



THE PASTICHE PROSECUTOR

A SPECULATIVE INTRODUCTION TO MR. DISTRICT ATTORNEY

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THERE IS JUST ONE SMALL, long-out-of-print book devoted to the exploits of “Mr. District Attorney”: *Mr. District Attorney on the Job* (1941), the first chapter of which is printed below at pages 307-338. Nevertheless, to many Americans he is a familiar figure – the first great “ripped from the headlines” crime drama lawyer. If you were born before 1950, there is a good chance that as an impressionable youth you heard or saw Mr. District Attorney.¹ His runs on radio (1939-53) and in comic books (1939-42, 1948-59) were long and successful; in the movies (1941-42, 1947) and on television (1951-52, 1954-55) less so.² As a Founding Figure of lawyering in popular culture, Mr. District Attorney has been the subject of some study by modern scholars of law in society, and he will probably enjoy more attention in the future.³

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¹ See, e.g., *The Eyes of a Schoolboy*, TIME, Nov. 20, 1944 at 60 (“One evening early in 1942 Harris Wofford Jr., 15, was doing his Latin homework and simultaneously listening to his favorite radio program, Mr. District Attorney.”).

² JOHN DUNNING, ON THE AIR: THE ENCYCLOPEDIA OF OLD-TIME RADIO 464 (1998); Mike Widener, *Lawyers in Comics: Mr. District Attorney*, YALE L. LIB. RARE BOOKS BLOG, blogs.law.yale.edu/blogs/rarebooks/archive/2010/09.aspx (Sept. 17, 2010); RON BACKER, MYSTERY MOVIE SERIES OF 1940S HOLLYWOOD 196 (2010); HAL ERICKSON, ENCYCLOPEDIA OF TELEVISION LAW SHOWS 190 (2009).

³ See, e.g., David Ray Papke, *Mr. District Attorney: The Prosecutor During the Golden Age of Radio*, 34 U. TOL. L. REV. 781 (2003); Steven D. Stark, *Perry Mason Meets Sonny*

One aspect of Mr. District Attorney that merits study is his provenance, because the source (or sources) of his character might shed light on the development of the fictional lawyer as action figure.

It is a commonplace that dramatic portrayals of lawyers tend to be, well, unrealistically dramatic. That makes sense. Dramatists are in the business of attracting audiences, and an accurate portrayal of a life in the law would not attract many listeners or viewers.⁴ In the old days, audiences were attracted to a type of dramatically amalgamated fictional lawyer: part fearless investigator (tracking down clues and wrongdoers) and part courtroom gladiator/magician (engaging in emotion-packed confrontations and dramatic revelations). The *Perry Mason* television series (1957-66) is a fine, and now much-criticized, example.⁵ Modern audiences seem to like a lawyer who is a single fragment rather than an amalgam, with the fragment being a sophisticated version of the high-passion/low-professionalism courtroom aspect of the earlier Perry Mason type. Lawyers on *Law & Order* (1990-2000), for example. Characters of both types can and often do have fine qualities, but verisimilitude is rarely one of them.⁶

But their dramatic implausibility pales before the professional life of their precursor, Mr. District Attorney. He spent little time in his office and less in the courtroom, but a great deal out of doors, chasing clues and criminals and saving innocents: "The listener could, as a result, quite easily take Mr. District Attorney to be more a part of law enforcement than a member of the legal profession."⁷ Yet he is invariably described as "inspired" by or "modell[ed]" on Thomas E. Dewey, the renowned New York prosecutor and District Attorney

Crockett, 42 U. MIAMI L. REV. 229, 241, 247, 253 (1987).

⁴ See DAVID RAY PAPKE ET AL., LAW AND POPULAR CULTURE 11 et seq. (2007).

⁵ See MICHAEL ASIMOW AND SHANNON MADER, LAW AND POPULAR CULTURE 100-01 (2004); Norman Rosenberg, *Perry Mason*, in PRIME TIME LAW 115 (1998) (Robert Jarvis and Paul Joseph, eds.); see also ERICKSON at 217.

⁶ See, e.g., Elka Jones, *Reality vs. fantasy in occupational portrayals on the small screen*, OCCUPATIONAL OUTLOOK Q. 10 (Fall 2003); but see ASIMOW AND MADER at 69 (The 1933 film "*Counselor at Law* is unique in the entire history of motion pictures in its grimly realistic depiction of the daily life of a practicing lawyer.").

⁷ Papke, 34 U. TOL. L. REV. at 791; see also, e.g., pages 307-338 below.

The Pastiche Prosecutor



Above: New York County District Attorney Thomas E. Dewey (center, with moustache) meeting with members of the news media in Washington, DC. Below: New York City Mayor Fiorello LaGuardia (left) and Patrolman Joseph Lamb (right) arriving at a fire in Long Island City.



in the 1930s and '40s.⁸ Dewey achieved great success as a crime-fighter, but he did so the way any good lawyer would – by researching and mastering the law and facts and then presenting his cases persuasively in court.⁹ Unlike Mr. District Attorney, Dewey was not in the habit of “joining the police in a dramatic automobile chase,” or invading a mob-controlled insane asylum to rescue a damsel in distress.¹⁰ Thus, while Dewey’s cases provided storylines for episodes of *Mr. District Attorney* – the story printed below, for example, is obviously based on his 1938 prosecution of taxicab racketeer Joseph Biondo and his confederates¹¹ – Dewey’s work habits just as surely were not the basis for Mr. District Attorney’s activities.

But that does not mean Mr. District Attorney was pure fantasy. There was another prominent, crime-fighting lawyer in New York at that time, and he was well-known for his habit of getting out from behind his desk to race through the streets with the police: Mayor Fiorello LaGuardia.¹² He was famous, for example, for leading raids in search of then-illegal slot machines, and then smashing the offending machines with a sledgehammer.¹³

So, the tradition that Dewey inspired Mr. District Attorney rings true, in part. But it might be more fair to say that Mr. District Attorney was a Dewey-LaGuardia pastiche, in which Dewey inspired the stories, LaGuardia inspired the action, and both men – known for their integrity and public spirit – inspired his noble commitment “not only to prosecute to the limit of the law all persons accused of crimes perpetrated within this county but to defend with equal vigor the rights and privileges of all its citizens”¹⁴

⁸ See, e.g., *id.* at 787; Bennett L. Gershman, “Hard Strikes and Foul Blows”, 42 LOY. U. CHI. L.J. 177, 181 (2010); Robert M. Pitler, *Independent State Search and Seizure Constitutionalism*, 62 BROOK. L. REV. 1, 72 n.255 (1996).

⁹ See generally, e.g., RICHARD NORTON SMITH, THOMAS E. DEWEY AND HIS TIMES chs. 4-9 (1982); ROBERT HUGHES, ATTORNEY FOR THE PEOPLE chs. 2-33 (1940).

¹⁰ Papke, 34 U. TOL. L. REV. at 791; pages 329-331 below.

¹¹ See *Lucania Aide Held In Taxicab Racket*, N.Y. TIMES, July 14, 1938, at 1.

¹² See, e.g., *Mayor Plays Role As Head Of Police*, N.Y. TIMES, Sept. 16, 1945, at 1.

¹³ See H. PAUL JEFFERS, THE NAPOLEON OF NEW YORK 2, 193-97 (2002).

¹⁴ DUNNING at 465.