police station seeking to gain access to his client.[331] Although *Escobedo* appeared in the main to be a Sixth Amendment right-to-counsel case, the Court at several points emphasized, in terms that clearly implicated self-incrimination considerations, that the suspect had not been warned of his constitutional rights.[332]

Miranda v. Arizona.—In *Miranda v. Arizona*, a custodial confession case decided two years after *Escobedo*, the Court deemphasized the Sixth Amendment holding of *Escobedo* and made the Fifth Amendment self-incrimination rule paramount.[333] The core of the Court's prescriptive holding in *Miranda* is as follows: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or

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[331] Previously, it had been held that a denial of a request to consult counsel was but one of the factors to be considered in assessing voluntariness. Crooker v. California, 357 U.S. 433 (1958); Cicenia v. Lagay, 357 U.S. 504 (1958). Chief Justice Warren and Justices Black, Douglas, and Brennan were prepared in these cases to impose a requirement of right to counsel *per se*. Post-indictment interrogation without the presence of counsel seemed doomed after Spano v. New York, 360 U.S. 315 (1959), and this was confirmed in Massiah v. United States, 377 U.S. 201 (1964). *See* discussion of "Custodial Interrogation" under Sixth Amendment, *infra*.

[332] Escobedo v. Illinois, 378 U.S. 478, 485, 491 (1964) (both pages containing assertions of the suspect's "absolute right to remain silent" in the context of police warnings prior to interrogation).

[333] 384 U.S. 436, 444–45 (1966). In Johnson v. New Jersey, 384 U.S. 719 (1966), the Court held that neither *Escobedo* nor *Miranda* was to be applied retroactively. In cases where trials commenced after the decisions were announced, the due process "totality of circumstances" test was to be the key. *Cf.* Davis v. North Carolina, 384 U.S. 737 (1966).