

0:00 - Car door shuts, turns car on, beeping noise to put on seat belts

**Kaila:** A few weeks ago, podcast editor Katie O'Connell and her husband drove to pick up takeout from Scottsdale. The restaurant was 9.1 miles away from their house. As they were driving, they kept track of one thing ... how many attorney advertisements could they see on their drive?

2:26 - (Turn signal going) Evan: Oh, by the way, there's one.

2:30 - Katie: First one spotted.

2:57 - Katie: There's two. Evan: We've got two in point two miles.

**Kaila:** Ultimately, the duo spotted 13 billboards, 8 bus stop ads and one ad on a bus that was rolling past them. Perhaps not as many as you'd guess. But consider this ... there stopped being billboards along the road the closer they got to downtown Scottsdale.

\*theme music comes in\*

**Kaila:** Attorney advertisements are all around us, not just on billboards. They're on TV and the radio (clip of one plays). They're in magazines and newspapers. They're even on Facebook ads or paid Google searches.

**Kaila:** The ubiquitous ads made listener Douglas Peterson curious. He wondered why there are so many of them. (pause)

**Kaila:** Welcome to Valley 101, a podcast from The Arizona Republic and azcentral.com where we answer the questions you ask about metro Phoenix. I'm your host, Kaila White.

**Kaila:** If ... like Douglas ... you've ever wondered about attorney advertisements, then I've got a fun fact for you. Until 1977, attorneys were barred from advertising. But I'll let Katie tell you the rest of that story.

\*theme music fades\*

**Katie:** No, you don't have to adjust your speakers or rewind. You heard Kaila correctly. Once upon a time, attorneys *could not advertise*.

**Katie:** In 1908, the American Bar Association issued a prohibition against attorney advertising and solicitation.

**Van:** [00:02:52] The rule that forbade advertising was universal. A version of it existed in all 50 states and it was enforced by the disciplinary authority variously in each of those states. [00:03:06][14.0]

**Katie:** That's Van O'Steen. He's an attorney in Phoenix. Van said that not only did every state have its own prohibition against attorney advertisements, but they were pretty strict too.

**Van:** [00:03:17] One lawyer was disciplined for putting his name in the Yellow Pages of a phone directory in bold letters. [00:03:25][8.0]

**Van:** [00:03:36] You couldn't have any advertising, no copy of any type. Just a simple listing of tombstone listings. But one lawyer, you know, committed the sin of having you could pay extra and have your name put in bold type. And he did that. He was disciplined by the authorities in his state for doing it. [00:03:58][21.9]

**Katie:** Things as simple as business cards could come under scrutiny, if you were allowed to have them at all. At the time, it was thought that barring advertisements would protect the integrity and reputation of individual attorneys and the practice of law in general.

**Katie:** So let's fast forward a bit to the '70s.

\*70s music comes in\*

**Katie:** In 1972, Van O'Steen and his friend John R. Bates had been working at the Maricopa County Legal Aid Society.

**Van:** [00:05:31] It's the civil legal services system funded by the government that provides non-criminal legal services to the very poor. And you'd really have to be absolutely destitute to qualify for services there.

**Katie:** Something caught their attention while they were working there. They noticed there were a lot of people who needed basic consumer legal services. Things like *uncontested* divorces or *uncontested* adoptions. But many people either made too much or owned a house, so they couldn't receive legal services from the Legal Aid Society.

**Van:** [00:06:46] So. Armed with that knowledge and the fact that we had ourselves developed systems for handling common types of legal matters very efficiently. In 1974, we formed the legal clinic of Bates and O'Steen. [00:07:08][21.7]

**Katie:** Their clinic would only take on specific cases. Things like simple personal bankruptcy or change of name filings. Uncontested divorces and adoptions. That way their firm wouldn't be on the hook for long, drawn out legal proceedings, which was key. Avoiding those proceedings allowed them to charge a fixed fee for their services.

**Van:** [00:07:28] So a client coming to us would know in advance what the total cost of his or her service would be with us. And, you know, we did the math on a napkin and figured we can make a living doing this. [00:07:41][13.4]

\*End 70s music, if it hasn't stopped already\*

**Katie:** Bates and O'Steen would use things like standardized forms to drive up the volume of work they were doing.

**Van:** [00:07:42] So it was the concept of the legal clinic was predicated on low fees and high volume. What we learned after a couple of years is that we had achieved the unworkable situation of low fees and low volume.

**Katie:** Simply put, they weren't bringing in enough business to continue providing legal services at a fixed, affordable rate.

**Van:** [00:08:09] And we either would we're going to shutter the clinic and leave and go take jobs and other law firms or do something to let consumers know we were there. [00:08:23][14.6]

**Katie:** So they did what anyone *nowadays* would do ... they took out an ad. One, single ad in ... of all publications ... the paper I work for, The Arizona Republic. And it only ran once. It was a simple ad that said their name, listed the services they provide and how much each service cost. But that didn't matter that it was a simple, single ad. The Arizona State Bar moved to discipline Bates and O'Steen.

\*dramatic, legal music comes in\*

**Katie:** Bates and O'Steen had anticipated this. In fact, Van O'Steen told me their *goal* was to take their case to the Supreme Court.

**Van:** [00:11:39] You know, we wanted a decision from the U.S. Supreme Court on the First Amendment right of professional services providers .... See, this covers more than lawyers, doctors, engineers, architects, accountants. They all had similar rules. And we wanted a decision from the U.S. Supreme Court on the right of those professional service providers, us included, of course, on on the right to advertise as commercial free speech. It was a First Amendment case. [00:12:12][33.2]

**Katie:** Ultimately, the Supreme Court sided with Bates and O'Steen in a 5 to 4 decision. They agreed that prohibiting attorneys from advertising was a First Amendment violation. Justice Harry Blackmun wrote quote, "Bankers and engineers advertise, and yet these professions are not regarded as undignified" end quote.

**Katie:** The Supreme Court also felt that the lack of advertising could hurt potential clients. Without clear ways to find representation, the court was worried that clients would pay too much or settle for incompetent attorneys.

**Katie:** [00:18:24] How do you have your thoughts about the case and its ruling change over the years, if at all? [00:18:29][5.1]

**Van:** [00:18:31] Well, I you know, honestly, I think if you have any soul at all, you have to kind of hate lawyer advertising. Some of the people on TV make my hair stand on end. But the simple fact is that it's been a benefit to consumers. And that was ultimately our goal. It was our motivation. [00:18:56][25.0]

\*music ends\*

**Katie:** It's worth noting that there are still some limitations on what attorneys can say when they advertise.

**Patricia:** [00:05:55] For example, you can't let .... you know nobody should be putting out false or misleading advertising. [00:06:03][8.2]

**Katie:** That's Patricia Sallen. Patricia is an attorney who represents other attorneys in the state bar's discipline system. She also advises attorneys or firms on ethical issues.

**Patricia:** [00:08:47] We have a rule that says. If there is somebody in that advertisements that purports to be a lawyer, that person has to be a full time employee of the advertising law firm. So there are a couple of specific rules that deal with that. [00:09:07][19.6]

**Katie:** The condensed rules essentially say that advertisements can't be misleading. But after Bates vs. State Bar of Arizona, lawyers were free to use them.

\*potential spot for music\*

**Katie:** Legal advertising was slow to find its footing. Some still felt that it was gauche for attorneys to advertise. Others tried it ... and failed at it. But as the years went on, legal advertising picked up steam.

**Katie:** As best I can tell, Kantar Media is the main -- and perhaps the only -- company that tracks the amount of spending on different ad campaigns across the country. They said that nationally in 2019, lawyers, law firms and legal-services providers spent a whopping \$1.9 BILLION across TV, digital, print, search, out-of-home and radio advertising. That's \$1.9 BILLION spent across the country without factoring in spending on social media campaigns.

**Katie:** Kantar Media also sent me the data for Arizona markets. They define that as Phoenix, Tucson and Yuma combined. Collectively between those three metro areas, attorneys spent \$27 million on advertising in 2018 and \$32 million in 2019.

**Katie:** But, despite my seven weeks of emails and phone calls, I didn't receive any data from Kantar Media on how Arizona compares to other states. Is the volume of legal advertising here really that much more than other states? The short answer ... based on my research ... is no.

\*music fades out\*

**Nancy:** [00:05:03] So the number I have for Arizona from IHS Global Insight is that in 2019, we spent five billion six hundred and eighty eight thousand dollars. In advertising, that's just general advertising. California. Like we spent five point six billion dollars. California spent forty eight billion dollars in advertising. [00:05:34][30.9]

**Katie:** That's Nancy Gray. She's a professor at Arizona State University and the creative director of Gray Matter Creative, a branding and advertising firm. Nancy said that Arizona's ad spending in general is more on par with states like Colorado. So the likelihood that we spend more on legal advertising than other states ... it just doesn't hold up.

\*another potential spot for music\*

**Katie:** Here's another way of looking at it. Phoenix is the fifth largest city in the U.S. We're outspent by our larger cities like Los Angeles and New York, which makes sense. Those are larger markets with larger audiences. (pause)

**Katie:** So, let's take a look at the Tampa Bay-St. Petersburg area instead. In a study by the American Tort Reform Association, attorneys in the Tampa Bay-St. Petersburg area spent \$4.6 million in one quarter of 2018. On average, we spent about \$6.75 million in the same time frame. So, we've got two million more people than Tampa-St. Petersburg, and we spent more than \$2 million than them in the same time period. Once again, the amount of spending correlates pretty well to the overall market size. (pause)

**Katie:** I can't say with confidence that Phoenix spends more on or has a higher volume of attorney advertisements than other states. The numbers seem to suggest that we're right on par with states of our size. (pause)

**Katie:** So that leaves me with one final question ... if our spending on attorney advertisements is about average, then why does it feel like we're SURROUNDED by them?

\*music ends\*

**Katie:** To answer that question, I called the attorney in Phoenix whose ads most stuck out to me when I moved here.

[Clip from ad 00:00 - Mark](#): Hi, I'm Mark Breyer.

**Alexis:** And I'm Alexis Breyer. We're the Husband and Wife Law Team.

**Katie:** Mark and his wife Alexis opened Breyer Law offices in 1996. The duo specialize in serious injury and wrongful death law. It's a kind of law that falls under the category of torts ... a wrongful act that causes someone harm and leads to civil litigation.

**Katie:** It's also the kind of practice you're most likely to see advertised.

**Mark:** [00:20:43] So I think the reason is that when it comes to personal injury and to some degree criminal law and so forth, it's the consumer that needs the lawyer and often a consumer that doesn't have access to a lawyer. They don't have a lawyer that they know. They don't have the money to hire a lawyer and they never have to hire a lawyer. And so lawyers advertising as we do our reaching out to everybody. [00:21:04][21.0]

**Katie:** Think of it this way. If you work for a corporation, odds are you have some sort of corporate counsel. You have an attorney or a team of attorneys who can represent you in your dealings.

**Katie:** But the average person doesn't have that. The average person doesn't need a lawyer to go about their daily lives. Until ... *something happens*.

**Mark:** [00:21:14] I mean, the reality is the difference between people who got home to mark that day and someone who had something tragic happen can be a matter of a split second. And where that person was with someone else wasn't paying attention or they were looking at the phone and they ran a red light. [00:21:27][13.2]

**Mark:** [00:21:28] And so I think you see such a huge percentage of the advertisers seeing people who are focused on personal injury or criminal law, because we're really targeting everybody, including a huge percentage of the population that doesn't know a lawyer and doesn't have to hire a lawyer in most cases. [00:21:47][19.2]  
[32.3]

**Katie:** And as I said in the episode on car washes, Phoenix is a growing market. So, if you're a personal injury lawyer and you could potentially represent anyone ... *It's also a growing market*.

**Katie:** Van O'Steen ... remember, he's the Phoenix attorney who fought for the right to advertise ... well, Van had another thought on why there's an abundance of advertising from personal injury attorneys.

**Van:** [00:23:52] I think it's because that area of practice tends to be. More profitable than other areas of practice. Therefore, there is more money available to lawyers who are doing that kind of work to promote themselves on television. [00:24:11][19.3]

**Katie:** From a practical standpoint, that makes sense. You need money to advertise. And once you start advertising, you can potentially make more money, which means you can potentially advertise more.

\*potential spot for music\*

**Katie:** What's interesting to me is that the attorneys who advertise ... well, they know it's probably not your favorite thing to see. In fact, Mark Breyer HATED attorneys who advertise growing up. He said it felt like they were chasing the dollar and talking about money. Not helping people. Here's an example he gave from when he was in high school.

**Mark:** [00:02:54] So long before I knew I would be a lawyer, let alone a trial lawyer, certainly not advertising where I was a busboy at a restaurant. [00:03:00][5.8]

Mark: [00:03:01] And one of the advertising lawyers on TV in the city I grew up in came in and sat in my section and I made a friend of mine. I'd grown up with bus table because I want to do it. And for all I know, the lawyer, I mean, it made me a great lawyer and a great guy. But it just shows how different I viewed lawyer advertising particularly then. [00:03:24][22.6]

**Katie:** Mark's views changed over the years. It started in law school. His torts professor drove home the fact that personal injury lawyers could potentially help anyone navigate dicey legal waters.

**Katie:** Initially, Mark and Alexis didn't advertise. And once they started advertising, they did it gradually. They'd put an ad in the Yellow Pages as a test. Then maybe a billboard or radio ad. He said it was probably about five years ago that they started really investing in TV ads. Although ...

**Mark:** [00:07:36] it probably feels like forever for anyone who's lived here and has to see them all the time. [00:07:41][4.9]

**Katie:** Despite his initial and strong misgivings about advertising, Mark sees the benefit in them now, both for his firm and for potential clients.

**Mark:** [00:11:48] I can tell you the message we're hoping that we convey to people who are looking at anything we do is that this is actually a value based business that cares about treating people better than they've ever been treated by anyone in their life, and that we are going to do everything above and beyond to get them the results that they deserve. Leaving no stone unturned. [00:12:08][19.7]

**Katie:** And odds are, you'll be hearing things like that for a long time, because attorney advertisements aren't going away. But don't worry. If you run into Mark, you've got carte blanche to joke with him about it.

\*theme music comes in\*

Katie: So Kaila, there you have it -- the long and short on why attorney advertisements seem to be everywhere. I know the Husband and Wife Law Team sticks out in my mind when I think of attorney ads. Out of curiosity, which ads pop into your mind automatically?

Kaila: (Answer here)

Kaila: Well Valley 101 listeners, we want to know which ads you see most often. Let us know which one you love ... or which ones you love to hate. Share your picks with us on Twitter @Valley 101 pod.

Kaila: Thanks to Douglas Peterson for submitting this question. We're looking for more questions to answer. If you've got one, you can send it to us on Twitter. Or you can submit it online at valley 101 podcast dot azcentral dot com.

Kaila: That's all for this week. I'm your host, Kaila White, signing off until next week.