Old Rule*

In 1986, the United States Supreme Court held that after an in-custody defendant requests counsel at his arraignment (6<sup>th</sup> Amendment right to counsel), police may not question the defendant unless the defendant's attorney is present or the defendant initiated the questioning (*Michigan v. Jackson*). Police were forbidden to initiate questioning when the defense attorney was not present, even if the defendant waived his *Miranda* rights. Essentially, courts were required to presume such waivers were ineffective after counsel was appointed and subsequent confessions were suppressed automatically.

#### *The New Rule*

In *Montejo*, the United States Supreme Court overruled *Jackson*. The Court held that if an in-custody defendant makes a "voluntary, knowing, and intelligent" waiver of his *Miranda* rights (including the right to have an attorney present), there is no

requirement to automatically suppress a confession. Police may now properly interrogate an in-custody defendant whose appointed counsel is not present, but only if the Court's other Constitutional safeguards are honored.

#### *The Other Safeguards*

Officers must remember the Court only overruled *Jackson*. The Court's other rules concerning custodial interrogation must still be followed:

Once a defendant has invoked his right to counsel, police may not question him further until counsel is present (even if he has talked with his attorney), or unless the defendant re-initiates questioning (*Edwards v. Arizona*, *Minnick v. Mississippi*). Police may never badger a suspect into waiving an already invoked right to counsel – such waivers will be considered involuntary and subsequent confessions will be suppressed (*Massiah v. United States*).

Ultimately, the key is to properly advise in-custody suspects of their *Miranda* rights before questioning them, and scrupulously honor any invocation of their rights.

Because prosecutors may have to prove a *Miranda* waiver is voluntary, knowing, and intelligent, officers should thoroughly document the circumstances of any waiver. If possible, *Miranda* warnings should be recorded and suspects should sign a waiver.

For discussions of other aspects of the law relating to *Miranda*, review Legal Updates 47 to 51 on the [archives page](#).

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