

THE UNITED STATES OF EMBARRASSMENT: HOW CONCERNS ABOUT THE
WORLD'S VIEW OF AMERICA PROPELLED JUSTICE DEPARTMENT
ACTION IN CIVIL RIGHTS

A THESIS IN
History

Presented to the Faculty of the University
of Missouri-Kansas City in partial fulfillment of
the requirements for the degree

MASTER OF ARTS

by
SARAH RUCKER

B.S., Ohio University, 2011

Kansas City, Missouri
2019

THE UNITED STATES OF EMBARRASSMENT: HOW CONCERNS ABOUT THE
WORLD'S VIEW OF AMERICA PROPELLED JUSTICE DEPARTMENT
ACTION IN CIVIL RIGHTS:

Sarah Marie Rucker, Candidate for Master of the Arts Degree

University of Missouri-Kansas City, 2019

ABSTRACT

In the infancy of the Cold War, the Department of Justice submitted a series of amicus curiae briefs to the Supreme Court in support of civil rights for the first time in history. Curiously, these amicus briefs were laden with rhetoric about the hindrance the international spotlight on American racial discrimination had on foreign relations, national security, and America's good image as a beacon of freedom and democracy. Why did the Department of Justice submit amicus briefs in Supreme Court cases concerning civil rights? Did the Department's amicus briefs sway the Court in favor of racial equality? Did Truman encourage the Department's involvement?

Following World War II, the United States was in direct competition with the Soviet Union for international ideological, military, geopolitical, and monetary influence, especially

regarding Third World nations emerging from decolonization in Africa and Southeast Asia. Armed with reports of mistreatment of African Americans in the U.S., the Soviet Union, allies, and Communist-associated countries were able to effectively demonstrate to those newly-emerging nations and the rest of the world that capitalism was innately flawed and denied minorities economic, legal, and social equality.

That international pressure led directly to Truman's Department of Justice intervening in landmark Supreme Court cases concerning civil rights through amicus curiae briefs, marking the first time in history that the U.S. government took an official, documented stand against segregation. The decision to initially intervene set a precedent for future judicial involvement by the Department of Justice, and led to the dismantling of the 'separate but equal' doctrine established by *Plessy v. Ferguson* in 1896.

Figures within Truman's Department of Justice, more so than Truman himself, were key in the writing and submission of amicus briefs in support of civil rights to the Supreme Court. Examining amicus curiae briefs, Supreme Court rulings, memos, press releases, and speeches revolving around *Shelley v. Kraemer* (1948), *Henderson v. United States* (1950), and *Brown v. Board of Education* (1954), it is clear that President Truman's Department of Justice, carried on into Eisenhower's presidency, had a significant hand in building the legal momentum of the civil rights movement.

APPROVAL PAGE

The faculty listed below, appointed by the Dean of the College of Arts and Sciences have examined a thesis titled “The United States of Embarrassment: How Concerns about the World’s View of America Propelled Justice Department Action in Civil Rights,” presented by Sarah M. Rucker, candidate for the Master of Arts degree, and certify that in their opinion it is worthy of acceptance.

Supervisory Committee

Dennis Merrill, Ph.D., Committee Chair
Department of History

Diane Mutti-Burke, Ph.D.
Department of History

Rebecca Davis, Ph.D.
Department of History

CONTENTS

ABSTRACT.....	iii
Chapter	
INTRODUCTION	1
LAND OF THE FREE.....	10
TRUMAN’S BALANCING ACT	14
“LIMITED SCOPE AND JURISDICTION”	20
<i>SHELLEY V. KRAEMER</i>	24
MILES TO GO	27
<i>HENDERSON V. UNITED STATES</i>	29
BROWN V. BOARD OF EDUCATION OF TOPEKA (1954).....	33
THE SUPREME COURT’S DECISION IN HISTORICAL CONTEXT.....	37
CONCLUSION.....	40
BIBLIOGRAPHY	42
VITA.....	47

Introduction

When the Supreme Court reached a landmark decision in *Brown v. Board of Education* in May of 1954, outlawing public school segregation in the United States, *The San Francisco Chronicle* wrote:

Great as the impact of the antisegregation ruling will be on the states of the South in their struggle to make physical and intellectual adjustment which it requires, still greater, we believe, will be its impact on South America, Africa and Asia . . . to the vast majority of peoples of the world who have colored skins, [*Brown*] will come as a blinding flash of light and hope that presents a new picture of America and puts this nation in a new posture of justice.¹

Media reports showcasing legal racial discrimination were rampant during the presidency of Dwight D. Eisenhower in 1954, but the international spotlight had been shining on inequality in America for nearly a decade prior to the *Brown* decision. Fueled by institutionalized discrimination and violence, international media reports embarrassed America on the world stage and threatened to turn the potential of a world of free, capitalist societies over to Communist hands that could expand the Soviet sphere of influence. That international pressure led directly to President Harry S. Truman's Department of Justice intervening in landmark Supreme Court cases concerning civil rights through amicus curiae briefs in the late 1940s and early 1950s, marking the first time in history that the U.S. government took an official, documented stance against segregation. Amicus curiae, or "friend of the court," briefs are legal documents submitted to the court from a party not involved in the case, but with a strong interest in the subject, to attempt to sway the judges in the direction of a particular verdict. The pursuit of a civil rights agenda through amicus briefs

¹ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2011), 110.

set a precedent for future judicial involvement by the Department of Justice and led to the dismantling of the 'separate but equal' doctrine, created by *Plessy v. Ferguson* (1896).

When many Americans think of the civil rights movement, more often than not images of Martin Luther King, Jr., Rosa Parks, Freedom Riders, and marches on Washington come to mind. To a lesser degree, some think of monumental Supreme Court decisions such as *Brown v. Board of Education* (1954) to end segregation in schools across the country. A handful of scholars like Mary Dudziak, Thomas Borstelman, and Penny Von Eschen have, in recent years, delved into the link between U.S. Cold War foreign policy and the civil rights movement, proving the influence of those entities were a major factor in the progression of African American civil rights.

After defeating a fascist regime in World War II, America appeared hypocritical across the globe and to some citizens at home. How could a country that claimed to be the beacon of freedom and democracy in the world fight Nazi Germany's regime only to return home and continue to uphold Jim Crow laws? Why did the government welcome African American troops to serve in the military, albeit in segregated units, yet allow those soldiers to return home to a systematically racist, oppressive nation? These questions were on the minds of millions of people around the world during the infancy of the Cold War.

What was exceptional regarding the position in which America found itself in the mid-1940s? After all, African Americans who fought in World War One returned home with the expectant notion that things would be different after laying their lives on the line for a country that did not see them as equals, only to see another thirty years of Jim Crow, state-sponsored segregation, lynching, and disenfranchisement. Following World War Two, the United States found itself at a unique moment in history. People around the world were

knowledgeable of the atrocities of Hitler's genocidal regime and international print media, in no uncertain terms, championed the efforts of America and the Allies for bringing an end to Germany's fascist reign. The shock of the racially motivated Holocaust, and emboldened international media, the rise of the Cold War, and the beginning of global decolonization created an ideal scenario for civil rights to advance in the United States.

During his presidency from 1945-1953, Harry Truman's administration propelled government action via executive studies, executive orders, and Department of Justice intervention to advance Civil Rights under immense international pressure. Following World War II, the United States and the Soviet Union competed for international ideological, military, monetary, and geopolitical influence. While Cold War competition first escalated in postwar Europe, it soon became a global affair that frequently centered on newly emerging nations in Africa, the Middle East, and South and Southeast Asia, often referred to as the "Third World."² As historian Odd Arne Westad has noted, many new states in these regions were rich in strategic and economically valuable raw materials, potential sites for vital air and naval bases, and increasingly important players in the United Nations and other international forums. They were also inhabited by people of color who, in America, suffered legal discrimination in several parts of the country.³ The Soviet Union and other allies and Communist-associated countries, armed with reports of mistreatment of African Americans,

² Greg Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism* (New York: Metropolitan Books, 2006). South America and Latin America were vital to both America and the Soviet Union. These territories did not include many new nations, but rather former colonial areas with less-developed economies and increased political instability.

³ Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (Cambridge: Cambridge University Press, 2007).

attacked the United States and effectively demonstrated to those newly-emerging nations and the rest of the world why they believed capitalism was innately flawed and denied minorities economic, legal, and social equality.

The Cold War featured more than a geo-political rivalry between the two superpowers. It also positioned itself into American politics and culture. The infamous Red Scare led by Senator Joseph McCarthy was still five years away at the end of World War II, but the fear of Communism already gripped the nation. Before an examination of the Soviet-American international battle that led to government intervention in Supreme Court cases can begin, it is necessary to analyze why Communism struck fear into the American government and its people. Democratic capitalism thrives on individuality, competition, and open markets, and the threat of revoking any of those from Americans caused unease among the public. In *Selling the American Way: U.S. Propaganda and the Cold War*, Laura A. Belmonte explained America's apprehension toward Communism was oftentimes due to U.S. officials who advocated self-determination and individuality. They "demonstrated how democracies protected civil rights, personal property, and individual dignity" and by "extolling these liberties, U.S. policymakers hoped to gain adherents to the democratic way of life and to discredit communism."⁴

The fear of severe restrictions being imposed on American citizens was drummed up by government officials to justify their war against Communism. Emotional appeals to patriotism and denunciations of "big government" and "pagan" socialism also provided

⁴ Laura A. Belmonte, *Selling the American Way: U.S. Propaganda and the Cold War* (Philadelphia: University of Pennsylvania Press, 2013), 97.

conservatives convenient tools for attacking popular New Deal programs that had only recently been implemented on the home front.⁵

U.S. historians have traditionally drawn stark distinctions between the nation's domestic and foreign experiences. In the last two decades, however, practitioners of the "cultural turn" in U.S. diplomatic and transnational history have explained how the fluidity of cultural discourse has often given way to a blending of domestic and international constructions of race, class, and gender. Paul Kramer has detailed how U.S. soldiers charged with extinguishing the Philippine Insurrection in the early twentieth century, and the colonial government that followed, invented new racial categories outside of the Jim Crow binary of white and black to accommodate new realities in the recently acquired U.S. colony.⁶ Amy Kaplan has also demonstrated how racial hierarchies in the United States have been complicated by encounters with racial "others" abroad – in Hawaii, Cuba, and Puerto Rico. Decades before it wrestled with challenges to "Separate but Equal" the Supreme Court in *Downes v. Bidwell* (1901), for example, mangled meanings when they reasoned that Puerto Rico and other newly acquired territories were "inhabited by alien races" unsuitable for the application of Anglo-Saxon law, and therefore best defined for legal purposes as "foreign in a domestic sense."⁷

⁵ Kevin M. Kruse, *One Nation Under God: How Corporate America Invented Christian America* (New York: Basic Books, 2015), 11.

⁶ Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, & the Philippines* (Chapel Hill: The University of North Carolina Press, 2006), 96.

⁷ Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Cambridge: Harvard University Press, 2002), 1-8.

In recent years, a small number of scholars have begun to explore the numerous points at which U.S. Cold War policies and the domestic movement for civil rights reform have intersected. Their goal was not to depreciate the influence of grassroots activists, nor to deny African American agency in the struggle for racial equality, but to complicate traditional interpretations and expand the list of actors who played a role in the quest for a more perfect union.

In the groundbreaking *Cold War Civil Rights*, Mary Dudziak focused on how race became an important part of Cold War narratives when international news sources and Soviet propaganda agencies drew attention to the inequalities inherent to the Jim Crow system of racial segregation and voter disenfranchisement in America, particularly in the American South. Several foreign newspapers, including *The Fiji Times and Herald*, Ceylon's *Observer*, and Haiti's *La Nation*, were constant critics of America's racial dilemma, along with Soviet publications such as *Trud*. These criticisms damaged Washington's efforts to highlight the Soviet Union's own dismal human rights record in occupied Eastern and Central Europe. Dudziak argued that the international embarrassment that followed helped stimulate the Truman, Eisenhower, Kennedy, and Johnson administrations' evolving support for African American civil rights reform – from Truman's assembly of the President's Committee on Civil Rights in 1946, to Eisenhower's deployment of U.S. troops to Little Rock, Arkansas in 1957, and finally to backing civil rights and voting rights legislation in the 1960s in the Kennedy and Johnson administrations.

Taking a somewhat different track, Thomas Borstelmann and Penny Von Eschen examined the relationship between international anticolonialism movements and civil rights activists and organizations in the United States. Borstelmann's *The Cold War and the Color*

Line: American Race Relations in the Global Arena examined how Washington juggled support for European allies who maintained their colonial holdings after World War II, with its need to reach out politically to movements for self-determination – while simultaneously addressing growing demands for African American civil rights on the domestic front. He optimistically concluded that the collision of these objectives led to the destruction of global white supremacy. Penny Von Eschen’s *Race Against Empire* reached a different conclusion by examining the direct ties that developed between grassroots movements for decolonization in Africa and the American civil rights movement. She argued that U.S. Cold War foreign policy objectives, along with the postwar Red Scare, thwarted the efforts of leftist, civil rights activists such as W.E.B. Du Bois and Paul Robeson to connect their domestic cause to the global Pan-Africanist movement. To win the backing of Democrat and Republican administrations alike, mainstream U.S. civil rights organizations made the strategic decision to limit their agenda to dismantling domestic Jim Crow injustices rather than launching a broader attack on international capitalism and its subsequent racial discrimination.⁸

Inspired by these groundbreaking historians, Ian Fagelson’s 2018 article “President Truman’s Justice Department and the Fight for Racial Justice in the Supreme Court” looked not at Truman’s civil rights policies, but focused more narrowly on the actions of the Justice Department and its motives for issuing amicus briefs in five Supreme Court cases in support of civil rights. Fagelson’s study spoke to the mixed views of individuals within the

⁸ Penny Von Eschen, *Race Against Empire: Black Americans and Anticolonialism, 1937-1957* (Ithaca: Cornell University Press, 1997), 97.

Department of Justice, but did not investigate the possible linkages between international context and the department's tactic of issuing amicus briefs.⁹

Landmark civil rights Supreme Court cases involved Department of Justice intervention far more than is typically believed. This paper is a study of three cases, predominantly examining Department of Justice amicus curiae briefs submitted in landmark civil rights cases. This study includes the outlawing of racial covenants in *Shelley v. Kraemer* (1948), the banning of segregated railroad cars and challenging *Plessy v. Ferguson's* (1896) 'separate v. equal' doctrine in *Henderson v. United States* (1950), and outlawing public school segregation in *Brown v. Board of Education* (1954).

This paper builds on the pioneering works of Dudziak, Borstelmann, and Von Eschen in an effort to further expand our understanding of the relationship between Cold War and civil rights history. Specifically, it explores the initiatives taken by the Truman administration's Attorneys General Tom C. Clark, J. Howard McGrath, and James P. McGranery, Solicitor General Philip B. Perlman, and others within the Department of Justice. I argue that these individuals formulated the strategy of using amicus briefs to support and advance the civil rights agenda. Although President Truman earned his place in history by appointing the President's Committee on Civil Rights in 1946 and ordering the desegregation of the U.S. military in 1948, I argue that his Department of Justice was actually more integral in the legal advancement of racial equality. While these men were likely motivated to act by multiple concerns, they consistently referenced Cold War

⁹ Ian B. Fagelson, "President Truman's Justice Department and the Fight for Racial Justice in the Supreme Court," *Journal of Supreme Court History* 43 (2018): 69-82.

international political realities, including America's embarrassing image and difficulty to conduct foreign relations, to make the case for civil rights reform at home.

This paper illuminates how the Department of Justice, President Truman, and the U.S. State Department, at times driven by different motives, joined forces to simultaneously address demands for civil rights at home and for racial justice in the former colonial world. The Department of Justice was looking for a solution to the rise of domestic racial violence, which was widely reported in international print media, without making prominent arrests that could anger southern white Democrats who still comprised an element of Truman's Democratic Party coalition. It found a solution by composing amicus briefs to quietly influence the Supreme Court outside of the fanfare of electoral politics. President Truman's motivations have historically been called into question, but there is no doubt that the civil rights platform the Democratic party adopted in 1948 forced him to take definitive action in support of civil rights and propelled his support for the amicus briefs. Finally, the State Department, frustrated with the increased difficulty of promoting the United States as a beacon for world freedom amid America's treatment of African Americans, contributed heavily to the amicus briefs. The international and domestic spheres, traditionally studied independently, are reciprocal and closely intertwined.

Land of the Free

The picture of democracy that America wished to portray appeared disingenuous to more than just African Americans and civil rights advocates in the U.S. In 1950, civil rights advocate and lawyer Raymond Pace Alexander wrote to Secretary of Defense George C. Marshall a personal letter detailing his observations during a trip to American-occupied Germany. He discussed the questioning he endured from Germans, French, and Belgians about the hypocrisy of the United States who wondered “why do they say that America is such a free, liberal and democratic country, so good to their people, that we should copy its way of life, when you maintain two separate armies of soldiers?”¹ Alexander argued that for America to claim its role as the pinnacle of freedom in the world and withstand Communist propaganda, it must shed its robe of segregation or quickly “be used by Russia in their racial propaganda being daily spread among the more than a billion yellow and brown people of China, India and the East Indian archipelago.”²

The American and Soviet battle for countries to follow the path of capitalism or Communism, respectively, was the major impetus for the U.S. government to act on civil

¹ Raymond Pace Alexander, ‘Letter from Raymond Pace Alexander to George C. Marshall, October 6, 1950’, in *Documentary History of the Truman Presidency: Volume 12: The Truman Administration’s Civil Rights Program: President Truman’s Attempts to Put the Principles of Racial Justice into Law, 1948-1950*, ed. Dennis Merrill (Lanham: University Publications of America, 1996), 541-560.

² *Ibid.*

rights during the Truman and early Eisenhower years. In a now declassified memo, Stephen J. Spingarn, administrative assistant to President Truman, outlined Russia's relentless propaganda production and distribution that commented "more extensively on the American domestic scene than on any other nation."³ Spingarn expressed frustration with the ways in which the Soviet Union was taking factual information and, in his view, blowing it out of proportion. By "making the flat statement that in the US 'according to official statistics over 5,000 negroes have been lynched,' Soviet propaganda seeks to give its audience the impression that lynchings are a daily occurrence."⁴ Indeed, he cited dozens of snippets from Soviet media outlets such as radio shows on Radio Moscow and Radio Azerbaijan, tabloid newspaper *Komsomolskaya Pravda*, and newspaper *Trud*, among others. In addition to lynchings, Spingarn lamented that these outlets highlighted racial discrimination in the U.S. military and workplace.

Soviet media outlets were not the only ones reporting on America's mistreatment of African Americans. In 1947, a Mississippi hotel denied a reservation to a Haitian Ambassador to the United States who was in town on invitation to a conference. The ambassador returned home outraged. The Haitian newspaper *La Nation* wrote an article, picked up by the *Miami Herald*, that captured the international tone: "Can the Americans themselves speak of Pan-American solidarity when among themselves they make a fierce discrimination between the people of the Americas?"⁵ The *Fiji Times & Herald* ran a story

³ Stephen J. Spingarn, *Soviet Charges of Violations of Human Rights in the United States*, 1949, memo, *Harry S. Truman Presidential Library*, Stephen J. Spingarn Papers Box 21.

⁴ *Ibid.*

⁵ Mary L. Dudziak, "Desegregation as a Cold War Imperative," *Stanford Law Review* 41, no. 1 (November 1988): 91, accessed September 28, 2017, JSTOR.

entitled “Persecution of Negroes Still Strong in America” that detailed the economic disparity of African Americans, especially in the southern states, and the racist persecution they encountered on an everyday basis.⁶ In 1948, the Ceylon newspaper *Observer* ran stories about America’s racial issues often enough to cause concern for American Embassy officials. According to Ceylon journalist Lakshman Seneviratne, in Washington “the colour bar is the greatest propaganda gift any country could give the Kremlin in its persistent bid for the affections of the coloured races of the world, who, if industrialized, and technically mobilized, can well dominate, if domination is the obsession, the human race.”⁷

The National Committee on Segregation organized in 1946 by Edwin Embree of the philanthropic Rosenwald Fund to draw nationwide attention to racial discrimination in Washington, D.C.. The Committee released a pamphlet in 1948 entitled “Segregation in Washington,” a condensed summary of research findings concerning the negative international press generated by segregation in the nation’s capital.⁸ The pamphlet detailed Russian print media reports of mistreatment of African Americans and included an excerpt of an article by the *Associated Press* entitled “Russian Newspaper Hits Treatment of Negroes Here,” citing the Moscow newspaper *Trud*. The National Committee on Segregation ended the section that addresses American hypocrisy by arguing that “sometimes it pays to see ourselves as others see us. Those who come here from foreign lands to consolidate the peace

⁶ Dudziak, “Desegregation,” 81.

⁷ *Ibid.*, 83.

⁸ Wendell E. Pritchett, "A National Issue: Segregation in the District of Columbia and the Civil Rights Movement at Mid-Century" (2005), Faculty Scholarship, Paper 1226, at 323. http://scholarship.law.upenn.edu/faculty_scholarship/1226 .

are disposed to be friendly. . .but the reaction of foreign visitors to racial segregation in Washington is. . . uniformly negative.”⁹

Truman’s administration was hard at work trying to balance the tumultuous situation of promoting equality to African Americans while attempting to calm the storm of citizens vehemently opposed to civil rights and trying to set an example for the rest of the world. In an unprecedented move, the United States Department of Justice filed amicus curiae briefs in several Supreme Court cases regarding racial segregation and discrimination, beginning with *Shelley v. Kraemer* (1948). For the first time in history, the Department of Justice issued an amicus brief in a civil rights case, setting the tone for the future of civil rights involvement for the Truman administration that would carry the nation through the dismantling of legal segregation.

⁹ Kenesaw M. Landis, *Segregation in Washington* (Chicago: National Committee on Segregation in the Nation’s Capital, 1948), 9.

Truman's Balancing Act

Scholars have been conflicted in their analyses of Truman's actions and motivations concerning civil rights, but he is widely regarded as the most racially-progressive president since Abraham Lincoln. Some paint him as a man lobbying for legislation and pushing through executive orders to progress civil rights, moved to action despite his own upbringing in the segregated border state of Missouri by a dawning awareness of racial injustice. Others, like biographer Alonzo Hamby, suggest that Truman only gave priority to civil rights when it benefited him politically.¹ The migration of an estimated 1.2 million southern blacks to the urban north in search of defense jobs during World War II had, in fact, created a potentially rich block of votes for the political party willing to address matters of racial injustice.²

Truman received thousands of personal letters from citizens urging him not to pursue a progressive civil rights platform. One such letter came from Alabaman Elmo McCray, Jr., who wrote about the inherent distrust southerners had for northerners and African Americans. In response to one of Truman's civil rights bills that stalled in the Senate, McCray lamented, "you have suggested a bill that will again give them equal rights – pouff – just like that."³ Claiming that his female ancestors were raped and sexually assaulted at the hands of former slaves, he outraged "we retain the distrust of the Negroes. Why? Because

¹ Alonzo Hamby, *Man of the People: A Life of Harry S. Truman* (Oxford: Oxford University Press, 1995).

² Garth E. Pauley, "Harry Truman and the NAACP: A Case Study in Presidential Persuasion on Civil Rights," *Rhetoric and Public Affairs* 2, no. 2 (1999): 211-241, at 222.

³ Elmo McCray, Jr., 'Elmo McCray, Jr., to President Harry S. Truman April 19, 1948,' Letter, *Harry S. Truman Presidential Library*, Truman Papers, President's Personal File 200: Civil Rights.

they haven't shown us that they are to be trusted and treated as equals."⁴ Recalling Civil War Reconstruction, McCray anguished, "immediately the Southerners remember the trouble and turmoil such a measure brought on us once before. . . I don't intent to risk the security of my wife and daughter on a chance."⁵ Americans were far from a consensus regarding civil rights, some taking every opportunity to voice their displeasure with Truman's proposals.

It is worth noting that while it is easy to see Truman being motivated by a cynical concern for the African American vote after he became president, he was no novice when it came to racial politics. It is even arguable that he had, over the years, come to view the protection of certain basic, African American rights as the norm. His political apprenticeship came as a county executive in Jackson County, Missouri, a functionary of the Kansas City political machine led by the notoriously corrupt Tom Pendergast. Pendergast was no groundbreaking activist when it came to social reform, but his political machine rewarded loyal black constituents as well as white.⁶ Perhaps this political upbringing influenced him when as a U.S. Senator, he voted for cloture, or to end a filibuster, when southern Democrats filibustered an anti-lynching bill in 1938.⁷ He also received the support of the National Association for the Advancement of Colored People (NAACP) executive director Roy Wilkins, the former editor of the *Kansas City Call*, the city's leading black newspaper, who

⁴*Ibid.*

⁵ *Ibid.*

⁶ Franklin D. Mitchell, "Who is Judge Truman?: The Truman for Governor Movement of 1931," *Midcontinent American Studies Journal* 7, no.2 (1966): 3-16, <http://www.jstor.org/stable/40640642>.

⁷ David Goldfield, "Border Men: Truman, Eisenhower, Johnson, and Civil Rights," *The Journal of Southern History* 80, no. 1 (2014): 7-38, at 14.

stated, “I had known him when he was a judge back in Kansas City, and one of the things he had done back then was to save a home for Negro boys that the white folks thought was too good for colored children.”⁸

No matter the president’s personal motivations, 1946 is a significant catalyst Truman’s administration, due in large part to a surge of nationwide violence against African Americans – especially targeting returning U.S. military veterans. In Aiken, South Carolina, the Chief of Police violently beat Sergeant Isaac Woodard with his nightstick, blinding him in both eyes. In Georgia, Maceo Snipes, who had served in the Army for two and a half years and was honorably discharged, was shot dead by whites shortly after casting a ballot in the state’s Gubernatorial primary.⁹

In September 1946, a frustrated president wrote to his Attorney General, Tom C. Clark, conveying graphic details of just a few of the attacks:

I had as callers yesterday some members of the National Association for the Advancement of Colored People and they told me about an incident which happened in South Carolina where a negro Sergeant, who had been discharged from the Army just three hours, was taken off the bus and not only seriously beaten but his eyes deliberately put out, and that the mayor of the town had bragged about committing this outrage.

I have been very much alarmed at the increased racial feeling all over the country and I am wondering if it wouldn’t be well to appoint a commission to analyze the situation and have a remedy to present to the next congress...

I know you have been looking into the Tennessee and Georgia lynchings, and have also been investigating the one in Louisiana, but I think it is going to take something more than the handling of each individual case after it happens--it is going to require the inauguration of some sort of policy to prevent such happenings.¹⁰

⁸ Goldfield, “Border Men”, 14.

⁹ Dudziak, “Desegregation,” 77-78.

¹⁰ Harry S. Truman to Tom C. Clark, September 20, 1946, in *Harry S. Truman Presidential Library & Museum: Papers of David K. Nilis*, <https://bit.ly/305ILCR>.

In December 1946, Truman announced the creation of the President's Commission on Civil Rights to investigate the state of race relations in America and to recommend measures to combat the violence and protect the civil rights of the nation.

In October 1947, the Committee released their report *To Secure These Rights*, on which Truman based many of his civil rights policy decisions. As a result of the report, Truman advocated for a permanent Fair Employment Practice Committee (FEPC), "an anti-lynching law, an anti-poll tax measure, and the prohibition of discrimination in interstate transportation facilities," among others.¹¹ Truman also issued Executive Order 9981 in 1948, which desegregated the U.S. armed forces.

Truman's embrace of a civil rights platform was aided by the young leader of a rising progressive wing of the Democratic Party, Minneapolis Mayor Hubert Humphrey, who gave an impassioned pro-civil rights speech at the 1948 Democratic National Convention. On the convention floor, Humphrey roused his party to a pro-civil rights platform:

There are those who say to you we are rushing this issue of civil rights. I say we are 172 years late. There are those who say this issue of civil rights is an infringement on states' rights...Every citizen has a stake in the emergence of the United States as the leader of the free world. That world is being challenged by the world of slavery. For us to play our part effectively, we must be in a morally sound position.¹²

¹¹ Monroe Billington, "Civil Rights, President Truman and the South," *The Journal of Negro History* 58, no.2 (1973): 132.

¹² Hubert Humphrey, "Speech on Civil Rights," (speech, Philadelphia, Pennsylvania, July 14, 1948), Minnesota Historical Society, <http://www2.mnhs.org/library/findaids/00442/pdfa/00442-00187.pdf>.

When Humphrey's speech ended, in "unleashed pandemonium in the convention hall. When the celebrating had subsided long enough for a vote to be recorded, the southerners were soundly beaten."¹³

Truman was hesitant to push civil rights legislation forward prior to Humphrey's speech. In fact, the desegregation of the military was ordered less than two weeks after the speech at the DNC. Humphrey's speech and fierce support of civil rights spurred the adoption of a civil rights platform that outraged Southern Democrats so greatly that it led to a convention walkout and a new political party. The States' Rights Democratic Party, also known as the Dixiecrats, nominated South Carolina Governor Strom Thurmond as their candidate to run against Truman on a platform of segregation and states' rights. Truman won the 1948 election, but the Dixiecrats were able to take four Southern states, proving the citizens of the American South were far from ready to accept African Americans as their equals.

Toward the end of his presidency, Truman acknowledged his role in the Department of Justice amicus briefs. Upon receiving the Franklin Delano Roosevelt award from the Interdenominational Ministers Meeting in Harlem, New York, in October 1952, Truman acknowledged his role in the Department of Justice's amicus brief in *Shelley v. Kraemer* (1948) and *McLaurin v. Oklahoma State Regents* (1950)¹⁴ and *Sweatt v. Painter* (1950). Speaking on *Oklahoma State Regents* (1950) and *Sweatt v. Painter* (1950)¹⁵, Truman said, "at my request, the Solicitor General of the United States went before the Supreme Court to

¹³ Kari Frederickson, *Dixiecrat Revolt and the End of the Solid South, 1932-1968* (Chapel Hill: The University of North Carolina Press, 2001), 129.

¹⁴ *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

¹⁵ *Sweatt v. Painter*, 339 US 629 (1950).

argue that Negro citizens have the right to enter State colleges and universities on exactly the same basis as any other citizens. And we won that fight.”¹⁶

Truman walked a fine line between advancing civil rights and keeping the peace in the American South; hoping to successfully appeal to both the northern African American vote and the southern white vote. Because of this balancing act, Truman supported other areas of the government in progressing civil rights without blatantly interfering with the rights of southern states.

¹⁶ Harry S. Truman, ‘Address in Harlem, New York, Upon Receiving the Franklin Roosevelt Award,’ Address, *Harry S. Truman Presidential Library*, Public Papers, Harry S. Truman 1945-1953, <https://www.trumanlibrary.org/publicpapers/index.php?pid=2278&st=&st1>.

“Limited Scope and Jurisdiction”

Tom C. Clark, appointed as Truman’s Attorney General at the beginning of his presidency in 1945, became a major advocate for legal racial equality through his leadership of the Department of Justice. After championing civil rights for several years, Truman appointed Clark as an Associate Justice of the Supreme Court in 1949. Clark’s civil rights legacy lived on throughout his time as a justice and beyond. He resigned from the Supreme Court so that his son Ramsey Clark, an outspoken supporter of civil rights in the 1960s, could assume the role of Attorney General without perceived conflict of interest under President Lyndon B. Johnson, the administration that won passage of the landmark Civil Rights Act of 1964 and the Voting Rights Act of 1965. Truman later recalled in his published memoir that Tom Clark’s appointment was contingent on his Department of Justice advocating for equality.

When I conferred with Clark regarding his appointment, I expressed to him my ideas of how I wanted him to run the Department of Justice. I emphasized to him the need to be vigilant to maintain the rights of individuals under the provisions of the Bill of Rights...I emphasized this so much that Tom Clark thought I was ‘hipped’ on the subject--and I was. Particularly in time of war, there is danger of encroachments on the civil rights of the people.¹

Clark’s Department of Justice would not delve into civil rights cases via amicus briefs until 1948, but the issues of race and civil rights were probably on Clark’s mind from the outset. As early as June 1946, prior to the formation of the President’s Committee on Civil

¹ Harry S. Truman, *Memoirs of Harry S. Truman: Year of Decisions Vol. 1* (New York: The New American Library, 1955), 361.

Rights, Clark spoke to the Chicago Bar Association about the nation’s racial wounds. This speech came at a particularly turbulent time in America, following race riots and the killing of two unarmed African American men detained for said riots while in police custody in Columbia, Tennessee. Drawing attention to the wave of violence, Clark told his audience that in the first half of the 1946 fiscal year, the Department of Justice received no fewer than 2,600 complaints “from groups, individuals, and even officers concerning violations of personal rights.”² The Attorney General, however, also noted his office’s limited jurisdiction and the “comparatively few instances . . . [in which] we have authority to investigate and prosecute.”³ In short, while Clark expressed his desire to address the many complaints lodged, he had yet to determine a legal process for doing so.

It is telling that just two years prior to Justice Department intervention in Supreme Court cases, Clark publicly lamented that his hands were figuratively tied and the Department's power limited when it came to protecting African Americans. Clark was looking for a way for the Department to intervene without sending federal agents to make arrests in the South and causing a political firestorm that would affect the Truman administration's re-election goals. Clark, speaking of his Department’s limitations, harkened back to Civil War Federalism, arguing that the Bill of Rights did not protect citizens from the illicit deeds of state governments or individuals, “nor did it empower the National

² Tom Clark, “Civil Rights,” speech to Chicago Bar Association, June 21, 1946, accessed February 11, 2018, <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/06-21-1946.pdf>.

³ *Ibid.*

government to take affirmative action to protect those liberties. Until the Civil War the individual looked only to his State as the source and guardian of his personal rights.”⁴

Clark seemed to throw up his hands and say the Department of Justice could do nothing to help African Americans in cases from voter suppression to murder. Many, however, were skeptical of Clark’s claims. Even one decade later, historian John Hope Franklin attended a conference in Austria where he was told by a French attendee that “it appears to the outsider that federalism stands in the way of nothing that the national government actually wants to do; but it is always used as an excuse for the national government’s not protecting the rights of negroes.”⁵ How could the most powerful government on the planet claim to not have the power to prosecute white police officers who murdered handcuffed, unarmed black men in custody?

Clark did not want to cause political unrest in the South, and he achieved this by shifting the onus of responsibility to American citizens. The Attorney General acknowledged the shortcomings of the historically-weak civil rights protections that had failed to defend African Americans, distanced his department from the thousands of complaints and criticisms it received, and masterfully deflected responsibility for progressing civil rights. Clark urged everyday Americans to “enforce and practice in his daily life the American principles of tolerance and fair play, which are our heritage and the hallmarks of our civilization.”⁶ Appealing to a sense of moral responsibility, Clark argued that “it is even

⁴ *Ibid.*

⁵ Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge: Harvard University Press, 2001), 107.

⁶ Clark, “Civil Rights,” 456.

more the duty of every American to see to it that his community, his state, his federal government, constantly affirm and apply those principles.”⁷ As civilian complaints mounted, international media’s scrutiny continued compounding, and the Cold War heated up, the Department of Justice found another way to advance civil rights without creating an all-out political firestorm in the South.

⁷ *Ibid.*

Shelley v. Kraemer

Less than two years after Clark's speech to the Chicago Bar Association, the Department of Justice filed its historic amicus brief in *Shelley v. Kraemer* (1948), the first ever submitted by the U.S. government in a civil rights case. The case examined the issue of restrictive covenants, which restricted the use of land, and whether or not it violated the fourteenth amendment's guarantee of equal protection. *Shelley*, a case from St. Louis, Missouri, challenged a fifty-year old restrictive covenant on a rental property that stated the property could not be sold to nonwhites. The African American Shelley family purchased a house that, unbeknownst to them, fell under a restrictive covenant. Other homeowners in the neighborhood sued on the basis of restrictive covenants in the St. Louis Circuit Court and lost, but appealed to the Missouri Supreme Court, which subsequently overturned the ruling in favor of the Shelley's neighbors.¹

Clark and Solicitor General Philip B. Perlman, at President Truman's request, submitted the amicus brief to the Supreme Court in support of Shelley.² They asserted that "the Federal Government has a special responsibility for the protection of the fundamental civil rights guaranteed to the people by the Constitution and laws of the United States."³ In the brief, they argued that the American government "is of the view that judicial enforcement

¹ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

² Truman, 'Address, Upon Receiving the Franklin Roosevelt Award,' Address, *Harry S. Truman Presidential Library*, Public Papers, Harry S. Truman 1945-1953.

³ Tom C. Clark and Phillip B. Perlman, *Prejudice and Property, an Historic Brief against Racial Covenants* (Washington: Public Affairs Press, 1948), 22.

of racial restrictive covenants on real property is incompatible with the spirit and letter with the Constitution and laws of the United States.”⁴

In their first amicus brief involving the civil rights of African Americans, the Department of Justice took a legal stance toward equality that served as a line in the sand for future Supreme Court cases of a similar nature. Clark and his colleagues had also settled on a legal strategy allowing the federal government to act by connecting civil rights reform to U.S. national security. The Shelley brief specifically pointed to the rising tide of international criticism of American race relations. Acknowledging the stress the U.S. was under to advance civil rights during the Cold War’s infancy, they asserted that racial covenants “being enforced by instrumentalities of government has become a source of serious embarrassment to agencies of the Federal Government in the performance of many essential functions, including . . . to the conduct of foreign affairs.”⁵

Clark and Pearlman dedicated an entire subsection of the *Shelley* brief to detailing the hindrance of conducting foreign affairs. Quoting the then-Acting Secretary of State Dean Acheson, they specified the reasons foreign relations suffered under racial covenants. The government found it “next to impossible to formulate a satisfactory answer to our critics in other countries; the gap between the things we stand for in principle and the facts of a particular situation may be too wide to be bridged . . . the existence of discrimination against minority groups in the United States is a handicap in our relations with other countries.”⁶ In

⁴ Clark and Perlman, *Prejudice and Property*, 68.

⁵ *Ibid.*, 24.

⁶ *Ibid.*, 35.

order to sway the court's decision, the Justice Department appealed to the Supreme Court justices' sense of integrity and American identity as a harbinger of freedom and democracy.

Following World War II, the establishment of the United Nations brought major countries together to promote peace around the world. Thus, the *Shelley* brief dedicated a section to America's responsibility to uphold The Charter of the United Nations of 1945, which had been approved as a treaty by the U.S. Senate. The brief specifically cited the Charter's goal to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."⁷ How could the United States fulfill its international obligations, Clark and Pearlman asked, without first rectifying its domestic racial dilemma?

The message came across in unmistakable terms. To win Cold War allies in a dangerous world, Washington had to practice what it preached. The *Shelley v. Kraemer* (1948) amicus brief was the Department of Justice's first official step toward racial equality. The Truman administration was so pleased with the brief, it was published in its entirety as *Prejudice and Property: An Historic Brief Against Racial Covenants*. Amicus briefs were rarely published and made available for wide distribution, indicating the Department's opinion was seen as a significant statement on the importance of racial equality. While Truman did not author the brief, the publishing of the *Shelley* brief implies that he was certainly in favor of it being written.

⁷ *Ibid.*, 71-72.

Miles to Go

The Supreme Court's monumental decision in *Shelley* (1948) declared that courts could no longer enforce racial covenants, but had little effect in immediately changing public opinion or political behavior. In fact, while the president had sent several of the initiatives recommended by his Committee on Civil Rights to Congress, including the establishment of a permanent U.S. Civil Rights Commission, they sat bottled up in committees headed by powerful, senior white Democrats. The initiatives were highlighted in Truman's inaugural address, alongside the famous "Point Four" in the speech that called for a technical and economic assistance program designed to kickstart modernization and development in Third World nations. In January 1949, Administrative Assistant to Truman and future Special Counsel to the President Charles S. Murphy wrote a memo to Truman's Special Assistant Philleo Nash, the president's point man on minority affairs, regarding cloture action of filibusters in the U.S. Senate. In his memo, Murphy bluntly told Nash that if the administration did not take an immediate and decisive stance on civil rights,

The professions of our country about world democracy will be viewed with derision and scorn in the interest of winning the vast millions of peoples of color in the undeveloped areas of the world, who in your inaugural address you hope to help by American technological know how.¹

Murphy's memo directly linked the Truman administration's lack of Congressional action to the United States not "winning" peoples of color that Truman wanted to modernize

¹ Charles S. Murphy, 'Charles S. Murphy to Philleo Nash, January 31, 1949', in *Documentary History of the Truman Presidency: Volume 12: The Truman Administration's Civil Rights Program: President Truman's Attempts to Put the Principles of Racial Justice into Law, 1948-1950*, ed. Dennis Merrill (Lanham: University Publications of America, 1996), 292-293.

with “American technological know-how.” The rhetoric in Murphy’s memo captured America’s desire for Third World countries to have open, productive markets, and clearly demonstrated a member of Truman’s administration advocating for the progression of civil rights legislation because the impediment of said legislation interfered with America’s ability to “win” peoples of color.

The National Citizens’ Council on Civil Rights, formed by forty-eight religious, business, educational, and civic leaders to promote a permanent government commission on civil rights, authored a report to President Truman in January 1949 regarding his proposed establishment of a permanent Federal Commission on Civil Rights.² That report also addressed the international implications of domestic civil rights reform. In subsection four of the report’s preamble, the Council emphasized the international attention to the “inconsistency between our protestation and our practice” of equality.³ The Commission’s call to action was for the American people to be educated about the international ramifications of adopting the United Nations Declaration of Human Rights, while it hosted the undemocratic practices of racial discrimination at home.⁴

² “National Citizens Council on Civil Rights Formed by Group of Religious, Civic Leaders,” *Jewish Telegraph Agency*, August 1, 1948, <https://www.jta.org/1948/08/01/archive/national-citizens-council-on-civil-rights-formed-by-group-of-religious-civic-leaders>

³ National Citizens’ Council on Civil Rights, ‘A Federal Commission on Civil Rights: Preamble’, in *Documentary History of the Truman Presidency: Volume 12: The Truman Administration’s Civil Rights Program: President Truman’s Attempts to Put the Principles of Racial Justice into Law, 1948-1950*, ed. Dennis Merrill (Lanham: University Publications of America, 1996), 292-293.

⁴ *Ibid.*

Henderson v. United States

Following *Shelley*, Solicitor General Perlman authored another amicus brief for the Department of Justice under Attorney General Howard J. McGrath, who had replaced Clark in 1949 when Truman appointed him to the Supreme Court. This time, the brief supported the desegregation of railroad dining cars under consideration in *Henderson v. United States* (1950). While Elmer Henderson, an African American, traveled via railway on government business as Executive Secretary of American Council on Human Rights, he was refused service in a diner car, “although whites were being served at the Jim Crow table.”¹ The memo “Civil Rights Are Not Standing Still” boasted about Department of Justice involvement in *Henderson* as the first instance in which the U.S. government challenged the ‘separate but equal’ doctrine established in the landmark *Plessy v. Ferguson* (1896) case.²

Before proceeding, it is necessary to briefly examine *Plessy v. Ferguson*, which established the doctrine of “separate but equal.” In 1896, the Supreme Court ruled that “if the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically.”³ This ruling, declaring that segregation was legal as long as the separate facilities were of equal quality, underpinned Jim Crow laws mandating separate schools, drinking

¹ Philleo Nash, *Civil Rights Are Not Standing Still*, Memo, Harry S. Truman Presidential Library, David K. Niles Papers Box 26.

² Nash, *Civil Rights Are Not Standing Still*.

³ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

fountains, rail cars, restaurants, and a plethora of other public establishments, facilities, and amenities for whites and blacks.

The *Henderson* brief contained three subsections that discussed how certain groups were impacted by “separate but equal” segregation. The first subsection, “Effect on Negroes” pointed out that the institution of Jim Crow limited both economic and social development in black communities. It was accompanied by a survey of social scientists, 90.4% of whom endorsed the proposition that segregation “has detrimental psychological effects” on African Americans even when equal facilities are made available.⁴ This section of the brief ran roughly five, heavily footnoted pages long. So heavily footnoted, in fact, that page fifty-three had but two lines of actual content. The next subsection, “Effect on Whites,” was brief, declaring that the belief in a superior race sowed the seeds for oppression.

The final, and longest subsection regarding individual groups, was “Effect on the Nation,” which asserted that “in our foreign relations, racial discrimination, as exemplified by segregation, has been a source of serious embarrassment to this country. It has furnished material for hostile propaganda and raised doubts of our sincerity even among friendly nations.”⁵ Again using the word “embarrassment” to describe the nation’s image, the *Henderson* brief directly named America’s propaganda problem. Perlman continued:

Racial segregation enforced by law hardly comports to the high principles to which, in the international field, we have subscribed. Our position and standing before the

⁴ Brief for the United States as Amicus Curiae, p.50, *Henderson v. United States*, 339 U.S. 816 (1950).

⁵ Brief for the United States as Amicus Curiae, p.60, *Henderson v. United States*, 339 U.S. 816 (1950).

critical bar of world opinion are weakened if segregation not only is practiced in this country but also is condoned by federal law.⁶

It is interesting to note that while Perlman's signature is on the *Henderson* amicus brief, implying that it was the Department of Justice's official stance, the entire department did not fully agree on desegregation. Just three weeks after the *Shelley* brief was filed in 1948, other Justice Department lawyers had determined to uphold railroad segregation in *Henderson* in the U.S. District Court.⁷ These lawyers dropped their official opposition by the time *Henderson* reached the Supreme Court. Official court records, along with the files available at the Harry S. Truman Library, do not illuminate the discussions that must have swirled around the Justice Department, but the final brief suggests that the Solicitor General, presumably supported by Attorney General McGrath, played a strong leadership role in staking out a pro-civil rights position.

The amicus brief filed in support of *Henderson* pointed out "that segregation is in itself a discrimination, and calls on the court, if it feels the doctrine applies in this case, to reconsider and reject it."⁸ *Henderson v. United States* (1950) did not overturn *Plessy v. Ferguson* (1896), but the Justice Department's amicus brief accomplished two major civil rights victories. The brief marked the first time the government called into question the constitutionality of the "separate but equal" doctrine, further establishing the Truman administration's stance and setting the tone for future Justice Department involvement.

⁶ Brief for the United States as Amicus Curiae, p.63, *Henderson v. United States*, 339 U.S. 816 (1950).

⁷ Ian B. Fagelson, "President Truman's Justice Department and the Fight for Racial Justice in the Supreme Court," *Journal of Supreme Court History* 43 (2018): 69-82, at 75.

⁸ Nash, *Civil Rights Are Not Standing Still*.

Henderson's victory also abolished segregation on railroad cars, one step closer to the Truman administration's quest for civil rights. *Henderson* did not put an official end to 'separate but equal,' but proved a major blow to Jim Crow laws that paved the way for *Brown v. Board of Education* (1954), that overturned *Plessy v. Ferguson*, and ended legal segregation.

Brown v. Board of Education of Topeka (1954)

The Department of Justice's amicus brief in *Brown*, widely held as the most monumental Supreme Court case regarding civil rights and one of the most notable decisions in the Court's history, played a significant role in Oliver Brown's favor and ending legal public school segregation in the United States. Oliver Brown's daughter, Linda Brown, a third grader at a black elementary school in Topeka, Kansas, had to walk over a mile to attend the nearest black school. Brown sued for his daughter to enroll in the nearest white school, roughly six blocks away from the family's home. Brown and several black parents sued the Topeka Board of Education in 1951. The case made its way to the Supreme Court in 1954, combined with other school segregation cases from Delaware, South Carolina, Virginia, and the District of Columbia.¹

Truman's presidency ended before the official *Brown* decision came down, but the department filed its amicus brief weeks before Eisenhower took office. Department of Justice lawyer Philip Elman, under newly-appointed Attorney General James P. McGranery, penned yet another amicus brief urging the courts to rule in Oliver Brown's favor and make school segregation illegal, thus dismantling *Plessy v. Ferguson*. Elman spoke of the struggle the United States faced on the international stage and argued that "the existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discriminations furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our

¹ Dudziak, *Cold War Civil Rights*, 99.

devotion to the democratic faith.”² The Department of Justice requested a State Department statement regarding the effect discrimination had on foreign relations, and Secretary of State John Foster Dulles contributed greatly to the *Brown* amicus brief. Dulles explained that America was “under constant attack in the foreign press,” whose criticisms reached all corners of the world.³ He acknowledged that while some of the attacks by foreign press were falsehoods or distorted, “the undeniable existence of racial discrimination gives unfriendly governments the most effective kind of ammunition for their propaganda warfare.”⁴ Careful to acknowledge that some progress had been made, Dulles asserted that continued racial discrimination was a “source of constant embarrassment to this government in the day-to-day conduct of its foreign relations.”⁵ The secretary’s statement confirmed Washington’s desperation to end racial segregation, and greatly highlighted the government’s embarrassment as it tried to showcase democratic capitalism to developing states under the shadow of America’s Jim Crow traditions and institutions.

Chief Justice Earl Warren, nominated to the Supreme Court by Eisenhower in 1953, did not come to the court with a progressive civil rights background. As Governor of California from 1943 until his appointment to the court, he was quoted as saying “if the Japs are released, no one will be able to tell a saboteur from any other Jap,” when speaking in

² Brief for the United States as Amicus Curiae, p. 6, *Brown v. Board of Education*, 347 U.S. 483 (1954).

³ *Ibid.*

⁴ *Ibid.*

⁵ *Brief for the United States as Amicus Curiae*, p. 7-8, *Brown v. Board of Education*, 347 U.S. 483 (1954).

support of America's Japanese internment camps during World War II.⁶ Despite his lack of prior civil rights support, Warren presided over a court that had undermined the doctrine of "separate but equal" several times in the previous decade with its aforementioned decisions in *Shelley* and *Henderson*, along with *McLaurin v. Oklahoma State Regents* (1950) and *Sweatt v. Painter* (1950).⁷ *McLaurin* and *Sweatt*, decided on the same day, also received a Department of Justice joint amicus brief supporting civil rights at the request of President Truman.⁸ The court's decisions ended legal segregation for graduate and professional education in the United States, helping foster ideal legal conditions for the Court to decide in favor of *Brown*.⁹

Chief Justice Warren delivered the Court's unanimous decision, which acknowledged that in the case of *Brown*, there was evidence that African American and white schools had been or were being equalized. Therefore, the court looked not at the inequality of facilities or curricula, but at segregation's inherent inequality.¹⁰ In weighing segregation's effects, Warren concluded that separating African Americans from "others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."¹¹

⁶ Louis H. Pollak, "The Legacy of Earl Warren," *Harvard Law Review* 88, no.1 (1974), 8.

⁷ *Sweatt v. Painter*, 339 U.S. 629 (1950).

⁸ Truman, 'Address, Upon Receiving the Franklin Roosevelt Award,' Address, *Harry S. Truman Presidential Library*, Public Papers, Harry S. Truman 1945-1953.

⁹ Fagelson, "Truman's Justice Department," 75-76.

¹⁰ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

¹¹ *Ibid.*

Warren concluded that “in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.”¹²

As the Supreme Court reached its landmark decision in *Brown v. Board of Education* in May 1954, it immediately became a major national and international news story. The *Pittsburgh Courier* praised the outcome, claiming it would “stun and silence America's Communist traducers behind the Iron Curtain” and would “effectively impress upon millions of colored people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color.”¹³ Within an hour of the decision, news reached Eastern Europe on the “Voice of America” radio broadcast, which gave it top priority for weeks. The government wasted no time spinning the decision as a major perk of a free, democratic society, emphasizing to the media that “the issue was settled by law under democratic processes rather than by mob rule or dictatorial fiat.”¹⁴ Motivated in its fight against Soviet propaganda and unfavorable coverage in the international media, the U.S. government not only had a major influence in striking down segregation, but managed to find a counter to Communist propaganda by linking the civil rights victory to the endless potential of a free and democratic society.

¹² *Ibid.*

¹³ Mary L. Dudziak, “Brown as a Cold War Case,” *The Journal of American History* 92, no. 1 (2004): 35.

¹⁴ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy*, (Princeton: Princeton University Press, 2011), 107.

The Supreme Court's Decision in Historical Context

There is no way quantify the influence the Department of Justice amicus briefs in the unanimous decision to end segregation in U.S. schools, but one can look at brief histories of the court and its justices to see how much potential influence they wielded. Historically, Supreme Court decisions regarding national security have been heavily influenced by the prevailing global. Mary Dudziak explained how the Supreme Court during World War II initially stretched parts of the Constitution to uphold local laws allowing schools to expel children who refused to salute the flag out of religious conviction in *Minersville School District v. Gobitis* (1940)¹. The court reversed itself three years later in *West Virginia State Board of Education v. Barnette* (1943)², but the original ruling equating national unity with national security during war time nonetheless established a chilling precedent.³ Indeed, the court returned to its draconian ways in 1944 when it upheld the legality of Japanese internment infamous *Korematsu v. United States* (1944).⁴

Matters of national security continued shaping Court decisions during the Cold War. In 1951, as the Korean War raged, *Dennis v. United States* (1951) upheld the prosecution of members of the Communist Party. Justice Felix Frankfurter, a liberal appointed by FDR, went so far as to suggest that “the Court was not limited to the facts presented by the parties.” It could, in fact, “take judicial notice that the Communist doctrines which these defendants

¹ *Minersville School District v. Gobitis*, 310 U.S. 586 (1940)

² *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

³ Dudziak, *Cold War Civil Rights*, 103.

⁴ *Ibid.*

have conspired to advocate are in the ascendency in powerful nations who cannot be acquitted of unfriendliness to the institutions of this country.”⁵

The justices deciding these cases were not ignorant to what was happening outside the court’s walls. Justice William Douglas visited India in 1950, where he was asked in a press conference in New Delhi why America tolerated the lynching of African Americans. The following year, his book *Strange Lands and Friendly People* addressed the importance of Asian color consciousness that he deemed “a major influence in domestic and foreign affairs,” emphasizing that the treatment of minorities in America was of the utmost importance to India’s relationship with the U.S.⁶ He was well-aware of the negative civil rights reputation America had garnered abroad.

Chief Justice Earl Warren acknowledged the inextricable links between the domestic and the foreign in a speech to the American Bar Association in 1954, in which he admitted that the “American system like all others is on trial both at home and abroad.”⁷ He went on to say that upholding the Constitution for all citizens, no matter their race, would do more for America’s national security and image “the number of hydrogen bombs we stockpile.”⁸

Finally, it is important to remember that, at the time of the *Brown* decision, former Attorney General Tom Clark was on the bench, and had himself highlighted the international implications and perceptions of racial discrimination. There is no language in the *Brown* decision that speaks directly and explicitly to the international ramifications of Jim Crow

⁵ *Ibid.*, 103-104.

⁶ *Ibid.*, 104-105.

⁷ *Ibid.*, 106.

⁸ *Ibid.*

discrimination, but it would have been impossible for the Justices to have been unaware of the international context of their decision.

Conclusion

The *Brown* decision had the effect the government desired, as international media praised the outcome. In August 1954, a National Security Council Report claimed that:

The U.S information agency ‘exploited to the fullest the anti-segregation decision of the U.S. Supreme Court.’ *Brown* ‘was of especially far-reaching importance in Africa and India. . . the decision is regarded as the greatest event since the Emancipation Proclamation, and it removes from Communist hands the most effective anti-American weapon they had in Black Africa.’¹

Washington’s desire to control the global narrative and make it easier to conduct foreign relations clearly motivated its decision to intervene via amicus briefs in Supreme Court cases.

One cannot help but wonder that if international mass media were not emerging during this time, would the government have put as much manpower, time, and money into civil rights? By looking purely at the amicus briefs for the landmark Supreme Court cases, it appears that the motivation for legal intervention were as much international embarrassment and dwindling chances of influencing Third World countries as they were an evolving view that African Americans should be seen and treated as equals.

There is no way to ascertain with certainty how the U.S. government’s motivation to control the international narrative and appear to foster racial equality stacked up against other factors in propelling the United States toward civil rights reform. What is clear, however, is that the Truman, and subsequently Eisenhower, administration, encouraged the Department of Justice to advocate for racial equality, and to do so by drawing attention to the political consequences of ignoring cries for racial equality in an increasingly interdependent and

¹ *Ibid.*, 109.

multicultural world order. In the Cold War's infancy, Truman and the Democratic party were ambivalent and slow to act in addressing racial violence and segregation, and Truman's motivations for civil rights reform remain unclear. The Department of Justice, led initially by Tom Clark and assisted by Philip B. Perlman, however, found in the amicus briefs a mechanism that allowed the American government to support racial equality. This bolstered those at the grassroots level who led the charge against states' rights and for civil rights in the United States and on behalf of human rights in the Cold War international arena.

In the end, the Department of Justice amicus briefs played an important and overlooked role in landmark Supreme Court rulings that allowed the civil rights movement to unfold as it did, culminating in the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Bibliography

Primary Sources

- Alexander, Raymond Pace. 'Raymond Pace Alexander to Secretary of Defense George C. Marshall. October 6, 1950.' In *Documentary History of the Truman Presidency: Volume 12: The Truman Administration's Civil Rights Program: President Truman's Attempts to Put the Principles of Racial Justice into Law, 1948-1950*, edited by Dennis Merrill, 541-560. Lanham: University Publications of America, 1996.
- Bayard, Herbert Swope. 'Herbert Swope Bayard and National Citizens' Council on Civil Rights to Harry S. Truman. January 12, 1949.' In *Documentary History of the Truman Presidency: Volume 12: The Truman Administration's Civil Rights Program: President Truman's Attempts to Put the Principles of Racial Justice into Law, 1948-1950*. Edited by Dennis Merrill, 221-223. Lanham: University Publications of America, 1996.
- Brief for the United States as Amicus Curiae, *Brown v. Board of Education*, 347 U.S. 483 (1954).
- Brief for the United States as Amicus Curiae, *Henderson v. United States*, 339 U.S. 816 (1950).
- Brown v. Board of Education*, 347 U.S. 483 (1954).
- Clark, Tom C. "Civil Rights." Speech, Chicago Bar Association, Chicago, IL, June 21, 1946. Accessed February 11, 2018, <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/06-21-1946.pdf>.
- Clark Tom C. and Perlman, Philip B. *Prejudice and Property: An Historic Brief against Racial Covenants*. Washington: Public Affairs Press, 1948; New York, Greenwood Press.
- Clark, Tom C. 'Statement and Analysis by the Attorney General Concerning the Proposed Civil Rights Act of 1949: HR 4682. 1949. *Harry S. Truman Presidential Library*. Tom C. Clark Papers Box 27.
- Henderson v. United States*, 339 U.S. 816 (1950).
- Humphrey, Hubert. "Speech on Civil Rights." Speech, Philadelphia, Pennsylvania, July 14, 1948. Minnesota Historical Society.

- <http://www2.mnhs.org/library/findaids/00442/pdfa/00442-00187.pdf> (accessed February 2, 2019).
- Landis, Kenesaw M. *Segregation in Washington*. Chicago: National Committee on Segregation in the Nation's Capital, 1948.
- Minersville School District v. Gobitis*, 310 U.S. 586 (1940).
- Nash, Philleo. *Civil Rights Are Not Standing Still*. Memo. *Harry S. Truman Presidential Library*. David K. Niles Papers Box 26.
- National Citizens Council on Civil Rights Formed by Group of Religious, Civic Leaders, *Jewish Telegraph Agency*, August 1, 1948, <https://www.jta.org/1948/08/01/archive/national-citizens-council-on-civil-rights-formed-by-group-of-religious-civic-leaders> (accessed March 2, 2019).
- McCray, Elmo. 'Elmo McCray, Jr., to President Harry S. Truman April 19, 1948.' Letter. *Harry S. Truman Presidential Library*. Truman Papers, President's Personal File 200: Civil Rights.
- McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).
- Plessy v. Ferguson*, 163 U.S. 537 (1896).
- Shelley v. Kraemer*, 334 U.S. 1 (1948).
- Spingarn, Stephen J. *Soviet Charges of Violations of Human Rights in the United States*. 1949. Memo. *Harry S. Truman Presidential Library*. Stephen J. Spingarn Papers Box 21.
- Spingarn, Stephen J. 'Stephen J. Spingarn to Charles Murphy. March 1, 1950'. In *Documentary History of the Truman Presidency: Volume 12: The Truman Administration's Civil Rights Program: President Truman's Attempts to Put the Principles of Racial Justice into Law, 1948-1950*. Edited by Dennis Merrill, 439-442. Lanham: University Publications of America: 1996.
- Sweatt V. Painter*, 339 US 629 (1950).
- Truman, Harry S. 'Address in Harlem, New York, Upon Receiving the Franklin Roosevelt Award.' Address. *Harry S. Truman Presidential Library*. Public Papers, Harry S. Truman 1945-1953, <https://www.trumanlibrary.org/publicpapers/index.php?pid=2278&st=&st1>.
- Truman, Harry S. *Harry S. Truman to Tom C. Clark, September 20, 1946*. Letter. From Harry S. Truman Library and Museum, *Papers of David K. Niles*. https://www.trumanlibrary.org/flip_books/index.php?pagenumber=2&titleid=250&tl

date=1946-09-20&collectionid=ihow&PageID=1&groupid=3721 (accessed September 13, 2018).

Truman, Harry S. *Memoirs of Harry S. Truman: Year of Decisions Vol. 1*. New York: The New American Library, 1955.

West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).

Secondary Sources

Bell, Derrick A. "Brown v. Board of Education and the Interest-Convergence Dilemma." *Harvard Law Review* 93, no. 3 (1980): 518–533.

Belmonte, Laura A. *Selling the American Way: U.S. Propaganda and the Cold War*. Philadelphia: University of Pennsylvania Press, 2013.

Billington, Monroe. "Civil Rights, President Truman and the South." *The Journal of Negro History* 58, no. 2 (1973): 127-39. doi:10.2307/2716825.

Borstelmann, Thomas. *The Cold War and the Color Line: American Race Relations in the Global Arena*. Cambridge: Harvard University Press, 2001.

Catsam, Derek. "The Civil Rights Movement and the Presidency in the Hot Years of the Cold War: A Historical and Historiographical Assessment." *History Compass* 6, no. 1 (2008): 314-344.

Clark, Tom C. "Civil Rights: The Boundless Responsibility of Lawyers." *American Bar Association Journal* 32, no. 8 (1946): 453-57. <http://www.jstor.org/stable/25715671>.

Dudziak, Mary L. *Cold War Civil Rights: Race and the Image of American Democracy*. Princeton: Princeton University Press, 2000.

Dudziak, Mary L. "Desegregation as a Cold War Imperative." *Stanford Law Review* 41, no. 1 (November 1988): 91. Accessed September 28, 2017, JSTOR.

Fagelson, Ian B. "President Truman's Justice Department and the Fight for Racial Justice in the Supreme Court." *Journal of Supreme Court History* 43 (2018): 69-82.

Frederickson, Kari. *The Dixiecrat Revolt and the End of the Solid South, 1932-1968*. Chapel Hill: The University of North Carolina Press, 2001.

Goldfield, David. "Border Men: Truman, Eisenhower, Johnson, and Civil Rights." *The Journal of Southern History* 80, no. 1 (2014): 7-38.

Grandin, Greg. *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism*. New York: Metropolitan Books. 2006.

- Hamby, Alonzo. *Man of the People: A Life of Harry S. Truman*. Oxford: Oxford University Press, 1995.
- Kaplan, Amy. *The Anarchy of Empire in the Making of U.S. Culture*. Cambridge: Harvard University Press, 2002.
- Kramer, Paul A. *The Blood of Government: Race, Empire, the United States, & the Philippines*. Chapel Hill: The University of North Carolina Press, 2006.
- Kruse, Kevin M. *One Nation Under God: How Corporate America Invented Christian America*. New York: Basic Books, 2015.
- LaFeber, Walter. *America, Russia, and the Cold War, 1945-2006*. 10th ed. McGraw Hill, 2008.
- Leffler, Melvyn P., *For the Soul of Mankind: The United States, the Soviet Union, and the Cold War*. New York: Hill and Wang, 2007.
- Mitchell, Franklin D. "Who is Judge Truman?": The Truman-for-Governor Movement of 1931." *Midcontinent American Studies Journal* 7, no. 2 (1966): 3-15.
<http://www.jstor.org/stable/40640642>.
- Pauley, Garth E. "Harry Truman and the NAACP: A Case Study in Presidential Persuasion on Civil Rights." *Rhetoric and Public Affairs* 2, no. 2 (1999): 211-41.
<http://www.jstor.org.proxy.library.umkc.edu/stable/41939509>.
- Pollak, Louis H. "The Legacy of Earl Warren." *Harvard Law Review* 88, no. 1 (1974): 8-10.
<http://www.jstor.org.proxy.library.umkc.edu/stable/1340007>.
- Pritchett, Wendell E., "A National Issue: Segregation in the District of Columbia and the Civil Rights Movement at Mid-Century" (2005). Faculty Scholarship. Paper 1226.
http://scholarship.law.upenn.edu/faculty_scholarship/1226 .
- Romano, Renee. "Moving Beyond 'The Movement That Changed the World': Bringing the History of the Cold War into Civil Rights Museums." *The Public Historian* 31, no. 2 (2009): 32-51.
- Skrentny, John David. "The Effect of the Cold War on African-American Civil Rights: America and the World Audience, 1945-1968." *Theory and Society* 27, no. 2 (1998): 237-285.
- Von Eschen, Penny. *Race Against Empire: Black Americans and Anticolonialism, 1937-1957*. Ithaca: Cornell University Press, 1997.
- Walker, Harry J. *The Negro in American Life*. New York: Oxford Book Company, 1954.

Westad, Odd. *The Global Cold War: Third World Interventions and the Making of Our Times*. Cambridge: Cambridge University Press, 2007.

VITA

Sarah Rucker was born on December 16, 1988, in Huntington, West Virginia. She was educated in the public school system in the villages of Proctorville and Chesapeake, Ohio, graduating with honors from Chesapeake High School in 2007. She received her undergraduate degree in communications with a minor in history from Ohio University in Athens, Ohio in 2011.

She worked as a production manager in Overland Park, Kansas for six years before pursuing a Master of the Arts in History from the University of Missouri-Kansas City in January 2017. She is currently a Simulation Technologist at the Zamierowski Institute for Experiential Learning at The University of Kansas Medical Center and the University of Kansas School of Medicine, and is expected to complete her master's program in May 2019. Upon completion of her degree, she plans to continue work as a Simulation Operations Technologist and help begin development of a committee dedicated to beginning a history of medical simulation.

Author's name:	Sarah Rucker	UMKC Student ID # 16234324
Author's degree program:	<input checked="" type="checkbox"/> Master's <input type="checkbox"/> Doctoral	
Field of study: (For example, Psychology, Computer Science, etc.)	History	
Title of thesis or dissertation:	The United States of Embarrassment: How Concerns About the World's View of America Propelled Justice Department Action In Civil Rights	

NON-EXCLUSIVE DISTRIBUTION LICENSE

To properly administer this scholarly research repository, MOspace, and to preserve the contents for future use, the University of Missouri-Kansas City (UMKC) requires certain permissions from you, the author(s) or copyright owner. By accepting this license, you still retain copyright to your work. You do not give up the right to submit the work to publishers or other repositories.

By signing and submitting this license, you grant to UMKC the non-exclusive right to reproduce, convert (as defined below), and/or distribute your submission (including the metadata and abstract) worldwide in any format and medium for non-commercial, academic purposes only.

You agree that UMKC may, without changing the content, convert the submission to any medium or format for the purpose of preservation.

You also agree that the UMKC Libraries may keep more than one copy of this submission for purposes of security, back-up and preservation.

You represent that the submission is your original work, and that you have the right to grant the rights contained in this license. You also represent that your submission does not, to the best of your knowledge, infringe upon anyone's copyright.

If the submission contains material for which you do not hold copyright, you represent that you have obtained any necessary permission from the copyright owner to grant UMKC the rights required by this license, and that such third-party owned material is clearly identified and acknowledged within the text or content of the submission.

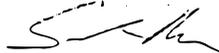
IF THE SUBMISSION IS BASED UPON WORK THAT HAS BEEN SPONSORED OR SUPPORTED BY AN AGENCY OR ORGANIZATION OTHER THAN UMKC, YOU REPRESENT THAT YOU HAVE FULFILLED ANY RIGHT OF REVIEW OR OTHER OBLIGATIONS REQUIRED BY SUCH CONTRACT OR AGREEMENT.

UMKC will clearly identify your name(s) as the author(s) or owner(s) of the submission, including a statement of your copyright, and will not make any alteration, other than as allowed by this license, to your submission.

Theses and Dissertations will be posted to the repository immediately upon receipt unless the author submits an approved Embargo Request form.

Sarah Rucker

 Printed name



 Signed name

3/15/2019

 Date