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Lance B. Wickman

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# In Search of Atticus Finch

*Lance B. Wickman*

The journey that brought me to the profession of law was more odyssey than freeway. From the time that I was a young boy, my mother wanted me to be a lawyer, which was interesting because we had no other family members on any branch of the family tree who were lawyers.

Unlike some others present here, I had no father or uncle who took me to his law office as a child. I don't recall ever hefting a law book until my first day as a law student. There were no Socratic discussions at the dinner table of my youth. All I can recall is my mother's counsel: Go into law.

For one thing, having come of age in the Great Depression, she saw an occupational independence in the legal profession. "You can always hang out your shingle as a lawyer," she would say. But there was much more than that behind her admiration for the profession. She saw law, and those who follow its profession, as a force for good. In her mind there was a nobility associated with it. She saw it as a worthy calling and thought she saw in me the "right stuff" for such a calling.

But I was unpersuaded. As an undergraduate I flirted somewhat with the possibility of going to law school after graduation. But in that season of life, I was drawn more to the prospect of becoming a soldier. So, when a commission in the regular army was offered upon graduation, I accepted it. Thus began a turbulent five years. One tour of duty in Vietnam followed another. And somewhere in the midst of the turbulence the idea of becoming a lawyer reemerged in my mind. My mother's counsel of years before began to resonate. I decided that I wanted to become a lawyer when the war was over. But swept along as I was by the overpowering currents of the Vietnam War, I felt like a man caught in a riptide. The goal seemed far off, unreachable. I felt like events were sweeping me farther and farther away. There were times when

I wondered if I would ever return, if this newly realized dream would ever happen.

But, at last, it did happen. I still remember vividly purchasing my case-books at the Stanford Bookstore before the first day of class. I was so grateful to be there. Really, it felt like Christmas! For many of my classmates, starting law school was just another year of school. But for me it was a time of gratitude, of answered prayers. I can honestly say that I enjoyed law school. Oh, sure, by my third year I was anxious to move on from school to actual law practice, but I thoroughly enjoyed the law school experience. I enjoyed my years of law practice with a fine law firm. For more than a decade now, I have felt privileged to serve as the general counsel of the Church.

But in all of my years of affiliation with the profession of law, I have had many occasions to ponder wherein lies the nobility that my mother thought she saw in it so many years ago. Wherein lies the deep—but often elusive—satisfaction that can and ought to come to those who are associated with the profession? With cascading reports of disenchantment, or “burn out,” as it is now called, within the ranks of those who have come to the bar, it would seem that finding that nobility—and the accompanying satisfaction—is anything but a unique or simple quest.

So, I should like to say something this evening about that quest. I should like to say something tonight about finding *the profession* in the profession of law. To that end I have entitled my remarks “In Search of Atticus Finch.”

After preparing these remarks, I learned quite by chance that my selection of title is not new! In fact, I have discovered that there is an excellent book of the same title on the subject of lawyer ethics by Mike Papantonio.<sup>1</sup> So much for originality! However, I can assure you that the ideas expressed in these remarks are all mine, and I alone am responsible for them.

Tom Robinson was guilty. That was the popular verdict in Maycomb County, Alabama, even before he went on trial. There wasn't really any question about it. Miss Mayella Ewell had been assaulted. Her father, Bob Ewell, claimed to have returned home just in time to see Tom disappearing out the door of their cabin with Mayella screaming. Perhaps more to the point, Tom Robinson was black. Mayella Ewell was white. And in Maycomb in 1932 that color scheme added up to guilt—an open-and-shut case. Some even wondered why it was necessary to have a trial at all. Just string Tom Robinson up from the water tower and be done with it.

Enter Atticus Finch. Having descended from the “founding fathers” of Maycomb County, Atticus' birthright made him one of the county's leading citizens. He had “read law” in Montgomery, obtained his law license, married, saw two children born—a boy and a girl—and, while they were yet small, lost his wife to a heart attack. Atticus Finch hung out his shingle

in a tiny office at the Maycomb County courthouse. His first two clients, the Haverford boys, were hanged for murdering the local blacksmith in the presence of witnesses in a dispute over a horse. Atticus had urged them to accept the county's offer of a plea to second-degree murder and a prison sentence. But the Haverfords, who were never accused of having the sense Providence had bestowed upon a goose, refused—insisting instead on placing their fate in the “he-had-it-coming” defense. So, Atticus' only meaningful service in that case had turned out to be attendance at the hanging ceremony.

The whole experience had left him with a strong distaste for criminal law. Atticus preferred helping common people resolve the common problems of life, often taking payment of his fee in kind, such as a bag of hickory nuts or some such thing. He was not wealthy by any means, but he provided a roof and meals and other necessities for his family. He was satisfied.

So, when the trial judge approached him and asked him to defend Tom Robinson as a public service, Atticus was not enthusiastic. But Atticus Finch was above all else a man of principle. He believed that law exists to serve the interests of the people, who created it in the first place. As an officer of the court, he believed that a lawyer's first duty is to assist in the administration of justice. He believed that in a real sense the rights of the Tom Robinsons of the world are the rights of everyman. If Tom could not be assured a vigorous defense, no one else could either. So, Atticus Finch—lawyer—took the case.

By now, many of you will have recognized this recitation as a creature of fiction. In one sense Atticus Finch and Tom Robinson live only in the pages of Harper Lee's Pulitzer Prize-winning masterpiece, *To Kill a Mockingbird*, and in the classic motion picture by the same title, starring the late, great Gregory Peck as Atticus Finch. But in another, more important, sense Atticus Finch lives! He must live! Should the day ever come that he ceases to exist, the *profession* of law also would cease to exist, because Atticus Finch is the embodiment of what it means to be a *professional* in law.

How so? What is a “professional” anyway? In our 21st-century vernacular, the word is seen as synonymous with competence. In one dimension it means possessing a particularized set of skills beyond those commonly found in the general populace. Often it means advanced education, qualifying examinations, and certification. “Know how.” “Board certified.” “Admitted to the bar.” “MD.” “CPA.” “NFL.” “NBA.” “The National Academy.” These are all words, initials, and phrases commonly found in the context of any reference to a professional.

But in law, especially, there is another dimension. Being a professional is more, much more, than possessing a set of skills, a license, or the initials JD. Being a lawyer means more than being a skilled advocate, more

than a legal technician, or more than an architect of business transactions. The lawyer has taken an oath—a solemn oath, administered by a judicial officer—to uphold the Constitution and the principles, rights, and privileges enshrined in the laws of his state and nation. He is, above all else, an *officer of the court*—a servant and preserver of the law. No less than the judge who sits upon the bench, the lawyer who stands at bar has pledged his talents, his knowledge, his experience, and his very life to advance and defend the cause of “justice for all.” If he is also able to provide a living for his family, all the better. This is the ideal embodied in Atticus Finch.

One can only wonder what Atticus would think if, like Rip Van Winkle, he should awaken from a long nap and find himself not in the Maycomb County of 1932, but in the courtrooms, board rooms, and law office suites of the 21st century. “Billed hours,” “bottom lines,” “originations and proliferations,” “partner tracks,” and other law business buzz words and phrases doubtless would be mystifying to a man who was happy to take his modest fee in a sack of hickory nuts. More mystifying still would be the go-ahead-make-my-day lawsuit craze and the overzealous and take-no-prisoners litigation strategies that infect and threaten to overwhelm our courthouses. In an age when the phrase “officer of the court” has become quaint and lawyers are too often known more for their extravagant lifestyles than for their service to the people and the cause of justice, Atticus Finch would indeed stand bewildered.

Some years ago I served on the Stanford Law School board of visitors. We met annually at the law school for two or three days of meetings with faculty and students. One year the Friday evening event was a dinner of the board with the first-year law school class. The guest of honor was Justice Stephen Breyer of the United States Supreme Court. He was, of course, the featured speaker at the dinner. Justice Breyer gave a marvelous address (seemingly off-the-cuff, although I am quite sure it had been carefully prepared) on the subject of a lawyer’s professional obligation to serve the best interests of the people. His theme was that there must be much more to law practice than billing hours and collecting fees. There must be time to give back to the community in professional service. He asked the rhetorical question as to why public esteem for lawyers is low (and why the public esteem for Congress is even lower!). He noted that, by contrast, public regard for the *army* is quite high.

Justice Breyer said, “I asked Derek Bok (who was the president of Harvard University) why this was the case. He didn’t know either but expressed the view that the army is seen as not being in it for itself.” What he meant was that those who serve in the armed forces are devoted in their service to their country. There is no evident greed or self-promotion as they perform their duties. This is a thought-provoking idea!

Certainly it is true that professional soldiers are not in it for themselves, and yet even they may not be highly regarded or even considered

much in the public square until the war trumpet sounds. This phenomenon was captured lyrically in Rudyard Kipling's immortal poem "Tommy,"<sup>2</sup> which was a tribute to the selfless service of the British soldier of the 19th century. Here are just two stanzas that capture the flavor of the sentiment:

I went into a public-'ouse to get a pint o' beer,  
The publican 'e up an' sez, "We serve no red-coats here."  
The girls be'ind the bar they laughed an' giggled fit to die,  
I outs into the street again an' to myself sez I:

O it's Tommy this, an' Tommy that, an' "Tommy, go away";  
But it's "Thank you, Mister Atkins," when the band begins to play,  
The band begins to play, my boys, the band begins to play,  
O it's "Thank you, Mister Atkins," when the band begins to play.

Yes, makin' mock o' uniforms that guard you while you sleep  
Is cheaper than them uniforms, an' they're starvation cheap;  
An' hustlin' drunken soldiers when they're goin' large a bit  
Is five times better business than paradin' in full kit.

Then it's Tommy this, an' Tommy that, an' "Tommy, ow's yer soul?"  
But it's "Thin red line of 'eroes" when the drums begin to roll,  
The drums begin to roll, my boys, the drums begin to roll,  
O it's "Thin red line of 'eroes" when the drums begin to roll.

We in the United States have witnessed this same phenomenon in recent years, as young men and women in uniform—professionals as well as "citizen soldiers"—have found themselves in places like Iraq and Afghanistan. Often unappreciated in peacetime, their devotion to a higher duty than themselves in wartime has earned them the overwhelming appreciation of the nation.

But even the army struggles to maintain its tradition of selfless professionalism in this egocentric society of the 21st century. In an insightful and thought-provoking essay entitled *Army Professionalism, the Military Ethic, and Officership in the 21st Century*,<sup>3</sup> published in 1999, three professors at West Point express their views about what they contend is an ascendancy within the army of a so-called "force protection" ethic—an academic euphemism for an inclination on the part of soldiers to exalt the preservation of their own lives over the army's traditional "mission first" ethic. A number of factors explaining this alleged phenomenon are addressed in the essay. But of some relevance to us in the legal profession is this observation about our contemporary "postmodern" society:

What many call "post modernism" is best thought of as a complex collection of beliefs and theories that, in essence, reject the idea that there is any such thing as objective truth, ethical or otherwise. Without an objective standard, "truth" is then left to the individual or group to decide and thus becomes relative to their desires and beliefs. This has undermined the earlier consensus among Americans that any particular belief can actually be wrong.

Of course, not all Americans embrace such relativism, but often what arises in its place is an unreflective egoism, which is best characterized as the belief that what is morally good is “what is best for me.” Rather than the relative standard that post modernism offers, egoism is an objective standard against which to measure conduct. Its basic premise is everyone should do those things, and only those things, that they perceive are good for them.<sup>4</sup>

Whatever pertinence that observation about postmodernism and egoism may have in the profession of arms, it seems to me that it is profoundly applicable in the legal profession. Lawyers, too, can empathize with the “Tommy” of Kipling’s poetry. We, too, endure the so-called “lawyer jokes” and snide comments—sometimes good-natured, sometimes not. But well might we ask how far the parallel to “Tommy” extends. In the public’s mind, after the humor is there ever an occasion for gratitude, even redemption, for those following the profession of law? Do we ever have our “thin red line of heroes”? If not, why not? Could there be, if we in the profession devoted ourselves more to actually *being* professional? President James E. Faust—himself a very distinguished lawyer during an earlier season of his life—once humorously remarked to me in a private moment: “Lance, you and I can’t laugh at the lawyer jokes, because we know that most of them are true!”

True or not, is not this humor based to some degree on those same postmodern and egoistic trends within the legal profession that may be infecting other social institutions, like the army? Is there not a justifiable public perception, as Justice Breyer noted, that lawyers are seen as “in it” for themselves? Is it not true that too many of our brothers and sisters in the law—and perhaps even we ourselves—measure our sworn duty as officers of the court against the “what-is-best-for-me” standard? *Where, indeed, is Atticus Finch in the 21st century?*

My own view is that *Atticus lives!* We—each of us—just need to coax him out of the shadows. As Justice Breyer put it to us in his remarks at Stanford, “Why not five days of billings and one for service?” I look into the faces of those assembled here in the conference center. I try to imagine those of you gathered at other locations, participating by satellite. I see some of the finest people ever to walk the earth. The *crème de la crème!* The best of the best! Here is a gathering of men and women at law with spouses and friends who, as Latter-day Saints, are already committed to the principle of service after the manner of the Savior. In the priesthood quorums, auxiliaries, stakes, wards, and branches of the Church, those here assembled represent hundreds of thousands of hours of service in the kingdom of God. Do we not also have within us a few hours to give as officers of the court, as true *professionals* in the profession of law?

Opportunities abound. For one thing, there are genuine pro bono service opportunities just waiting to be filled. I have been gratified to learn that a growing number of chapters of the J. Reuben Clark Law Society are

seeking out such opportunities. To you I say bravo! Additionally, many law firms have developed programs allowing their members and associates to devote professional time in public service. Bravo, again!

But I think there are other opportunities for true professional service that go beyond such organized efforts to render legal services to the poor and the indigent. I refer to what could be called, in the spirit of Atticus Finch, “sack-of-hickory-nuts” service—that is, providing some services for those who can pay something, but not the stratospheric fees that are becoming the norm rather than the exception in the law business. There is a large segment of our society, neither rich nor poor, which often goes unrepresented (or at least underrepresented) at bar. These are the proverbial “just plain folk,” who work hard, struggle on modest means to raise their children and provide for their own old age. These are they who simply do not have a waiting financial reserve when the unexpected encounter with the legal system occurs, but neither do they stand destitute at the doorway of the courthouse and thus eligible for free services. They also need the services of a professional—a lawyer. What about them?

In my experience, at least, the biggest challenge to the spirit of public service that in the Atticus Finch tradition is the very essence of the legal profession is the egoistic “what’s-in-it-for-me” attitude that often stalks the hallways and conference rooms of profit-mesmerized law offices and firms. Billing rates continue to rise to match the sense of financial entitlement held by too many lawyers—and their families! And—can I say this without using an overly broad tar brush?—some law firm pro bono programs may be motivated as much by a desire to be “seen of men” as by a genuine desire to render “alms” in the form of legal services. Those who practice law solely for the money or the acclaim, in the words of the Master, “have their reward.”<sup>5</sup>

So, without in any way condemning any selfless professional service rendered to anyone in need, may I just point out that there are some real opportunities for sack-of-hickory-nuts service among the ranks of the great middle class of society. I speak to those of you in the great, institutional law firms, as well as those in smaller firms and sole proprietorships. A will expertly drawn for an elderly widow who has not much money, but who can bake the best apple pie on the planet! Accepting a hundred dollars as full payment from an anguished father and mother whose teenage son has gotten on the wrong side of the law in some adolescent miscreance. Receiving a modest line of credit as payment from a struggling tradesman or small merchant for helping him solve a commercial dispute. Such charity from a legal professional is in the highest tradition of what it means to be an officer of the court. It is service that would resonate with Atticus Finch.

But there is yet another, even more fundamental, dimension to lawyer professionalism. I have struggled to encapsulate it in a single phrase



with only limited success. The best I can do without circumscribing too narrowly what I am referring to is simply this: *Standing for goodness. Doing the right thing.* Not because it is profitable, not because it looks good, not even because the bar association has included it in a code of conduct or set of ethical standards; but doing the right thing simply because it is *the right thing!* On my office desk is a framed quotation attributable to President Harry S. Truman. It states simply: “When in doubt, do what’s right.” That, I believe, is the spirit of Atticus Finch.

“Standing for goodness”—“doing the right thing”—is a personal philosophy that covers a multitude of virtues. It begins at the everyday level with just common courtesy and pleasantness. Recently, I read a number of codes of “professionalism” promulgated by various states. Universally, they include something like this: “Lawyers should exhibit courtesy, candor, and cooperation in dealing with the public and participating in the legal system.” Or, “Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries.” I shook my head sadly—not at these declarations, which are commendable in sentiment, but at the notion that a “sandbox” or Sunday School lesson, like treating others decently, needs any mention at all in a professional code of those sworn to serve the public interest. For you and me—for men and women at law who weekly covenant to take upon ourselves the name of Jesus Christ, to keep His commandments, and to always remember Him—such codes should be unnecessary. Standing for goodness is something that should just be part of who we are. Like Atticus Finch.

This matter of standing for goodness as reflected in one’s civility towards others is not mere idealism. It is also practical and, in my experience at least, one of the very first evidences of a true professional. A number of years ago while practicing law in San Diego, I was invited to participate in a bar association committee that was drafting one of these codes of conduct. The association also decided that it wanted to establish an annual award for the lawyer whose skill and integrity best exemplified the maxim “His word is his bond.” The first such award was given to a good friend of mine who I regarded as perhaps the finest civil trial lawyer in San Diego.

I attended the bar association dinner in his honor where the award was to be presented. Numerous fine tributes were paid to this able and good man by lawyers who were his partners and by those who had been his opponents. Finally, it was his turn for a response. He said this: “When I was a new lawyer, just starting out, I went to Judge Louis Welch [who had been one of the deans of the Superior Court bench] and asked for his advice. He answered with five words. “The decided are always gentle.” What a lesson! *The decided are always gentle!* Gentility. Cordiality. Understatement. Honesty. These are all evidences of a gentleman or woman. They are the marks of integrity in one committed to standing for goodness. And, in my experience at least, they are invariably the marks of

an opponent to be reckoned with! They are the very first signs of a true professional in law.

Sometimes, standing for goodness is not easy—as Atticus Finch knew. Sometimes it means standing up for justice—for doing the right thing—even when it is difficult.

The news in July 1942 was bleak on every hand. Only six months earlier, air and naval forces of the Empire of Japan had left the U.S. Pacific Fleet a smoking ruin at Pearl Harbor. A seemingly invincible Japanese juggernaut had advanced the boundaries of the Japanese empire throughout Asia and the islands of the Pacific and was literally knocking at Australia's door. In Europe the invincible Nazi war machine had advanced hundreds of miles into the Russian heartland, seizing Stalingrad on the Volga River. Except for a brilliant naval victory at Midway in June, the United States had hardly gotten into the game. And in New York City, Anthony Cramer, a former German national, was charged with high treason for allegedly aiding a group of Nazi saboteurs. Public sentiment cried out for Cramer's prompt conviction.

Into that grim situation stepped Harold R. Medina, one of New York's best-known trial lawyers. A federal judge asked Medina to represent Cramer. As Medina later recalled, "He told me that Cramer was wholly without means to hire any lawyer, that it was important to demonstrate to the American people and to the world that, under our system of American justice, the poor man is just as much entitled to the advice of competent counsel as is a man with plenty of money. He explained that he wanted me to defend the accused as a patriotic duty."<sup>6</sup> Without hesitation, Medina accepted the unpaid assignment.

It was a delicate and courageous endeavor. Many in the public, even some friends, thought he was giving aid and comfort to the enemy. Others thought he was just in it for the money. But burning deeply in Harold Medina's heart was the principle embodied in the Sixth Amendment that assures every accused the able assistance of legal counsel. So devoted was Harold Medina to this, and all other, provisions of the Constitution that he refused to say or do anything to betray doubt in his client's cause, even refusing to acknowledge that he was a court-appointed attorney. Years later he said:

I had made up my mind from the beginning that not one word should come from my lips to give the jury the impression that I was anything other than a lawyer retained by Cramer to defend him. He was entitled to the best defense we could give him. He was entitled to the full advantage of everything which went with the fact that I was standing by his side as his lawyer. Nor did I want the jury to think for even one moment that perhaps I thought Cramer was guilty but was defending him only because I had been assigned by the court to do it.<sup>7</sup>

On May 15, 1947, President Truman nominated Harold R. Medina as a federal district judge. Four years later he presided at the marathon trial of 11 top-ranking American Communists accused of advocating the violent overthrow of that same Constitution. Eventually, he succeeded the eminent Judge Learned Hand as a judge of the Second U.S. Circuit Court of Appeals.

The cover of *Time* magazine for October 24, 1949, carried the picture of Judge Harold Medina. The caption read, “A certain calm and peace of mind.” Truly, the decided are always gentle.

Atticus Finch’s decision to defend Tom Robinson was anything but popular. Some accused him, in less elegant tones than these, of being a “lover” of the black race. There was even an attempt on the lives of his two children. But Atticus Finch was a true professional. His love of law was more than a mere flirtation, more than an occasional dalliance, certainly more than a marriage of convenience. His was a deep and profound devotion to the idea of justice and to the bedrock principle of charity and the worth of each soul underlying it. Tom Robinson was a man. As such, in his earnest protestations of innocence, he deserved to be taken seriously. As was the right of any man—rich or poor, white or black or brown, honored or despised—Tom Robinson was entitled to the full requirement of the law that the government’s case against him be established beyond a reasonable doubt.

And there was plenty of doubt. Evidence at the trial revealed that Tom Robinson had a withered arm, making it highly unlikely, if not altogether impossible, that he could have committed the alleged crime. And Tom’s own compelling testimony was that he had been lured into the Ewell cabin by a seductive Mayella on the pretense of performing a small chore for her—a seduction, like that of Joseph in Egypt, that he had firmly resisted.

Atticus’ closing argument was even more compelling—marshaling the facts convincingly, showing that Mayella was likely under the abusive influence of Bob Ewell (who turned out to be the real aggressor), and ultimately dragging into the sunlight the racism that lurked in the shadows of Maycomb County. It was magnificent.

But in Maycomb in 1932, it was not enough. Tom Robinson was convicted. Unable to face the prospect of a lifetime in jail, Tom fled while being transported to jail and was shot dead in the attempt. What possible good was served by Atticus Finch’s taking that case? In the end Tom Robinson was dead anyway. Atticus’ own relationship with some in the white community was strained. His children barely escaped the attempt on their lives. And Atticus certainly was not any richer; he had represented Tom Robinson for free—as a public service. For those who measure value according to the egoistic “what’s-in-it-for-me” standard, nothing good came from that ill-fated representation.

But there is another standard of valuation, a nobler, deeper, richer, infinitely more satisfying standard, a standard that only the true professional, the genuine officer of the court, can appreciate. It is profoundly portrayed in the film version of the story about Atticus Finch and Tom Robinson. During the trial the black community of Maycomb had been present—not on the main floor of the courtroom, but in the steaming balcony and outside at the windows.

Now, picture this: The verdict has been announced, the defendant led away. The judge, the lawyers for the county, and the white audience have all departed. Only Atticus Finch remains in the courtroom proper, slowly putting papers into his briefcase. But in the balcony the black audience remains, silent and still. Atticus' two children are with them. As Atticus Finch rises and slowly walks from the courtroom, the entire black population, as though on signal from an unseen hand, arises to its feet in quiet reverence and gratitude, gratitude to a great and good man—an ordinary man perhaps, but a great one. A professional. Says the black preacher to the two Finch children at his side, “Stand up, children. Your father is passing.”

*This satellite fireside address was given to the J. Reuben Clark Law Society at the Conference Center in Salt Lake City on February 10, 2006. Reprinted from the Clark Memorandum, spring 2006, 2–11.*

*Lance B. Wickman received his JD from Stanford University in 1972. He served as a member of the Second Quorum of the Seventy 1994–2000. He is currently general counsel for The Church of Jesus Christ of Latter-day Saints and a member of the First Quorum of the Seventy.*

## Notes

1. Mike Papantonio, *In Search of Atticus Finch: A Motivational Book for Lawyers* (Pensacola, Florida: Seville Publishing, 1996).
2. Rudyard Kipling, “Tommy,” *Ballads and Barrack Room Ballads* (1892, 1893), stanzas 1, 2, 5, 6.
3. Don M. Snider, John A. Nagl, & Tony Pfaff, *Army Professionalism, The Military Ethic, and Officership in the 21st Century* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 1999).
4. *Id.* at 7.
5. Matthew 6:2.
6. William M. Kunstler, *The Case for Courage* (New York: William Morrow & Co., 1962).
7. *Id.*