REAGAN vs. CITIES: THE 20TH CENTURY BATTLE OVER SOUTH AFRICAN APARTHEID & LESSONS FOR THE TRUMP ERA

SUMMARY REPORT

AUGUST 2017

JOBS TO MOVE AMERICA • CENTER FOR MEDIA AND DEMOCRACY
REAGAN vs. CITIES:
THE 20TH CENTURY BATTLE OVER SOUTH AFRICAN APARTHEID & LESSONS FOR THE TRUMP ERA

SUMMARY REPORT

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AUGUST 2017
ABOUT JOBS TO MOVE AMERICA

Jobs to Move America (JMA) is a national organization uniting community, labor, faith, civil rights, philanthropic, academic, and environmental groups and is dedicated to ensuring that the billions of taxpayer dollars spent on public infrastructure create better results for our communities: sustainable jobs, cleaner equipment, and greater opportunity for low-income and other disadvantaged people. For more information about JMA’s work and this report, see www.jobstomoveamerica.org or contact Alaa Milbes, amilbes@jobstomoveamerica.org or Katherine Hoff, Esq., khoff@jobstomoveamerica.org.

ABOUT THE CENTER FOR MEDIA AND DEMOCRACY

The Center for Media and Democracy (CMD) is a nationally-recognized watchdog group that leads in-depth, award-winning investigations into corporations and lobbying groups acting behind the scenes to advance narrow special interests that hurt working Americans and their families. CMD’s investigations have ignited national conversations on money in politics and the distortion of public policies about our democracy, environment, economy, and schools – at every level of government and in every region of the country. For more information about CMD’s research, see www.ExposedbyCMD.org or contact Nikolina Lazic, Nikolina@prwatch.org.

ABOUT THE REPORT

Between December 2016 and June 2017, Jobs to Move America (JMA) researchers combed through thousands of pages of documents—legal memos, policy guides, court briefings, and correspondence between corporations and the Reagan administration. JMA wanted to piece together the story of how cities and states joined the fight against apartheid in South Africa and explore how the Reagan administration sought to suppress those efforts. JMA also investigated parallels between the Reagan era battles and current tensions between the federal government and cities and states. Finally, JMA examined the long-term effects of the Reagan era apartheid policies.

This Summary Report is a synopsis of a much longer report. The full report can be found on the JMA website, www.jobstomoveamerica.org, and at the following web address: http://jobstomoveamerica.org/wp-content/uploads/2017/06/Reagan-vs.-Cities-Report_FINAL.pdf
REPORT SUMMARY

Overview

By the 1980s, the apartheid political system in South Africa and its brutal oppression of people of color had become increasingly shocking to the world. Sustained global opposition resulted in the system’s collapse by the beginning of the following decade.

In the United States, anti-apartheid efforts pitted community leaders, states, and cities against the Reagan administration and the federal government, as well as numerous corporations and their business associations and lobbying groups. By withholding public contracts and investments, cities and states sought to sanction U.S. companies that were profiting from the South African apartheid system.

They were met with fierce opposition from the Reagan administration, which fully supported the racist government of South Africa through a policy of “constructive engagement” and which claimed that economic sanctions would “exacerbate” the situation of black South Africans, causing greater harm. Constructive engagement focused on “slow change” rather than sanctions, primarily through community development and aid and through the application of the Sullivan Principles. These were a set of voluntary guidelines that provided “ethical labor standards” for American companies, enabling them to continue doing business in South Africa.

At the same time, U.S. corporate interests heavily influenced the Reagan administration’s South Africa policy. American businesses lobbied the administration both directly, and through corporate lobbying groups like ALEC and the South Africa Foundation, led by the founder and CEO of South African mining industry giant Anglo American. Numerous American businesses went on to use the Sullivan Principles as part of public relations efforts to justify continuing business in South Africa without divesting by acknowledging the injustices of the apartheid system and articulating support for “gradual change.”
The Battleground

The clash over apartheid between the Reagan administration and cities and states offers important lessons that provide guidance for contemporary times. First, the tools wielded by the Reagan administration to thwart cities and states during the anti-apartheid struggle have the current effect of inhibiting local innovative policies in public contracting today. In addition, the ways in which cities and states fought back provide lessons for policymakers contending with threats from the Trump administration to punish “sanctuary” cities and other communities resisting aggressive measures by the federal government.

Four Tactics Used by the Reagan Administration to Suppress State & Local Sanctions Laws

The Reagan administration’s stated policy was one of encouraging U.S. firms to continue doing business in South Africa in order to promote social and economic change. Accordingly, the Reagan administration was steadfastly opposed to state and local sanctions laws and launched efforts to curtail the U.S. sanctions and divestment movement. These efforts took many forms, but four federal government tactics are especially noteworthy:

1) Adopting national policy to deter independent actions by Congress, cities, and states
2) Collaborating with the business lobby to oppose sanctions
3) Interpreting federal law to justify withholding federal funding from cities and states adopting sanctions and divestment policies
4) Actively organizing support for litigation to challenge city divestment and sanctions laws

1) Adopting National Policy to Deter Independent Actions by Congress, Cities, and States

The Reagan administration claimed that sanctions were harmful, and furthermore, that policies to address apartheid should be developed by the federal government, not states or cities. On September 7, 1985, Reagan signed National Security Directive Number 187 (Directive 187), entitled “United States Policy Toward South Africa,” which stated that suppressing all sanctions was a cornerstone of the U.S. policy in South Africa. The directive laid out a coordinated national strategy, which included “Combin[ing] the resources of the White House and the Departments of State, Treasury and Commerce to oppose or satisfactorily limit the imposition of new legislative sanctions against South Africa....” In addition, Directive 187 stipulated that the State Department would organize a public affairs strategy to persuade the public that sanctions were counterproductive, and that the Reagan administration would attempt to convince the United Nations of the same.

A year later, when Reagan vetoed the Comprehensive Anti-Apartheid Act of 1986 (which was enacted by Congress over the President’s veto after years of organizing by the anti-apartheid movement), Reagan reiterated his opposition to state and local sanctions: “Sanctions ... do not add up to policy... Positive steps as well as negative signals are necessary.”
CITY, COUNTY AND STATE SANCTIONS LAWS PASSED AGAINST SOUTH AFRICA
2) Collaborating with the Business Lobby to Oppose Sanctions

Internal documents indicate that the Reagan administration wanted to ensure corporations continued to operate in South Africa and believed that if the federal government took no action, the sanctions and divestment movement would undermine the ability and willingness of U.S. corporations to do so. Acting on this view, the Reagan administration collaborated with, supported, and organized events with lobbyists and U.S. corporations that opposed sanctions.

In internal memos, Reagan administration officials coordinated efforts to recognize politicians who blocked local sanctions legislation and helped organize a policy briefing for businesses on U.S.- South Africa policy. The Reagan administration also spearheaded a domestic and international public relations campaign in coordination with corporate entities to advocate for “reform” and to stop city and state divestment policies. U.S. corporate officials participated in this campaign by writing op-eds and letters, appearing on TV, and speaking publicly about the administration’s South Africa policy. In addition, U.S. corporate leaders pledged to spend millions of dollars on community aid and job opportunities for black South Africans.

3) Interpreting Federal Law to Justify Withholding Federal Funding from Cities and States Adopting Sanctions and Divestment Policies

The Reagan administration’s third major tactic was to stretch the interpretation of federal law in ways that justified withholding federal funding from cities that passed local sanctions and divestment measures under the theory that these local laws were preempted by federal law and that they conflicted with federal contracting rules.

For example, one preemption argument made by Reagan officials after congressional approval of the Comprehensive Anti-Apartheid Act (CAAA) in 1986 was that localities could not adopt sanctions laws because the federal government had essentially “occupied the field” and that city and state laws were therefore preempted by the CAAA. The administration also argued that localities could not legally become involved in foreign affairs and interstate commerce because these areas were the sole dominion of the federal government.

In an argument rooted in competition and contracting rules, the administration successfully claimed that federal statutes authorizing grant funding to states and cities prohibited the application of anti-apartheid sanctions and divestment laws to all contracts that included federal funds, because those laws could be a “burden” on competition and could impact contract prices. Reagan officials attempted to apply this legal “burden” analysis through the Office of Management and Budget (OMB) across federal agencies to almost every state and city. The larger campaign to convince the OMB to issue this policy guidance failed. But the Reagan White House, with the support of the Department of Justice, Office of Legal Counsel (OLC) and the Department of Transportation, succeeded in curtailing New York City’s local sanctions law—Local Law 19.
The OLC opinion that resulted had long-lasting effects on the federal government’s authority over grants to cities and states.

4) Actively Organizing Support for Litigation to Challenge City Divestment and Sanctions Laws

The Reagan administration also directly supported litigation designed to stop state and local sanction measures in the courts. In general, members of the administration contemplated broad litigation strategies. For example, some top Reagan administration officials considered encouraging private plaintiffs to bring lawsuits, after which the federal government would file amicus briefs on the plaintiffs’ behalf. The White House also debated legally challenging local and state laws touching on other human rights issues, such as Northern Ireland, where pension fund-held corporations were being investigated for their treatment of workers. The administration’s central litigation strategy, however, was the extensive effort by the U.S. State Department and National Security Council to support a lawsuit regarding a Baltimore City divestment ordinance in 1987. Ultimately, these agencies were not successful in pushing for full federal intervention in the suit and provided only peripheral support to the Baltimore ordinance legal challengers.

The Local Response: A Tale of Two Cities and Beyond

In the face of these Reagan administration tactics, local responses varied significantly. The city of New York, for example, capitulated to the Reagan administration’s threats while the city of Baltimore stood up to the federal government’s efforts to curb a local divestment ordinance.

New York

In 1984, after sustained grassroots organizing, the New York City Council passed Local Law 19, which imposed sanctions on businesses with financial interests in South Africa. It allowed a New York City board to withhold contracts from companies doing business in or using material from South Africa. Instead, the city could offer the contract to a company that was not invested in South Africa, so long as that company’s proposal was within 5 percent of the original lowest bid.

Subsequently, the U.S. Department of Transportation (DOT) threatened to withdraw funding from federally funded transportation projects in New York City, unless Local Law 19 was rescinded. The DOT, supported by an opinion from the U.S. Department of Justice (DOJ), claimed that the law did not conform to the federal competitive bidding statutory provisions requiring “full and open competition.” According to the DOT and the DOJ, the New York law could result in increased costs for New York City contracts, thereby putting an “undue burden” on companies bidding on those contracts. The DOT also argued that the local law conflicted with federal laws on apartheid. Although then-Mayor Edward Koch protested both to President Reagan and DOT Secretary Elizabeth Dole, and threatened litigation, the city eventually relented. It revised Local Law 19 to meet the terms set by the federal government and “exempted federal transportation projects from its [Local Law 19’s] purview.” Succumbing to pressure, New York changed its local law and never filed suit against the DOT.
Baltimore

In 1986, the City of Baltimore adopted an anti-apartheid divestment ordinance, Ordinance Number 765, which required Baltimore city pension funds to divest from any companies doing business with South Africa within two years. At the time, approximately $174 million, or about 21 percent of the city’s pension investments, were invested in companies doing business in South Africa. Trustees of Baltimore’s pension funds, along with pension fund beneficiaries, filed a suit to challenge the constitutionality of the ordinance in 1987. This was the first legal challenge to a divestment law in the country. While the Department of Justice chose not to file an amicus brief, the U.S. State Department and the National Security Council submitted or urged submission of supplemental documentation in direct support of the divestment law challengers. After losing at the Maryland Court of Appeal, the business-backed opponents of the Baltimore ordinance appealed to the U.S. Supreme Court, which refused to grant certiorari. Baltimore’s divestment ordinance stood as a victory for the anti-apartheid movement and a powerful symbol of a locality’s ability to resist bullying by the federal government.

Reagan vs. Cities: Timeline of 20th Century Battle Over Apartheid South Africa


Reagan takes office.

Free South Africa Movement begins with arrests inside of S. African Embassy.

Reagan’s S. Africa policy “combine[s] resources of WH & Dept of State, Treasury & Commerce to oppose ... imposition of ... legislative sanctions against S. Africa”

Federal Anti-Apartheid Act Passes

Major businesses pull out of S. Africa because of sanctions laws. OMB considers threat to cut off federal funds because of alleged federal preemption. Baltimore successfully defends anti-apartheid law in Maryland Appeals Court.

New York City passes sanctions law.

U.S. Justice Dept finds that NY law is “burden on competition” & violates federal grant agreements.

U.S. Justice Dept “burden” analysis incorporated into Common Grant Rule.

Nelson Mandela released from prison. Over 130 local & state sanctions laws still in effect.

ALEC launches anti-sanctions program to stop laws at every level of government.
The Victory Against Apartheid

By 1991, 28 states, 1 territory, and 92 cities had imposed sanctions, divestment, or other measures on companies doing business in South Africa, costing U.S. corporations substantial sums of money. Notwithstanding the Reagan administration’s efforts, sustained opposition to the apartheid system caused its downfall in 1991. The sanctions and divestment movement is credited for playing a critical role in apartheid’s demise.

The Lasting Impact of Reagan’s Policies

While the Reagan administration ultimately lost its battle to curtail anti-apartheid sanctions and divestment, the tools it wielded in that battle endure. First, the Justice Department’s legal opinion from that era resulted in significant, long-term changes to the interpretation and application of laws defining federal authority to withhold federal pass through grants from cities and states. Consequently, when federal funds are involved, states and cities face obstacles to introducing innovative procurement policies that would benefit the public, such as mandating local hire. The current interpretation of procurement policy must be re-examined and reinterpreted in light of the historic political context in which it was issued, and with the public good and equity in mind.

In addition, the Reagan Administration’s tactics continue to resonate today because President Trump has employed maneuvers similar to those of former President Reagan. These include a public relations strategy aimed at vilifying opponents, cutting off funding to cities and states, and taking cities to court for challenging his executive orders. In the Trump era, as cities and states around the country prepare to challenge the White House, they can look to the example of the anti-apartheid movement, when grassroots groups joined together with cities and states to fight the federal government’s threats and help black South Africans triumph over a repressive regime.
The following items have been selected from the full version of the report, with the number headings referring to their positions within the larger document. Clear copies of documents have been provided where possible. In some cases, the originals themselves are illegible. The full report including the complete appendix can be found on the JMA website, www.jobstomoveamerica.org, and at the following web address: http://jobstomoveamerica.org/wp-content/uploads/2017/06/Reagan-vs.-Cities-Report_FINAL.pdf
## CONTRACTS LOST DUE TO STATE & LOCAL ANTI-APARTHEID STATUTES

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<tr>
<th>Firm</th>
<th>Contract Lost</th>
<th>Approx. $ Value</th>
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<tr>
<td>Major Bank</td>
<td>Underwriting</td>
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<tr>
<td><strong>LOS ANGELES</strong></td>
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<td>3M</td>
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<td>Allied Signal</td>
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<td>Applied Electro Mech.</td>
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<tr>
<td>Arthur Young &amp; Co.</td>
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<td>Atlantic Research Corp</td>
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<td>Ashland Oil</td>
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<td>Bank of America</td>
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<td>Deloitte Haskins</td>
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<tr>
<td>Exide Corp.</td>
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<td>First Interstate Bank</td>
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<td>General Electric</td>
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<td>General Electric</td>
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<tr>
<td>Goodyear Tire &amp; Rubber</td>
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<tr>
<td>W.R. Grace</td>
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<tr>
<td>IBM Corporation</td>
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<td>Legi-Slate</td>
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<td>Mine Safety Appliance</td>
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<td>Motorola</td>
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<td>Rexnord</td>
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<tr>
<td>Schindler Elevator</td>
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<td>Sears, Roebuck</td>
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<td>Soloman Brothers</td>
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<td>Tillipman Elevator</td>
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<tr>
<td>Westinghouse Elect Sup.</td>
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<tr>
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<tr>
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<tr>
<td>Chemical Co.</td>
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<tr>
<td>Construction Co.</td>
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<td>Construction Co.</td>
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<td>Computer/Office Supplies</td>
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<td>Cable Television</td>
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<td>Automotive Parts &amp; ACCESSories</td>
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<td>Actuarial Services</td>
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<td>Electric Wire &amp; Distrib.</td>
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<td>Typewriters/Copiers</td>
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<td>Company/Service</td>
<td>Product/Service</td>
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<td>NEW YORK CITY</td>
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<tr>
<td>SAN FRANCISCO</td>
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<td></td>
<td>W.R. Grace</td>
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<td>(Unamed Chemical Firm)</td>
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<td>STATE OF CALIFORNIA</td>
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<td>Major Bank</td>
<td>Underwriting</td>
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<tr>
<td>STATE OF NEW JERSEY</td>
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STATE OF NEW YORK
IBM
Computer Equipment
$5-25 million

DISTRICT OF COLUMBIA
IBM Corporation
Computer Equipment
$5-25 million

WESTCHESTER COUNTY, NEW YORK
Major Bank
Underwriting
n/a

Other Examples:

- An engineering firm lost $5 million in contracts in Los Angeles, San Francisco, Philadelphia, and Houston.
- An electronic firm lost $1 million in 1986 and expects more losses in 1987 due to local anti-apartheid statutes.
- An automotive firm expects to lose $125 million in revenues as a result of state/city anti-apartheid statutes.
- A major chemical manufacturer lost $1 million worth of contracts with New York City, San Francisco, Houston, and New York State.
- An office materials and equipment manufacturer lost hundreds of thousands of dollars in state and local contracts in New York, Los Angeles, and San Francisco.
- Major New York bank prohibited from selling commercial paper to major pension funds, thus raising the price of its borrowing.
DISINVESTMENT

The Department of State's position with regard to sanction-type initiatives which have been launched at the federal, state and local levels, such as those aimed at discouraging U.S. firms from investing in or doing business with South Africa, is that such measures do not appear to be consistent with broad U.S. foreign policy objectives or strategy regarding South Africa. U.S. policy toward South Africa seeks to use American influence to identify those constructive things we can do to support peaceful change away from apartheid and toward government based on the consent of all South Africans. Our approach is to engage ourselves positively; to add the weight of the U.S. public and private sectors in support of American values; to back ideas, institutions, and groups that can add to a dynamic for change; to open doors and build bridges—not the reverse. The concept of supporting efforts for positive change also has Congressional support, which has been manifested in passage of several programs aimed at improving the situation of those disadvantaged by apartheid. Specifically, Congress has approved programs which provide for scholarships, labor and entrepreneurial training, a Human Rights Fund and drought relief, totalling nearly $10 million in fiscal year 1984. These programs, which help finance the building blocks for change, provide tangible evidence of our commitment to remain involved on behalf of peaceful change away from apartheid inside South Africa.

Measures which call for penalizing U.S. firms which are involved in South Africa undercut a very important aspect of the constructive engagement philosophy on which our policy is based. Rather than engaging in actions which have the effect of pushing U.S. firms to consider withdrawing from South Africa—the aim of many of the divestment measures proposed—we believe it is more appropriate for those who wish to see change in South Africa to focus on encouraging and supporting the positive things which U.S. firms can do and have been doing to improve the situation for blacks in that country.

I refer in particular to those firms which have signed the Sullivan Principles of corporate conduct which provide for equal treatment for all employees on the job and active involvement on the part of the employer in efforts to benefit black employees in such nonworkplace areas as education, housing, health and recreation. Approximately 134 of the 350 U.S. firms with investments in South Africa adhere to the Sullivan Principles, covering about 70 percent of the black employees employed by U.S. firms in South Africa. These firms have spent well over $100 million on behalf of improvements in community conditions for their nonwhite employees in South
Africa in the past six years, as well as establishing a nonsegregated and more equitable working environment. Such precedent setting actions have become an example for other firms in South Africa, and have undeniably served as a catalyst for significant change in a society that is seeking ways to transform itself.

Efforts to encourage U.S. firms to leave South Africa or to punish them for being there would work at counter purpose to overall U.S. policy by having the effect of curtailing or bringing to an end these sorts of important contributions to peaceful change. In addition, to the extent that such efforts are successful, they would result in direct harm to the very people we are trying most to help, namely the black employees who would be the first to lose their jobs or come under less enlightened management when U.S. firms are bought out—at bargain basement prices.

Black workers have expressed their concerns at these sorts of proposals, most recently in a U.S. State Department-commissioned survey conducted by South Africa's most respected private opinion pollster, which concluded that while black factory workers are unhappy with their lot in life and generally support groups opposed to the government, at the same time 75 percent of these workers are opposed to the pullout of U.S. firms from South Africa. This is not at all surprising since what the divestment advocates propose ultimately threatens the loss of jobs for black South Africans already struggling to survive in that society. We should also point out that it is unlikely that divestment or other sanctions efforts would have the desired political effect of prompting the SAC to move away from apartheid. Indeed, the historical precedents indicate that the reverse is likely. Rather, we believe it is more appropriate for critics of apartheid—and we count ourselves among them—to find ways to urge U.S. firms operating in South Africa to become more involved on behalf of their nonwhite employees, particularly by becoming full adherents to the Sullivan Principles or similar codes of conduct, or by recognizing the contributions of those U.S. firms already fully committed to change.

U.S. Department of State
December 1984
Southern Africa: Constructive Engagement  February 1985

Background: On taking office in January 1981, the Reagan Administration determined to focus on the threat to stability in southern Africa posed by the unresolved issues of Namibian independence, the presence of large numbers of Cuban troops in Angola, the abhorrent policy of apartheid in South Africa which denies basic rights to that country's black majority, and the seemingly endless cycle of cross-border violence in the region.

US policy: To address these problems and protect US and Western interests, the Administration developed a regional policy toward southern Africa that has come to be known as "constructive engagement." This policy has four objectives:

- Namibian independence: The Contact Group on Namibia (US, UK, France, West Germany, Canada), in consultation with the Front-Line States (Angola, Botswana, Namibia, Zimbabwe, Mozambique, and Tanzania), obtained agreement of all the parties, including South Africa, to the UN plan for Namibian independence as set forth in Resolution 435. At US initiative, that plan was strengthened and now offers the best available prospects for a fair and impartial result. At the same time, the US and its allies have successfully turned aside attempts to substitute other settlement formulas. However, South Africa has made clear its readiness to proceed only in the context of a parallel commitment to resolve the longstanding problem of Cuban troop withdrawal from Angola.

- Regional peace: To overcome this last obstacle to Namibian independence, the US has engaged in an active dialogue with the Angolan Government. All parties, including Angola, now accept that Cuban troop withdrawal must be part of an overall settlement. We helped broker the February 1984 Lusaka agreement between South Africa and Angola, under which South Africa undertook to disengage its military forces from southern Angola and the two nations established a Joint Monitoring Commission to oversee the withdrawal. That withdrawal is nearly complete; the two nations continue to discuss future security arrangements. Fighting between South African and Angolan forces has ended.

We also helped Mozambique and South Africa negotiate the March 1984 Nkomati accord, under which both governments agreed to prevent the use of their territories as bases for armed attacks against each other. South Africa continues to work closely with the Mozambican Government to effect a ceasefire between the government and antigovernment guerrillas. Other agreements between the two nations will bring Mozambique substantial economic benefits in the fields of energy, transportation, tourism, and investment. These and other instances involving Lesotho, Zimbabwe, and Botswana indicate that the nations of this potentially explosive region are increasingly looking to the US, not to the Soviets and their allies, for solutions to the problems of development and regional coexistence.
Movement away from apartheid: Constructive engagement seeks to encourage peaceful change away from apartheid in South Africa. We have used our limited influence to encourage the government to accommodate the legitimate demands of South Africa’s black majority. The US has called for an end to apartheid and has rejected the “homeland” concept, under which black South Africans are deprived of South African citizenship and offered no political role except as tribal groupings in impoverished rural “homelands.” The new constitution, approved overwhelmingly in 1993 by white voters, is flawed because it does not grant political rights to South Africa’s black majority; it does, however, provide for sharing limited national political power with Asians and Coloreds. It is part of a process of change that has begun but clearly has a long way to go. President Botha’s statement of intent to engage in a dialogue with black South Africans to discuss changes in apartheid implies movement away from apartheid. Similarly, the legalization of black trade unions in recent years is a positive step; unions are an agent of democratic change that should be supported. American leaders, including the President, Vice President, and Secretary of State have spoken out forcefully and consistently against violations of basic human rights in South Africa, such as forced removals of settled black communities to the homelands. That policy is now being reviewed by the South African Government. The US is providing $10 million annually to assist black education, help small, black-owned business, and train black labor unionists.

The US maintains an arms embargo and enforces other restrictions on the sale of equipment to South Africa’s military, police, and other agencies enforcing apartheid.

Reassertion of US influence: Although the gains are fragile and much remains to be done, we have made significant progress largely because the US is the only mediator enjoying credibility with all the regional governments and guerrilla movements. The US has seized the strategic initiative from the Soviets and their allies, shifting the focus from military to diplomatic and economic solutions.

US investment in South Africa: The Administration opposes punitive economic sanctions or trade restrictions against South Africa because they will harm the intended beneficiaries and are not likely to provide us influence over the pace and direction of change. The US supports the Sullivan principles on fair employment, which have had a beneficial impact on black working and living conditions. Signatory US firms are a positive force for change, not only in the workplace but also in black communities where they have spent over $100 million in the last 7 years on black education and housing. US firms have set the pace among all foreign and local firms in supporting black advancement.

Important US role: Serious problems remain. We do not regard the situation in South Africa as satisfactory. But we can play a genuine role in encouraging peaceful evolution only if we are involved and are seen to be supporting positive change in South Africa and working to bring about regional coexistence.

Harriet Culley, Editor (202) 632-1208
Council votes South African investment ban

By Sandy Batrisky

The Baltimore City Council voted last night to direct the trustees of the city government's pension funds to divest all investments with firms that do business in white-ruled South Africa.

"This is a historic day in the history of Baltimore city," said Councilman Matthew J. McFadden, D-Div. 88. He approved the measure on a vote of 17 to 3, with two members absent.

Last night's resolution directed the trustees of the city's two pension funds — one for fire and police employees and one for all other city workers — to begin selling off stocks of any company or affiliate doing business in South Africa "and to carry out this divestiture with responsible fiscal prudence."

The resolution is only a declaration of city policy and does not carry the force of law, but several council members said last night they expected the trustees to comply with the directive.

"They are willing to cooperate, clearly," Mr. McFadden said. "They've indicated they would do something of a substantial nature to comply."

The council chambers were filled last night with supporters of the divestment bill, who cheered and applauded the vote. Before the meeting, the group of about 80 had rallied outside City Hall in chant and song in protest of apartheid, which almost only whites to be best-class citizens, and in support of the South Africans who are fighting to overturn the system.

"There's a spirit of death that hovers over much of South Africa at this hour," Councilman Kwesi Milliner, D-Div. 49th, said as he voted for the resolution. "It's a spirit that beckons us to move rather quickly.

"This is a small step," Councilwoman Agnes Welch, D-Div. 49th, told the spectators. "Don't forget you have more work to do."

The move toward divestment began in February. At the time, its supporters said they preferred to begin their campaign with a resolution only. Should that fail to produce results, they said, they would introduce a bill, which, if passed, would require divestment by law.

Speaking of the attitude of the pension

See COUNCIL 4B, Col. 5
Council votes to end holdings in firms tied to South Africa

COUNCIL, from 1B

fund's trustees, Councilman Timothy D. Murphy, D-6th, said: "We have discussed this with them. This was a cooperative effort. I'm satisfied that we're dealing in good faith. The events in South Africa are developing in such a fashion it's clear now that adherence to the spirit of the resolution is consistent with good fiscal policy."

In March, the pension officials reported to the council that the funds have about $174 million, or about 21 percent of their total holdings of $833 million, invested in firms that do business in South Africa.

At a hearing in May, many speakers said they detested apartheid but worried that selling off holdings in firms that do business in South Africa could endanger the fiscal health of the pension systems. Many of the largest American firms, which pay the greatest dividends, do business in South Africa.

By law, the trustees of the pension funds are to manage the system to earn the most money for the city's retirees. City taxpayers make larger contributions to the system should the returns fall below projected levels.

But sponsors of the bill argued that other cities and states have passed legislation ending investment in firms with links to South Africa without losses to pension systems.

In other business, the council approved a resolution that directs it to hold hearings into the sale, possession and use of handguns in Baltimore.

Mr. McFadden, sponsor of the resolution, hopes the hearings will help the council draft legislation to be introduced into the legislature to control the use of handguns in the city.

By state law, only the state can legislate gun control. "We want to ban the sale and possession of handguns in the city," Mr. McFadden said. "We hope as a result of these hearings we can develop some legislation that can be pre-filed" in Annapolis for the next session of the legislature.
MEMORANDUM FOR MITCH DANIELS
DEBORAH STEELMAN

FROM ALEX DIMITRIEF

SUBJECT POSSIBLE SOUTH AFRICA BRIEFING

THE WHITE HOUSE
WASHINGTON

January 13, 1986

Following up on our South Africa discussions, we can expect various sorts of divestment bills and debates over the next six months in fifteen states:

-- California (governor vetoed bill last year);
-- Connecticut;
-- Florida;
-- Illinois;
-- Maine;
-- Massachusetts;
-- Michigan;
-- Minnesota;
-- New Hampshire;
-- New Jersey;
-- New York;
-- Ohio;
-- Pennsylvania;
-- Washington;
-- Wisconsin.

In addition, we can expect anywhere from 75 to 100 city councils to take up similar resolutions or ordinances.

At present, ALEC is providing most of the intellectual firepower to those state legislators fighting divestment petitions, helped occasionally by State's IG Office. This is usually done through the State ALEC office, which alerts the office here of pending legislation and distributes whatever talking points ALEC may have. Vonni Borie, who heads up ALEC's efforts, and Jayne Plank would both be overjoyed by some sort of Washington "event" for the top players in each state -- they could easily provide us with a "top 5" from each of the fifteen states in question for an audience of 75, and we could invite city officials on top of that. ALEC believes some sort of "reward" or recognition would be useful because these folks are towing the Administration's "line" even though many still feel "sold out" by the President South Africa Executive Order.
Although I agree that such a meeting could be productive, I believe the action on this one should remain entirely over at State; we can certainly help Doug Holladay get a good list together, but I would be wary of involving the White House once again in a nettlesome issue which most would agree the President handled rather adroitly last summer. I sense that what these folks want more than anything is some sign that the Administration does in fact care about and support their efforts, and this can be done just as easily through a State Department briefing as anything else.

In short, I would recommend having me bring Doug, Jayne Plank & Lee Hunt, and ALEC's people together to give them a jump start on pulling the briefing off, help them pull the list together, and let them know that their efforts have your blessing.
Participants in the February 5, 1986 briefing for Businessespersons

Robert J. Brown  
E & C Associates  
Greenwood, SC

John Kenneth Lee  
Attorney/American Federal Savings & Loan Association  
Greenwood, SC

Larry Shaw  
Shaw Food Services Company  
Peytonville, SC

Astrid B. Versole  
Executive Director, Urban Affairs  
GM  
Detroit, Michigan

James Morris Griffin  
President, Comprehensive Marketing Systems, Inc.  
Washington, DC

Larnie Glenn Horton  
President, International Domestic and Development Corporation  
Raleigh, NC

Joe Zirven  
ABC Maintenance Company  
Dallas, TX

James E. Hayne  
Past President, National Association of Real Estate Brokers  
Cleveland, Ohio

William Frank Pickard  
Chairman, African Development Foundation  
Bloomfield Hills, MI

William S. Kanaga  
Chairman, Arthur Young  
New York, NY

James D. Johnson  
Vice President for Industry-Government Relations  
GM  
Washington, DC

Edward P. Heenan  
Corporate Division, Human Resource Programs  
Burroughs Corporation  
Detroit, Michigan

Carole F. Hoover  
Senior Vice President, Greater Cleveland Growth Association  
Cleveland, Ohio
George Schroll
Director of Corporate Employee Relations
Colgate-Palmolive
New York, NY

Ralph L. Phillips
Senior Planning Analyst
Mobile Oil
New York, NY

Wilfred Kopolowitz
Vice President for International Public Affairs
Citibank
New York, NY

Reginald Dunn
Booker T. Washington Foundation
Washington, DC

Ronald R. Morris
Company Group Chairman
Johnson & Johnson
New Brunswick, NJ

Aldrange B. Cooper, Jr.
Director, Public Affairs
Johnson & Johnson
New Brunswick, NJ

James A.R. Johnson
Manager, Government Affairs
Xerox Corporation
Washington, DC

AF Bureau and NSC representation
William B. Robertson
Deputy Assistant Secretary for African Affairs
The Department of State

P. Allen Harris
Deputy Director, Office of Southern Affairs
The Department of State

Phil Ringdahl
National Security Council

Commerce Department Staff
W. Davis Coale, Jr.
Desk Officer for South Africa, Commerce Department

White House Staff
Mel Bradley
Special Assistant to the President
Speakers

Charles W. Muller
Secretary and Treasurer, Urban Foundation
New York, NY

Susan Blackman
Director, Office of Africa, Commerce Department

Jay P. Morris
Deputy Administrator, Agency for International Development

Walter Raymond
Senior Director International Communications and Information, National Security Council and Special Assistant to the President

Frank Wisner
Deputy Assistant Secretary for African Affairs, The State Department

SAWG staff

J. Douglas Holladay
Alan Van Egmond
Ronald Quincy
Richard Campanelli
Joseph F. Ryan
Maureen McEwen
From: NSHJC
To: NSFSS

NOTE FROM: Herman J. Cohen
SUBJECT: Federalism Debate at Justice on Thursday, Mar. 19

My Contacts at State tell me they are not invited to the debate in Justice tomorrow on the federalism question stimulated by State and local government sanctions against companies doing business with South Africa. They hear it will be an internal affair between the Office of Legal Counsel and the Civil Division. They suggest the following contacts if you would like to pursue the possibility of your attendance as the NSC rep: Bob Bittner, Deputy Director of the Civil Division; David Anderson, Office of Federal Programs in the Civil Division; and in the State Department, Michael Hatherson, Deputy Director of the African Legal Advisor's office. He can be reached at 647-8460.

I gather that South Africa is not the only issue with which local authorities are running their own foreign policy. Northern Ireland and Arab-Israeli relations also stimulate similar activities. The bottom line is that we want American companies to remain South Africa, and the Congress, in its wisdom, has said the same thing, despite sanctions. If the Federal Government takes no action against the local authorities, the companies will have to leave South Africa.
The Honorable Robert P. Bedell
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
New Executive Office Building
Room 9001
Washington, D.C. 20503

Re: South Africa -- Local Anti-Apartheid Statutes

Dear Bob:

Relative to the effect of local government anti-apartheid statutes on Federal grantees procurements, enclosed is the Wall Street Journal (March 20, 1987) article on Xerox Corporation’s announcement to withdraw from South Africa. The article attributes Xerox’s decision to the local anti-apartheid statutes, and mentions the loss of a contract with the Pittsburgh public school system -- no doubt a recipient of some Federal grants from the Department of Education.

Clearly, when these local statutes work to force U.S. companies to withdraw from South Africa, in spite of the good work done by them in furtherance of the Sullivan human rights principles, the Administration’s foreign policies and interests in having U.S. companies stay in South Africa are being frustrated. Section 606 of the 1986 South Africa sanctions legislation gave local governments a grace period in which to ensure that these statutes did not conflict with Federal procurement statutes and regulations -- both generally and by agency grant programs -- but it may well be that this "statutory warning" is going unheeded.
I hope you find this useful in your consideration of this emerging problem.

All the best.

Sincerely,

Bob

Robert E. Carlatom, Jr.
Director
Congressional Relations

Enclosure

cc: Ambassador Douglas Holladay
   South African Working Group
   Department of State

   Stephen Cooney, NAM
March 20, 1987

Xerox, Finally Succumbing to Pressure, Says It Will Sell South African Unit

By DENNIS KNEALE

NEW YORK—Xerox Corp., one of the last die-hard supporters of an American corporate presence in South Africa, finally succumbed to pressures here and abroad and said it will sell its South African unit.

Xerox said its 51%-owned Rand Xerox unit, whose 49% partner is Rand Organisation PLC, a British-based leisure and hotel company, will sell the local business to Aftron Group, a big South African electronics firm. Xerox wasn't disclosed for the sale, which is to be completed by May 1.

The pullout culminates more than a year of agonizing at Xerox, which in December held off a final decision as executives searched for a new approach that might let them stay in the newly troubled land. And the move is unlikely to ease the pressure from activists, who criticized Xerox's plans yesterday to let the unit continue selling photocopiers in South Africa after its sale.

"It's a perfect example of a decision that basically pleases no one," David T. Kearns, Xerox chairman, said in an interview.

But does it please him. Mr. Kearns was one of industry's most vocal proponents of the notion that only by staying can companies help end apartheid and repression in South Africa. His view grew lonelier last year when two other out spoken chairmen—Roger B. Smith of General Motors Corp. and International Business Machines Corp. John P. Akers—reversed course and pulled out.

Mr. Kearns said that still feels staying put is best for South Africa's 33 million blacks. But he now says selling is what is best for Xerox: "It will clear things that were continuing to deteriorate on all fronts," he said. The nation's economy and social climate were worsening, pro-apartheid groups were rising, and Xerox was beginning to lose sales in the U.S. to local competitors that were backing out of contracts with companies doing business there.

The departure by Xerox, the 16th-largest U.S. employer in South Africa, comes at a critical time for U.S. firms. The pace of pullouts is accelerating, as pressure groups that once assumed any departure now say simply leaving isn't enough. The Reagan administration's patient approach toward the South African government has been all but dismissed, even by a Reagan-appointed advisory panel. And a May 31 deadline looms for U.S. companies that follow the Sullivan Principles, fairness guidelines that for 10 years provided a moral ground for protecting local sales in South Africa.

The Rev. Leon H. Sullivan, founder of the principles, has said he will urge U.S. companies to leave South Africa if apartheid hasn't ended by May 31—a seemingly impossible prospect. That might lead to a wave of new withdrawals.

Xerox, based in Stamford, Conn., became the 24th company to announce or complete a withdrawal in the first three months of this year. That compares with 137 U.S. companies in South African units and 188 announced shutdown plans. The total was 267 companies less than a year ago.

"The financial impact on Xerox will be painful—" the unit provided less than 1% of Xerox's $19.3 billion of annual sales last

"Xerox may have been more damaged by the financial impact of staying. Last fall Xerox got out on a photo copier contract with the Pittsburgh school board, which wouldn't buy from South Africa-linked companies.

But the sales were 'certainly a lot more than a few thousand dollars,' Mr. Kearns said, and it is something we saw increasing unless Xerox pulled out. But he conceded he still may lose sales in high

"Eastman Kodak Co is one of the few that left and ended all product sales in South Africa.

The criticism of Xerox comes despite the unusual efforts it made in pulling out. It negotiated a promise from the buyer that the unit's 1,000-plus employees won't lose their jobs. It also is forming a foundation run by black leaders that will spend $500,000 a year on social programs after Xerox leaves."
March 23, 1987

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: HERMAN J. COHEN

SUBJECT: South African Sanctions: State and Local Government Actions Against American Firms

ISSUE:

Whether or not to inform OMB Director Miller of our high level interest in preventing state and local governments from imposing, through their own procurement processes, sanctions beyond those approved by Congress against American firms doing business in South Africa.

Background:

One aspect of the anti-apartheid campaign in the U.S. has been individual actions by state and local governments to pressure U.S. firms to quit doing business in or with South Africa. The preferred method of applying pressure is to announce that such firms are ineligible to bid on state/local procurement contracts. Such action by state/local government is objectionable on constitutional grounds, because of the preemptive federal authority in matters involving foreign relations and interstate commerce. It also may be incompatible with the state/local government's continued receipt of certain federal funding. The Justice Department has concluded that the Transportation Department must withhold federal highway construction funds from New York City to the extent that the City's application of its local anti-apartheid law is inconsistent with competitive bidding requirements of federal statute. This principle may have much broader application to other federally-funded programs. Section 606 of the Comprehensive Anti-Apartheid Act of 1986 accordingly provided state and local governments a 90-day grace period within which to conform their procurement policies to the requirements of federal law. That grace period expired December 31, 1986, but most state/local governments apparently have not yet conformed their practices. From a policy point of view, we have an interest in making sure that the law is enforced. While we enforce sanctions, it is our belief that American business firms should continue to remain in South Africa and continue to trade with South Africa. The maintenance of American business presence in South Africa is important to the maintenance of U.S. influence during this period of transition.
To conform state/local practices to the supervening requirements of federal law, the next step is for the Office of Management and Budget to send a circular to recipients of federal funding and state/local procurement authorities to notify them that application of local anti-apartheid measures may disqualify them for continued federal funding.

The State Department is now discussing this with OMB at the level of Mr. Robert P. Redell, Administrator, Office of Federal Procurement Policy. At meetings I have attended on this subject, I note OMB agreement in principle, but a certain bureaucratic reluctance to demonstrate any real. I feel the matter is becoming urgent because a growing number of companies are beginning to doubt the wisdom of remaining in South Africa. This is just one more headache on top of all the others, including stockholder and consumer protests. I believe, therefore, that you should communicate with OMB Director Miller to let him know that the issue has a high foreign policy priority in addition to its legal aspects.

Paul Stevens concurs.

RECOMMENDATION

That you sign the memorandum at Tab I to Mr. Miller.

Approve _____ Disapprove _____

Attachment
Tab I Your memorandum to Mr. Miller
NOTE FROM: Herman J. Cohen

SUBJECT: Justice Decision on South African Sanctions by State and Local Governments

I understand that Justice decided to delay on this issue. They will be replying to the Shultz-Madse letter saying that the Deputy Attorney General (Buzby?) will be in touch with State to work on it. It looks to me like Cooper, who wants to do nothing, has been victorious.

Last week, IBM, Mobil and 3M came in to say that San Francisco's action is now killing them. You might want to liaise with Sofaer on this to determine the next step. I feel that a PMG is really necessary to make sure this issue is brought to closure quickly.

4/1/87

Hank:

As we discussed, I think a PMG on this issue is a good idea. Do we have anything scheduled yet? The more we can do, the better off we'll be. I think it's an odd case for federalism principles to win out on.

Paul S.
City trustees hold back on S. Africa divestment

By Ann LoLordo

The trustees of Baltimore's municipal pension systems are delaying selling off South Africa-related investments and may seek to postpone divestment indefinitely because of their court challenge to the city's new law.

Though the ordinance took effect Jan. 1, the trustees have invoked a provision of the law that allows them to suspend divestment for 90 days if the rate of return drops below a certain level.

The trustees sued the city Jan. 1 in what is believed to be the first court challenge of a divestment law in the country.

They maintain that selling the usually high performing, South African-related stocks would seriously affect the performance of the city's $1.1 billion pension fund.

Depending on the portfolio's recent performance, the trustees for the two systems — police and fire and public employees — may ask for an injunction to delay implementation of the ordinance until the lawsuit is resolved, according to a lawyer for the trustees.

In delaying divestment, the trustees on Jan. 22 cited an exemption in the law that allows them to suspend the sale of South African-related investments if the rate of return dips below the average annual rate of the past five years. That rate, as of last June 30, was slightly more than 19 percent.

The trustees based their decision on the Sept. 30 quarterly earnings of minus 1.6 percent for the police and fire system and minus 1.8 for the municipal employees system, said Ernest J. Glinka, retirement system's administrator.

As part of their decision, the trustees said that any new investments would be made in companies not doing business in South Africa.

They will meet again April 30 to decide whether to continue the suspension.

The delay has been questioned by one of the law's key sponsors, Councilman Nathaniel J. McFadden, D-2nd. Mr. McFadden argued that the current investment performance should have no bearing on implementing the divestment law.

He maintained that the intent of the suspension provision was to ensure that the system did not suffer under divestment.

NATHANIEL J. MCFADDEN
City councilman, D-2nd

The councilman said retirees had a "golden opportunity" to prove the contention of their suit — that the divestment process violates the trustees' fiduciary responsibility to earn the most they can for pensioners.

According to Mr. Glinka, of the pension system, the trustees have two choices if investment earnings improve sufficiently to raise the average yearly earnings. They could draw up a divestment plan or decide whether to seek an injunction, Mr. Glinka said.

He said that investment earnings for the pension systems have increased since last fall. Earnings for the quarter ending Dec. 31, 1986, were 4.1 percent, and there were stronger returns in the first quarter of this year, he said.

If investment performance does not enable the trustees to continue the suspension, the retirees' lawyer in the suit, George A. Nison, said yesterday that he believed his clients would be in a "good position" to win approval to stay implementation of the law.

Circuit Judge Martin B. Greenfeld, who is hearing the divestment suit, is expected to rule on the retirees' motion to decide the case by late April.

He has already decided that one issue in the case — whether the contract rights of retirees were impaired — needs to be resolved in a trial. But he could determine the outcome of the lawsuit on other grounds.

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I believe you are aware that on May 5 the NSC convened a Policy Review Group on the question of federal intervention in lawsuits challenging state and local South Africa measures. I understand that all of the participants in the 2nd session that day intervention is legally justifiable and would be supportive of Administration policy.

As you know, we feel that U.S. interests argue strongly in favor of challenging state and local measures which seek to affect the conduct of our foreign policy, whatever the foreign country involved. If these measures remain unchallenged, state and local authorities will be able to evade the federal government's constitutional authority and ability to conduct a coherent foreign policy.

This is particularly true with regard to the many state and local measures on South Africa, which penalize even those U.S. businesses that comply fully with existing federal sanctions against South Africa. These measures run directly contrary to our policy of encouraging U.S. firms to remain in South Africa and to work to promote social and economic change in that country.

I do not believe that federal intervention in lawsuits challenging these South Africa measures would be politically harmful. The Congress specifically considered and rejected language in the Comprehensive Anti-Apartheid Act of 1986 and other legislation that would have approved the enforcement of such state and local measures. Further, attitudes may be changing, even among the strongest opponents of apartheid in this country. On the wisdom of forcing U.S. firms to disinvest from South Africa.

The Honorable
Edwin Meese III,
Attorney General
In any event, we should be able to stress that any federal involvement in legal challenges to state and local South Africa measures is part of a general policy of opposition to unconstitutional actions by states and localities to direct the conduct of U.S. foreign relations. In this respect, our focus need not only be on South Africa measures: we could, for example, intervene in a coordinated manner against similar state and local actions directed against Northern Ireland.

Federal participation in challenges to these South Africa measures need not always be accomplished through direct federal initiation of lawsuits. Our involvement could be limited, for example, to encouraging the initiation of lawsuits by private plaintiffs and to indicating the willingness of the federal government to support these challenges through the filing of amicus briefs.

The only private legal challenge currently taking place is being heard in Baltimore, where a private plaintiff is seeking to have that city's divestment ordinance declared unconstitutional. I understand that if we are to intervene in the Baltimore suit or provide other assistance to the Baltimore plaintiffs, it must be done quickly. I therefore believe that the issue should be presented to the President for his consideration as soon as possible.

I look forward to hearing from you soon.

Sincerely yours,

George P. Shultz

Drafted: L/A: LClarizio 5/18/81 ext. 647-4110 0919A

Cleared: L:MMatheson 5/18/81 AP:CNFreeman
L/AR:ECummings EUP/MS:WPerloo [Info]
R:Binant [Info]
June 24, 1985

The Honorable Howard H. Baker, Jr.
Chief of Staff to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Howard:

Today I sent the enclosed letter to President Reagan expressing our concern at Johnson & Johnson for the future of United States companies in South Africa. As my letter indicates, Johnson & Johnson has been in South Africa since 1930 and intends to remain in business there as long as humanly possible. However, unless some of the pressure from state and local governments or those United States companies remaining in South Africa is removed, our continued presence there may be short-lived. Any assistance that the federal government can offer under appropriate provisions of federal law to alleviate some of these conditions would be appreciated.

Kind regards,

Sincerely,

[Signature]

James F. Burke

Enclosure
President Ronald Reagan
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

The recent announcement by Reverend Leon Sullivan calling for the withdrawal of United States companies from South Africa, while disappointing, was not unexpected. It does, however, make the continued presence in South Africa more difficult. The continued withdrawal of United States companies increases the pressure on those of us who have chosen to remain.

Johnson & Johnson has been in South Africa since 1937. We employ more than 1,400 people which puts us in the top ten of the American companies still operating there. Our decision, while constantly under review, has been based on the local commitment to our employees and their families and on the people of South Africa who have been loyal customers and who we believe should be afforded the full benefits of our health care products developments. Of course we believe that the advocates of investment and disinvestment, while well intentioned, are totally wrong in their philosophy. We know, however, that they will continue their efforts to force the rest of the United States companies out of South Africa without any regard for the quality of our social and business performances there.

We believe that the United States companies in South Africa have been the best advocates of our American way of life. However, unless we receive some advocacy in our behalf, our positions and our contributions to South Africa will disappear. For this reason, I encourage your Administration to take advantage of the provisions of Section 506 of the Comprehensive Anti-Apartheid Act of 1986 and, interface with State and local governments whose anti-apartheid laws disfavor or discriminate against United States business. We think it is critically important that the federal government engage in this dialogue to assure the necessity of the remaining United States businesses in South Africa may be in doubt.

Very respectfully,

James E. Burke
ACTION

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: PAUL SCHOTT STEVENS

SUBJECT: South Africa: Baltimore Divestment Case

The time has arrived for the United States to decide whether to file an amicus brief in the Baltimore divestment litigation. The filing deadline is Friday.

As you will recall, a Baltimore ordinance requires the city's pension fund to sell its interests in corporations doing business in South Africa. The fund's Board of Trustees sued to have the ordinance declared invalid, and lost at the trial level. The Board has appealed. The State Department has consistently urged that the United States file a brief to preserve the important constitutional prerogatives of the Federal Government at issue. (See Tab I) The Justice Department will file a brief only on presidential direction, and State has proposed through Hank Cohen that you call Deputy Attorney General Burns.

The issue for decision is whether it is appropriate to revisit with Senator Baker the earlier decision not to intervene because of the perceived political risks. Clearly, the issue is not going to disappear, and the longer we delay stating our constitutional views in court, the greater the Balkanization of foreign policy. I therefore recommend that you raise the question of an amicus brief with Senator Baker in time for Justice to file its brief on Friday.

Herman J. Cohen and Alison B. Portier concur in this recommendation.

RECOMMENDATION

That you revisit the issue of filing a brief in the Baltimore divestment litigation with Senator Baker.

Approve _____ Disapprove _____

Attachment
Tab I - State memoranda
I, Chester A. Crocke, hereby declare and say as follows:

1. I am the Assistant Secretary of State for African Affairs in the United States Department of State. I have held this position since June 3, 1981. I am 55 years of age. The facts stated herein are based on my personal knowledge and on information obtained by me in my official capacity.

2. Under the direction of the Secretary of State, I am responsible for the direction and conduct of United States foreign policy toward all countries in sub-Saharan Africa, including South Africa. I supervise the Bureau of African Affairs of the Department of State and am responsible for ensuring that guidance and instructions are provided to United States diplomatic and consular posts in Africa.

...
3. It is the established and stated policy of the United States to promote peaceful change in South Africa and to seek the earliest possible end to the system of apartheid. The United States supports the establishment of a nonracial, democratic system of government in South Africa based on the consent of the governed.

4. In order to achieve these goals, the United States for many years has encouraged U.S. nationals in South Africa to maintain an active presence in that country and to use their influence to promote change in South Africa. In particular, the United States has encouraged U.S. firms in South Africa to implement certain fair labor standards. (Since September 9, 1985, all U.S. departments and agencies have been precluded by Executive Order from interfering with any foreign government regarding the export marketing activities of U.S. firms that do not adhere to those standards.) It is the view of the United States that, through their commitment to desegregation, equal employment opportunity, and freedom of mobility for all South African workers, firms complying with these fair labor standards have posed a direct challenge to the apartheid system.

5. It is the view of the Department of State that the implementation of these fair labor standards and other initiatives by U.S. firms have benefitted those in South Africa who are the victims of apartheid. The United States considers these firms to be in the forefront of American efforts to
challenge the apartheid system and to remain positively involved in the search for a better future in South Africa.

6. Insofar as U.S. firms succumb to divestment and other state and local initiatives by withdrawing from South Africa, the U.S. loses an important lever to press for change in South Africa. By punishing U.S. firms in South Africa that use their influence to promote fair labor and equal employment practices, such state and local measures conflict directly with the foreign policy of the United States.

7. Though the people of the United States are clearly united in their opposition to South Africa's racial policies, there has been a vigorous debate in which sharply different views have been aired about the most efficacious means to influence change in that country. The Congress and the president have addressed these important issues, and the debate over legislative sanctions at the federal level is now over. The adoption of comprehensive sanctions by the federal government, however, has not altered the fundamental United States policy of supporting U.S. firms that remain in South Africa and that work actively to promote change in that country. Indeed, the Act imposing these sanctions applauded U.S. firms in South Africa that adhere to the aforementioned fair labor standards for their commitment to assisting victims of apartheid in gaining their rightful place in the South African economy.
6. It is essential to the conduct of a coherent foreign policy that the United States speak with one voice with respect to South Africa. In foreign affairs, that voice is properly that of the federal government. In addition to being contrary to the foreign policy of the United States, state and local measures that punish U.S. firms that have remained in South Africa create other difficulties for the successful execution of U.S. policy. They give the impression that the foreign policy of the United States is fragmented and contradictory. They thus frustrate attempts by the United States to impress upon South Africa the need for change. Such mixed signals interfere with the ability of the United States to achieve its stated policy goals.

Under penalty of perjury, I solemnly affirm that the foregoing is true to the best of my personal knowledge and that I am competent to testify to the matters stated in this Affidavit.

Executed on __________________

Chester A. Crocker
Assistant Secretary of State
The Honorable Abraham D. Sofaer  
Legal Adviser  
United States Department of State  
Washington, D.C. 20520

Dear Abe:

Thank you for your letter of October 8 concerning the Baltimore divestment case, The Board of Trustees of the Employees' Retirement System of the City of Baltimore v. Mayor and City Council of Baltimore City, now before the Maryland Court of Appeals on a writ of certiorari. As you remember, when we visited this subject earlier, the Justice Department took the view that before the United States makes a filing in this case, the White House should be consulted and have the opportunity to consider the matter of our participation. Further, the Department stated that if the decision were made to participate, the United States would do so through the filing of a full brief in this litigation, as opposed to the submission of an affidavit or letter.

The Justice Department is of the same opinion concerning whether to participate in this case on appeal. In addition to our previously expressed reservations about litigating these important issues in this context, we have additional concerns about litigating these issues in this court. In the event the United States Supreme Court accepts this case or another case raising similar issues, if past is indeed prologue, there is every prospect that the United States will be asked for its views, and at that time we will enter the case.

There is never a dull moment. I want you to know how much we enjoy working with you and your excellent staff.

Sincerely,

Arnold T. Burns  
Deputy Attorney General
ENDNOTES


2 The beginning of the climax of the U.S. anti-apartheid movement occurred in November 1984, after the Free South Africa Movement (FSAM) was formed, when U.S. Civil Rights Commission appointee Dr. Mary Frances Berry, D.C. Congressman Walter Fauntroy, and advocacy group TransAfrica’s Executive Director Randall Robinson were arrested as they sat in the South African Ambassador’s office to demand the dismantling of apartheid. “Free South Africa Movement.” AfricanActivist Archive. Michigan State University, http://africanactivist.msu.edu/organization.php?name=Free%20South%20Africa%20Movement.


6 Dimitrief, Alex. “Memorandum from Alex Dimitrief to Mitch Daniels, Deborah Steelman RE: Possible South Africa Briefing.” 13 Jan. 1986. See Appendix I item 18 for the primary source.


ENDNOTES


25 Dimitrief, Alex. “Memorandum from Alex Dimitrief to Mitch Daniels, Deborah Steelman RE: Possible South Africa Briefing.” 13 Jan. 1986. See Appendix I item 18 for the primary source.

26 South Africa Briefing for Business Persons Invitees and Agenda, 5 Feb. 1986, folder “Director of African Affairs Records,” WHORM: South Africa, Ronald Reagan Library. See Appendix I item 20a-20c for the primary source.


28 Ibid. pp. 128-129.

29 Ibid p. 128.


36. Ibid.


45. Ibid.


48. Ibid.


52 Crocker, Chester A. “Affidavit of Chester A. Crocker Submitted in the Circuit Court for Baltimore City.” *The Board of Trustees of the Employees’ Retirement System of the City of Baltimore, et al. v. Mayor and City Council of Baltimore City*. See Appendix I item 56 for the primary source.


54 “Contracts Lost Due to State & Local Anti-Apartheid Statutes.” *Folder South Africa Sanction (2)*. Box 92019. Paul Schott Stevens Files, Ronald Reagan Library. See Appendix I item 1 for the primary source.

55 A forthcoming piece by the authors documents this new interpretation, its lack of support in law, and the ways in which this interpretation has influenced all federal grant programs through the present time. See summary of forthcoming legal analysis of the 1986 OLC memo in Appendix II in full report.
FOR MORE INFORMATION,
GO TO WWW.JOBSSTOMOVEAMERICA.ORG