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Welcome to BackStory, the show that explains the history behind the headlines. I'm Nathan Connolly.

I'm Joanne Freeman. If you're new to the podcast, we're all historians. Each week we explore the history of a topic that's been in the news or on our minds. Today's show starts with a crime.

There had been a kidnapping, armed robbery, and a rape of a young lady by the name of Patricia.

This is Carrol Cooley. He's retired now, but he was a police officer in Phoenix at the time this case crossed his desk in March of 1963. Patricia had been coming home late from a job taking tickets at a local movie theater. She got off the bus a few blocks from her house.

It was very dark. There was no street lighting. There was no sidewalks. She had to walk on the side of the street.

And suddenly a man pulled her into his car and drove her out into the desert. Later, the police found physical evidence she'd been assaulted. But remember, this was 1963 so there was no DNA testing.
The strongest lead they had was a description of the inside of the car the young woman had given to them. She remembered an unusual pattern on the seat covers and a strange rope handle along the back seat. It wasn't much to go on.

**CARROLL COOLEY:** I went home for the weekend, and it was pretty much at a dead end.

**JOANNE:** But the next week, there was a tip waiting for them. After the attack, one of Patricia's relatives had started walking her home at night.

**CARROLL COOLEY:** And he would go down and walk her home because she was afraid to walk home, as well she should have been. And so while he was there waiting for her to get off the bus a little after midnight, he saw a car driving in the neighborhood. And it was driving very slow, and he became a little suspicious.

**JOANNE:** The relative called the police and described the car. It took a few days, but Cooley and his partner found a car that matched what Patricia and her relative had described parked outside the home of a couple named Twyla Hoffman and Ernesto Miranda.

**CARROLL COOLEY:** This young man came to the door, didn't have a shirt, no shoes. He was wearing a pair of khakis. His hair was all messed up. And it looked like he had been asleep, which I'm sure he was.

And he asked us what this was about. And we told him, well, it was a police matter. He said, well, come in then. And we came into the house. And as we're standing there in his living room with Twyla and those three kids standing there with us, watching us, once again he wanted to know what we wanted to talk about. And we said, well, we'd rather not talk to here in front of your family, would you volunteer, or would you come with this to the police department, and we can ask questions there. And if you're not involved in what we're looking into, we will bring you right home. He said, yes.

**NATHAN:** Ernesto Miranda's trip to the police station that day would spark one of the most famous Supreme Court cases of the 20th century.

[**MUSIC PLAYING**]

**MALE SPEAKER:** Number 759, Ernest Miranda, petitioner versus Arizona.
Today on the show we’ll explore why Miranda ended up being such an important case, and how it created an important police procedure that most Americans can recite from memory.

Look, it obviously starts with, you have the right to remain silent. I know you’ve heard this before.

Anything you do or say can and will be used against you in a court of law.

You have the right to the presence of an attorney.

If you cannot afford one, one will be appointed before any questioning. Do you understand that?

What’s the difference, I’ve got nothing to hide.

But first, let’s return to Ernesto Miranda at the Phoenix police station in March of 1963. Cooley and another officer asked him questions about the night Patricia was attacked. Eventually, Cooley asked point blank if he raped Patricia on the night of March 3rd.

He said, no, it wasn’t me. I wasn’t up there.

We went back into the room, and we sat down. And I didn’t say anything to Ernie. He knew that we had had several people, apparently, look at him. And he said, how did I do? And my response was, Ernie you didn’t do so good.

So he said, well, I guess I better tell you about it then. And I said, yes, I think you should, Ernie. So he writes out a confession, it’s on a departmental form.

The form handed to him to write on contained a typed statement as follows, which precedes his handwritten confession--

I, Ernest A. Miranda, do hereby swear that I make this statement
voluntarily and of my own free will with no threats, coercion, or promises of immunity, and with full knowledge into my legal rights, understanding any statement I make may be used against me. This statement was read to him by the officers, and he confessed in his own handwriting.

Right.

CARROLL: And he signed that. He knew his constitutional rights.

COOLEY:

JOANNE: So the case went to trial.

[MUSIC PLAYING]

CARROLL: And, of course, in that case, Patricia identified him in court, naturally. And we introduced the written confession. And he was quickly convicted of that-- 25 to 30 years consecutively. And so, I did my job. I was satisfied with what I had done. I thought I had done a pretty good job of investigating and testifying.

JOANNE: That confession got Ernesto Miranda convicted of rape and kidnapping. And it would also take his case all the way to the Supreme Court.

CARROLL: The first I found about it was in 1966, they said this case that I had worked had gone to the Supreme Court.

COOLEY: Supreme Court.

JOANNE: Were you surprised by that?

CARROLL: I was very surprised. I knew we went by the letter of the law. We were very careful in what we did.

COOLEY: Cooley wasn't wrong. When the detectives interrogated Ernesto Miranda in 1963, they had done everything by the book. But by 1966, when this case made its way to the Supreme Court, two recent decisions had dramatically strengthened a suspect's rights while they were in police custody.

[MUSIC PLAYING]

JOANNE: In 1963, *Gideon v Wainwright* said that every defendant had the right to an attorney, even if they couldn't afford to hire one. And the next year, the Supreme Court ruled in a case called *Escobedo versus Illinois* that a defendant must be allowed to consult a lawyer if they wanted to while in police custody. That decision also said that a suspect had an absolute right to remain
The Miranda case put those new rights into play. Yes, Ernesto Miranda had been informed that he had constitutional rights, but only after he agreed to confess. He wasn't told he could have a lawyer present. He also had not been told his rights included the right not to speak with the police.

The court decided 5-4 that the police had a responsibility to explicitly tell a suspect these rights. By this new standard, Miranda's confession wasn't considered voluntary and his conviction was overturned.

Gideon, Escobedo, and Miranda were part of a series of decisions in the 1960s focused on reforming the criminal justice system. The court at the time was known as the Warren Court after its very active Chief Justice, Earl Warren.

Two different arcs of history were converging in the Warren Court's criminal procedure revolution.

That's legal scholar Risa Goluboff. She says, that in order to understand the court's thinking in cases like Miranda, we've got to step outside of the court and into two national debates that were in full swing in 1966-- one on police and crime, and the other about civil rights.

There had been a belief that legislators write laws and then police officers enforce them, and that there was no gap between the laws on the books and the laws as enforced. And you had major national surveys into policing and the criminal justice system that revealed, actually the police have a lot of discretion. They could decide not to arrest people. They can arrest people who don't really deserve to be arrested. And that kind of discretion was really rampant.

You know, it's rampant at the moment of the first interaction. What we would today think of maybe a stop and frisk. And then, it exists at the moment of arrest, and then the moment of charging, and for going to trial, or for allowing for plea bargains. And then, there is discrimination, and discretion, and abuse in the gathering of evidence-- so coerced confessions, things like that, right?

And then, that's what the Warren Court was really embracing in the 1960s, and the Miranda is
part of. And the idea there was that guilt or innocence wasn't the only important aspect of the criminal justice system. The criminal justice system also had to ensure that it was treating people with fairness, with dignity, with equality.

And, I think, forced confessions had been an issue for a long time, making statements without lawyers-- so just not having a lawyer. So if you think about Miranda, it only comes a few years after *Gideon versus Wainwright* where the court required criminal defendants who couldn't pay for lawyers to be provided lawyers in felony cases. So that's a big change. And so, Miranda is really part of putting in place safeguards so that the people who are getting processed through the system are not only guilty, or likely guilty, or will be adjudged guilty, but are also receiving all of the rights and procedural protections that our constitution gets interpreted to provide.

**NATHAN:** But that wasn't the court's only concern.

**RISA GOLUBOFF:** The civil rights movement happens and you get massive arrests of civil rights activists and demonstrators, and people seeing the police as the front line of Jim Crow, seeing the police as oppressors in a way that, you think of the g-men in earlier decades who are heroes and suddenly they don't look as much like heroes in certain circumstances, as well as the recognition that policing is a civil rights issue, that African-Americans are being policed differently from whites, and that's something that goes back to the '40s and beyond. But it really becomes a much bigger issue during the '60s, as well.

**NATHAN:** So would you feel comfortable describing the Miranda decision of '66 as part of the story of civil rights law-- that there's an actual connection between what we more conventionally think about as the rights movement and the Miranda decision?

**RISA GOLUBOFF:** Absolutely. One, I think the Warren Court clearly understood its criminal procedure revolution as part of the civil rights movement. They understood that policing was racialized. They understood that so many criminal defendants were African-American or people of color. So I do think that they had a sense and they understood criminal justice in the context of race.

**NATHAN:** Even though this was an Arizona decision you would say?

**RISA GOLUBOFF:** Yeah, even though. And actually, I mean, when you look at a lot of the criminal procedure cases, they didn't always have an African-American defendant come out of New York, or Chicago. You know, that wasn't how it worked. And that's often the case with the court. The best example I can give of that is Ruth Bader Ginsburg, when she was bringing cases for sex
discrimination to create the sex discrimination doctrines that we know today, most of those cases had male plaintiffs.

**Nathan:** Interesting.

**Risa Goluboff:** They were discrimination against men. And she was using them as ways of getting rights for women. I actually think the court found it useful and attractive to make universal pronouncements that the justices knew would redound to the benefit of African-Americans. So they wanted to be making civil rights change, but there were times when they wanted to be able to do it without saying that's what they were doing.

**Joanne:** Now, that we've explored the legal thinking that went into the Miranda decision, we've got another question to answer here, Nathan.

**Nathan:** And what's that, Joanne?

**Joanne:** How did this decision migrate out of the courtroom and into pop culture?

[Laughter]

It's a good question. And as it happens, that part of the story starts with another question.

**Ron Steiner:** What exactly are we supposed to say when we arrest somebody?

**Joanne:** That's legal scholar Ron Steiner. He says that the California Attorney General, like many prosecutors around the country, wanted to ensure confessions were not going to get thrown out because of this new Supreme Court decision. And while the decision laid out specific rights, it didn't have specific language.

So the attorney general took matters into his own hands. He asked the local district attorney to break down the court's decision into a simple paragraph that could be easily remembered by both police and suspects.

[MUSIC PLAYING]

**Ron Steiner:** The court wanted the suspect to know the right to remain silent, the right to have an attorney, the right to have a free attorney if they couldn't afford it. And he distilled that language into a credit card sized card that police officers could carry. He, on the side, actually owned a print shop. And he realized that, hey, everybody is going to need these. And so, pretty quickly,
statewide and then even beyond that he started marketing these little credit card sized Miranda cards. And so, this phenomenon that we now call “reading him his rights, was born out of that little print shop.

[MUSIC PLAYING]

JOANNE: Within months of a Supreme Court case, cops across the country were carrying these little cards. Carol Cooley remembers carrying them when he was on the job. Years later, he and his fellow officers sometimes ran into the man he’d arrested interrogated back in 1963-- the guy who started the whole court case in the first place. By then, Ernesto Miranda carried Miranda Warning cards too.

CARROLL COOLEY: That is true. He would ask police officers, if they had any Miranda Warning cards, and we would give him cards. He used to sign that. So he would sell them for $1 or $2, whatever he could get for them.

NATHAN: By 1967, at least one Miranda card also ended up in the hands of a man named Jack Webb.

RON STEINER: At the time the Miranda decision was handed down, one of the most popular television shows on the very limited menu of shows you could watch was Dragnet, Jack Webb’s landmark, police procedural TV show. And Jack Webb had this almost obsessive compulsive pattern of trying to get every detail right.

NATHAN: Give us a sense of Jack Webb’s commitment to realism.

RON STEINER: They went down to Parker Center, the LA police headquarters, and there’s a kind of a funny story of him having his production assistants get down on their hands and knees and count the flecks in the tile on the floor, because the tile was kind of a black and white tile with these different flecks in it to give it a little texture. And he wanted to be able to match the floor tile exactly.

Now, that's a detail that just can't matter, right?

NATHAN: Right.

RON STEINER: To the audience, the viewer, but he wanted to get every detail right. And he thought, in consultation with the police experts that he was working with, that Miranda mattered. And that if his officers that he portrayed were going to be going strictly by the book and doing
everything right, that they would need to give a Miranda Warning, and a proper Miranda Warning each time somebody was being subjected to questioning after arrest. And so, he had Miranda written into the script.

JOE FRIDAY: Sit down.

BILL GANNON: Before we talk we want to advise you of your constitutional rights.

MALE SPEAKER: I'm a minor, daddy.

JOE FRIDAY: Minors have rights too.

BILL GANNON: Any statement you make to us might be used against you in a court of law. You have the right to remain silent. You have the right to the presence of an attorney. If you cannot afford one, one will be appointed before any questioning. Do you understand that?

MALE SPEAKER: What's the difference? I've got nothing to hide.

JOE FRIDAY: Do you understand it?

MALE SPEAKER: Yeah, yeah I dig. I dig.

RON STEINER: So the American public suddenly became aware of this new step in police procedure. And he continued that and to his next police procedural show *Adam 12*, which was kind of another generation of cops on the street in LA. Every week people were subjected to one or two readings of the Miranda Warning, and the American public quickly became aware of the fact that when you've been arrested and when you're being subjected to custodial interrogation, they're supposed to read you your rights.

NATHAN: So Miranda became a marker of a certain type of cop show, one committed to getting the details right, like Webb's did. Eventually, the warning became so ubiquitous on cop shows, that script writers rarely put more than the first line into an episode, confident that a generation of viewers raised on shows like *Dragnet* could fill in the rest.

RON STEINER: So you have this fade to black phase of the Miranda Warning.

NATHAN: This part will sound familiar to anyone whose TV diet included shows like *Law and order* or *Hill Street Blues*.

MALE SPEAKER: You bring me a root beer?
MALE SPEAKER: Michael Dobson, you're under arrest for the murder of Emily Dobson. You have right to remain silent. Anything you do say can and will be used against you in the--

RON STEINER: Music swells, camera goes to black. We're going to go to commercial, maybe you can go to the bathroom, and when you come back, we move on.

JOANNE: But while Miranda settled seamlessly into pop culture, it was a controversial legal decision almost from the start. Many viewed Miranda as protection for the guilty at the expense of police. Carol Cooley certainly feels that way.

CARROLL COOLEY: Well, it was a very bad decision, I should say, for police work, because much of what police do is gather information and seek the truth. And if you tell somebody he doesn't have to talk to you, and then you tell him, listen, you have right to an attorney, if you can't afford one, we will provide you one. Well, attorneys tell their clients, don't talk to the police.

And so, if a person is being questioned and he's told these mornings, he'd be somewhat a fool to not take advantage and to answer those questions.

JOANNE: He gave an example of a case where he felt that mirandizing a suspect may have allowed a guilty man to get away with a crime. That crime was the murder of Ernesto Miranda himself. Miranda was stabbed to death in a bar fight in Phoenix in 1976.

[MUSIC PLAYING]

CARROLL COOLEY: There was a fight between he and two other Hispanic males over a card game there at the bar. That was the biggest mistake of his life. It was his life. He was stabbed twice, once in the stomach and through the heart. And he died on that dirty floor.

JOANNE: Two men were questioned in the case. One was eventually charged. But the other suspect disappeared after the police questioned him. Cooley feels that the second man escaped, in part, because he was mirandized and police couldn't get enough information to keep him in custody.

CARROLL COOLEY: The one thing you should know, though, that the guy that stabbed him to death was questioned. He was given his rights and questioned. But we didn't have a case on him, and he walked away and he's still gone-- he's still out in the wind.

[MUSIC PLAYING]
NATHAN: But there were also plenty of critics who felt that Miranda didn’t go far enough.

RISA GOLUBOFF: Absolutely. So critics from the right who thought this was an infringement of police professionalism and overreaching by the courts over the police, which was true for much of what the Warren Court did, that it was perceived to be the court being too activist. But from the left, it certainly seemed to many— I think to fewer at the time, but more over time, that by providing, say, you know, you just have to say that people have these rights—and they’re called Miranda rights now—that people have these rights doesn’t really help them very much. It creates a formal rule. And then, once everybody accepts the rule, suddenly you say you have these rights, and then if you talk to me it’s all fair game. And then, what do people do? They still talk. So it’s a formal advance, but does it really protect defendants in the end, or suspects in the end? Does it really actually meaningfully change the relationship between the suspect and the officer.

NATHAN: Eventually, the legal controversies surrounding the Miranda decision and Miranda, the pop culture icon would meet in a court case called Dickerson versus the United States.

MALE SPEAKER: The question before the court today asks whether Congress has the authority to legislatively overrule and reverse this court’s decision in Miranda. The key to this question turns on whether the requirements of Miranda are constitutionally based, and therefore immune--

RON STEINER: Is the requirement that the police go through these very precise details in cautioning somebody, is that constitutionally required, or is that just a good idea? And if you don’t do that, it’s still possible claim that the testimony was voluntary. And so, the question of Miranda’s constitutional pedigree was squarely at issue in Dickerson, in a case that, in a way that, it had never been before.

NATHAN: But it’s not that easy to get rid of my guess is.

RON STEINER: In the decision for the court written by Chief Justice Rehnquist--

JUSTICE WILLIAM I have the opinion of the court to announce in number 995525, Dickerson against the United States. You have the right to remain silent, anything you say can be used against--

RON STEINER: He acknowledged that a lot of people don’t think the details of Miranda stand up. He acknowledged that if he had to do it himself beginning from zero—ground zero—that he
probably wouldn’t hand down the requirements as they were handed down. But then he went on to say, unfortunately, maybe we’re not writing on a blank slate.

JUSTICE WILLIAM: These four warnings that echo through police stations and on television screens in the 34 years since we decided in the case of *Miranda versus Arizona*—

REHNQUIST: And in particular, we’re writing a decision about Miranda and what voluntariness means in the midst of a popular culture where everybody knows the Miranda Warning, he says. And everybody expects that when they’re being now subject to what the courts would call custodial interrogation, when they’re under arrest and being asked potentially incriminating questions, they think they’re supposed to have been given a Miranda Warning.

JUSTICE WILLIAM: Whether or not we would agree with Miranda’s reasoning and it’s resulting rule, were we are addressing the issue in the first instance. Miranda has become embedded in routine police practices to the point where the warnings have become part of our national culture.

REHNQUIST: And we can’t pretend that that’s not happening. And so if we take the Miranda Warning away, we’ll confuse people. We’ll unsettle all these expectations that people have, and that’s a problem. And so, the court relied on the sort of basic common law concept of precedent. We call it stare decisi in Latin, where the previous decision stands, not because we agree with it necessarily, but because it would be too socially disruptive to try and reverse it.

NATHAN: Make life imitate art in effect.

RON STEINER: Yeah, in a really interesting, yeah. The popular culture-- the court acknowledges that the national culture expects it. They didn’t say it, but we all know that it comes from Jack Webb and *Adam 12* and the various police procedurals over the years. You can’t take it away without confusing people. And so, I guess we’re going to have to leave it in place says the court.

NATHAN: But it’s also not the end of the story. You and your researchers made a pretty striking observation, that during the 1980s you take a show like *Hill Street Blues* and just in the way that arrests on that show were being portrayed, you found that three out of four the arrests—over 75% of the arrests—on *Hill Street Blues* included some element of the Miranda rights being read as part of the broadcast. Fast forward to the ’90s and early 2000s, a show like *NYPD Blue*, and over 80% of the arrests on the show do not have any Miranda rights involved at all. Again, this is from your own research with your team.
Now, this is an amazing development, because it's demonstrating that the popular culture is shifting the way in which Miranda, as part of a script, enters the discussion as a plot device is leaving our popular culture. Is there any sense that that may have an impact in what the future of Miranda rights may be going forward?

RON STEINER: I think that's exactly the right question. So the fact that we don't see Miranda anymore as much as we used to is important. Because if Dickerson is serious-- if the court is serious and it's saying Miranda was, perhaps, a flawed decision, but we're going to live with it because it's so ingrained in people's mind through TV, and then TV stops showing it, if that's true, then what happens when people haven't seen it so much on TV? What's the next step in that analysis?

So we didn't do a study to find out how aware are people today of Miranda. Yeah, I can recite Miranda, more or less. I don't know if my kids can cite Miranda. As a matter of fact, I tested them, and they can't. They get--

[LAUGHTER]

Into, you know, you have the right to remain silent, and then they become silent. It stops at that point. That's all they know.

NATHAN: Yeah. I'm of the generation of the *Law and Order* blackout, as well. So it really does stop after those first two sentences.

RON STEINER: Yeah, yeah. And there was even-- we did our study based on TV shows, and one of the students who did the research with me pointed out in the more recent movie, *21 Jump Street*, it becomes a plot joke that these young cops, they themselves can't recite Miranda, that they haven't seen enough shows where the whole Miranda Warning is given, that they don't actually know it themselves.

DEPUTY CHIEF HARDY: Do you even know the Miranda rights?

HARDY: Yes.

DEPUTY CHIEF HARDY: Let's hear them then.

HARDY:
JENKO: It's-- look, it obviously starts with, you have the right to remain silent-- I know you've heard this before. And then, it I think it sounds something like, you have the right to remain an attorney.

DEPUTY CHIEF HARDY: Did you say, that you have the right to be an attorney?

SCHMIDT: You do have the right to be an attorney if you want to.

NATHAN: But what would you say the legacy is of Miranda given its permutations both through the courts and through popular culture?

RON STEINER: I think Miranda is, of course, a big part of the Warren Court era rethinking of criminal procedure and the rights of criminal suspects. And that's something that I think we, perhaps, maybe take for granted today. We forget how bad it had gotten. Because there were no national constitutional standards, judges and prosecutors, who in many cases are actually elected representatives, have this overwhelming desire to get convictions, right? Get the bad guy.

And if nobody stops them from going too far, they go too far. And the courts saw that. And the Supreme Court said, unfortunately, the only way we're going to get law and order in the police departments and in the criminal prosecutions is if we tell the police, look, if you invade somebody's privacy and search them illegally, that evidence is useless. So don't do it.

If you intimidate somebody into a confession that they didn't want to make, that confession is useless. It's not going to be used in court, so there's no point doing it. If you want your convictions to stand up, do it the right way.

[MUSIC PLAYING]

NATHAN: Ron Steiner is a professor of law at Chapman University and co-author of the *Rise and Fall of Miranda Warnings in Popular Culture*.

JOANNE: Earlier, we heard from Carol Cooley, a retired captain with the Phoenix Police Department. We also heard from Risa Golubuff, Dean of the University of Virginia School of Law and author of *Vagrant Nation-- Police Power, Constitutional Change, and the Making of the 1960s*.

[MUSIC PLAYING]
That's going to do it for us today, but you have the right to keep the conversation going online. Let us know what you thought of the episode, or ask us your questions about history. You'll find us at backstoryradio.org, or send an email to backstory@virginia.edu. Were also on Facebook, Tumblr, and Twitter @backstoryradio. Whatever you do, don't be a stranger.

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Do you understand these credits as I've read them to you?

Yeah, but I want a lawyer.

[LAUGHTER]

[Music Playing]

Panoply.