set at 14 days by the *Shatzer* Court, the rationale for solicitous treatment ceases. If the suspect is thereafter put into custody again, the options for questioning no longer are limited to suspect-initiated talks or providing counsel, but rather the police may issue new *Miranda* warnings and proceed accordingly.[380] Moreover, the *Edwards* rule has not been explicitly extended to other aspects of the *Miranda* warnings.[381]

Fifth, a properly warned suspect may *waive* his *Miranda* rights and submit to custodial interrogation. *Miranda* recognized that a suspect may voluntarily and knowingly give up his rights and respond to questioning, but the Court also cautioned that the prosecution bore a "heavy burden" to establish that a valid waiver had occurred.[382] The Court continued: "[a] valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained."[383] Subsequent cases indicated that determining whether a suspect has waived his *Miranda* rights is a fact-specific inquiry not easily susceptible to *per se* rules. According to these cases, resolution of the issue of waiver "must be determined on 'the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.'"[384] Under this line

---

[380] Id.

[381] For a pre-*Edwards* case on the right to remain silent, see Michigan v. Mosley, 423 U.S. 96 (1975) (suspect given *Miranda* warnings at questioning for robbery, requested cessation of interrogation, and police complied; some two hours later, a different policeman interrogated suspect about a murder, gave him a new *Miranda* warning, and suspect made incriminating admission; since police "scrupulously honored" suspect's request, admission valid).

[382] Miranda v. Arizona, 384 U.S. 436, 475 (1966). *See also* Tague v. Louisiana, 444 U.S. 469 (1980). A knowing and intelligent waiver need not be predicated on complete disclosure by police of the intended line of questioning, hence an accused's signed waiver following arrest for one crime is not invalidated by police having failed to inform him of intent to question him about another crime. Colorado v. Spring, 479 U.S. 564 (1987).

[383] 384 U.S. at 475.

[384] North Carolina v. Butler, 441 U.S. 369, 374–75 (1979) (quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)). In Oregon v. Elstad, 470 U.S. 298 (1985), the Court held that a confession following a *Miranda* warning is not necessarily tainted by an earlier confession obtained without a warning, as long as the earlier confession had been voluntary. *See* Bobby v. Dixon, 565 U.S. ___, No. 10–1540, slip op. (2012). *See also* Moran v. Burbine, 475 U.S. 412 (1986) (signed waivers following *Miranda* warnings not vitiated by police having kept from suspect information that attorney had been retained for him by a relative); Fare v. Michael C., 442 U.S. 707 (1979) (juvenile who consented to interrogation after his request to consult with his probation officer was denied found to have waived rights; totality-of-the-circumstances analysis held to apply). *Elstad* was distinguished in Missouri v. Seibert, 542 U.S. 600 (2004), however, when the failure to warn prior to the initial questioning was a deliberate attempt to circumvent *Miranda* by use of a two-step interrogation technique, and the police, prior to eliciting the statement for the second time, did not alert the suspect that the first statement was likely inadmissible.