

UNIVERSITY OF MICHIGAN
SENATE ASSEMBLY

Minutes of Regular Meeting of 14 February 1983

ATTENDANCE

Present: Thornton, Bailey, Barald, Barnard, Barritt, Beck, Bishop, Blass, Briggs, Brooks, Browne, Comninou, Burdi, Cares, Carter, Cassidy, Cooper, Crane, Dahl, Easley, Evans, Fellin, Payne, Deniston, Hagen, Hilbert, Hildebrandt, Hollinger, Hopwood, Hultquist, Janecke, Kaplan, Kelsey, Knudsvig, Lawrence, Loup, Ludema, Maassab, Meyer, Moerman, Mosher, Taylor, Nagy, O'Meara, Pollock, Powell, Rae, Regezi, Ringler, Robinson, Senior, Solomon, Stevenson, Radine, Weiner, Whitehouse, Wieland

Absent: Caffesse, Catford, Danielson, Adler, Weisfeld, Haddock, Kahn, Keren, Lockwood, Martin, Morash, Rinne, Root, Rucknagel, Simon, Smith, Young

CALL TO ORDER AND MINUTES

The meeting was called to order by Professor Bishop at 3:20 p.m. The minutes of the meeting of 17 January were approved.

ANNOUNCEMENTS

1. Three members are to be elected to SACUA, by preferential ballot, at the Assembly's March meeting. The candidates proposed by the Nominating Committee are Senate Members Bailey, Barritt, Briggs, Easley, Green, and Loup. Nominations from the floor are permitted but require the consent of the nominee.

2. Professor Bishop called attention to SACUA's decision, reported in its minutes of 24 January, that it will distribute to the Assembly only material from SACUA or Assembly committees. Others wishing to distribute material to the Assembly will be given access to the membership list and encouraged to bring copies to the meeting for alternate members and others who may not have received copies. Professor Bishop also reported that Professor David Bassett, who had mailed a statement on defense-related research to Assembly members, has agreed to supply extra copies at the March meeting.

MATTERS ARISING

Referring to the SACUA minutes of 10 January, Professor Barritt asked about SACUA's role in the budgetary review process. Specifically, on what aspects of the reviews does SACUA not pass judgment? Professor Bishop replied that SACUA oversees the process of the reviews but does not pass judgment on the resulting recommendations. In reply to a further question from Professor Barritt, Professor Bishop said that SAUCA has no serious concerns about the process now.

REMARKS BY VICE PRESIDENT COSOVICH

Jon Cosovich, Vice President for Development and University Relations, addressed the Assembly. He began by saying that he does not flatter himself to think that the large audience had come to hear him. He views it as a reflection of the vitality of the institution, which was one of his reasons for coming to Michigan. He expressed sympathy for those in the back of the hall who experience the consequences of the apparent neglect, in this era of technological advances, of the study of sound amplifications; he had attended a lecture in the same amphitheatre and had found it very difficult to hear the speaker.

He expressed his pleasure at being here and invited faculty with concerns in his area of responsibility to bring them to his attention. He said that he expects his main job in his first year to be the prosecution of the already-planned fund-raising campaign. This campaign is intended to raise \$160 million of endowment funds, of which half would be used for faculty, student aid, teaching, research, and libraries, while the other half is used for buildings, primarily a new Chemistry Building and part of the Replacement Hospital Project.

SOCIAL RESPONSIBILITY AND INVESTMENT POLICIES

After reminding the Assembly of Vice President Brinkerhoff's statement at the last meeting on investments in companies doing business in South Africa, Professor Bishop introduced Financial Affairs Committee chair Professor Thomas Gies to present that committee's report on the same topic. The report, "Social Responsibility and Investment Policies of the University of Michigan," had been distributed with today's agenda.

Professor Gies said that the Financial Affairs Committee had spent much time in the last three months considering University investments in areas where one might wish to consider divestment. It reflected on a range of policies ranging from divestment to neutrality; it recommends neither extreme but rather a response adapted to the specific situation.

Professor Gies pointed out that the state law on divestment refers not only to South Africa but also to the Soviet Union; its proscriptions could easily be extended to cover several Latin American nations, others in the Middle East, Nigeria, all the iron curtain countries, and individual corporations like Nestle. Geographic restrictions pose a particularly severe problem for large institutions that tend to invest in blue chip stocks; i.e., large corporations; it is difficult to name a major U.S. corporation without overseas investments. Proscribing South Africa probably would not significantly damage the University's rate of returns, but extending the proscription would have the effect of prohibiting investment in all major corporations and could therefore violate the University's legal obligation to invest prudently.

Professor Gies said that he has not found anyone favoring apartheid or human rights violations; disagreements are not about policy but about tactics for persuading the rest of the world. We have, in the past, taken up arms over this issue; that tactic is not proposed yet. We could shun any culture not abiding fully and completely by our values. The committee feels that it would be more effective to adopt a policy of surveillance, persistent pressure, and insistent determination to change the policies with which we disagree.

Professor Gies reported that the committee had met with Leon Sullivan, whom he described as an impressive man in the mold of Martin Luther King, and asked him whether adoption of the Sullivan Principles has begun to have an effect. Sullivan replied that it has, but too slowly to satisfy him. There were ten signatories in the U.S. in 1978; there are over 100 now. Corporate management is coming to recognize the importance of social responsibility.

Professor Gies concluded his presentation by saying that other proposals may have merit, but, with patience, the policy recommended by the committee is more likely to achieve our goals.

DISCUSSION

Professor Barritt said that the committee's report was helpful in focusing on the key issues. He asked on what evidence the committee based its evaluation of various policies. Professor Gies said that the results of current decisions are, and will for twenty years, be hard to read; so no conclusive proof is possible. He pointed out that the problem in handling civil rights in the U.S. took much longer, and he asked whether we could have achieved what we did if we had simply turned our backs on our own South.

Professor Hollinger said that the Sullivan Principles don't go to the heart of apartheid. The social system is not affected much by corporate behavior, no matter how sincere. Professor Gies said that he doubted any policy we adopt could overcome apartheid. It may be a pity that we cannot simply enforce our values, but the practical question is which tactic to adopt.

Professor Bailey asked whether the University has voted any proxies against management. Professor Gies said that it would be more appropriate for Vice President Brinkerhoff to respond since he is more familiar with past decisions. Professor Gies referred to the discussion of the same question last month and said that there were two to five such votes mentioned. He said that the University has sold certain securities and shunned other investments because it felt the corporations were not making progress toward the Sullivan Principles. The University was not totally insensitive but should become more proactive. Professor Dahl, who had asked Vice President Brinkerhoff about votes against management, said that the reply had been merely a reference to the procedures followed; he was troubled by the lack of specifics, especially in regard to South African issues. William Sturgis (assistant to Vice President Brinkerhoff), in the audience, said that proxy votes are not the only way the University seeks to influence corporations. He did not have information on proxies but said there is a vast correspondence file showing the University's efforts in connection with South African operations. Norman Herbert (Investment Officer), also in the audience, said that the University has, in the past, supported shareholder requests, for example for adoption of the Sullivan Principles. It has also voted against management on issues that would affect the University financially.

Professor Evans said that the committee's report reads as though the University were an investment company. University activities must be justified by educational impact on students or by advancement of knowledge, unhampered by external interference. To the extent that a policy says students that we support a racist regime, it conflicts with our commitment to training students to live in a multi-racial society. In view of the continuing existence of German and Japanese companies and cartels from before

World War II, it is foolhardy to suggest that our prodding can have an effect. Our message to the students should be that we are willing to sacrifice certain investments in order to make our position on the issues clear.

As SACUA liaison to the Financial Affairs Committee, Professor Nagy, introduced the committee's recommendations in the form of a motion that: "The Senate Assembly recommends reaffirmation of the investment policies adopted by the Board [of Regents'] resolution at the September 20, 1979, meeting. We recommend that the University play a more active role in encouraging management to adopt the principles of the resolution, and specifically that progress in meeting the objectives of the Sullivan and like principles be accomplished quickly and not drag on from year to year." Professor Browne seconded the motion.

Professor Hollinger spoke against the motion, saying it was based on two incorrect assumptions and tended to perpetuate them. The first is that American corporations can be an important progressive force in South Africa; the problems there are not the fault of these corporations and are not solvable by them. The second is that South Africa is just another normal capitalist state whose human rights violations we can condemn just like others; apartheid is unique in its institutionalized racism. Withdrawal of capital is the rest of the world's message about apartheid. The University's voice is tiny, but the Regents should use it on the side of casting out South Africa.

Professor Bishop announced that six persons who are not Assembly members had asked to speak to the Assembly. He suggested that the requests be considered after Assembly members had an opportunity to speak.

On behalf of the faculty of the School of Natural Resources, Professor Cares introduced a substitute motion: "The Senate Assembly advises the Board of Regents that it favors divestment by the University of Michigan of stocks and securities in corporations doing business in South Africa." He added that the recent state law on divestment is not involved in this motion. The motion was seconded by Professor Bailey. Acting as parliamentarian at Professor Bishop's request, Professor Hildebrandt said that the main motion should be discussed first and the substitute afterward.

Professor Easley said that she agreed with Professor Hollinger in opposing the motion; five or ten more years of the Sullivan Principles won't help, and foreign investment helps the South African government to oppress its people. She also questioned the financial prudence of investments in a volatile situation and mentioned the risk involved in fighting the state on the issue of autonomy.

Professor Taylor also spoke against the motion. He said that the committee's recommendation of "a more active role" is an illusion since the University has so little influence.

Professor Barritt asked whether the committee had spoken with people well-acquainted with the situation in South Africa, not just people here who favor continued investment.

At this point, Professor Bishop raised the question of outside speakers who wish to address the Assembly. Professor Nagy moved that each of the six people who had asked to speak be given five minutes; Professor Hildebrandt seconded the motion. Professor Whitehouse said that two minutes per speaker should be sufficient, since Assembly members had already studied the issue. He moved to amend Professor Nagy's

motion by changing the time limit from five to two minutes; Professor Evans seconded the amendment. The amendment was defeated by a vote of 31 to 15, and the motion to allow the six non-members to speak for five minutes each passed with one dissenting vote. Professor Pollock urged the chair to enforce the time limit and to include the time consumed by clapping, etc., as part of the speaker's allotted five minutes. Summaries of the six speakers' statements follow.

Leonard Suransky: For a South African like me who spends a lot of time studying South Africa, the level of debate is annoying. It is ridiculous to suggest that the Sullivan Principles can change apartheid; they are a brilliant red herring. The assertion that everyone abhors apartheid hides the fact that many people don't really understand it. South Africa is justly a pariah, singled out from other evil regimes. The attempt to justify the Sullivan Principles by comparing the fight against apartheid with the civil rights fight here ignores the fact that South African blacks have no constitutional rights at all. They cannot travel without a pass; even spouses can be separated; hospitals, schools, buses, theaters, etc. are separate; the government is de-citizenizing 22 million people. In such circumstances a civil rights campaign cannot be effective. South Africa is today's closest approximation to Nazism, and not by accident. Reagan is wrong when he says South Africa was with us in World War II; its current leaders were then interned as Nazi sympathizers. They are tough, and no corporation can change them.

John Woodford: To see what I feel is the issue before you today, suppose this were 1938 and you were discussing a prudent and profitable investment in a U.S. corporation with a subsidiary that supports the Nazification of Germany by making lampshades and soap out of the tissue of slaughtered Jews; how would you vote? You may find this analogy far-fetched and unfair to our Regents and vice-presidents who support continued investment in South Africa; the Nazis had nothing like the Sullivan Principles. No, but they did have the services of a Quisling. Let me develop the point. I worked at Ford Motor Company Public Relations before coming to the University; their confidential "Strategy and Policy Manual" acknowledged that barely one or two percent of the black work force was affected by the Sullivan Principles and that these principles were condemned, e.g., by the Motor Assemblies and Component Workers Union. Yet Ford is spear-heading a lobbying and public relations effort in defense of U.S. investments in South Africa. Leon Sullivan, the source of the Sullivan Principles, first became prominent when Philadelphia corporations financed his Opportunities Industrial Centers, which pretend to provide training for jobs that the corporations pretend exist, to keep the unemployed away from corporate personnel offices and provide public relations benefits for the private sector. The Sullivan Principles are not aimed at apartheid; they are a smokescreen to deceive American opposition to apartheid. At Ford, they were never discussed as ending apartheid but rather as a tool to mold public opinion. The Sullivan Principles were rejected by a hundred black church leaders, in favor of one principle, freedom. They are rejected by all South African liberation groups, the National and World Councils of Churches, the United Nations, Michigan State, Oregon, Massachusetts, Connecticut, the State of Wisconsin, the City of Grand Rapids, Eastern Michigan, the Allied Workers Union of South Africa, and Sullivan's own city of Philadelphia. Sullivan is aptly named, for his principles sully any institution that uses them once they have been held to the light of day. Other institutions have divested without financial loss, but if my job depends on blood money I don't want it. The Regents haven't challenged the state on other issues. One of them says the Sullivan Principles are important to prevent bloody revolution; but the South African system is far bloodier than any revolution. As for prudence, was dumping tea in

Boston Harbor prudent? Although today's issue does not provide the opportunity to strike the best blow against apartheid, you can say "No" to a vulturous investment policy; please reject it.

Ben Davis: I was the only member of the Financial Affairs Committee to vote against the report; this statement is in lieu of a minority report. The University supports apartheid by investing in companies that pay taxes to, obey the laws of, and comply with the military regulations of the apartheid regime. The Sullivan Principles don't address the question of power; non-white South Africans have no voice in them. I am amazed at the arrogance of administrators who say South Africans don't know what's in their interest. Others have spoken of willingness to make financial sacrifices for what is right. But there may be no sacrifice. Thirty other schools have divested \$97 million worth of stocks without serious economic consequences; some even profited. In 1977, the University's investment office reported that, on the basis of stock performance from 1970 to 1977, divestment would have cost \$295,000; a one dollar increase in tuition for those years would have covered the cost.

John Hendricks: I have completed five years of study here and will return to South Africa. I will not call for divestment, since I could be charged with treason if I did. I have a Ph.D. but no franchise; every white South African has the franchise. In South Africa, violent change gains in appeal as non-violent methods fail. If Communists win in South Africa it will not be because of their zeal but because of the failure of Christianity and the West. Non-violent change must come from outside pressure, particularly from the U.S., Britain, and West Germany. In the past, corporate divestment has alarmed the South African government to the point of suspending the pass laws. South Africa likes to see itself a part of the West, not of Africa; so alienation by divestment has a strong psychological effect. Representatives of the oppressed won't beg or plead with the University, but we will present our case. Continued investment supports apartheid. The Sullivan Principles are a rosy rationalization and ignore political rights; they shine our shackles but don't remove them.

Jemadari Kamara: We have been through this discussion before. Last time, the Assembly rubber-stamped an administration request to continue over \$50 million of investments in 42 companies operating in South Africa. Afterward, we found 13 of them didn't comply with the Sullivan Principles. The administration called up all 13, and they said they were in compliance. We are about to rubber-stamp another request without doing our homework. Fewer than 18% of Ford's supervisors, managers, and administrators in South Africa are non-white, and none of these can supervise a white. We are encouraging defiance of state law by an administration that would be the first to come down on students who violate the law. We could remove our money from South Africa and invest it better. The American Friends Service Committee is much more restricted than we and has over a billion dollars in socially responsible investments. We could use the money as venture capital. The question before us is both a moral and an economic one. During our deliberation, 120 Africans will be incarcerated for having no pass, and 120 African children will die of malnutrition.

Niara Sudarkasa: The Assembly should urge the Regents to divest, not because of state law, but because the only moral course is to disavow the most ostentatiously brutal regime of the twentieth century the only admittedly and arrogantly racist regime. Divestment is a small step, but significant and a model for others; continued investment signals support for the status quo. We want to hit oppression where it

hurts, at least a bit. The South African economy and military rely on the West. Divestment undermines the only regime that says rights are only for those they call white. If we fail to act, our inaction speaks for itself.

Professor Bishop said that discussion of the main motion would continue, to be followed by discussion of the substitute motion. Professor Bailey raised a point of order, saying that, according to Robert's Rules of Order, the substitute should be discussed first. Professor Hildebrandt agreed.

Professor Pollock asked whether, when proposing the substitute motion, the faculty of the School of Natural Resources had discussed countries other than South Africa. Professor Cares replied negatively. Professor Pollock said that the arguments for divestment seems applicable to other oppressive regimes and asked whether the Assembly should include such regimes in the resolution or imply that they don't exist.

The motion to substitute the School of Natural Resources proposal for that of the Financial Affairs Committee passed, on a vote of 40 to 6.

Professor Evans said that, although he supported the motion, he was concerned about the sterility of its language. The reasoning should be connected with the University's purpose for existing; the resolution could provide an opportunity to enunciate our principles. Merely washing our hands is not much better than going along with the Sullivan Principles.

The motion, to advise the Regents that the Assembly favors divestment, passed on a vote of 40 to 3.

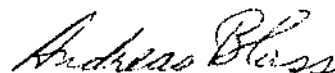
OLD BUSINESS

Professor Bailey said he was distressed to find two Ann Arbor police cars parked in front of the building as he entered. He said that today's meeting showed that the Assembly can conduct its business without a police presence. Professor Bishop promised to check who was responsible for the police being there.

ADJOURNMENT

The meeting was adjourned at 4:53 p.m.

Respectfully submitted,


Andreas Blass
Senate Secretary

SOCIAL RESPONSIBILITY AND INVESTMENT POLICIES

OF THE UNIVERSITY OF MICHIGAN

A memorandum of Review and Recommendations to the Vice President and Chief Financial Officer and the Senate Assembly from the Senate Assembly Advisory Committee on Financial Affairs

The controversy over colleges and universities holding investments through their endowment and other funds in companies doing business in South Africa appeared first in the early '70s in the form of student protests and has led to searching review by trustees of higher education institutions all over America. The Regents of the University of Michigan have studied this problem repeatedly and adopted a Resolution at the meeting of March, 1978, amended at the meeting of September, 1979 which made it University policy to:

1) Hold securities of companies which operate in South Africa only if the companies agree to:

- a) Affirmation of the Sullivan Principles
- b) Corporate encouragement to endorse the enhancement of political, economic and social rights for all of the corporation's employees in South Africa.
- c) Regular reports to publicly disclose corporate progress toward achievements in these matters

2) Withdraw deposits from and discontinue purchasing short-term money market instruments of those banks that hereafter make or increase loans to the Government of the Republic of South Africa, unless it is demonstrated that such loans are conditioned upon governmental action which shall tend to end the system of apartheid.

However, the Legislature of the State of Michigan adopted legislation in December, 1982, which includes the declaration that public educational institutions shall not:

Encourage or condone legally required discrimination against an individual on the basis of race or color by knowingly making or maintaining after April 1, 1984, an investment in an organization operating in the Republic of South Africa.

Encourage or condone religious discrimination or ethnic discrimination by knowingly making or maintaining after February 1, 1983, an investment in an organization operating in the Union of Soviet Socialist Republics.

This new legislation clearly carries a different dictate for investment policy of educational institutions than that adopted by the Board for the University of Michigan. In view of this new legislation, the Senate Assembly Advisory Committee on Financial Affairs has once more reviewed the entire problem of social responsibility and investment policy and agreed upon the following position statement.

The Committee has examined the problem from three points of view:

- 1) Potential breadth of social responsibility questions.
- 2) The prudent investor question in the context of social responsibility.
- 3) Effectiveness of divestiture versus ownership.

Potential Breadth of Social Responsibility Questions

While the focus of the investment policy question currently runs to the Republic of South Africa's apartheid policy, a later Board of Regents may find itself facing like questions for valid concerns about companies doing business in Latin America--e.g., Argentina, Brazil, El Salvador--or the Middle East--e.g., Iran, Iraq, Saudi Arabia. This is analagous to the addition of the U.S.S.R. concerns to the State legislation. Not inconceivably, the future issue might be anti-social acts such as polluting or strip mining rather than human rights; or possibly condemnation of companies doing business in the predominantly Catholic countries of Europe where abortion is discouraged. Only by addressing the issue in terms which recognize the potential breadth of the problem can the Board find grounds for a comprehensive policy.

The Prudent Investor Question in the Context of Social Responsibility

Michigan, along with many other states, defines the standards to be followed by institutional investors in a statute (P.A. 1976 No. 157, 451.1201 Michigan Compiled Laws) which incorporates the language of the Uniform Management of Institutional Funds Act. An important principle in that law is the "prudent investor" rule, which is set out in Scott on Trusts as follows:

The only general rule which can be laid down as to investments is that the trustee is under a duty to make such investments as a prudent man would make in his own property having primarily the view of preservation of the estate and the amount and regularity of income to be derived.
.....Trustees in deciding whether to invest in, or to retain the securities of a corporation may properly consider the social performance of the corporation.

Therefore, from the prudent investor point of view decisions to invest or not to invest may reasonably include matters of social responsibility, but such human rights issues should be addressed in the context of determining the long run economic success of the firm, not as separate, unrelated questions.

Investment policy of the University should not become a social or political football. It should be aimed clearly and unequivocally toward achievement of optimum returns. However, this does not mean that we should disregard social issues in our investment policy. Good investments rest in the long run on sound corporate management. And good management in the

contemporary world includes recognition of social and economic problems and sensitivity to their relationship with success of the corporation. Further, we assume that incorporation of human rights considerations into investment policy necessarily has a positive influence on the success of investments. Hence it is appropriate that the Board include consideration of social issues in their investment policy design, but it would be inappropriate to build that policy exclusively around current social problems and to select and eliminate securities from the University's investment portfolio exclusively on the basis of social considerations which may have, at most, marginal significance to the success of the investment.

Donald Reidhaar, general counsel of the University of California has argued:

There appears to be no authority to support the proposition that consideration of social performance may be taken into account to the extent of precluding the opportunity for making investments most appropriate to the fund or foreclosing opportunities for prudent diversification or incurring large transactional costs which cannot be justified in terms of investment considerations. In other words, consideration of social responsibility is to supplement rather than supplant the basic standard of maximizing return and preserving principal.

Divestiture, as called for by the December 1982 amendment to P.A. 453 of the Public Acts of 1976, ignoring as it does all economic considerations, may represent violation of the prudent investor rule and breach of fiduciary duties may result. Yet divestment based upon economic reasoning, including in its context that certain social conditions make a given security undesirable would seem to be legally acceptable.

Effectiveness of Divestiture Versus Ownership

Divestiture has a certain appeal in terms of achieving immediate impact effects; it represents a pointed statement of social principles. However, its real effectiveness in achieving change in social conditions is much less. Sale of stock or bonds by the University results simply in a transfer of the security to a new owner, who may have less concern about the social behavior of the corporation in its South African operation. In any event, corporate management is more likely to be affected in its South African operating policies by an active ownership group than by a policy of shunning ownership by concerned investors. Certain consumer activist groups have undertaken ownership of targeted corporate stocks for the express purpose of having opportunity to provide input to management policymaking. The policy position established by the Board in 1979 which included provision for discretionary response to management proxy seems more appropriate to the issue under consideration than either outright divestiture or categorical support of existing management policies.

More generally, it is our opinion that the Board can achieve greater benefits to this university, to the State of Michigan, and to those seeking universal racial and religious equality by a policy of patiently and persistently pressing for those goals we believe in than by brittle actions which may receive momentary attention but little if any permanent and lasting effect. We do recognize that progress on racial justice in South