

# Report of the Committee on University Responsibility To the Trustees, with Recommendations, Concerning University Policy Relating to Investments in Companies Doing Business in South Africa

*January 16, 1986*

## Introduction

During the past year, events in South Africa have captured and held the attention of the entire University community. One need only scan the daily newspaper or listen to the nightly news to learn of the escalating violence in that nation. As resistance grows against apartheid, which as a matter of law ignores the most fundamental rights of the nonwhite majority, the South African government has intensified its repression by declaring a state of emergency and arresting and detaining thousands of opponents of apartheid without due process. As trustees, we are united in our abhorrence of apartheid.

In light of the increasing level of conflict in South Africa and the heightened attention being paid to the problem of apartheid by the federal government, by corporations that do business in South Africa, and by concerned members of the University community, the Trustees asked the Committee on University Responsibility (the "Committee") to review the Trustees' policy concerning South Africa, particularly relating to University investments in companies that do business in that nation, and to make recommendations as to whether that policy should be modified.

In accordance with its charge, the Committee has focused on the question of divestment and the role of the University as a stockholder. However, while not a part of the Committee's formal recommendations, all the members of the Committee strongly support the role of the University as an educational institution in providing opportunities for oppressed South Africans to study at the University, in cooperating with appropriate educational institutions in South Africa and in helping in other ways to provide the knowledge essential to the new leadership in government, health care and other professions as apartheid is dismantled. The Committee commends President Hackney and other members of the University community for their efforts to date and knows that the Trustees will enthusiastically support further efforts in this direction. This is the arena in which Penn and other American universities can have a real impact.

## Evolution of the University's Policy

The Trustees have had a longstanding concern with the social responsibility of corporations in which the University invests. In 1972 the Trustees established Guidelines for investment in Publicly Held Companies, which state that while the University "has traditionally sought to manage its endowment to achieve maximum return," it "should not retain in its portfolio the securities of any company whose activities, on balance, are unconscionable."

Within this context, the Trustees have been particularly concerned with the conduct of corporations that do business in South Africa.\* Accordingly, in 1978 the Trustees endorsed the Sullivan Principles (Appendix A) as an appropriate standard of corporate conduct for companies in which the University held stock and which had operations in South Africa.

In 1980, the Trustees adopted a policy of selective divestment, under which companies in the University's portfolio that do business in South Africa are required to adhere to "sound principles of corporate practices, comparable in all important regards to the Sullivan Principles . . . and other similar international statements of principles of corporate practices." A company which fails to adopt and abide by such principles may be considered a candidate for divestment. The Trustees also resolved that financial institutions in which the University holds equity investments should not make new loans, renew old loans, or extend the terms of loans to the government of South Africa or to state-owned corporations, unless such loans support projects which substantially benefit non-whites and would not likely be undertaken without foreign support. Should such financial institutions fail to comply with this guideline, the Committee is empowered to make recommendations to the full Board which may include divestment of stock.

Two years later, the Trustees reaffirmed the 1980 policy, and authorized the Committee to vote the University's proxies in support of shareholder proposals that companies not engage in new or expanded investment in South Africa. The Trustees also recommended that if a company has adopted the Sullivan Principles, yet is ranked in the annual Sullivan Reports (prepared by Arthur D. Little, Inc.) in Category III-A (Received Low Point Rating); Category III-B (Did Not Pass Basic Requirements); or Category IV (Signatories Which Did Not Report), the Committee should attempt to bring about change by a program of communication with management; the company would be considered a candidate for divestment if it could not improve its rating in a reasonable period of time.

\* Recognizing that there are many important issues and injustices in the world that confront individuals today, the Trustees have for many years singled out the evil of apartheid in South Africa for attention under the Guidelines. The Trustees believe that there remains a strong and fundamental presumption against the University taking an institutional position on political or social issues. As the Committee noted in its 1980 draft statement concerning Institutional Response to External Issues:

If . . . an issue does not closely relate to the mission of the University, the University of Pennsylvania will take institutional positions only under the most unusual circumstances and only on the issues which are of the greatest social concern and deal with the most fundamental human rights.

In accordance with the 1980-1982 guidelines, in 1983 the University, after extensive but unsuccessful attempts to persuade Dart & Kraft, Inc. to comply with the reporting requirements of the Sullivan Principles, divested of 12,000 shares of that corporation, representing a market value of \$813,000.

In 1984 the Trustees authorized the Committee to consider new entry, expanded investment or any sales by a company to the South African police or military as factors in determining whether a company should be a candidate for divestment.

As of June 30, 1985, the University's investments in companies doing business in South Africa totaled \$92.6 million, constituting 11.42% of all University investments. (Appendix B). All U. S. companies are Sullivan Principle signatories; the one non-U. S. company is a subscriber to the European Economic Community Code of Conduct for Companies with Interests in South Africa. None of the companies in the University's portfolio does more than 1.2% of its business in South Africa. The University owns no investments in South African-owned companies.

## Current Consideration of the University's Policy

In 1985 the level of violence in South Africa increased dramatically, notwithstanding (and perhaps in response to) the government's declaration of a state of emergency. In August, South Africa's President Botha indicated little willingness on the part of his government to change its policy of apartheid. Thus, in many respects, the prospects for peaceful change in South Africa appear bleak. Yet there are still a number of hopeful signs on the horizon, as leaders of major South African and American corporations have expressed public opposition to the government's policy, calling upon the government to change its course.

The United States government also modified its stance with regard to South Africa. Under pressure of stronger legislation being considered by Congress, President Reagan in September issued an executive order imposing limited economic sanctions on South Africa. That legislation, the Anti-Apartheid Act of 1985, was the subject of extensive Congressional discussion. In May 1985, President Hackney was asked to testify on the legislation before the Senate Subcommittee on International Trade and Finance, and did so in his individual capacity. President Hackney supplemented that testimony by joining, in June 1985, with nineteen other college presidents urging Senate passage of the anti-apartheid bill.

Given events in South Africa and the changing domestic climate of opinion, the Trustees determined that it was appropriate to review the current University policy of selective divestment and to reexamine that policy at the January 1986 stated meeting.

At its meeting on October 23, 1985, the Committee resolved to solicit opinion from the University community as to the appropriate role of the University as an educational institution and as a shareholder in addressing the issue of apartheid. Opinions were sought by posing a series of questions the Committee believed pertinent to the issue. During November 1985 these questions were widely disseminated to the University community and published in the campus media. The Committee requested written responses and received replies representing the views of 57 individuals and organizations.

Members of the Committee gathered additional information concerning South Africa and informed themselves of campus opinion by participating in a dialogue with the Executive Committee of the University Council. On October 30, 1985, the Chair of the Committee participated

in an open forum, sponsored by the Undergraduate Assembly, on South Africa-related investments. Committee members also attended a meeting of the University Council on November 13, 1985, at which the policy on divestment was discussed and a resolution favoring divestment was passed by a vote of 25 to ten with five abstentions.

The Committee sponsored an open forum on December 3, 1985, attended by six trustees, at which members of the University community were invited to present their views on divestment. The Committee subsequently met three times to discuss and evaluate the policy of selective divestment of South Africa-related stock.

## Consideration of University Community Opinion

During the course of its deliberations, the Committee gave careful consideration to the written responses it received to the series of questions about apartheid and the proper role of educational institutions in addressing apartheid which the Committee addressed to the University community. The Committee recognizes that many members of the University community devoted substantial time and effort to answering these questions, and the Committee deeply appreciates and values the information and opinions provided on all sides of the issue. The opinions expressed in the responses defy easy characterization; they reflect a considerable diversity of viewpoint on appropriate conduct by the University, on the role of corporations in South Africa, and on the prospects for (and the best means of) dismantling apartheid. The responses were closely split on the advisability of divestment, with 31 responses appearing to favor such a course of action and 26 responses expressing opposition to divestment. A brief summary of the responses is attached as Appendix C.

For reasons articulated in some of the responses to the questions from members of the University community, as well as in the Committee's January 1982 report to the Trustees, and in light of some of the comments made during the University Council's thoughtful and searching discussion on this topic, the Committee continues to question the appropriateness and efficacy of complete and immediate divestment. We are mindful of the fact that the sale of South Africa-related stock by the University would be effectuated through the purchase of the identical shares by other investors, who may not be concerned about the situation in South Africa. We are not convinced that immediate divestment of stock by the University would influence the actions of multinational corporations, much less the actions of the South African government. While we may believe that the threat of disengagement of companies from South Africa might be seen as exerting leverage for change in that nation, we do not believe that divestment will directly or indirectly result in disengagement.

We are concerned that complete and immediate divestment might amount to "washing one's hands" of a difficult problem while there may still be an opportunity for individuals, groups, and entities such as corporations and universities to play a constructive role in South Africa. And, given the rapidly shifting political and economic situation in South Africa and the emergent role of the South African business community in the anti-apartheid movement, the Committee is not yet prepared to classify the mere presence of a corporation in South Africa as "unconscionable" under the 1972 Guidelines.

While the Committee does not recommend the complete and immediate divestment of the University's stock in all companies doing business in South Africa, it is increasingly disturbed by the apparent intransigence of the present South African government and is concerned that

the prospects for peaceful and meaningful change in that nation may soon vanish. Given the present South African context, the Committee believes the Trustees should expect these companies to play an active economic and political role in pressuring the South African government to dismantle apartheid. The Committee continues to believe that such companies have the capacity to be a positive force in South Africa. Indeed, Dr. Leon H. Sullivan, the author of the Sullivan Principles, has recognized the need for U. S. corporations to assume a more active posture in this regard toward the South African government. The Fourth Amplification of his Principles (articulated in late 1984) requires that signatory companies "work to eliminate laws and customs which impede social and political justice." Future reports on the Sullivan Principles will monitor the performance of signatory companies under this new and higher standard of activity. The Committee intends to review such performance with an extremely critical eye.

## Recommendations of the Committee

The Committee emphatically believes that the opportunities for significant progress toward reform in South Africa are not of unlimited duration. The time for meaningful change is now, not at some unspecified future date. If the efforts of corporations, governments, and other interested parties to dismantle apartheid are not soon rewarded with substantive reforms on the part of the South African government, the heightened potential for continued social unrest and the improbability of peaceful dialogue among South Africans will cast grave doubts on the economic wisdom and moral propriety of continued investment. Despite our belief that U.S. corporations can play a constructive role in bringing about peaceful change, continued intransigence on the part of the South African government could reduce even the best intentioned and most diligent corporations to a state of involuntary alliance with an unconscionable system of oppression.

If the Committee determines that by June 30, 1987,\* substantive progress has not been made in dismantling the legal structure of apartheid, the Committee will ask companies in which the University owns stock to withdraw from South Africa and, if they fail to do so within a reasonable period of time, will recommend that the University divest its holdings in those companies.

The Committee would define "dismantling the legal structure of apartheid" to include, but not be limited to, the elimination of the laws and conditions attendant to apartheid that deny human rights, civil liberties, political rights, and individual economic opportunities to the nonwhite majority of South Africans. In evaluating whether "substantive progress" has occurred, the Committee will require that all or substantially all of the following steps will have been taken:

- The Government of South Africa has eliminated the system which makes it impossible for black employees and their families to be housed in family accommodations near the place of employment. [Black (Urban Areas) Consolidation Act.]
- The Government of South Africa has eliminated policies that restrict the rights of black people to seek employment in South Africa and to live wherever they find employment in South Africa. [Black (Urban Areas) Consolidation Act; Group Areas Act.]
- The Government of South Africa has eliminated policies that make distinctions between the South African nationality of blacks and whites. [(Population Registration Act; Natives (Abolition of Passes and Co-ordination of Documents) Act; Reservation of Separate Amenities Act.)]

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- The Government of South Africa has ceased removals of black populations from certain geographic areas on account of race or ethnic origin. [Group Areas Act; Black Administration Act.]
- The Government of South Africa has eliminated residence restrictions based on race or ethnic origin. [Group Areas Act; Black (Urban Areas) Consolidation Act; Black Lands Act.]
- The Government of South Africa has taken meaningful steps to ensure the effective sharing of political power in South Africa with all nonwhites.

The Committee further recommends that the University communicate now with the portfolio companies having South African operations to encourage their active efforts to end apartheid and to inform them of the Trustees' expected timetable.

The University should monitor, during the next eighteen months, the performance of companies in its portfolio in seeking to foster substantive progress. During this period we believe that the current policy of selective divestment should be strengthened to ensure that all companies in which the University invests maintain the highest standards of corporate conduct in South Africa. Therefore, we recommend that the current policy be amended to require:

- That the University hold no stock in any Sullivan signatory with a rating of III-B (Did Not Pass Basic Requirements), with any divestment to be carried out in a prudent and orderly fashion upon ascertaining the Sullivan rating;
- That the University, in cases in which it holds stock in a company with a Sullivan rating of III-A (Received Low Point Rating), allow such company to improve its rating by the next reporting period. If no improvement is noted in the subsequent report, that stock should be divested in a prudent and orderly fashion; and
- That the University place an immediate freeze on all purchases of shares in companies that are rated in Sullivan Category III-B, or that have not signed the Sullivan principles, or have not reported their progress under the Sullivan principles or their substantial equivalent.

The Committee recognizes that divestment is a serious step, with economic consequences difficult to predict. It has examined various studies and opinions concerning the financial consequences of future divestment, including, but not limited to, the probability that a higher level of risk may be associated with a South Africa-free portfolio and that given the current philosophy of management of the University's portfolio, the total return would be somewhat lower than with an unrestricted universe of possible investments. It has concluded that the opportunity cost inherent in a South Africa-free portfolio cannot be predicted with any certainty, though there are undeniable portfolio turnover costs associated with divestment. Consistent with the Trustees' fiduciary duties, therefore, the Committee recommends that whenever the University is considering the sale of its holdings in South Africa-related companies, every effort should be made to minimize costs.

Cognizant that conditions can change rapidly and in unexpected ways, the Committee understands that the Trustees must reserve the right to revise any policies adopted today if warranted by future conditions or developments. In carrying out its charge, the Committee will continue to monitor matters relating to the situation in South Africa that should be brought to the attention of the Trustees.

\* This date allows time for two regular sessions of the South African parliament.



## Resolution on the Report of Committee on University Responsibility

### Intention:

The Report of the Committee on University Responsibility, with Recommendations, Concerning University Policy Relating to Investments in Companies doing Business in South Africa dated January 16, 1986 has been circulated to the Trustees in advance of today's stated meeting. This report includes a number of recommendations pertaining to the University's ownership of stock in companies doing business in the Republic of South Africa. The trustees are united in their abhorrence of apartheid and intend to adopt the recommendations of the Committee.

**Resolved,** that the Trustees accept the Report of the Committee on University Responsibility to the Trustees, with Recommendations, Concerning University Policy Relating to Investments in Companies doing Business in South Africa, dated January 16, 1986, and adopt the Committee's recommendations as follows:

(1) If the Committee on University Responsibility determines that by June 30, 1987, substantive progress has not been made by the South African government in dismantling the legal structure of apartheid, as defined in its report dated January 16, 1986, the Committee will ask companies in which the University owns stock to withdraw from South Africa. If a company fails to withdraw from South Africa within a reasonable period of time thereafter, the Committee will recommend that the University divest its holding in that company. In carrying out this resolution, the Committee shall communicate now with companies in the University's portfolio having South African operations to encourage their active efforts to end

apartheid and to inform them of the University's expected timetable.

(2) The Committee shall recommend the sale of stock in any company in the University's portfolio which is a signatory to the Sullivan Principles and which has a Sullivan rating of III-B (Did Not Pass Basic Requirements), such divestment to be carried out in a prudent and orderly fashion upon ascertainment of the Sullivan rating.

(3) Any company in which the University holds an equity investment which operates in South Africa and which receives a Sullivan rating of III-A (Received Low Point Rating), should improve its rating by the next Sullivan reporting period, and if no improvement is noted in the subsequent report, the Committee should recommend the sale of the University's stock in that company, such divestment to be carried out in a prudent and orderly fashion.

(4) The University should not purchase any shares of stock in companies which do business in South Africa and which:

- (a) are not signatories to the Sullivan Principles or a substantially equivalent statement of principles of corporate practices; or
- (b) are signatories to the Sullivan Principles and have received a Sullivan rating of III-B (Did Not Pass Basic Requirements) in the most recent Report On the Signatory Companies to the Sullivan Principles; or
- (c) are signatories to the Sullivan Principles or a substantially equivalent statement of principles of corporate practices but which have not reported their progress under the Sullivan Principles or their substantial equivalent.

— Passed, voice vote; 5 recorded 'nays' and 2 recorded abstentions.

Appendices A and B are available from the Office of the Secretary. Appendix C is printed below.

## Summary of Responses to Committee on University Responsibility Questions

As of December 17, 1985, the Committee had received fifty-seven (57) written responses to the questions. Fifty-four (54) of these responses were signed by members of the University community acting in an individual capacity or on behalf of organizations; the remaining three (3) responses were from anonymous sources. Comments were received from students, faculty, employees and alumni, as well as from groups such as the University of Pennsylvania Alumni Clubs of Central Massachusetts and Metropolitan New Jersey, the Graduate and Professional Student Association, the Undergraduate Assembly and the Penn Anti-Apartheid Coalition. The responses were closely split on the advisability of divestment, with thirty-one (31) responses appearing to favor such a course of action and twenty-six (26) responses expressing opposition to divestment.

The opinions and ideas expressed in the responses defy easy characterization or classification. Many respondents elected to use the Committee's questions as a starting point for the presentation of their opinions, while others returned the question sheet with their marginal notations or ignored the questions entirely. This summary broadly describes and samples responses to each question. However, the full range of opinions can only be gleaned from a thorough review of the responses.

The Trustees' Committee on University Responsibility wishes to thank those individuals and organizations who responded to the series of questions pertaining to South Africa and the University's investment policy which the Committee posed to the University community in November 1985. In view of the high level of interest in this matter, the Committee plans to make the responses available for review by the University community by placing them on reserve in Van Pelt Library. To afford individuals and groups an opportunity to preserve the confidentiality of their opinions, respondents who do not wish their responses to be made public should so advise Dr. Mary Ann Meyers, Secretary of the University, at 121 College Hall, on or before February 3, 1986, so that the responses in question may be deleted from the volume.

Richard P. Brown, Jr.  
Chairman, Trustees' Committee  
on University Responsibility

**Question 1:** Is the apartheid problem in South Africa directly related to Penn's educational mission? Why or why not?

Thirteen (13) respondents stated that no direct relationship existed, one of whom made the following points:

- (a) South Africa is geographically distant. It is distinct in government, moral and ethical values from the United States and the University . . .

(b) the University's mission is not to pressure or impose moral or political values on people outside its community . . . (c) the South African apartheid problem is essentially a political problem, the moral issues notwithstanding.

Many other respondents, however, took a contrary position. One student contended that to educate means "to develop mentally or morally," and that the University has "an obligation to detach itself from all those activities [such as investment in companies doing business in South Africa] that are contrary to this end." Some respondents argued that apartheid was a vital topic of historical, political, economic, sociological and ethical inquiry, and thus was related to the University's educational mission. One individual declared that "everything affecting human rights and dignity is related to Penn's educational mission," while the Penn Women's Alliance stated that "Training young people in moral responsibility always has been, and should remain, a traditional function of a Penn education." Some of the responses focused upon Penn's role in the wider world (e.g., the University "sets an example of enlightened thought and conduct, behavior that can rise above the profit motive in favor of high ideals;" the University teaches students "to think critically, act and view themselves as part of the moral fiber of their worlds; and so too, the institution is no exception to that educational mission"); other responses explored the ties between the abstract pursuit of knowledge and morality:

When the University discerns that it is a participant in supporting a morally wrong system, then that knowledge becomes directly related to its educational mission. To possess that knowledge and to do nothing would prevent the very character and spiritual integrity of the institution itself, as well as its mission.

The Black Alumni Society warned that the "apartheid system threatens the very freedoms on which the University depends to continue to flourish . . . To safeguard the academic and personal freedoms which are essential to the maintenance of an outstanding university, the tacit condoning of apartheid cannot be permitted."

**Question 2:** Under what circumstances should the University—as distinguished from members of the University community as individuals—take an institutional position on issues not directly related to its educational mission? If the University takes an institutional position, how can it avoid inhibiting the freedom of expression of those on campus who may hold different views?

Eight (8) of the respondents argued against the taking of any noneducational institutional positions. "Academic institutions," said one individual, "have enjoyed great autonomy in the United States, but that status will be endangered if we seek to impose our will beyond our jurisdiction." He quoted a statement by Derek Bok that "resources were entrusted to [the University] for academic purposes and not as a means of demonstrating our opposition to apartheid or to other manifest injustices around the world." Another writer expressed concern that taking an institutional position on a noneducational issue would "require [the University] to consider, spend time on and take positions on any number of other ethical or political issues. This would politicize the University and be contrary to, if not, undermine its [sic] mission." Other respondents claimed that institutional positions should be adopted "only under extreme conditions, where there exists no other feasible conduit of change," or in the "extreme case" where "there is a clear cut violation of fundamental values which the University seeks to uphold and upon which it is based. In other words, if there is no reasonable doubt that a system is evil."

A view expressed by twelve (12) respondents was that the University's continued ownership of stock in companies doing business in South Africa already constituted the taking of an institutional position.<sup>1</sup> Ac-

cording to the Graduate and Professional Student Assembly ("GAPSA"):

It is clear that by investing in South Africa the University has already taken an "institutional position" on the political system of apartheid which exists there. The returns from our investments in South Africa depend on the existence of apartheid . . . Many of our investments actually allow the white regime to enforce and strengthen the oppression of black South Africans, through loans to the white government and sale of goods to the South African military and police.

One respondent asserted that since an institutional position on apartheid already existed, divestment would merely constitute correcting or "changing that position in light of new facts and considerations."

There was also broad disagreement over whether the adoption of an institutional position would inhibit the freedom of expression of those members of the University community who hold contrary views. Eight (8) respondents voiced concern that such individuals might be unwilling or unable to freely express their opinions, but eleven (11) respondents argued that such a result was highly unlikely. As one professor explained, "I see no danger of inhibiting the freedom of expression of individuals with views opposed to the trustees' action, since such individuals will always be free to express their agreement or disagreement with any trustee position." Another professor commented that "as a University member who has often expressed positions at variance with those in the administration . . . I have always felt welcome, indeed encouraged, as a junior faculty member, to do so. And so in the tradition of Penn would I presume the continuance of this atmosphere." One answer sought to allay fears of restricted speech by observing that the current "institutional position" of the University has by no means served to silence the advocates of divestment.

**Question 3:** Should apartheid be singled out as an issue calling for an institutional position, as compared to other social and political issues? If so, why?

Sixteen (16) respondents felt that the issue of apartheid should not be designated for special institutional treatment. According to one individual:

There is no reason that UP should get deeply involved in the racial problems of [South Africa] while it ignores similar or worse problems in dozens of other countries: citizens of USSR need permission to travel inside their country; citizens of Romania are forcefully relocated by the thousands from their homes to other settlements, and people of Chile are exploited by their "upper class" and by governmental organizations far more corrupt than [the South African] government.

Yet many other groups and individuals strongly believed that the situation in South Africa merits unique measures. South Africa, wrote one respondent:

is the only developed country in the Western Alliance whose government maintains power by an explicit policy of brutality, suppression, torture, and a particularly abhorrent form of racism. It keeps the vast majority of its population in grinding Third World poverty: they are not deemed worthy to share their own country's abundant wealth, simply because of the color of their skin.

This author stated that the situation in South Africa remained fluid and that South African society was "now exquisitely sensitive to external economic pressure," thereby necessitating the adoption of a special University position with regard to that country. Other respondent groups distinguished South Africa as the "only country in the world which practices institutionalized racism," or explained that:

due to the extreme nature of the violations of human rights which occur daily there (for example, the murder of unarmed demonstrators, the mass arrest of protestors, including schoolchildren, and the torture and murder of political prisoners) and its uniquely institutionalized system of racial discrimination, the situation in South Africa deserves special attention . . . in the form of a firm and effective institutional position.

One response answered the question affirmatively, noting that apartheid was "like a festering sore and, like slavery was, is likely to lead to widespread bloodshed." The signatories to this response also urged that

<sup>1</sup>One respondent noted that a footnote in the Committee's 1980 Draft Statement on "Institutional Response to External Issues" explicitly states that the Trustees' adoption of a policy statement on South Africa on January 18, 1980 constituted the taking of an institutional position by the University.



other issues should be similarly addressed by the University as an institution. Still other respondents called for University sanctions against South Africa, claiming that apartheid "violates the basic morals upon which the University of Pennsylvania is based," or that "we are dealing with a morally wrong system. There is general agreement on this, which is not true of other social and political issues." The Penn African Students Association objected to the raising of this question, stating that "it is our belief that any attempt as it seems to be the case—to compare the Apartheid issue with any other issue is tantamount to playing down the seriousness and viciousness of the crime of Apartheid and is therefore racist in nature."

A number of individuals took the position that the Committee, through the adoption of its 1982 Report, had previously elected to treat South Africa apart from other global problems. That report contains the statement that "we have subjected investments related to South Africa to a much higher level of scrutiny than we have those related to other countries where oppressive regimes have tried to grind certain of their citizens into submission" and declares that "we do recognize the unique character of the situation in South Africa in which a white minority government has imposed a system of racial repression on a non-white majority." And while one student who felt that apartheid could not be distinguished from other issues worried that "if we try to correct all the ills of the world we would end up achieving absolutely nothing," another student expressed his belief that "while apartheid is certainly not the only flagrant violation of human rights in the world," nevertheless "some progress is more desirable than no progress."

**Question 4:** *The University's 1972 Guidelines for Investment in Publicly Held Companies state that "the University should not retain in its portfolio the securities of any company whose activities, on balance, are unconscionable." Recognizing that the companies in the portfolio that do business in South Africa do less than 1.5% of their business there, are their activities, "on balance, unconscionable"? Is the presence per se of a company in South Africa an "unconscionable activity" regardless of its principles of operation? If so, does the fact that, as in all cases of University-held companies, less than 1.5% of the company's revenues is derived from South African operations make its activities, "on balance, unconscionable"?*

Ten (10) individuals rejected the notion that the mere presence of United States corporations in the Republic of South Africa was "unconscionable activity," with eight (8) of the same respondents also explicitly refusing to agree that the activities of a corporation that conducts 1.5% of its business in South Africa should be classified as "on balance, unconscionable." One alumnus wrote that "Certainly the mere 'presence' of a company in South Africa is not proof of unconscionable activity. In fact, many companies have expressed opposition to apartheid, employ many blacks at decent wages and are doing all they can to change the practice by peaceful means." Another respondent declared that "Doing proper, honest business cannot be termed unconscionable. If I open a store, I sell to those who come in to purchase whether or not I like them personally or approve of their life styles."

Other responses called for amending the 1972 Guidelines. Suggested modifications included striking the words "on balance" from the 1972 Guidelines and adding the phrase "or who do business with countries that practice or support apartheid" to the end of the policy statement.

These respondents and others expressed the view that any U.S. corporate presence in South Africa was unconscionable and that the concept of "balancing or measuring" a corporation's activities was inherently unworkable. According to the Penn Anti-Apartheid Coalition:

All companies doing business in South Africa support the apartheid system by providing the government with goods, services, revenues from taxes—and in general by lending the system moral legitimacy . . . [Furthermore the] notion of a "balance" or "scale" is morally suspect. If a person is a murderer 1.5% of the time and a law-abiding citizen the rest of the time, would this mean that his actions were "on balance" con-

scionable? Whether they do 1.5% or .0015% of their business in South Africa, these companies still lend material support to apartheid.

One respondent also noted that:

substantial business in South Africa does not necessarily mean per cent of a company's operations there. Rather, it also is measurable by the scope of business activity within South Africa as compared with other enterprises in the South African economy. One and a half percent of a large multinational isn't insubstantial in South Africa. Finally, substantiality is not adequately measured by economic statistics alone. American companies are disproportionately visible in South Africa, and their behavior (and their investors' behavior) is very important to the South African government.

Making a similar point, the Black Alumni Society pointed out that "U.S. corporations control some of the most vital sectors of the South African economy—70% of the computer market, 44% of the petroleum products market, and 33% of the automotive market, including military vehicles." Another respondent questioned whether the University would "invest in a company only 1.5% of whose business is run by the mafia and involved in drugs and prostitution plus just a little murder?" Analogies were also drawn to involvement with and hence alleged support of slavery, Nazi Germany, and discrimination in modern American society.

**Question 5:** *What is the purpose of divestment? Is the sale of stock from the University's portfolio a useful way for the University to take a position opposing apartheid? Are there alternative or additional means of opposing apartheid that the University should pursue? Would it be more constructive for the University to find educational ways to help prepare South Africa for a stable democratic multiracial society?*

Some opponents of divestment expressed skepticism about the motivation behind divestment ("political diversion") and/or its practical effects ("Imposing financial hardship on groups of people that you intend to 'help' will only bring resentment, and further incite some to violence and obstruct communication"). Proponents of divestment, on the other hand, offered various reasons for selling the stocks of companies doing business in South Africa, among them:

- Making symbolic "statement of our unwillingness any longer to be involved in or to profit from an unjust and racist regime;"
- "To sensitize the moral conscience of corporate management and to bring pressure on them to take disinvestment measures." Many respondents argued that divestment, if followed by disinvestment (see Question 7) would be a highly effective means of bringing pressure to bear on the Pretoria regime: "the South African government acutely fears massive Western disinvestment (more than it admits in public pronouncements), and [divestment] by a prestigious American university carries disproportionate influence, owing to its visibility [sic] and moral stature in America and abroad;"
- By increasing public awareness of the situation in South Africa and fueling negative publicity against companies doing business in that country, divestment may "cause the United States government to put more pressure on the South African government to make reforms"; and
- "Divestment would cause other institutions to consider divesting, thereby augmenting the impact of [other] efforts."

There appeared to be substantial agreement on the utility of anti-apartheid educational measures to be implemented by the University. Approximately twenty (20) respondents favored the creation of special classes or scholarship programs; about one-half of these individuals and groups supported educational initiatives as an adjunct to—and not as a substitute for—divestment.<sup>2</sup> One student suggested;

Why not sponsor an ongoing series of debates extending invitations to representatives of South Africa's government to participate? . . . What about offering a free course in the Spring term taught by a rotating group

<sup>2</sup>Two (2) respondent groups, however, (the Penn Anti-Apartheid Coalition and the Penn Women's Alliance) would only support such programs if they were approved by "recognized black leadership, the African National Congress and the United Democratic Front."

of faculty on the question of apartheid . . . ? Perhaps Penn could arrange with universities in South Africa an exchange program whereby students of all races are exchanged between our two countries. . . .

Another individual stated that "It would be much more constructive to retain our stocks in those U.S. corporations doing business in South Africa and allocate the dividends therefrom to scholarships for Black South African students at Penn than to divest those stocks and just wash our hands of positive involvement in that nation's future." Yet one response rejected the notion of such University-sponsored educational programs, noting that while "Individual members of the University community may wish to engage in such . . . activities" nevertheless "the University's institutional responsibility is not education or government in South Africa but the correctness, morality, and educational significance of its own investment policy."

**Question 6:** *If the University should choose to divest completely, should it sever other ties—including, for example, research relationships, receipt of gifts, purchases of products—with companies doing business in or making sales to South Africa?*

Eleven (11) respondents answered this question in the affirmative. Some agreed on the basis of logical and moral consistency ("Certainly, unless it is a candidate for Hypocrite of the Year"; "For the sake of consistency . . . all support of the company in question must be cut off"). One faculty member wrote:

The Princeton position is the only consistent moral position to take. If you are going to disassociate yourself from a corporation because it will not remove a presence which supports the apartheid system, then you should not accept any of their gifts, buy any of their products . . . or have any other business relation with that company.

Fifteen (15) respondents answered the question in the negative. The justifications for these answers varied widely, ranging from the opinion from an opponent of divestment that "it would underscore the absurdity of the divestment policy" to a belief that such a course of action would "impeach [the University's] standing, international[ly] as a foremost bastion of academics and intellectual pursuits." One person worried that cutting all such economic ties was "too high a price to pay for an illusory attack on apartheid," at least two (2) individuals advised that this measure could be held in reserve as a more drastic second step if divestment failed to accomplish its purposes, and three (3) other respondents claimed that such behavior would "have no political effectiveness." Six (6) of the negative responses stated no reasons."

A self-avowed "undecided" individual stated that "Because my arguments . . . have more to do with political pressures to minimize violence, etc., than with the 'blood money' claim, I don't see as strong a need to cut all ties." the same individual also wondered whether "Investors, as owners, are accountable for the behavior and location of companies in a way that consumers and gift/grant beneficiaries are not."

The Penn Anti-Apartheid Coalition responded that: these questions . . . should be considered as separate issues after the divestment question has been resolved. In our view, divestment is not an attempt to achieve moral purity and absolute consistency; rather, it is a strategy designed to have maximum political impact at minimal cost to the University community. We need not be distracted by these questions at this time.

**Question 7:** *Would the sale by this University, or a group of universities, of stocks of American companies doing business in South Africa have any influence on the companies' conduct and, in particular, on their decision whether to stay in South Africa or withdraw?*

The Committee received twelve (12) written responses arguing that divestment was not likely to have any impact on a corporation's decision whether or not to disinvest. According to one alumnus, "I think the sale by this University of American companies doing business in South Africa would not have any influence whatever on the companies'

conduct." Another respondent observed that "The stocks would be bought by other investors and the stock price would not change appreciably. Someone will always be willing to purchase the stocks of companies of the calibre of those in the investment portfolio." Yet another individual commented that "It is doubtful that even a group of Universities' holdings would be of a significant enough percentage of total outstanding shares to effect a change."

Twelve (12) respondents contended that corporations would be influenced by Penn's election to divest. "If a sizeable group of universities protested in this way," wrote one faculty member, "it would be an important step toward making support of Pretoria seem a minority position, one held only by a few extremist right-wingers and racists. No respectable company, or company desiring to seem respectable, will want to be seen associating with such a minority." The Black Alumni Society's response noted that "divestment would have an influence on the conduct of companies . . . . The movement in the United States and throughout the world against apartheid is growing, and as more institutions, governments and individuals apply pressure through economic sanctions, the companies will be forced to comply if simply for economic survival." Another respondent claimed that:

Concerted actions, based on rational analysis, by a large number of institutional investors will send a clear signal. They will not . . . only demonstrate that these institutions agree that the corporation's actions are unsatisfactory, but they will have the added clout of depressing stock prices and making the corporations a worse investment for the others who, unconcerned with the situation in South Africa, will invariably rush in to buy.

A smaller group of respondents expressed doubt about the existence of any cause-and-effect relationship between divestment and disinvestment, but maintained that divestment would still have an effect upon corporations operating in South Africa: "It is true that divestment does not lead directly to disinvestment. But . . . disinvestment is bad publicity for American companies and affects their decision-making nevertheless." One student articulated this position in the following manner:

The sale of stocks of companies doing business in South Africa by the University of Pennsylvania will not directly affect the conduct of those companies. However, if Penn divests it will encourage other institutions to consider divesting. If some of the institutions then divest, even more institutions will consider divesting. In this way, the divestment movement could gain enough momentum to have substantial impact on corporate policy. A movement such as this would bring such bad publicity to the firms in question that they would have no choice but to reconsider there [sic] presence in South America.

**Question 8:** *Would the political and economic position of the black majority in South Africa be better or worse—both in the short run and the long run—if American companies withdraw from South Africa?*

Question 8 gave rise to an extremely broad range of responses. Fifteen (15) respondents argued that South African blacks would be worse off if the corporations withdrew.<sup>3</sup> One individual noted that:

[B]lacks would lose substantial employment opportunities. And, especially if European companies followed suit, the South African economy could become depressed, resulting not only in more unemployment for blacks. . . . The antagonism of the ruling white minority toward blacks would increase as they would be seen as the cause of the depression. If the economy should deteriorate far enough there is the possibility of greater riots and bloodshed. . . .

Other respondents commented that "Foreign workers would be particularly hurt by the divestment and this effect would carry over to many neighboring countries which are in political and economic turmoil."

One individual stated that:

[D]ivestment hurts the very people we seek to help. Chief Buthelezi sums

<sup>3</sup>The GAPSA response to Question 8 though, notes that "U.S. companies concentrate their activities in technology and capital intensive sectors of the South African economy, and employ a very low percentage of the non-white labour force."



up this argument with these words, "Not only will the poverty and misery of Black South Africa be increased by a successful divestment campaign; political progress towards positive change will be impaired. . . . Just recall that it was the industrialization of our South that did so much to break down racism, raise Black living standards, and encourage Black political activity."

The answers of three (3) individuals expressed the opinion that while the economic position of the black majority and the white minority will be harmed in the short run by U.S. withdrawal. . . . In the long run the economic affects will not be large, as South Africa will still be able to export its natural resources. There may also be an influx of capital from other sources. . . ."

Seven (7) responses reflected the position that "Although the short-term economic effects of divestment would hurt the black majority temporarily, much as any strike or boycott, the short and long term political effects would help them dramatically. . . . If economic sanctions are maintained until the black majority requests their removal, then Botha will eventually be forced to negotiate with the black leadership."

According to the Penn Anti-Apartheid Coalition:

The withdrawal of American companies from South Africa, combined with economic sanctions imposed by the international community, especially the United States, could seriously dislocate the South African economy. In the event of such dislocation, the economic position of black South Africans would probably worsen in the short run. . . . But it should be remembered that the present economic position of blacks is bad, especially when compared to the position of whites. . . . If political rights are granted before the economy is destroyed by the intransigence of the government, there is no reason for the economic situation of blacks not to improve.

The rest of the responses to this question adopted widely scattered viewpoints, ranging from the proposition that "The policies of American companies, and whether or not they withdraw from South Africa, is also not for the University to define or decide," to the observation of one student that "Undoubtedly the Blacks who are benefitting [sic] from employment with American companies would be hurt. However, numerous Black movements . . . appear to favor divestment." Another student argued that there could be reform without harm to the economic position of the blacks due to the existence of an "intermediate period, while divestment begins to pick up around the country but before companies withdraw from South Africa. It is very likely that during such a period the South African government can be persuaded to change its present course." Finally, one respondent stated that "we cannot assign a financial value to freedom. . . . [I]f divestment helps the blacks to achieve freedom it should be considered beneficial to them in the long run."

**Question 9:** *What would the effect of divestment be on the returns earned by endowment? If there is a risk that the effect would be significantly negative, would the University community be willing to have the Trustees compromise their fiduciary duties to earn maximum returns, consistent with risk, in support of the University's educational mission, i.e. is the community willing to bear the financial burdens in terms of higher tuition, less financial aid, and smaller increases in salary for faculty and staff?*

This question was widely criticized as "unworthy," "specious" and "intimidating"; one respondent group referred to it as "a textbook example of a biased, leading or loaded question, because it implies that divestment will lead to higher tuition, less financial aid, and lower salary increases."

At least eleven (11) responses argued that divestment might not entail any financial loss to the University.<sup>4</sup> According to Robert J. Vitale, President of the Drexel Bond-Debt Fund, with regard to

the University stock portfolio, "there seems to be general agreement that divestment of large multinational corporations and reinvestment in smaller, more dynamic corporations will actually increase return, although there will be greater volatility or risk. Endowment funds are in the position where they should trade greater return for greater volatility risk." Mr. Vitale also stated with reference to the University's bond portfolio that:

While bond divestment will ordinarily involve greater concentration in lower-yielding U.S. government bonds, this will lower risk, offsetting some or all of the higher risk assumed in the equity portfolio and, at the same time, providing many advantages over corporate securities (such as lack of credit risk, increased liquidity, noncallability, and enormous variety of coupon and maturity).

The Penn Anti-Apartheid Coalition stated that in light of the "active nature of the University's portfolio, 'the transaction costs associated with divesting in a careful, phased manner would therefore be within the University's normal costs of portfolio management.'" and further noted that:

The supposed problem of increased risk because of a resulting lack of diversity in the portfolio . . . is an excuse for not divesting. . . . A glance at a financial listing will show literally hundreds of other, non-South African related holdings, with levels of risk and rates of return comparable to those holdings which would have to be sold, or could not be bought.

Three (3) responses suggested that, in view of the deteriorating situation in South Africa, prudent investors will soon be withdrawing from that country anyway.

Two (2) individual respondents commented that divestment would have a negative impact on the returns earned by the endowment.<sup>5</sup> One such respondent (who explained that financial impacts "certainly are not the decisive factor in my position") observed that certain studies: which reported positive returns [following divestment] did not adjust for the higher portfolio risk nor for the 'small firm effect.' Given that disclaimer, it is easy to reconcile the apparent anomalies of the recent neutral or positive experiences of divested portfolios. Once adjusted for risk and firm size, returns will fall—the only question being to what extent.

Nine (9) respondents appeared willing to suffer whatever adverse financial consequences might ensue from divestment. According to the Undergraduate Assembly, "our moral responsibility to take action against apartheid outweighs the financial risk of divestment." One student asked, "Can we not afford to shave a percentage point or two from earnings for the sake of supporting justice? Is this such a big price to pay when the moral authority of the Western world is at stake in South Africa?" A professor commented as follows:

I accept that we may suffer economically both through potential loss of income and from loss of the good will of the companies we divest. Speaking only for myself, I am quite willing to accept the consequences if they are negative; even if they mean a lower salary down the road.

Seven (7) respondents, on the other hand, did not believe that the University community would be willing to pay such a price. Wrote one student:

I am neither willing nor able to bear a financial burden, such as higher tuition and less financial aid, which would be connected to the implementation of a program like divestment. Since the University has an excellent rate of return on its endowment, the Trustees would be foolhardy to implement a policy of such dubious effect on both the endowment and the current conditions in South Africa.

Finally, one alumnus opined that "Whether the people within the community would be willing to bear their share [of the costs of divestment] is another question, but I am convinced that it would reduce the quality of life within the Pennsylvania community and, therefore, detract from its ultimate mission."

<sup>4</sup>See also the December 2, 1985 report of the GSAS/GAPSA Joint Committee on Divestment.

<sup>5</sup>See also the November 1985 report of the University's Office of Investments, entitled *Investment Costs of South Africa-Related Divestment*.