UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
210G Burton Hall
178 Pillsbury Drive S.E.
Minneapolis, Minnesota 55455
Telephone (612)373-3226

May 23, 1985

President Kenneth H. Keller
202 Morrill Hall

Dear Ken:

On May 30 the Senate Consultative Committee will meet with you for the last time during this academic year. We will want to allow ample time for topics you would like discussed. We would welcome your calling attention to areas you would particularly like to see the SCC enter into its agenda for 1985-86.

In addition, as time permits, we hope to address two subjects with you:

1. The Presidential Response to the Task Force Recommendations. SCC members should be ready to discuss with you both generally and specifically some of the contents of the Response. SCC needs to consider what responsibilities in this realm it and other Senate and Assembly committees now have.

2. Divestment issue. It is our understanding that your special committee may have reported before the 30th. We would appreciate hearing your observations on the issue as the Regents' annual review of investments approaches, and hope you might be in a position to share the recommendations from your advisory body, if they are available.

Cordially,

Jack C. Merwin, Chair,
Senate Consultative Committee

JCM:mbp

cc: Vice President V. Rama Murthy
Vice President Neal Vanselow
Senate Consultative Committee

Enc.: Agenda

UNIVERSITY OF MINNESOTA

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MINUTES

SENATE CONSULTATIVE COMMITTEE DISCUSSION WITH PRESIDENT KELLER
June 6, 1985
12:30 - 1:30
Regents' Room, Morrill Hall

TOPIC: DIVESTMENT

Present: SCC members Shirley Clark, Beth Emanuelson, Phyllis Freier, Douglas Melby, Jack Merwin (Chr.), Paul Murphy, Irwin Rubenstein, Paul Schulte, Frank Sorauf, Deon Stuthman, W. B. Sundquist.

SCC members-elect: Richard Goldstein, Dan Griffith, Tim Pratt, Roy St. Laurent.

Others: President Kenneth Keller, John Aune, James Borgestad, Marsha Riebe, Andy Seitel.

President Keller had requested the opportunity, which the SCC welcomed, to discuss to some extent with the committee the complex question of how the University should act with respect to its stock holdings in companies doing business in and with South Africa. A motion for the University to divest itself of those stocks was on the Regents' agenda for June 13-14 consideration and vote. President Keller told SCC members he would appreciate their views on some of the larger, symbolic issues involved as well as the immediate question of the Regents' vote.

Copies were distributed of the "Report to President Keller From The Advisory Committee on South Africa," dated 5 June 1985.

The President and the SCC members believe that virtually every member of the University community opposes apartheid and desires its end. There is no disagreement on the goal. How to contribute to the achievement of that end is far less clear.

The sum in question for this University, the President stated later in the meeting, is $31 million in investments.

The President first noted that some nationally known educational leaders such as Derek Bok and Howard Bowen have recently argued that it is unwise for an institution to take a position on moral and social issues. There was no sign of agreement with that position in the SCC meeting.

The President listed criticisms which are sometimes raised against a university's attempting to use its economic power to influence events; they are that, if a university chooses to behave in this way (1) it is engaging in a type of behavior for which it has criticized companies; (2) it is engaging in single issue politics; and (3) the act will have no effect.

The Wall Street Journal, he noted, had written that if U.S. companies pull out of South Africa they would likely sell out their holdings to their South African subsidiaries. The result would be little to no economic effect. To the extent this assessment is correct, he said, no economic pressure would follow from divestment acts. However, there might be some political pressure.

Choosing to divest, said the President, is not done on an economic basis, nor is the basis condemnation of the company since 99% of what the company does is all right. The University would be choosing to sell its holdings in that company for its own moral reasons, declaring this the place where it draws the line.

President Keller told the SCC that he had a copy of a document which was presented by U.S. corporations to the government of South Africa calling for an end to a number of the most egregious of the apartheid laws. However, the companies do not seem to have anything ready to back up their call.

The President then raised the question of whether there is a way for the University to work with the Reverend Leon Sullivan's enhanced approach, a question to which discussion returned near the close of the meeting.

The President cited the World War II contributions of Raoul Wallenberg who was able to save thousands of lives in Nazi-held Hungary while working for a government that maintained relations with Germany during the war. This example illustrates that there is the possibility for doing good in a number of different ways.

Professor Goldstein inquired whether divestment would have an economic effect on the University. The President answered first that certain fields would no longer be represented in the portfolio but that the effect is hard to judge. What might happen in the stock market if many stockholders wanted to make similar shifts? With divestment the University would be in more of a risk situation but there is no certainty it would suffer.

It is equally hard to guess what the effect would be on the Permanent University Fund. Perhaps at the margin some people might decide to give less to the University, but there are no data. There is only an estimate, based on what the University now raises from companies which would be affected, that the University might receive $10 million less. All the reports of managers at universities that have divested have been that they haven't yet lost money as a consequence but that no conclusions can be drawn from that. The University of Michigan is the only institution of its size that has unilaterally divested.

Mr. Griffith inquired whether the University has explored other companies to invest in that don't do business in South Africa. President Keller replied that the University is constantly making such exploration. The question is whether the risk exceeds the return. There are many such companies, but many of them are small and unstable. Very few pension funds, he remarked, have taken the risk of shifting from the large multi-nationals.

The President then referred to the institutional symbols regarding the concerns raised about divestment. Universities, he believes, are fragile things. He regards use of the institution of a university to affect policy as something to be done only in the rarest circumstances.

Mr. Griffith suggested that if what we witness now is the beginning of a trend toward divestment, since some universities have divested, it might well be to the University's advantage to divest early rather than late. The President pointed out that the University's standing policy encourages such moves and that the University has moved from investments in over 40 such companies to about 30. Then he explained that while there is more action at universities towards divestment, not a lot of money is involved.

Professor Sorauf stated that he was not troubled by the arguments attributed to Messrs. Bok and Bowen; consequences of taking an institutional stand could include disappointing some companies, but one must maintain the intellectual independence of the universities.

But he then drew attention to a different consideration, and one which has been neglected in this instance. In the May 16 Senate debate there was no reference to the efficacy of the proposed action: no one addressed the question of whether divestment would abet the downfall of apartheid and better the lot of South African blacks. Professor Sorauf holds the view that universities should not engage in symbolic acts that don't have some effect. To do so is not cost-effective.

He continued that he was not anxious to see the University take economic and political risks where there is very little prospect for achieving a benefit. Such action leaves one open to criticisms of moral posturing. We are faced with the fact, he told the meeting, that any institution has very real limits to the extent to which it can establish foreign policy, and yet we want to bring down a system in another country. One of the more effective avenues is to try to modify the nation's foreign policy. This university can tell corporations that the U.S. administration is far more apt to listen to them than to the universities. To act contra the foreign policy of the U.S. government is to set a very difficult course.

Professor Murphy said it is the case that the University of Minnesota and other universities do take overt or subtle positions toward a number of large issues. He indicated his agreement with Professor Sorauf's efficacy argument. He then inquired whether there is not some middle ground for the University, perhaps along the lines of the new Sullivan principles.

President Keller termed investment a single issue matter. If the University were to divest, companies could say we were rejecting them because of one single thing they do. Yet there is no question that within their own businesses some are doing good for South African blacks. Professor Sorauf offered the view that we should not use moralistic judgment of companies unless they are behaving unmorally.

Professor Merwin suggested that it might hurt the cause of fighting apartheid by withdrawing investments from companies that are going beyond the Sullivan Principles. President Keller referred to the three categories

Arthur D. Little has identified based on compliance: (1) companies which are going beyond the Sullivan Principles, (2) companies which are complying with them, and (3) companies whose behavior leaves room for improvement.

Professor Sundquist gave an assessment of the University's political situation at the present time. The Consultative Committee recommended to the Senate on May 16 that it delay its vote on divestment until June, so there would be more information to consider as a basis for voting. However, the Senate was ready on May 16 to vote favoring divestment. The senators got caught up in the prevailing spirit, although the preference of many was for a more studied approach.

There is a sense, continued Professor Sundquist, in which, given that the Senate has voted this way, a contrary action is seen as contrary to the Senate position. If the President and the Baord of Regents decide a course contrary to that asked by the Senate vote, they will be seen as contradicting the Senate vote. That impression will add to the President's burden and effectiveness in carrying out his office.

Professor Merwin contended that as the amended motion was worded, it was not an absolute vote for divestment.

Professor Stuthman described the Senate consideration as having been a presentation rather than a debate.

Mr. Schulte termed the Senate vote as a vote for an idea: to end apartheid. How to implement that idea is the difficult question. In his judgment, it was tactics, more than anything else, that produced such a lopsided Senate vote.

Professor Freier articulated the fundamental premise that the job of the University and of the faculty is to educate. If we are really going to effect changes in positions, she stated, she is opposed to the means of using the University to take positions. She believes the people of the Twin Cities do not appreciate how awful the South African situation is. She would like to see the University take the educational route towards effecting change, such as by bringing a distinguished lecturer to inform and educate the local community on the facts of apartheid. President Keller observed that that suggestion related to one of the options suggested in the report of his *ad hoc* committee, which is for the University to use its gains from South African investments to educate black South Africa's future leaders.

Ms. Emanuelson offerred the assessment that divestment is not simply the answer, but that the President's problem is to address those who are convinced that divestment *is* the answer. Mr. Melby said he could not see how divestment would bring about change, and so it would be an empty symbol. If he University wants to be on the forefront, he declared, it should use the money gained from its South African investments to work against racism.

President Keller reminded the Consultative Committee that the Regents had committed themselves to a vote on the question at their June meeting. There are a number of things he can recommend to them. He said he was not sure the June meeting dates can end consideration on the question.

Professor Clark requested that the President please speak to the Reverend Sullivan's new initiative. She asked whether there is a role for universities in that initiative and who is working with the Reverend Sullivan.

President Keller said there is a strengthened set of principles. The Reverend Sullivan has concluded that what companies are doing internally is not enough and that they must also be pushing the South African government for a change. If they cannot succeed at that in two years, the U.S. companies should pull out.

One existing forum, President Keller reported, the Johnson Foundation, will convene 20 to 30 university presidents in September to discuss how universities might have some effect against apartheid. Perhaps this university might have more effect, he suggested, by narrowing our attention to a few companies with whom we might make some progress. Among our possible moves are to look more closely at the level of companies' compliance with the Sullivan principles, and to make no further investments in companies engaged in South Africa.

He concluded his remarks and the meeting by stating simply that there are many other important matters on this university's agenda, and that this one should not be the telling one.

The meeting adjourned at 1:35 p.m.

Respectfully submitted,

Meredith Poppele,
SCC Executive Assistant

UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
210G Burton Hall
178 Pillsbury Drive S.E.
Minneapolis, Minnesota 55455
Telephone (612)373-3226

June 10, 1985

To: The Honorable Wendell R. Anderson
The Honorable Charles H. Casey
The Honorable Willis K. Drake
The Honorable Erwin L. Goldfine
The Honorable Wally Hilke
The Honorable David M. Lebedoff
The Honorable Verne Long
The Honorable Charles F. McGuiggan
The Honorable Wenda W. Moore
The Honorable David K. Roe
The Honorable Stanley D. Sahlstrom
The Honorable Mary T. Schertler

Dear Ladies and Gentlemen:

The agenda for your June 13-14, 1985 meeting includes consideration of ways in which the University can best use its investments policy to affect the practice of apartheid in South Africa. We are sure that you are aware of the vote of the University Senate taken on a motion related to this (132 for, 4 against, 3 abstentions) at its meeting on May 16, 1985. We, as members of the Consultative Committee, are concerned that you interpret this vote with full knowledge of the motion itself and events surrounding it. The motion voted on by the University Senate on May 16, 1985 was:

> Whereas the Board of Regents will meet on June 13-14, 1985, to review University investments in companies which do business with South Africa;
>
> Whereas University President Keller has appointed a commission to assess the current, and to propose alternative, strategies with respect to South African apartheid;
>
> Whereas the Senate has previously demonstrated its support and commitment to this cause as reported by the Social Concerns Committee on April 20, 1985;
>
> Be it resolved that the University Senate supports these initiatives to strengthen our divestment policy. We call upon the Board of Regents to include on its agenda of June 13-14 the University community proponents of divestment and South African Bishop Desmond Tutu.

> Be it further resolved that it is the sense of the Senate, in so far as the University's investments represent support for apartheid, that the Regents should divest out of all corporations and financial institutions doing business in or with the Republic of South Africa.

In its deliberations on this matter immediately prior to the Senate meeting and vote on the above motion the Consultative Committee concluded that a matter of such importance and complexity could not be adequately debated in the time available that day. Accordingly, the Committee moved:

> That the Senate allocate 30 minutes for debate on this date (May 16) and postpone a vote on the issue to a special Senate meeting June 6 when there would be more extensive debate, with the benefit of the report of the President's special committee, and a vote taken at that time. The action would still preceed by one week the June meeting of the Board of Regents.

This motion was defeated.

On June 6, we had the opportunity to discuss the divestment issue more generally with President Keller in light of the alternatives developed by his ad hoc committee on this matter. We left this meeting convinced that our earlier advice to the Senate had been sound. Had the Senate had the benefit of the report of the ad hoc committee and a more extensive discussion and debate, we are convinced that some members of the Senate would have considered and voted for alternatives to total divestment.

Thank you for this opportunity to relate the situation surrounding the vote on this matter by the Senate. We hope you will find it useful in determining how best to weigh that vote in your deliberations regarding how the University can best use its investments to affect apartheid in South Africa. We are now convinced that some of the alternatives developed by the ad hoc committee may well be more effective to this end than total divestment.

Sincerely,

Jack C. Merwin

Jack C. Merwin, Chair,
Senate Consultative Committee, and

Ellen Berscheid	Cleon M. Melsa
Cathleen Birk	Paul Murphy
Shirley Clark	Irwin Rubenstein
Beth Emanuelson	Paul Schulte
Charles Farrell	Frank Sorauf
Phyllis Freier	Deon Stuthman
Sue Gruenes	Wesley B. Sundquist
Joseph J. Latterell	Bruce Williams
Douglas Melby	

JCM:mbp

pc: President Kenneth H. Keller

UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-2717

President Kenneth H. Keller
University of Minnesota
202 Morrill Hall
Minneapolis, Mn 55455

5 June 1985

Dear President Keller:

On 10 May 1985 you formally appointed this Advisory Committee on South Africa, asking the members,

> . . . to review the alternatives available to the University in affecting the unacceptable system of apartheid in South Africa. Among these alternatives are obviously, those related to our investments in companies doing business in South Africa. Needless to say, such investments raise complex issues that attract considerable controversy and that resist easy solution. Still, the University has an obligation to address those issues in order to promote informed discussion by the academic community and responsible decision making by the Regents. In considering these issues, it strikes me as being particularly important at this time to focus attention on what additional or alternative actions the University might consider in taking a more proactive stance on change in South Africa.

The Advisory Committee has now completed its review and has set forth a series of divestment strategies as well as a dozen actions which the institution might take in addition to or as alternatives to any divestment policies.

It should be pointed out, however, that the Advisory Committee was not intended to be representative of the University at large. Instead, the members were selected primarily in terms of their relevant expertise vis-a-vis the South African question. Accordingly, the Advisory Committee neither took any votes nor attempted to achieve any unanimity of opinion; rather, it simply sought to define arguments and set forth alternatives. At the same time, each member of the Committee expressed reservations concerning various portions of the report. Hence, the willingness to sign this document should not be interpreted as complete agreement with its content. Two members of the Committee, in fact, are developing appendices articulating their alternative viewpoints.

The 29-page report which follows is divided into six chapters:

I. Summary of the Report
II. Introduction to the South African Investment Question
III. History of the University of Minnesota's Policies re. South Africa
IV. Total vs. Selective Divestment as Policy Options
V. Alternatives: Measures in Addition to or Other than Divestment
VI. Conclusion

Although we are sure you will want to read the full report, it may be helpful for to you to have in hand also a shorter summary of its contents. You will find that summary in the first chapter, which comprises a four-page overview of the major arguments, analyses, and alternatives contained in the full report.

Were time available, the report would surely include a more detailed examination of the complex issues that confronted the Advisory Committee. Unfortunately, time ran out on this Committee; time also appears to be running out in South Africa.

Sincerely,

Enclosure

REPORT TO PRESIDENT KELLER
FROM THE ADVISORY COMMITTEE ON SOUTH AFRICA

5 June 1985

This report is divided in six chapters, including a brief summary, an introduction, a history of the issue at the University of Minnesota, a discussion of how the University might handle the problem presented by its investments in companies doing business in South Africa, the identification of a dozen approaches which the University might pursue either in addition to or as alternatives to divestment, and the conclusion.

I. SUMMARY OF THE REPORT

1.

The Advisory Committee has in the following pages attempted to provide assistance in formulating recommendations to the Board of Regents. Although those who read the report will want to read in full, it may also be helpful to present a shorter summary of its contents.

2.

The Advisory Committee is not a representative body, and was asked for illumination not unanimity. The Committee thus addressed the two sets of questions posed by President Keller:

". . . those related to our investments in companies doing business in South Africa," and

". . . what additional or alternative actions the University might consider in taking a more proactive stance on change in South Africa."

Outside the majority of the white minority which governs the Republic of South Africa, nearly everyone condemns its national policy of racial separation. This global consensus makes apartheid policy one of a kind, and justifies a special attitude toward actions intended to influence developments in South Africa.

Just being against apartheid is too easy. As an actor in South African affairs, even a marginal one, the University should try to define the processes and outcomes to be sought, as a rational guide to the University's actions. The twin aim might be expressed this way: to help develop multiracial governance with a balance of majority rule and minority rights, and also to make more probable a peaceful transition from apartheid to a multiracial society. Such outcomes are likely to be partly a function of the number and quality of educated South African blacks who exercise leadership during the coming transition.

3.

The Board of Regents has already (in 1979, 1982, and 1983) adopted special policies on University investments related to South Africa. It has endorsed the Sullivan principles, selectively divested $8.7 million in 20 companies, and currently holds $31.5 million (6.5% of its portfolio) in 30 companies operating in South Africa.

A committee of the University Senate has also followed the matter and in 1982 recommended strengthened selective divestment. This year the Senate overwhelmingly voted for a strengthened divestment policy: "Be it resolved that it is the sense of the Senate, insofar as the University's investments support apartheid, that the Regents should divest out of all corporations and financial institutions doing business in or with the Republic of South Africa." Some members of the Committee found this language to be ambiguous in its reach.

4.

A policy of total divestment would rest on these main premises:

The University should make a clear moral and political statement.

The moderating effect in South Africa of anti-apartheid corporate personnel practices is outweighed by the corporations' indirect support of the regime.

A concerted divestment from U.S. firms would create economic incentives for the South African government to change its policies.

But: the effect of even a large U.S. divestment would be small over there (U.S. firms comprise a small part of the overall South African economy) and over here (firms doing business with South Africa are a fraction (less than 30%) of the market for stocks and a much smaller proportion of the market for bonds). The costs of divestment could include damage to the University's relationship with some key corporations, but the extent of this damage, if any, cannot be assessed.

Total divestment might thus make a clearer statement than the alternatives; would have uncertain effects in changing South African government behavior; but would not entail a heavy cost, since the University could probably, after a little while, find viable alternative investments. Some members of the Committee thought that the evidence on this last point is still unclear.

Several members of the Committee believed that in retaining some investments in firms doing business in South Africa, the University is retaining a lever which could be useful in pressing for rapid and peaceful change.

The alternative we considered is <u>a strengthened policy of selective divestment</u>. This approach would be designed to encourage U.S. companies in the use of their influence on South African policy. It would also require teaming up with other universities to monitor more closely the implementation of the firms' policies, and perhaps to adopt an expanded version of the Sullivan principles setting a higher standard of corporate responsibility.

But: There is considerable uncertainty as to the impact of strengthened selective divestment upon the South African government. This approach would also require some University investment in personnel and expertise to monitor policies and vote its stockholdings proactively. The resulting corporate relations would be sticky, though not so much so as total disinvestment could provoke. Carrying out this more complicated line of action might also make it more difficult to sustain a University consensus on this issue.

The strengthening of existing divestment policies might thus include the following measures:

- forbidding <u>future</u> investments in companies doing business in South Africa;

- not investing in companies doing business <u>primarily</u> in South Africa;

- divesting from companies that do not live up to the Sullivan principles (or other more stringent principles meanwhile adopted) after they have signed them;

- cooperating with other universities to develop additional principles as conditions for investment in South Africa;

- cooperating with other universities to encourage corporations to devote a proportion of their profits to educating more nonwhite South Africans;

- avoiding banks which make loans to the South African government; and

- not investing in any company operating in South Africa (i.e., total divestment).

5.

The debate about divestment has obscured other measures which might be used to influence the situation in South Africa; some of these measures are even more closely connected with the University's function as an institution of higher education.

Since any policy on this subject is likely to cost some money, the Committee considered some ways of applying resources (measured, perhaps, by University earnings on investments related to South Africa) to work for, and prepare for, the abolition of apartheid. This could be done without the delays inherent in organizing many universities to act in concert; but would be enhanced by developing, here too, university consortia of the concerned. Universities, including ours, possess much talent and expertise which could be pooled for the purposes suggested below. The University of Minnesota might wish to take the initiative in forming a consortium of universities in coordinating policies designed to promote change in South Africa.

These dozen measures are amplified in the Report:

1. The University could actively implement (as has not been done) the Regents' 1982 policy to pursue proxy issues relating to human rights in South Africa.

2. The University could provide education to many more South African nonwhites than the few registered at the University of Minnesota. There are 17 South African students registered of which two are on U.S. government supported fellowships.

3. The University could foster relevant exchange programs for both students and faculty.

4. The University could send staff or recent graduates to teach at precollegiate levels of education in South Africa.

5. The University could send recent University law graduates and student interns from Law and Public Affairs to work with public interest law and legal defense organizations in Namibia and South Africa.

6. The University could send observers to significant political trials in Namibia and South Africa.

7. The University could send staff or student interns to help in the organization and management of independent black labor unions in South Africa.

8. The University could, with other universities, monitor human rights, U.S. business impacts and justice-related issues in South Africa.

9. The University could, with other universities, actively use our influence for the release of South Africans jailed or banned for their political beliefs.

10. The University could provide a preference (as New York City has done) for the purchase of goods and services from companies not operating in South Africa.

11. The University could, with other universities, press for various forms of U.S. legislation designed to put pressure on the government of South Africa.

12. The University could, with other universities, press the federal government to change policies which support the South African government. An example would be U.S. insistence on linking the presence of Cuban troops in Angola, which seems to have become the main stumbling block to international action to end the South African presence in Namibia.

6.

The situation in South Africa is moving toward change. The University's actions should be designed to exercise whatever influence we have to speed the turn away from South African policies that are not only repugnant to this University community but in a rare global consensus are rejected by humanity at large.

II. INTRODUCTION

Over the past decade, no issue has generated more discussion and debate across campuses in the United States than the question of whether universities and colleges should divest their holdings in companies that conduct business in South Africa. The focus of such deliberations is the apartheid system of the South African government and, more specifically, how higher educational institutions might exert whatever influence they possess in changing that system.

There is little disagreement as to the repulsive nature of apartheid; virtually every campus voice deplores the system for what it is: institutionalized racial exploitation of the meanest kind. There also appears a consensus that universities should take some effective action to express their condemnation of apartheid. Unanimity of opinion, however, tends to end here and what quickly emerges is a narrowing of the discussion into a debate over divestment vs. continued investment. That debate is quite legitimate, but it narrows the focus of vision and tends to obscure the larger issue, namely, the variety of means by which universities and colleges might affect change in South Africa. In other words, the search for alternative actions tends to be short-circuited by limiting possibilities to a yes-or-no choice on a specialized slice of the whole issue.

This report, while examining the important divestment/ investment issue, seeks to expand the discussion of possible actions that the University might consider vis-a-vis South Africa. Such was the charge which President Keller gave to the Advisory Committee, such was the mandate which the Advisory Committee followed. In fulfilling its charge, the Advisory Committee neither endorses a single policy nor recommends a specific combination of activities. Instead, what follows is a consensus as to actions the University <u>might</u>, not necessarily should, adopt in carrying out its obligations as a socially-responsible institution, investor, and educational leader.

To understand and appreciate the Advisory Committee's analysis, several introductory comments warrant mention:

1. The Advisory Committee recognizes the slippery slope that this University treads upon when it ventures into the arena of social reform. The University's mission is, after all, distinctive: it is not the championing of external causes, rather it is the promotion of teaching and learning, creativity, scholarship, service, and outreach. Admittedly, to depart from that mission in advancing social reform -- as noble as the cause might be -- is to expose the University to pressures from other reform movements, political interests, and external critics, in general.

There is, however, a broad and growing consensus that the problem of apartheid in South Africa presents a special, if not <u>sui generis</u>, case for University action. First, apartheid constitutes a virulent form of racism, and there is a worldwide consensus which recognizes racism as one of the worst violations of internationally recognized human rights. Second, apartheid not only involves racism, but an institutionalized racism in which a very small minority of whites purports to rule a much larger majority of nonwhites. The great majority of blacks have no say whatsoever in their governance. Indeed, apartheid is the effort as a matter of formal government policy to institutionalize racial discrimination and thus exclude from political franchise, economic advancement, educational opportunity and cultural growth a very large majority of citizens subject to a state's political jurisdiction. Third, apartheid affects a very large number of victims -- some 28 million nonwhites in South Africa and about one million in Namibia. Fourth, there is a worldwide consensus condemning apartheid as practiced by the South African government both in South Africa and in its illegal domination of Namibia; this worldwide, unanimous condemnation of the South African government and its practice of apartheid is unique in the world today and may be without precedent in the history of international affairs. Worldwide rejection of apartheid has been reaffirmed in more than two decades of U.N. resolutions which have attracted a nearly unanimous consensus of the world's nations large and small, including the United States under both Democratic and Republican Administrations. Fifth, it is significant that apartheid was established by the South African government even after the world community had developed a set of international human rights norms in the United Nations Charter as well as in other international treaties and instruments that forbid racism and reject South Africa's claim to dominate Namibia.

Hence, while there exist many other places in the world where human rights violations occur, apartheid as practiced by the South Africa government presents a unique challenge to the University. The challenge as well as the need for action on apartheid has been acknowledged by the Board of Regents in adopting special policies in 1979, 1982, and 1983. The Advisory Committee acknowledges the same need today.

2. Anything the University does, or decides not to do, must be candidly regarded as a conscious intervention in the complex struggle for power inside South Africa. The Presidents of Harvard and Princeton have argued against total divestment on the ground that to do so would project the university into the advocacy of societal reforms, here and abroad, beyond its immediate interest in higher education. The Advisory Committee believes that reasoning is disingenuous. The University should severely ration and carefully select its intervention as an institution in political issues beyond its normal mandate. But where, as in this case, the issue is <u>sui generis</u>, one of a kind, and where the community which is this <u>University</u> achieves a consensus (as some doubt it has in this case) about a target for such intervention, it is not only justified but an expression of citizenship to act.

The University community must, of course, recognize its obvious limitations in advancing goals it thus carefully selects. The influence of this institution, or for that matter all of U.S. higher education, upon corporate policymakers in Minnesota or elsewhere, is speculative at best. The impact on government officials and public opinion in Pretoria, Johannesburg, or Cape Town is more tenuous still.

Some of those on both sides of the narrower divestment argument say that it is up to the people of South Africa to mold their own destiny. For the most part, it is and will inevitably be. But outside interveners, once having taken the conscious plunge, also become actors in the drama. They cannot, or at least should not, decide to play a part and then cop out with a stance of indifference to the drama's outcome.

It is therefore essential to develop some clarity about the outcome toward which we bend our efforts; the marginality of our actions does not justify fuzzy thinking about why we are acting. Being against apartheid is too easy. The real puzzle, for South Africans and outside interveners alike, is how <u>to</u>

help develop multiracial governance with a balance of majority rule and minority rights, and how to make more probable a peaceful transition from apartheid to a multiracial society. This aim is, in global perspective, very unusual. In most of the world's nations, the explicit or implicit assumption is that one race of people will provide all the political leadership and make all the destiny decisions. The United States of America is itself unusual in its still-unfulfilled effort to build a multiracial society with a commitment to racial nondiscrimination. Americans and U.S. institutions therefore have something special to contribute to the mix of influences that will determine both the process (peaceful or violent) and the outcome in South Africa.

3. Developing a suitable University policy is all the more difficult given the inevitable uncertainty of the impact of various policies. Editorial opinions, anecdotal data, and general analyses on the subject often are written as this uncertainty were not there. The consequences -- economic, political, social, or fiduciary -- of total divestiture, selective divestiture, or any number of alternative or complementary actions are inherently hard to predict. Indeed, there appears to be less probative evidence than the members of the Advisory Committee would ordinarily require as a basis for judgments and actions in our respective academic fields. The absence of such evidence seriously hampers policy development on the subject.

4. Quite aside from the effects that the University's policy might exert upon South Africa are the policy's consequences for the University itself. Indeed, the Advisory Committee acknowledges that most of the actions contained in this report are likely to have a more immediate impact upon this institution rather than upon external actors. Some of the implications are financial and include the possible financial losses (or gains) due to investment portfolio changes or to the reactions of corporate contributors. Others involve the need for more diligent monitoring of any institutional policy. Still others raise questions about the University's sense of community and the divisiveness that will be fostered by a failure to reach consensus on an appropriate policy with respect to South Africa. Whatever consequences might ensue, they are not likely to be resolved easily or once and for all.

II. HISTORY OF THE UNIVERSITY OF MINNESOTA'S POLICIES VIS-A-VIS SOUTH AFRICA

An understanding of the University's policies, both present and recent, on the South African question is required before one can assess alternatives to such policies. Generally speaking, the history of the University's actions on the subject has been an evolutionary one. Proponents sometimes refer to the University's policies as a "gradual tightening of the screws;" opponents call them "too little, too late." Whatever perspective one takes, the policies warrant brief review.

The debate over South African investments, as mentioned earlier, stretches back to the middle 1970s when concerned students and faculty began to call upon the Regents to divest from any company doing business in South Africa. In January, 1979, the Board of Regents responded by passing a resolution which, among other things, endorsed the Sullivan principles, argued for the vigorous voting of proxy resolutions in support of the Sullivan guidelines, and called for annual reports to the Regents on companies conducting business in South Africa. Under this policy, the University lobbied various companies to become signatories of the Sullivan principles. In two instances, the University was unsuccessful (Pepsico and Perkin-Elmer) and consequently divested its holdings. In another instance (Coca-Cola), the University, along with several other colleges, persuaded the corporation to adopt the principles on the day of the annual stockholders' meeting.

In June 1982 the Regents sought to strengthen its South African policies by prohibiting future investments in companies doing business there unless equivalent returns were not likely to be found elsewhere. Under this amendment, the University's investment managers first looked to corporations that were not active in South Africa and only if equivalent returns were not available did they invest in South African-related companies. The net effect of this policy is that the University currently has investments of $31.5 million (6.5 percent of its total portfolio) in 30 companies that operate in South Africa.

In December 1983 the Regents amended its policy once again, this time formalizing a practice that the University had implicitly followed since 1979, namely, refraining from the purchase and holding of stock in any non-Sullivan signatories. Over the years, this resulted in the divestment of $8.7 million (market value) in 20 companies as well as the non-purchase of stock in an undeterminable number of corporations.

In addition to actions by the Board of Regents, the University Senate has also been involved in the South African investment question. Its first formal activity was the formation of a Committee on Social Responsibility in Investments. Although this body was a subcommittee of the Senate Committee on Social Concerns, its primary function was to advise the University administration on investments, particularly those which the Social Responsibility Committee deemed unwarranted due to unfavorable records in South Africa.

In 1981, the Committee on Social Responsibility in Investments, while endorsing the existing policies on selective divestment, also called upon the Regents to adopt three additional criteria which required divestment from companies that 1) failed to adopt the Sullivan Principles or demonstrate adequate progress in implementing the principles; 2) permitted new loans to the South African government; or 3) permitted the sale of goods and services for use in maintaining South Africa's security or apartheid apparatus. The Regents did not act upon the resolution but rather adopted the June 1982 policy referred to above.

A third major action by the University Senate was its May 1985 discussion of the South African investments question and the adoption, by a 132-4 vote, of the motion: "Be it resolved that it is the sense of the Senate, insofar as the University's investments support apartheid, that the Regents should divest out of all corporations and financial institutions doing business in or with the Republic of South Africa." The vote signaled a changing attitude among Senate members on the South African question.

Hence, if one compares the actions of the University Senate with those of the Board of Regents, one finds both similarities and differences. Both are characterized by gradual evolution, both have supported the adoption of the Sullivan principles, the sponsorship of shareholder resolutions, the strict monitoring of companies active in South Africa, and the divestment of selected stocks. The recent Senate resolution, however, might be interpreted to call for total divestment which goes beyond the 1983 decision of the Board of Regents.

Some members of the Advisory Committee believed that the University Senate's lopsided vote does not seem to have been the product of serious study of the complexities here involved. The Senators did not have before them an analysis of the depth and quality upon which they as scholars would insist on as a basis for judgments in their own fields. These members of the Committee would look forward to a further Senate process after full and open debate on the considerations assembled in this report. Other members of the Advisory Committee felt that many participants in the Senate vote were at least as well informed on this issue as the members of the Advisory Committee and that this Committee should not try to second guess the action of a body which is representative of faculty and students.

III. TOTAL OR STRENGTHENED SELECTIVE DIVESTMENT OF INVESTMENTS IN SOUTH AFRICA AS POLICY OPTIONS FOR THE UNIVERSITY

The University has a policy of selective divestment of holdings in companies doing business in South Africa which have not signed the Sullivan principles. There is widespread support within the University, as evidenced for instance in the recent overwhelming majority vote in the University Senate, for substantially strengthening the University's policy on South African investment. This chapter outlines two broad options ("total divestment" and strengthened "selective divestment), sketches the possible types of strengthened divestment policies, and compares the costs, intended effects, and likely effectiveness of the main alternatives.

It can be argued that the time is ripe for stronger action for two reasons. For one, the political system in South Africa appears to many to be increasingly unstable and in decay, with the struggle against it having reached a critical phase, a fork in the road. For another, divestment actions by public institutions are a focus of current discussion. Action in this area can be effective only if it is matched by others. For such action to be effective, the time is right.

The South African policy of apartheid has been implemented with continued, even increasing vigor despite the operations of U.S. firms in that country, some of whom violate apartheid in their own labor practices. Persisting with the present, somewhat inconsistently implemented, University investment policy may amount to acquiescing in a status quo which the South African government finds consistent with strengthening apartheid.

The University's existing policy shows some weakness and inconsistency when taken on its own terms:

1. The University abstains from investing in companies which operate in South Africa unless they have signed the Sullivan principles. Signatories' compliance with those principles is monitored regularly by the Arthur D. Little, Inc. and many of them are either not complying well or refuse to cooperate in the monitoring. The University has made no effort to connect its investment policy to compliance monitoring, except that the University will not invest in companies which are dropped from the list of signatories of the Sullivan principles for repeated failure to their report on compliance or very low ratings for compliance over a long period.

2. The existing policy requires University participation in shareholder resolutions on South Africa, and this aspect of the policy has not been implemented in the past several years.

3. The existing policy of making no investment in firms doing business in South Africa "unless equivalent returns are unavailable elsewhere" appears self-contradictory -- if a divestment policy succeeds in making it more difficult for South Africa to attract foreign capital, it will do so precisely by forcing South African investments to pay an above-market return.

The Advisory Committee discerned two types of divestment:

1. "Selective divestment" is used to refer to a policy of continuing to invest in firms active in South Africa, but insisting on some ethical standards for the behavior of those firms in their South African operations. The University, like a number of others, has had a policy of this type, and the policy is already a constraint on the University investment portfolio. There are a number of ways the standards of selection could be tightened. These alternative forms of selective divestment are set forth in greater detail in part D of this chapter.

2. "Total divestment" is used to refer to a policy of ceasing to invest in firms which participate in the South African economy, no longer considering that when the firm's own standards of behavior are high enough participation in the South African economy is acceptable. In fact, there is a continuum of degrees of involvement in the South African economy, so any policy of this type will in fact be "selective" on some criterion. The most commonly proposed criteria are that firms with direct investments in South Africa or that firms with offices in South Africa be excluded. Some institutions, however, have ruled out investment in firms which do business with South Africa, or do so at a certain scale or in certain commodities. The University's present investment policy includes elements of the total divestment approach -- the University will not invest in any firm doing business in South Africa unless equivalent returns are not available elsewhere. A number of other institutions whose divestment policy is mainly "selective" nonetheless rule out any investment in firms whose "primary" business is in South Africa or which do a "substantial" proportion of their business in or with South Africa, without regard to such companies' employment practices.

Obviously "total divestment" is something of a misnomer, but this report will continue to use it to mean a policy predicated on the idea that the University should avoid participating in the South African economy, even via firms whose own employment practices do not follow the apartheid system.

A. The Case for Total Divestment

1. Objectives of Total Divestment

Total divestment aims at increasing the reluctance of U.S. firms to do business in South Africa, regardless of how they do business. It also aims at keeping the University's own resources free of involvement in an ethically indefensible system. It rests on a judgment that whatever good U.S. firms may do in providing an example of apartheid-free personnel practices is outweighed by the support they provide to apartheid both indirectly, by strengthening the economy, and directly, through taxes paid to the government.

2. Effectiveness of Total Divestment

Total divestment could succeed in its goal of freeing the University's own investments from direct contribution to the South African economy. It is unavoidably uncertain whether it could succeed in reducing the amount of U.S. involvement in the South African economy. The policy raises considerable concern in the business community, which suggests, at least, that it would not be ignored. To the extent that total divestment by many institutions succeeded in making U.S. firms more reluctant to participate in the South African economy, it would create economic incentives for the South African government to change its policies.

While the effectiveness of such incentives in changing South African government behavior is uncertain, there is no doubt that the participation of U.S. companies in the South African economy provides tax resources to the government and capital and skill resources to the economy at large. Hence, in supporting the development of policies which make participation in the South African economy acceptable, the University may be contributing to the perpetuation of apartheid.

Selective divestment, using the Sullivan principles as the criterion, does not in practice preclude investment in most large multinational firms which do business in South Africa. It can be argued that these are the firms with the largest and least easily duplicated resources of capital and technical knowledge to offer to the South African economy. It may be precisely for this reason that their adherence to the Sullivan principles is tolerated by the South African government. Those who argue for total divestment believe that it is therefore essential that a strengthened divestment policy restrict investment in these firms if it is to have a chance of affecting the views of the South African government.

Some argue that the example of enlightened U.S. firms is economically important to the disadvantaged black population in South Africa, so that disinvestment would substantially injure many blacks. There is, of course, some truth to this argument, but it is important to keep it in quantitative perspective: for every $1 paid to black workers, U.S. firms in South Africa pay about $2.60 in taxes to the South African government; employment of blacks by U.S. firms (which are Sullivan signatories) in South Africa totals about 66,000 out of a black population of 24 million -- less than three tenths of a per cent.

3. <u>Economic Costs of Total divestment</u>

The likely economic costs of total and selective divestment are qualitatively similar. Both involve restricting the range of assets from which the University forms its investment portfolio. Both could in principle invite economic retaliation in the form of reduced gift-giving or cooperation from corporations.

In principle, restricting the range of assets from which the University draws its portfolio must be expected over the long run either to reduce the yield or increase the risk of the University's portfolio. Even total divestment, however, would leave over 70 per cent of the stock market qualified for University investment, so the effects could be modest. Reflecting the marginal nature of these costs, existing studies and historical experience with South Africa free portfolios give conflicting answers as to whether there is any detectable effect. Studies show historical experience of slightly higher returns and slightly higher systematic risk with South Africa free portfolios, but with the differences statistically insignificant. (The recently prepared study of South African versus "alternative" investments by the University Investment Office reaches a different result, but employs a methodology which has been critiqued by Professor Sims in his appended statement.)

Whether reductions in corporate goodwill are a likely reaction to divestment is difficult to determine. Apparently, no corporation has publicly stated that its gifts to or cooperation with the University are contingent on the University's investment policy. Even if there were explicit or implicit threats of this nature, it is questionable that the University ought to allow itself to be influenced by them. The University's investment policies should be determined by judgments about profitability and social responsibility; any suggestion that it is possible for corporations to influence that policy by threatening to withhold gifts or cooperation would set an unfortunate precedent. Nevertheless, some members of the Advisory Committee were of the opinion that companies may be influenced in their gift-giving by an explicit University policy which indicated disapproval of them.

The economic costs of total divestment are larger than those of selective divestment mainly because a longer list of firms is proscribed under total divestment. Nonetheless, there are roughly as many U.S. companies doing business in South Africa which have not signed the Sullivan principles as there are companies which have signed them. The present University policy therefore already restricts the range of possible investments. Of course, it is true that there are several large Minnesota firms which cooperate with the University and which would be affected by total divestment, while not being affected by the current policy. Here, the argument made above applies: probably these firms would not let University investment policy affect other aspects of their relationship with the University, and in any case, the University should not allow explicit or implicit threats of this nature to affect its investment policy.

U.S. firms with operations in South Africa tend to be large, and those which sign the Sullivan principles tend to be large also. Hence, while over 70 per cent of the stock market as a whole has no operations in South Africa, only about 60 percent by value of the Standard and Poors 500, which consists of relatively large firms, is in this category. Most of the large firms with operations in South Africa are Sullivan signatories, so that the present University policy does not preclude investing in them. An investment portfolio restricted not to invest in these large firms would have to use a different strategy from one not so restricted, but neither available theoretical analysis nor historical experience with South Africa free portfolios suggests that the results would be likely to be much different from those obtainable with an unrestricted portfolio. (See the testimony by Robert Schwartz of Shearson/American Express and Stephen K. Moody of United States Trust Co. before the Committee on the District of Columbia of the U.S. House of Representatives, January 31 and February 7 1984.)

Though the case can be overstated, the costs of monitoring and effective implementation of a total divestment policy might be lower than those associated with a selective divestment policy. Selective divestment, if it were expanded to require monitoring compliance with the Sullivan principles, for example, would require continual checking of the status of numerous companies. It also would require a steady input of time to decide on how to vote on shareholder resolutions on South African business activities and to decide on when such resolutions should be introduced by the University. Of course, the same would be true of a total divestment policy which did not rely on a mechanical criterion for determining when a firm had significant involvement in the South African economy. With any of the more difficult-to-monitor forms of divestment policy there would be substantial advantage in matching the University's criteria to those of other institutions, so that the work of monitoring the criteria could be shared. Furthermore, continuous monitoring has the advantage of requiring substantial attention by the University community to this issue.

4. <u>Noneconomic Costs of Total Divestment</u>

There are unquantifiable costs to the University of injecting political and ethical considerations into its investment behavior. Ordinarily, the University tries to provide a forum for ideas kinds without taking institutional positions on the ideas themselves. The South African issue is already singled out as one which justifies an exception to this general rule. Total divestment therefore raises no new issue of principle in this respect. It revives the old issue of principle, however, because it implies a more vigorous rejection of the course of government policy in South Africa and a more pessimistic judgment about the overall effect of activities there by U.S. firms. The question is, does the consensus in the University community which justified selective divestment now extend to equally broad support of total divestment? There is a case that it does, as apparently evidenced by the University Senate vote.

Some members of the Advisory Committee also suggested that U.S. companies in South Africa represent a moderating force for progressive, nonviolent change in South Africa which would be sorely missed, if they withdraw. Others noted that based on the performance of the great majority of U.S. firms and the results they have obtained in the past decade, the possibility of change in the South African government through U.S. business pressure is insufficient to compensate for their support for the South African government in paying taxes and in lending an appearance of legitimacy.

B. The Case for Selective Divestment

1. Objectives of Selective Divestment

Selective divestment aims at inducing U.S. firms to defy apartheid in their own personnel practices in South Africa and to take action aimed at persuading South Africans to abandon apartheid.

2. Effectiveness of Selective Divestment

While the aspects of apartheid which are most burdensome to the black population have not changed in recent years, some moderation of the system has appeared, moderation which probably appears very substantial in the eyes of the South African government. It can be argued that this moderation represents a step in the right direction and that the active role of progressive U.S. firms in the economy has been important in making the step possible. Furthermore, there are opportunities for strengthening the existing University selective divestment policy to exert increased pressure for change without taking the position that all economic activity in South Africa is unacceptable. The University currently excludes from its portfolio only companies which have not signed the Sullivan Principles. Compliance of signatories to the principles is regularly monitored by Arthur D. Little, Inc. and many signatories are either unresponsive to monitoring or determined to be falling far short of full compliance. The University could adopt a more stringent policy of using compliance monitoring in setting investment policy, proscribing investment in signatories to the Sullivan principles which do not comply or do not cooperate in the monitoring process. It would also be possible to adopt, jointly with other institutions, an expanded version of the Sullivan principles setting a higher standard of corporate behavior. (The Sullivan principles themselves have been expanded recently, and it is not clear to what extent earlier signers have adopted the expanded principles.)

Such actions would partially answer the need for a substantial and concerted response to the slow progress of the South African government on apartheid, without condemning all economic activity by U.S. firms in South Africa.

3. Economic Costs of Selective Divestment

As already noted, the economic costs of selective divestment are qualitatively similar to the costs of total divestment. On the one hand, since many of the signatories to the Sullivan principles are not complying well, it is possible that a University policy of divesting holdings in such companies would soon prove nearly as costly as total divestment. On the other hand, the number of signatories is increasing, and conscientious monitoring might improve compliance, so that the economic costs might prove much less.

Total divestment in its strongest form rules out investment even in corporations doing tiny fractions of their total business in South Africa. Furthermore, even if these firms did withdraw from South Africa, there would be some substitution for them by firms from other countries, further diluting any impact of their withdrawal. While in principle selective divestment might also rule out investment in some such corporations, in practice large firms doing small amounts of business in South Africa are likely both to be willing to risk signing the Sullivan principles and to have the economic clout to comply with the principles even when it requires actions illegal in South African law. Any action in this arena involves balancing of costs the University imposes on itself against effectiveness in influencing the policies of the South African government. In the event of total divestment, it can be argued that the costs imposed by the University on itself would exceed any potential benefit in situations involving large profitable corporations with small activities in South Africa.

While selective divestment might impose higher administrative costs than total divestment, this difficulty might, in fact, be an advantage, as it would require continual attention to the issue by the University. As the inconsistent application of existing University policy in recent years shows, without a clearly defined administrative mechanism for implementing policy in this area, selective divestment can become an ineffective means for expressing University sentiment about South Africa. Total divestment would tend to take apartheid in South Africa off the agenda of the University community. Not being directly engaged, the University would not be as willing to use its influence to affect the further evolution of the events in South Africa.

4. Noneconomic Costs of Selective Divestment

Selective divestment runs less risk of political opposition outside the University community. On the one hand, certainly substantial elements of the business community find it much more acceptable than total divestment. On the other hand, it is clear that very substantial components of the University community would regard selective divestment as an inadequate response to the present situation. One might still take the position that there is not the strong consensus within the community which would be required to justify the discrete change in policy total divestment represents.

C. Additional Divestment Considerations

1. Ineffectiveness of Boycotts

It is often argued that no divestment policy can be very effective, because other investors will be quick to step in to take over divested holdings and because if U.S. firms withdraw from South Africa other firms will be quick to take their places. Refusal to engage in a market transaction generally imposes costs on both parties, and both parties generally can find substitutes for the refused transaction. If the University had no alternative to investment in corporations not meeting its policy on divestment, the fact that those corporations do have alternative stockholders and that South Africa does have alternative suppliers of capital would make a divestment policy quixotic. The fact is, though, that the University does have alternative investments, so that it can be argued that the costs of divestment are not disproportionate to the possible effects of it.

2. The Moral Slippery Slope

Total divestment is sometimes characterized as an attempt to keep the University's "hands clean" of involvement with South Africa. In fact, selective divestment has at least as much of this character. In either case, the argument goes that the same reasoning which leads to divestment must, if pursued to its logical conclusion, lead to more far-reaching and costly boycott actions. It might lead to refusal of gifts or of other sorts of cooperation with companies doing business in South Africa. It might lead to divestment of holding in such companies by the managers of the pension funds of University employees. It might lead to calls for boycotts of products of such companies in University purchasing. In addition, it might lead to extending all these measures to firms which sell to South Africa, or even to firms whose products eventually are used (after resales) in South Africa.

Those who support a stronger divestment policy, however, believe that such a policy has moderate costs to the University and a relatively clear potential effect on the situation in South Africa. Most proponents of total divestment recognize that even with a policy of total divestment, the University, like every participant in the interdependent world economy, would retain many indirect links to the South African economy. Most proponents of selective divestment recognize that even if the University manages to avoid taking any profit from economic activity in South Africa which imposes apartheid in the workplace, the University will retain many indirect links to such activity through all its economic transactions.

Indeed, the objection that the University would need to refuse gifts in certain companies is as applicable, in principle, to the present University policy of selective divestment, as it would be to a strengthened policy of selective divestment or to a total divestment policy.

Refusal of gifts, at least in many instances, would involve much more substantial costs to the University than any form of divestment policy, for the sake of much more remote potential effects. The same would be true of policies requiring broad purchasing boycotts.

In short, the fact that disinvestment policy is motivated by morality does not mean that its advocates have no calculus of cost versus effectiveness in mind. One can accept the argument for total or selective divestment without agreeing that similar actions with more remote effects and higher costs are wise.

3. Concerns Over the Risk of U.S. Military Involvement

Those who support total divestment bolster their views by expressing concern that the United States government might be more likely to become militarily involved in a conflict in South Africa if there were major U.S. companies with operations in South Africa. They point to past circumstances in which the U.S. government has explained the need for military intervention on the basis of the importance of protecting U.S. lives and other interests. The Advisory Committee was not able to assess the likelihood of such a U.S. military intervention in southern Africa.

4. Legal Constraints on Prudent Investment

The Board of Regents serves as a fiduciary in investing the University endowment and other funds. In that role the Regents must make decisions as a prudent investor. In acting as a prudent investor the Regents can look at both the comparative returns from various investments and the risks which are involved. The University should also be a socially responsible investor. As discussed above with respect to the economic costs of total or selective divestment, there does not appear to be any conclusive evidence that one approach to the University's portfolio is so superior to another that the Regents would fail to fulfill their role as a prudent investor by choosing one of the identified approaches over another. The Regents can also consider the long term risk which companies face in continuing to possess operations in South Africa. In any case, it is appropriate to note that many universities have chosen quite diverse approaches to their investments in companies with operations in South Africa. The Regents should, of course, seek appropriate and current legal advice as to their legal obligations in investing University funds.

D. Specific Options on Strengthened Divestment

A range of actions the University might take with respect to South African investment is listed below. Most are not mutually exclusive.

1. The University could exclude from its portfolio firms which do not comply with the Sullivan principles, even where the firms have signed the principles. For example, the University could only invest in companies which are ranked in the higher categories of compliance with the Sullivan principles.

2. The University could exclude from its portfolio all firms with operations in South Africa except where those operations are conducted in such a way that they contribute toward ending apartheid.

Since many people, including Reverend Sullivan, are critical of the impact of the Sullivan principles, the University might develop (in collaboration with other universities) additional precepts which could be imposed as a condition for investment. The Sullivan principles are mainly directed at improving the working and other conditions of black workers in U.S. companies in South Africa. They do not purport to have an impact upon the broader system of apartheid. The University (in collaboration with other universities) might insist that companies report regularly on the concrete measures they have taken during each six month period to dismantle the system of apartheid. The Trustees of the New York City Employees Retirement System voted to divest over five years from all corporations operating in South Africa except those judged to be actively aiding the struggle against apartheid. Similarly, the University could attempt to influence companies not to sell items to the government of South Africa which are likely to be used for the enforcement of apartheid, insofar as such items are not already limited by U.S. export controls. Also, the University might seek the implementation of the principles associated with the Nobel laureate Bishop Tutu or with the American Chamber of Commerce in South Africa. Both of these latter statements of principles are broader than the Sullivan principles in relating to South African economy and political system.

In this regard, the Advisory Committee recalls that in 1981, the Committee on Social Responsibility in Investments, while endorsing the existing policies on selective divestment, also called upon the Regents to adopt three additional criteria which required divestment from companies that 1) failed to adopt the Sullivan Principles or demonstrate adequate progress in implementing the principles; 2) permitted new loans to the South African government; or 3) permitted the sale of goods and services for use in maintaining South Africa's security or apartheid apparatus.

Similarly, the University (in collaboration with others) could insist that companies doing business in South Africa devote a certain proportion of their profits from their South African operations to educational programs for nonwwhites in South Africa from the primary to the university levels. (Such a program has been in place at IBM and Firestone and was recently initiated by Honeywell.) There must be assurance that the students and educational institutions receiving assistance from the U.S. companies are selected independently from the South African government. Such a requirement of educational programs might be enforced by the threat of divestment if they were not implemented after some appropriate period of time.

3. The Advisory Committee's attention was also drawn to the possibility of encouraging U.S. companies to use their influence constructively upon the South African government by investing selectively in companies which appear to be following such progressive policies. While the Advisory Committee could see the usefulness of encouraging constructive pressure upon the South African government, the Advisory Committee did not generally support this alternative. It was feared that a policy of selectively investing in certain companies to encourage progressive policies would require the University to endorse everything the company was doing in South Africa. While a policy of failing to divest or of selective divestment did not necessarily require the University to accept the morality and justification for the conduct of companies doing business in South Africa, a policy of selective investment might imply such an endorsement. Some members of the Advisory Committee also pointed out that a policy of selective investment ignores the significant contribution companies make to the taxes collected by the South African government and to the appearance of legitimacy of that government.

4. The University could avoid depositing its funds (or withdraw if necessary) from banks which make loans to the government of South Africa. Among the Universities which pursue this approach are Brown, Harvard, Michigan State, and Yale (no new loans). (Following, the decision of the New York City Council to take its deposits out of certain New York banks and a recommendation by the American Banking Association against loans to the government of South Africa, it is doubtful that any further loans will be made by U.S. banks.) The University of Minnesota has apparently been following this approach informally for several years.

5. The University could replace its present policy of not investing in any firm doing business in South Africa unless equivalent returns are unavailable elsewhere with a policy of

a) not investing in firms whose primary business is in South Africa (Such a policy is evidently pursued by Harvard University);
b) not investing in firms which do a substantial amount of business in or with South Africa;
c) not investing in firms which do any business in or with South Africa which has the effect of providing resources to the South African police or military, or
d) not investing in firms which have any direct investment in South Africa.

Obviously these possibilities are not mutually exclusive.

6. The University could implement any of the above options with varying rates of speed. Any criterion for disinvestment which required eliminating investments now held could create high costs if divestment were required to be immediate. At the opposite extreme, costs would be much lower if the criterion were applied only to new investments. A reasonable time period within

which to require that the portfolio be brought in to line with the criterion might be one to three years.

V. MEASURES IN ADDITION TO OR OTHER THAN DIVESTMENT

The Committee also considered a number of measures which the University might pursue either in addition to or as alternatives to selective or complete divestment. Several factors need to be considered in assessing these measures:

A. Factors to be Considered

1. The focus on divestment has made that single issue the litmus test of the University's stand on South Africa. The debate on divestment has significantly precluded serious discussion of other approaches to using the University's influence for ending apartheid in South Africa. Most of the measures identified below would require the University (and others) to monitor regularly the situation in South Africa and the policies of U.S. firms operating in that country. As a result (whatever stance it adopts on divestment as such), these additional measures would imply continued attention by the University to the problem presented by South Africa and would avoid the University simply turning its back on the problem.

2. The University's divestment would attempt to use only the University's investments as a lever to influence U.S. companies to stop investing in South Africa in the hope of placing pressure on the government of South Africa. But such actions do not engage the University's particular strengths as an educational institution to influence the course of fundamental political change in South Africa.

3. The Committee considered a number of nondivestment measures which would be both symbolic and influential -- particularly if taken in conjunction with similar institutions and pursued with adequate resources. Many of these alternative measures can be pursued most effectively and least expensively through collaboration with similar institutions. The University could take the initiative to develop such a consortium of universities and other institutions pursuing active policies against apartheid. All of the measures discussed below will require the expenditure of considerable University resources, which might be spread to some extent among collaborating institutions. Universities possess many resources of expertise about such issues as the political and economic situation in South Africa, investment strategies, the impact of corporate policy, etc. -- all of which could be pooled to help make better informed, unified, and thus more effective decisions.

4. While divestment can be implemented fairly promptly (although there are costs to haste), it will take time to develop a collaborative strategy with universities and similar institutions. (Various members of the Advisory Committee would be prepared to work with the President's office to implement

these alternative measures if the President wishes to pursue them.) It is unclear, however, whether the University and other institutions will have the necessary time.

5. While there are a number of hidden and not entirely knowable costs of divestment, the University must also recognize that alternative measures will require the expenditure of funds and the commitment of other resources, such as staff time. The Advisory Committee considered a proposal whereby the University might commit to alternative programs an amount of money which would be roughly equivalent to the amount the University earned from its investments in companies doing business in South Africa. For example, the University might estimate its earnings from a particular company, multiply those earnings by the percentage of business which the company does in South Africa and derive an amount which the University should devote to programs directed towards the abolition of apartheid. (Using this sort of calculation without obtaining the necessary company-by-company data, one might roughly estimate that the University earns about $46,000 per year on its South African-related investments.) The University might seek to obtain foundation or corporate donations to match or double the amount available for University programs against apartheid. Such a calculation with matching grants might help the University quantify the amount of commitment or the minimum commitment which the University must undertake to combat apartheid.

Some members of the Advisory Committee expressed discomfort with the above calculation of the University's commitment in this area. They were concerned that if such a calculation were adopted, the University would logically have no need to pursue alternative proactive measures, if the University adopts a total divestment policy. They were also worried that the calculation may result in an insufficient commitment of University resources and a probably understated estimate of the University's actual financial support for the South African government. For example, the calculation ignores the different rates of profit on South African investments; the calculation further disregards the taxes paid by U.S. companies to the South African government. In addition, they were particularly concerned that those who performed the calculation should actually look at the percentage of business of each individual company in South Africa; otherwise the calculation would be quite inaccurate. At least such a calculation could help the University quantify its degree of support for the government of South Africa.

6. Some members of the Advisory Committee, who do not otherwise support total divestment, believe that if the University is not willing to devote the necessary resources for pursuing at least several of the nondivestment alternatives to apartheid outlined below, the University should pursue divestment so as to take some, at least symbolic, stand on this problem. Such an individual action would be more likely to have an impact than many other unilateral actions because of the cumulative effect of similar decisions by a growing number of other

institutions. It was the consensus of the Committee that whatever degree of divestment might be selected as the Regents stance, the University should take several additional steps to use the University's particular strengths to help bring an end to apartheid.

B. <u>A Dozen Measures in Addition to or as Alternatives to Divestment</u>

The measures identified below could be adopted by the University whatever policy it adopts on divestment. Several members of the Advisory Committee expressed their support for "divestment plus" that is, divestment of investments in companies operating in South Africa, plus actions to link the University with institutions in South Africa which are working for the end of apartheid and the achievement of a just multi-racial society through evolutionary, political means. Those who favored a strengthened policy of selective divestment also favored adding such nondivestment measures as are suggested below. Other members of the Advisory Committee preferred a combination of several nondivestment measures. A dozen additional alternative measures were identified:

1. The Regents in 1982 adopted a policy which directed that "the appropriate administrative officers . . . [a]ctively pursue proxy issues relating to human rights in South Africa in those corporations in which the University has investments.. . ." This policy has apparently not been implemented. At a minimum the University could actively initiate and use its voice and vote to support proxy resolutions concerning South Africa.

The Interfaith Center for Corporate Responsibility has for several years developed a consortium of institutions (principally churches and other religious organizations) to bring pressure on U.S. companies operating in South Africa and on the South African government. The Interfaith Center monitors the activities of U.S. companies in South Africa and helps to pool shares for shareholder resolutions pressing for change. The Investor Responsibility Research Center (IRRC) also provides information on company activities in South Africa. The University could cooperate with the Interfaith Center, the IRRC, or a similar institution of universities.

2. The University presently enrolls 17 South African students of which two are South African blacks whose studies are financed through a U.S. government program administered by the Institute for International Education. The University could provide education to many more. Initial contacts with the Lutheran church sources indicate that the University could bring at least 20 students from Namibia every year. Perhaps, with the aid of other Minnesota institutions over 200, more could come from South Africa. In order to avoid any appearance of South African government involvement in the selection process, the University might be able to obtain the assistance of the Lutheran

Church or other agencies that are independent of the South African government.

3. The University could foster exchange programs, for both students and faculty. These exchanges could be with South African universities, institutes, professional organizations, and other institutions in South Africa (such as the South African Council of Churches) which have worked towards racial justice. For example, the University could provide two-years paid leaves of absence for faculty work building institutions in South Africa which provide alternatives to apartheid in such fields as law, industrial relations, unions, business enterprises, and teaching. Members of the Advisory Committee mentioned in this regard the University of Witwatersrand (their new Rector, Dr. Karl Tober, visited the University for several days in 1983), the University of the Western Cape (Colored), University of Durban (Asian), and Fort Hare (African).

4. The University could send some of its staff and/or recent graduates to teach at other educational levels in Namibia and South Africa. The South Africa Council for Higher Education (SACHED) has initiated a program for bringing U.S. educators to work in black high schools. For example, the Greater Chicago United Way has begun to participate with SACHED in sending high school teachers to South Africa. The Honeywell Foundation is also working with SACHED to fund Khanya College and thereby to provide educational opportunities to black high school graduates for a year of college preparation before enrolling in South African universities (or elsewhere).

The Committee is aware that such actions might be construed to legitimize the segregated educational systems in South Africa and Namibia. It is therefore essential that any such measures be carried out in such a way as to avoid this misunderstanding about the University's opposition to school segregation as an important component of the apartheid system. The Committee believes that the benefits of such a University activity outweighs this risk of misunderstanding.

5. There exist several public interest law and legal defense organizations in Namibia and South Africa, which could benefit from the receipt of recent University graduates and some student interns, especially from the Law School and the Humphrey Institute. For example, the best known legal defense institution in South Africa is the Legal Resources Center, which has established a program of receiving legal interns from Columbia University Law School. Minnesota might develop a similar program with the the Legal Aid Office of the Council of Churches in Namibia, the Legal Aid Office of the South African Council of Churches, the Applied Legal Studies Office run by Professor John Dugard at Witwatersrand University, Black Sash, and/or the Black Lawyers Association.

6. There are a number of very significant political trials in South Africa and Namibia to which the University might want to

send an observer. For example, the major treason trial which is expected in the next few months will be observed by some lawyers from the American Bar Association, but the ABA cannot possibly cover the whole trial which is expected to run for two years. Minnesota could cooperate with the ABA and other institutions to assure that the U.S. concern about that trial is clearly expressed. Indeed, Jim Dorsey of the Dorsey law firm is expected to attend the treason trial for a couple of weeks on behalf of the ABA and the Minnesota Lawyers International Human Rights Committee. The University could involve not only members of the law faculty, but the staff of the General Counsel's office, some of the lawyers on the Board of Regents, and/or distinguished University Law School graduates. The Minnesota observers could also return and continue to educate people here about human rights in South Africa.

7. One of the major developments over the past decade in South Africa has been the rise of independent black unions. These unions have become a significant political force for change. It appears that these unions could use the assistance of those who know how to organize and run labor unions. The University may be able to send staff and/or graduate student assistance to these labor unions. The Applied Legal Studies Office at Witwatersrand University provides most of the legal work for the independent black labor unions and could provide a point of departure for developing a University of Minnesota exchange program in the labor relations field. Another possible contact may be found in the South African Council of Churches which has been aiding the development of the independent black labor union movement. (The AFL-CIO also has been working some of the black labor unions, but it aids only those unions with which it has political ties.)

8. The University of Minnesota in consortium with other U.S. universities could develop a project to monitor the human rights situation in South Africa, the impact of U.S. business activities in South Africa on apartheid, and the ways by which universities and others in the U.S. can help to pursue justice in South Africa.

9. The University could use its influence and attempt to organize members of the university community to work persistently and visibly for the release of release of the large number of South Africans who have been jailed or banned for their political beliefs. Similarly, the University and members of the University community could publicize and work for an end to the use of torture and arbitrary killings by the South African government. In this human rights activity, the University could make use of the appeals generated by such international organizations as Amnesty International, the International Commission of Jurists, the Lawyers Committee for Civil Rights Under Law (Southern Africa project), and the United Nations. Indeed, there are thousands of people and institutions all over the world who are writing letters to the government of South Africa about specific

prisoners, sending aid packages to the families of prisoners, etc.

10. The University might consider following the leadership of the New York City Council which has limited the purchase of goods or services by the City to companies not doing business with South Africa. This policy is imposed upon contracts let by competitive bidding wherein any bidder that promises not to do business with South Africa is subjected to a five percent surcharge in determining the lowest responsible bid. Such a condition would be difficult to administer unless it were applied to relatively major contracts. The precise language of the New York City Council resolution should be consulted.

11. The University of Minnesota, members of the university community and/or a consortium of universities might want to push for various forms of U.S. legislation which would place pressure on South Africa. For example, the University and others could lobby for the adoption of one of the several proposals for legislation now pending in the U.S. Congress. One such measure has been introduced in the House of Representatives and has the support of five congressional representatives from Minnesota as well as over 130 other Members of Congress. Another bill has been introduced by Senator Dole and yet third has been identified as the Anti-Apartheid Act of 1985, S.635, introduced by Senators Kennedy, Weicker, Proxmire, Sarbanes, Levin, Kerry, Hart, and Riegle. S.635 would prohibit loans to the South African government, restrict corporations from making any new investments in South Africa, prohibit the sale of South African gold coins (krugerrands), forbids the sale of computers and computer technology to the government of South Africa, and mandates an improved version of the Sullivan principles on U.S. companies doing business in South Africa.

The advantage of University activity to encourage such federal legislation would be that a federal statute would have more pervasive impact upon the South African economy than a unilateral action by the University or even a broad alliance of similar institutions. The disadvantage of such political activity by the University is that it may set a precedent which might thrust the University too far into partisan political controversy on issues not related to federal policy on higher education. While the Advisory Committee believes that most of the measures outlined above would not involve an intolerable risk of undermining the University's necessary independence, this alternative might cross that indefinable line towards politicization. Also, it is not clear how effective the University would be as a lobbyist on such matters in the U.S. Congress.

There is some University experience with legislative activity in this sphere. In 1983 President McGrath supported a bill which would have made the Sullivan principles mandatory on all U.S. companies doing business in South Africa. The President's statement of position on behalf of the University did not appear to undermine the University's independence. Indeed, not much notice was taken of the President's statement either in Minnesota or on Capitol Hill.

Furthermore, at least one member of the Advisory Committee was concerned that some federal legislation to enforce divestment, etc. might cause a counterproductive reaction by the South African government, whereas spontaneous actions by a growing number of educational institutions, religious organizations, and pension funds might be more convincing to the South African government without engaging U.S.-South African government-to-government relations.

12. The University with others might also press the federal government to change its policies which appear to support the South African government. For example, the University might urge that the U.S. play a more constructive role in the negotiations to end the South African domination of Namibia. It appears that the U.S. insistence that all Cuban troops leave Angola has now become the only remaining excuse for the continued presence of South Africa in Namibia.

While such pressure on the U.S. government might not set such difficult precedents as efforts to lobby in favor of federal legislation, several members of the Advisory Committee expressed concern that this approach would also cross that indefinable line of over-politicizing the University. In any case, the University (and/or a consortium) would need to make use of available expertise in international relations and U.S.-South Africa relations to put credible pressure on the U.S. government. The University might also find itself in an adversarial relationship with the State Department and others in the Administration. Nevertheless, some members of the Advisory Committee believed that the precise point of such University activity vis-a-vis the U.S. government could have an important influence upon the situation in Namibia and, perhaps, in South Africa. At least one member of the Advisory Committee cautioned, however, that one should not exaggerate the influence of the United States to work its will upon other governments. Another Committee member observed that the United States is a superpower and one of the principal, if not the most visible, supporter of the South African government in the world community. Nevertheless, the United States may have difficulty convincing the South African government to take actions in regard to matters which the South African government may view as indispensable to its survival.

VI. CONCLUSION

The Advisory Committee has set forth a number of measures which the University of Minnesota could adopt to express its moral, political, and economic opposition to apartheid in South Africa and enhance the prospect of change toward multiracial participation in South African governance. These measures include complete divestment or varying degrees of strengthened selective divestment, and parallel efforts to use the University's influence to end apartheid.

The Advisory Committee shares with the President, the Regents, and the entire University community an abhorrence of the practice of apartheid in South Africa. The Advisory Committee agreed that the University should act effectively to use the University's influence to help bring an end to apartheid.

President Keller and the Regents should do what they think is right at this time in history. The Advisory Committee is confident that they will not take any action merely to placate those who protest or to increase their popularity among students or faculty. They will do what is right, because it is the right thing to do and the right time to do it.

> The most underrated danger of human events is prolonged procrastination. And the greatest tragedies of history have occurred, not so much because of what was finally done, but because of what had earlier foolishly been left undone. In the matter at hand, to fail to act wisely now is only to ensure having to act desperately later. (Robert McNamara, Chancellor's Lecture, University of Witwatersrand, 21 October 1982).