



U.S. Corporate Activities in South Africa

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U.S. Corporate Activities in South Africa

Alternative title	U.S. Corporate Activities in South Africa
Author/Creator	Subcommittees on International Economic Policy and Trade and on Africa; Committee on Foreign Affairs; House of Representatives
Publisher	U.S. Government Printing Office
Date	1983
Resource type	Hearings
Language	English
Subject	
Coverage (spatial)	South Africa, United States
Coverage (temporal)	1981 - 1982
Source	Congressional Hearings and Mission Reports: U.S. Relations with Southern Africa
Description	Includes testimony from hearings in 1981 and 1982, by administration officials, members of Congress, and supporters of sanctions against South Africa. Also includes appendixes with other statements, text of legislation, and articles.
Format extent (length/size)	329 page(s)

<http://www.aluka.org/action/showMetadata?doi=10.5555/AL.SFF.DOCUMENT.uscg020>

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

HEARINGS AND MARKUP
BEFORE THE
SUBCOMMITTEES ON
INTERNATIONAL ECONOMIC POLICY AND TRADE
AND ON
AFRICA
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
ON
H.R. 3008, H.R. 3597, H.R. 6393

SEPTEMBER 24, OCTOBER 15 AND 22, 1981; MAY 18 AND JUNE 10, 1982

Printed for the use of the Committee on Foreign Affairs



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CONTENTS

	Page
Thursday, September 24, 1981:	
Rev. Leon Howard Sullivan, chairman of the board, International Council of Equal Opportunity Principles.....	3
Hon. Stephen J. Solarz, a Representative in Congress from the State of New York.....	19
Hon. William H. Gray, III, a Representative in Congress from the State of California.....	34
Thursday, October 15, 1981:	
Mr. Joseph F. Dennin, Deputy Assistant Secretary for Finance, Investment, and Services, U.S. Department of Commerce.....	52
Mr. Princeton Lyman, Deputy Assistant Secretary of State for African Affairs.....	60
Mr. Thomas Leddy, Acting Assistant Secretary for International Affairs, Department of Treasury.....	72
Thursday, October 22, 1981:	
Hon. Carl D. Pursell, a Representative in Congress from the State of Michigan.....	121
Rev. William Howard, president, National Council of Churches.....	133
Mr. William B. Gould, professor of law, Stanford University Law School ...	137
Mr. Randall Robinson, director, TransAfrica.....	153
Mr. Broadus N. Butler, director, International Affairs, National Association for the Advancement of Colored People.....	157
Tuesday, May 18, 1982: Subcommittees' markup session (no witnesses).....	189
Thursday, June 10, 1982: Subcommittees' final markup session (no witnesses)..	203

APPENDIXES

1. Legislation:	
H.R. 3008, as introduced by Mr. Solarz, April 2, 1981.....	225
Amendment in the nature of a substitute to H.R. 3008, July 2, 1982.....	245
H.R. 3597, as introduced by Mr. Gray, May 14, 1981.....	278
H.R. 6393, as introduced by Mr. Bingham, May 18, 1982, and voted out of June 18, 1982 markup.....	274
2. A position statement of U.S. churches on bank loans investment in South Africa and December 1980 ICCR brief submitted by Rev. William Howard, president of the National Council of Churches of Christ in the U.S.A.....	276
3. Statement submitted by General Motors Corporation, October 23, 1981.....	283
4. Statement submitted by Ray Denison, director, department of legislation at the American Federation of Labor and Congress of Industrial Organizations.....	298
5. Letter dated November 9, 1981, submitted by Nicholas L. Deak, chairman of the board of DEAK-PERERA.....	309
6. Letter dated November 25, 1981, submitted by J. R. Fluor, chairman, president, and chief executive officer, and D. S. Tappan, vice chairman of the Fluor Corp.....	311
7. Letter dated November 19, 1981, from Mr. Wolpe to Department of Treasury and response letter dated December 30, 1981.....	315
8. Responses to questions submitted to the Department of Labor by the subcommittees.....	318
9. Article by the Economist, September 19, 1981, "America and South Africa Trade Follows the Flag".....	324
10. Article by Joseph Lelyveld, published in the New York Times, August 10, 1981, "South African Discloses Bid To 'Break' Black Union".....	325
11. Article by Joseph Lelyveld, published in the New York Times, November 28, 1981, "14 Unionists, Seized by South Africans".....	327

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

THURSDAY, SEPTEMBER 24, 1981

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEES ON INTERNATIONAL ECONOMIC POLICY AND TRADE AND ON AFRICA,

Washington, D.C.

The subcommittees met at 2:15 p.m., in room 2200, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. Today, the Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade are meeting jointly to begin the first of our public hearings on two bills introduced during this session of Congress on the role of American corporations operating in South Africa.

The first bill, introduced by my colleague from New York, Congressman Solarz, would require all American companies operating in South Africa to adopt and implement a fair employment code. His proposed legislation would also prohibit the importation into this country of South African krugerrands, and bar American banks and lending institutions from making loans to the South African Government.

The second bill, sponsored by my colleague from Pennsylvania, Bill Gray, would require the United States to ban any new American investments in South Africa.

South Africa's system of apartheid has been a growing source of international concern for nearly three decades. However, in the past several years, as South Africa's white leaders have refused to end that country's appalling racial system, an increasing number of American political leaders, labor unions, State legislatures, private foundations, religious groups, and colleges have urged the U.S. Government and Congress to reexamine American policy toward that country and to take some type of meaningful action to protest the flagrant violations of human rights that occur daily in that nation.

As a part of this reexamination of American policy toward South Africa, attention has focused increasingly on America's wideranging commercial and trade ties with South Africa. This has occurred because many people in and outside of South Africa believe that foreign businesses and investment help sustain and prop up South Africa's domestic racial system.

Clearly, American companies have a major stake in South Africa. U.S. investment in that country is in excess of \$2 billion,

representing the largest single U.S. investment in any country in Africa. Moreover, in recent years the United States has become South Africa's leading trading partner, with a two-way trade of nearly \$4.7 billion.

This afternoon we will hear from three distinguished proponents of that legislation: Congressman Steve Solarz of New York, Congressman William Gray of Pennsylvania, and Rev. Leon Sullivan.

During the course of our next three hearings we hope to hear from a spectrum of concerned American citizens, four or five major American Corporations doing business in South Africa and, finally, from administration witnesses from the State Department and the Departments of Commerce, Treasury, and Labor.

I would now like to call on my colleague and cochairman of these hearings, Congressman Jonathan Bingham.

Mr. BINGHAM. Thank you very much, Chairman Wolpe.

I would like very briefly to say that our subcommittee is pleased to be participating in these hearings and commend you and the members of the Subcommittee on Africa for initiating them.

The bills pending before the subcommittees include various proposed economic restrictions which are, of course, of interest to the subcommittee that I have the honor to Chair. While, in general, economic sanctions impose costs upon our own economy as well as upon the economy of the country toward which they are directed, there certainly are situations when they are justified as a means of attempting to influence foreign governments or as a means of separating ourselves from the policies of such governments. South Africa may well be the case where such policies are justified.

I look forward to the hearings.

Mr. WOLPE. Thank you very much.

I will be calling as our first witness Rev. Leon Sullivan, who must attend another meeting with Secretary Donovan, so we plan to hear from Reverend Sullivan and invite questions from the committees as to his testimony, and then follow with Congressman Solarz and Congressman Gray.

By way of introduction of Reverend Sullivan, I would like to read a short statement that my colleague, Congressman Pursell, asked me to make at this point. He wanted to participate in these hearings today but because of illness in his family he had to return to Michigan.

He writes:

I wish to indicate to my colleagues the brilliant and continued efforts of Dr. Leon Sullivan in constructively offering solutions to achieving full equality for all citizens in South Africa.

No one else better knows first hand the success and failures of attempts to rectify the present situation which denies job opportunities, adequate wages, housing, the vote and education to citizens on the basis of skin color.

However, as great as his familiarity of the issue is, it is not for Dr. Sullivan's knowledge that I proudly call him my friend and confidant; rather, it is his tireless efforts, particularly obvious through his famous "Sullivan Code", to work for a solution that is not immediate; to labor for peace when turmoil is imminent, to seek equality and understanding when domination and repression are the signs of the times. He is a rare combination of strength, resourcefulness, and hope. I applaud his enormous contributions toward improving the quality of life in every part of the world.

CARL PURSELL.

That is a fitting introduction to Rev. Leon Sullivan.

**STATEMENT OF REV. LEON HOWARD SULLIVAN, CHAIRMAN OF
THE BOARD, INTERNATIONAL COUNCIL OF EQUAL OPPORTUNITY PRINCIPLES**

Reverend SULLIVAN. I want to thank my Congressman, Congressman Gray, for letting me speak ahead of him, and my great friend, Congressman Solarz, whom we all admire so much and who has given us leadership over the years.

My name is Leon Sullivan. Today I come before you again, as I have come three times before, to testify concerning legislation in connection with the U.S. corporations doing business in the Republic of South Africa.

This time I come convinced that legislative action in the U.S. Congress is not only desirable but is a necessary step that must be taken in order for the effort with U.S. corporations to fully comply with meeting their social responsibility in the workplace and outside the workplace in South Africa to become a reality.

I see the code, generally called the "Sullivan Principles," as a valuable and workable catalyst for peaceful change in South Africa and as a positive alternative, along with other thrusts, to violent and blood racial warfare.

I see the Sullivan Principles as a realistic and workable plan on behalf of American businesses in South Africa to demonstrate their determination to end racial discrimination and apartheid in their plants, and to use their substantial resources and influence to help persuade the Government of South Africa to move from its apartheid policies.

I also see the effort of the American companies providing a leadership role among companies in South Africa from other nations of the world, toward a worldwide effort to use economic persuasion, equality of opportunity actions and economic leverage to ultimately help bring about the end of the hated apartheid system of humiliation, exploitation, segregation, and degradation.

I come today to say to you that the principles that were initiated in March 1977, some 4½ years ago, are beginning to work and to show some important and tangible results. Recent assessments obtained from the more than 100 American companies who have signed the principles demonstrate the value of what is being done in this endeavor thus far.

But, although the principles are more and more showing their value, the impact is not yet nearly enough. The problem is that although 138 or so U.S. companies have signed the principles and thus have committed themselves to carry them out, still more than 150 U.S. companies have not yet even signed the principles.

Unfortunately also, of those companies who have signed, too large a number of them are making a failing grade in their implementation. I am convinced that if all the American companies who have signed—and those who have not signed—aggressively and fully implement the principles in the promotion of equal employment practices, upgrading of black and other nonwhite workers, and utilizing the influence, resources, and power of the companies to improve and change conditions outside the workplace, such as in (1) housing, education, and health, (2) recognition of representative black and other nonwhite registered and nonregistered unions, and

in (3) lobbying the government for ending its apartheid policies, that these combined efforts would have a significant influence on the elimination of racial discriminatory conditions in South Africa.

What I am saying is, the principles have begun to have an effect and are beginning to make important changes in the right direction; but much, much more needs to be done by the American companies in the implementation of the principles, and additional pressures must be brought to bear to help make this happen.

Also, it must be realized that even if all the 300 U.S. companies made an all-out effort in the implementation of the Sullivan Principles, it would still not be enough, alone, to bring about the necessary economic impact for major policy alterations on that government.

The major problem in the Republic of South Africa is not better fair-employment practices but separate development and the inclusion of blacks, totally and equally, in the economic and political system. In order for sufficient moral and economic persuasion and pressure to be exerted to help bring this about, a worldwide united effort by all companies of the world operating in the Republic of South Africa must be initiated. In this respect and for this to happen, the strong and collective leadership of American companies is vital and necessary to influence such actions of companies from other parts of the world.

As a result of the Sullivan Principles, other codes of conduct have been developed and initiated by other countries for their South African companies. If we are able to get the American companies to vigorously follow through on the Principles to be measured and to be voluntarily monitored with reports of their progress publicly made, and if the U.S. Government will help in legislation, or however else possible, to effectively bring this about, the American Government and companies will provide the leadership necessary to get other governments and companies to act more aggressively on the implementation of their own codes of conduct.

It is for this reason I appeal to you today for the support of the Congress of the United States and urge you to help with whatever assistance you can give to encourage all American companies to sign and support the principles and to comply fully with their implementation. I ask you to assist, however possible, through legislation or resolution or whatever other binding means, to accomplish this end.

I have gone about as far with my personal appeals as I can go. I need not go into a recital of the inhumaneness and the injustice of South African apartheid to a committee like this. You know the evils of apartheid. You know that the need in South Africa today is for individual freedom and the recognition of the universal and inalienable rights of people.

The notion must be confronted and dispelled that a white person is superior to a black person, or that a black person is inferior to a white person, or that a person of any color is inferior to another person just because of the color of his skin.

I emphasize individual freedom because nothing will be more important to the future of South Africa than this: without individual freedom for black and other dark-skinned people there will be no future peace in that land; the individual freedom to work where a

person wants to work on the basis of his ability and willingness to learn; the individual freedom to live where a person wants to live, according to his desire and circumstances to do so; the individual freedom to attend a school with equal access without restriction because of color, race, or tribe; the individual freedom to take part in choosing their government and deciding who shall make laws and govern their lives, as well as being a part of those who govern; the individual freedom to move about without hindrance because of racial characteristics or identity; the individual freedom to be what one wants to be, to work, to strive, to save, and to own, as all others, for the benefit of one's person, one's family, one's community, and one's nation.

It must be sounded from the pulpits, taught in the classrooms, interpreted in the laws and practices in the nation. It must be realized that if a nation is to be truly democratic, the fundamental premise of the equality of all people before God and man must prevail.

As you must all know, whatever other measures are attempted to assist with improving racial conditions such as the principles, these efforts can and will only go so far until nationally and constitutionally and in practice racial segregation ends and individual freedom for all people becomes a reality.

You know that unrest and disorder grow and will continue to grow and mount until South Africa changes its outlook and its ways of dealing with its nonwhite population. Unless it changes, the country will be engulfed with turmoil and the cities, towns, and countryside paralyzed with revolt and destruction.

Unless South Africa changes, nothing they do will stop the devastation that lies ahead, neither the secret service nor the police nor the military, unless economically, socially, and politically they change and there is individual freedom for all, one day the tides of revolution will sweep over that country and destroy everything that has been built, including the businesses.

Although the main attention is focused on independence for Namibia and the illegal incursions of South African forces into Angola, and rightfully so, it must be clear to all that the real problem in the South African region is still the Republic of South Africa and the existence of apartheid and the necessity for the elimination of that country's racist policies and the ending of its separate development as a way of life, with the full and equal inclusion of blacks in the economic as well as the political system.

It is my hope and prayer, while there is still time, in the name of justice and in the name of God, that South Africa would accord their nonwhite population, through the actions of their parliament, their councils, their institutions, their churches, and their businesses, their status as full citizens with human dignity and all the rights and opportunities it provides. It is my hope and prayer it will be done before it is too late, and that is what I am working for.

It is my aim as a minister of the gospel to help work toward a peaceful solution, utilizing economic and moral means of persuasion, or I know there will be chaos in South Africa, untold numbers of lives will be lost, perhaps numbering in the millions, and most of them will be black.

It will also mean the probable confrontation of the two great nuclear powers. I see the principles as one of the ways of demonstrating, if done massively enough, how peaceful change can be achieved.

Since the principles, the following are some of the results so far:

When they were initiated 4 years ago, few if any American companies had completely ended segregation in the workplace. Today over 100 American companies have done so, in spite of the apartheid laws.

Whereas 4 years ago only a handful of blacks held technical positions or were in technical training with the American companies, today there are more than 10,000.

Whereas 4 years ago there were only a few black supervisors to be found in American companies anywhere, today there are several thousand.

Whereas 4 years ago there were only a few scholarships or bursars being offered by American companies, today there are thousands.

Whereas 4 years ago little if any recognition of the rights of blacks to belong to or to organize unions existed, today that right is recognized by 90 percent of the American signatory companies and the organization of unions is growing.

Whereas, 4 years ago little was being done to assist with education outside the workplace, today schools are being constructed and more than 100 elementary or secondary schools have been adopted by American companies helping more than 100,000 young people with improvements in their education until unified schools serving all become a reality.

Whereas, 4 years ago only a few (if any), black businesses were being initiated or supported by American companies, today there are hundreds.

Also, the U.S. Code has inspired the initiation of 13 similar kinds of codes of conduct around the world. They are a catalyst for change. As a result of them many racial, economic, and social barriers are being eliminated. The principles now have their own momentum and will continue to change conditions.

The problem is not that the principles are not making a contribution; the problem is that not enough companies are doing as much as they can and must do in order for them to be as effective as they can and must be.

Let the principles and the codes be effectively executed by American companies and companies of the world, and let them be monitored, and the effect will be a groundswell of change within and without the workplace on a revolutionary scale that would make a powerful impact tenfold to what is happening now in the next few years.

For example, 100 American companies that have desegregated, with the effort becoming worldwide would become 1,000 companies desegregated; 10,000 blacks in technical and highly skilled positions will become 100,000; 5,000 managers and supervisors will become 50,000; 200 black businesses initiated and supported will become 2,000; 10,000 scholarships and bursars will become 100,000; 100,000 young people helped with their education will become 1 million;

and the number of recognized black unions, registered and unregistered, will become hundreds.

All this would mean impact and would make a significant change in South Africa.

The economic and political structure in South Africa is so closely interrelated that massive changes in and outside the workplace, it seems to me, will, I think, have to influence change in the political system. It is a test as to whether economic necessity can outweigh social prejudice.

The problem is that while a number of companies are working hard to comply with the principles, too many companies are still giving lipservice and not really carrying out the plans according to the guidelines, and too many companies are doing nothing at all.

I believe the principles will and are working and can have a substantial effect on the South African system if they are aggressively and universally tried; but, in my view, the voluntary effort is not sufficient to make it happen.

This Government must require the adherence to the principles and there must be measurement and monitoring of effectiveness. If this happens, what has already been achieved will be increased manyfold with the U.S. companies alone.

It is against this background that the work this committee is doing is of the utmost importance. If the American Government takes the leadership in getting all American companies to comply with the principles it will set an example for other governments to take similar action regarding their companies in South Africa.

This does not mean that I believe that the principles themselves can solve the problem of apartheid, but they can help with an important part of the problem. Much more is needed, in addition to the companies, from unions, churches, and international government-to-government activity; but the influence that companies can have on the South African Government is of significant importance and should not be underestimated.

Also, businesses have a special role to play because they have been the major beneficiary of an unjust system and have helped to perpetuate segregation and apartheid. For this reason, they have a major responsibility to take business initiatives and to encourage worldwide business pressures on South Africa to provide equal opportunity and equal rights and to make every effort they can to help end apartheid. If the companies do not do this they should be required to leave South Africa.

Mr. Chairman, I wish to appeal to you and your committee for legislation and action, now. I want to restate my position, that at a minimum I would like to see you pass legislation making the principles mandatory for American companies, including sanctions and penalties for those who do not comply.

I would like to see language which outlines, in the most persuasive way, possible requirements, with emphasis on deseparation of the races, massive provisions for assistance to education, recognition of black and other nonwhite registered and nonregistered unions, the encouragement and support of economic projects and developments for blacks, and encouragement and support for political equality.

tween black and white. The issue is not black and white. The issue is justice and injustice.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you very much.

Mr. ERDAHL.

Mr. ERDAHL. Thank you, Mr. Chairman.

I regret that another committee meeting and the farm bill on the floor kept me away from this, but I am ably represented by one of my aides here, and we will discuss what has happened.

I would like to ask a question, and maybe this has been touched on, and if it is redundant I apologize for that. What contacts are maintained with your departments from agents, or your counterparts in the South African Government?

Mr. LYMAN. Mr. Erdahl, if I understand your question, we have a whole range of diplomatic contacts with the South African Government.

Mr. ERDAHL. I guess maybe I could explain it a bit better.

In your testimony, you frequently quote Mr. Crocker, is he the individual in our State Department who is most influential in determining our policies toward South Africa?

I would like, and it may be a question I ask out of ignorance, but I ask to find out, at what levels are the contacts with the South African Government made and maintained?

Mr. LYMAN. These are made at a lot of different levels. Mr. Crocker, of course, being the Assistant Secretary for Africa, is the principal official responsible for developing policy in Africa, but there are a lot of people who get involved, particularly above him, the Secretary and the President.

The contacts have been at various levels. Mr. Crocker, of course, has been there. The Deputy Secretary, Mr. Clark, has been there. Then, of course, there is a whole range of contacts at all other levels through the Embassy, and the office director level, and political officer level, et cetera. So there is quite a different range of contacts depending on the particular issue, and the state of negotiations.

Mr. ERDAHL. Maybe this question has been also asked, or this area touched upon.

Without sounding self-righteous, I think some of our American companies claim that they are really trying to improve the situation for their African employees. The question can well be asked, if the bills that we are considering today are, in fact, enacted, would that remove a force in Africa that hopefully is working toward better conditions, toward the elimination of apartheid.

Maybe you have touched on that in your testimony, but I would appreciate some reaction to that if you could, please?

Mr. LYMAN. We think that the American business community can be and has been a very positive force in South Africa for change. As I mentioned earlier, I think the Sullivan principles have been very important in this regard, as well as the actions of individual American businessmen.

I think one of the things that the Sullivan principles has done has been to focus the attention of very high level executive officers of American companies on their operations in South Africa, and on what the American business role there should be.

We have a fear that this kind of legislation will do two things. It will turn the matter into a legal battle between the State Department and the companies as to who is complying and what the sanctions are, rather than what the American companies can do in South Africa. If it does, in fact, lead to disinvestment, then it will take away the role that American business could play within South Africa on a positive scale.

I think American business has been playing a positive role. This has been documented in several studies of the role of business in South Africa. We think that it can continue to play that role, and we want to encourage it.

Mr. ERDAHL. Thank you very much.

Do either of the other two gentlemen wish to concur, or make any other elaborations on that same question, please?

Mr. DENNIN. I would like to join in both of the sentiments that were just expressed. In my prepared remarks, I made both those same points.

We do feel that the companies are doing something positive, and we think that because it is voluntary, because they have said, "We want to do this. Now let's go out and make it work."

Once we start to tell them, "You must do it," then we will end up in an adversarial relationship over whether or not they are meeting the letter of all the requirements. The price to be paid by them if they are found to be not meeting it is so great, that we are just afraid we will lose what we now have going for us.

Mr. ERDAHL. Thank you.

Mr. Leddy, would you care to respond?

Mr. LEDDY. I have no further comment.

Mr. ERDAHL. I yield back the balance of my time.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you very much, Mr. Erdahl.

I would like to pursue for a moment some of the responses that were given to earlier questions in connection with the status of the implementation of the Sullivan code.

I think Mr. Lyman indicated that of the 20 percent of American companies that are not signatories to the code, they essentially were small companies of 20 or fewer employees; is that correct?

Mr. DENNIN. I believe I said we thought that most of the companies that are not now signatories were smaller companies who did not feel themselves within the terms of the Sullivan principles.

Mr. WOLPE. Are you aware that one such company is the Dresser Industries, a mining industry, that employs 1,040 employees?

Mr. DENNIN. I do not know whether or not Dresser is a signatory to the Sullivan principles.

Mr. WOLPE. They are not.

Mr. DENNIN. I accept that representation.

Mr. WOLPE. Another one would be the Newmont Mining Corp. based in New York with 3,600 employees.

In addition, Coca Cola, as you may or may not be aware, had not signed the code until a request to testify before this subcommittee was submitted last summer.

Going beyond the issue of which firms have or have not signed on to the Sullivan code, you referred to a document there in which

the author spoke of the progress and the positive impact that the Sullivan code had had.

I believe that book was published in 1980. Do you know how many firms were signatories as of that point?

Mr. LYMAN. I have the figures, and I was trying to look them up. If I can get back to you in a minute I will get it for you.

Mr. WOLPE. Page 36.

Mr. LYMAN. You are way ahead of me on this.

Mr. WOLPE. Do you know how many firms have signed on since the publication of that book?

Mr. LYMAN. Since the publication of the book?

Mr. WOLPE. I wanted to get both the original figure, and the current figure.

Mr. LYMAN. No, I am sorry, I don't have that.

Mr. WOLPE. I think, if you were to investigate that, you will find that very few firms, indeed, have signed on. So the question really becomes, as Reverend Sullivan put it before this committee, as to whether the code has become effectively a dead end, or whether there is going to be a conscientious effort to work upon the positive progress that has been achieved by the code up to this point.

That is really the question that we are confronting in taking a look at the wisdom, or lack thereof, of making mandatory the Sullivan code, so as to secure a broader number of signatories.

The other dimension that has not been touched upon is the extent to which there has been effective compliance with the code.

In that regard, I think it perhaps might be instructive, and we would be interested in the reactions of the panelists here, that an official of one of the American automobile companies indicated to us during our visit to South Africa that one-half of all American firms that have, in fact, signed on to the code were only giving lip-service to the code.

What would be your reaction to that?

Mr. LYMAN. My impression, Mr. Chairman, from what I have seen, is that it varies a good deal by company, and it varies a good deal by the kinds of progress that people think are most significant.

Some people think that desegregation of facilities is very significant, other people don't seem to think that it is very significant. Some people think that a certain measure of improved employment practices or opportunities is very significant, and other people think that that is very insignificant against the larger problem. So in part, it is what one measures as significant.

There are reports, I have not read the latest report which I gather has just come out by A. D. Little Co., but I gather earlier reports show that a number of firms have made what I would consider as significant progress in this regard, and others have not.

One of the interesting things, I think, about the approach in the Sullivan principles has been this monitoring, which has again taken place not through a Government overseer, but a private mechanism, which is a very important part of the whole context and the way it operates.

Mr. WOLPE. I am glad you have raised the issue of the monitoring because in conversations during our recent visit with South Africans, colored leaders in particular, and trade union officials as

well, that indeed absent an independent monitoring mechanism, the code has nowhere near the dimensions of the impact that we would like to think it has.

So they are urging upon us, and in fact, they were not even very excited about any legislation to deal with the Sullivan code unless there was established an independent monitoring mechanism.

The last point that I would like to raise in my allotted time relates to these other European codes that were referred to earlier.

Someone made the statement that these codes are essentially voluntary, and do not have associated with them any kind of economic measures. Now these are Government codes, you are aware of that, are you not?

Are you saying that this administration would contemplate a government code, as long as it was voluntary and did not have attached to it economic measures, along the model of some of the Scandinavian countries?

Mr. LYMAN. No, I was answering a specific question. It was my understanding that some of them had been, in fact, as you say, Government codes, but I understand there is no enforcement mechanism, and there are no sanctions associated with them.

I don't think that that would be a particularly very helpful device from our point of view. I don't know what it would change frankly.

Mr. WOLPE. The Swedes have banned all investment, have they not, in South Africa?

Mr. DENNIN. New investment, that is right. Existing firms may maintain their capital stock.

Mr. WOLPE. But that is, in effect, a ban, is it not? It is not simply a voluntary prescription.

Mr. DENNIN. It is, I believe, the only example we are aware of, of a country which has banned all new investment, and I don't know that it is applied to your conduct under a particular code, that some companies can invest and some can't depending on your report card.

Mr. WOLPE. I just want, for the record, to indicate that the earlier suggestion that all of these efforts in Europe were totally voluntary is not accurate.

Mr. LYMAN. The codes of conduct are voluntary. This is a separate piece of legislation which cuts across—

Mr. WOLPE. But it is one of the bills that is before this committee.

Mr. LYMAN. Yes, that is right, you have more than one bill here.

But you see, the one bill goes in the opposite direction, and it depends, as we were discussing earlier, what the intent of the legislation is. If the intent is to promote change, our position is that making things mandatory or, in effect, by the effect of the legislation leading to disinvestment, that will not have an effect on promoting change.

Mr. WOLPE. I understand the philosophical difference here, I want to at least get the imperial record straight.

Mr. LYMAN. I understand.

Mr. WOLPE. Thank you.

Did South Africa retaliate when the Swedes imposed that particular ban on new investment?

Mr. DENNIN. I am not aware of what trade statistics are between South Africa and Sweden, and how much investment flow there really is.

Mr. WOLPE. I think you will find that there was no retaliation.

Let me turn now to Mr. Bingham, who has arrived. Would you care to have a round of questions.

Mr. BINGHAM. Thank you, Mr. Chairman, no. I am content to listen at the present time, thank you.

Mr. WOLPE. Mr. Solarz.

Mr. SOLARZ. Thank you very much, Mr. Chairman.

One of the objections you raise from a technical point of view is that under the terms of my legislation one would have to determine whether any loans to the South African Government for health or educational facilities were truly nonsegregated, and that this would impose some great burden on us.

Surely, you would concede that it shouldn't be too difficult to find out if a hospital, or an apartment house, or a school is segregated or nonsegregated, wouldn't you agree? I mean, either it is or it isn't, I don't understand how this requirement is so burdensome.

Mr. LYMAN. In some cases, it could be very clear, and in some cases it would not be segregated formally by law or legislation, but might be in practice. You know the long and sometimes difficult kinds of court cases we have had in the United States on de facto as opposed to de jure.

Mr. SOLARZ. But in the context of South Africa, when there is segregation, it is generally fairly clear, isn't it? De jure and not just de facto.

Mr. LYMAN. In some cases, yes, and in some cases, no. There have been recent changes in the labor law, for example, to remove any reference to race in the labor law.

Mr. SOLARZ. But we are talking here about de jure segregation in the legislation, and not de facto, and you would concede that de jure segregation would be relatively easy to determine, would you not?

I don't hear what you are saying.

Mr. LYMAN. De jure?

Mr. SOLARZ. Yes.

Mr. LYMAN. Yes, I think probably that would be.

Mr. SOLARZ. You have complained about the extraterritorial aspects of my legislation. To the extent that it does involve considerations of extraterritoriality, would you agree that the antiboycott legislation, the Corrupt Practices Act also involve extraterritorial considerations?

Mr. LYMAN. I wish I could answer that. I am not an expert on that legislation.

Mr. DENNIN. There are, it is true, a few American laws which are extraterritorially applied, the antitrust laws among others.

Mr. SOLARZ. So, insofar as this is a consideration, the principle has already been breached. It doesn't necessarily mean it is wise, but we have done it before, you would agree with that?

Mr. DENNIN. There are laws which are extraterritorially applied, yes.

Mr. SOLARZ. Mr. Lyman, you testified, I think, that this legislation would be ineffective in changing apartheid. Let's for purposes

of discussion concede that point. I doubt that it will bring about any fundamental change in the apartheid system.

What do you think the reaction to the adoption of this legislation will be in the rest of Africa? Do you think it will generally enhance American credibility elsewhere in Africa? Do you think it would be well received throughout black Africa?

Mr. LYMAN. It depends on who you are talking to.

Mr. SOLARZ. Let's name some people. Do you think Robert Mugabe would welcome it?

Mr. LYMAN. As a symbolic act, it would be, perhaps, considered very significant. As to what it would contribute to overcoming apartheid, if as you say it had no positive effect of overcoming apartheid, then it seems to me people in Africa would say, "So what are you doing about it?"

Mr. SOLARZ. But you agree that people like Mugabe, Nyerere, and many other African leaders would view this as a step forward?

Mr. LYMAN. I would not want to characterize what their reaction would be.

Mr. SOLARZ. Do you think they would consider it a step backward?

Mr. LYMAN. I again don't want to characterize what their reaction would be.

Mr. SOLARZ. Do you think they would consider it a hypocritical, neoimperialist maneuver to disguise a covert support for a racist regime?

Mr. LYMAN. I would not want to speak for people of such distinction, who are well able to speak for themselves.

Mr. SOLARZ. Tell me, how do you think it would be received by the black majority in South Africa? Do you think they would see this as an example of constructive identification with their cause by the United States, or do you think they would see this as a counterproductive obstacle to greater American investment in their country, and an undermining of the voluntary aspects of the Sullivan code?

Mr. LYMAN. As you know, Mr. Solarz, there are different opinions in South Africa on that issue.

Mr. SOLARZ. Obviously. What do you think the mainstream of opinion would be? You are the expert, give us your judgment.

Mr. LYMAN. I am flattered to be called an expert, but I wouldn't want to comment on what the mainstream opinion is in black South Africa, because there are a lot of different strains of thought, and there are honest differences on what the American role should be.

Mr. SOLARZ. I gather the administration's position has been that we have made some progress since January 20 in dealing with South Africa on the Namibian question; is that correct?

Mr. LYMAN. Yes.

Mr. SOLARZ. That progress took place after the adoption of the Evans amendment. The Evans amendment, in many respects, is similar to the legislation I have introduced, although it applies only to the Export-Import Bank.

If it was possible to achieve progress in our relationship with South Africa following the adoption of the Evans amendment, to which virtually all of the objections you have posed to my legisla-

tion are equally applicable, why shouldn't it be possible, even if my legislation were adopted, to make progress with South Africa in resolving other problems in the future?

Mr. LYMAN. Again, there are two points to the answer. One is, of course, that the legislation in principle is contradictory to the type of relationship that is embodied in what is called constructive engagement. Second, more specifically, if one is engaged on the questions of labor practices and apartheid, then in a specific way the enactment of the legislation could inhibit our ability to make progress on that.

Mr. SOLARZ. Would it be fair to say that the adoption of the Evans amendment has not totally poisoned our relationship with South Africa?

Mr. LYMAN. It has not totally poisoned our relationship with South Africa, but it does not contribute to our ability to work through those mechanisms, let's say, the Eximbank, to promote change.

Mr. SOLARZ. You would agree that in spite of the adoption of the Evans amendment, we have nonetheless been able to make some progress in resolving problems with South Africa?

Mr. LYMAN. In other spheres.

Mr. SOLARZ. Mr. Chairman, if I could ask unanimous consent for 1 more minute.

Mr. WOLFE. Surely, without objection.

Mr. SOLARZ. Thank you very much.

You pointed in your testimony to a constructive example of constructive engagement in the legislation adopted in our committee to provide \$5.7 million for the scholarship fund to bring South African blacks to the United States.

Several months later we continue to wait with baited breath for a constructive response to our constructive initiative. Have you reached any decision on this?

Mr. LYMAN. We are waiting with baited breath for the fiscal year 1982 legislation for foreign assistance.

Mr. SOLARZ. Come on, we have asked you for an opinion.

Mr. LYMAN. We have, as you know, initiated a small program in this regard in fiscal year 1981, and are actively now planning for how we might implement the program if the legislation is approved.

Mr. SOLARZ. I hope you can get the South African Government more affirmatively to your constructive initiatives than we have been able to get you to respond affirmatively to ours, because it seems to me that this is precisely what constructive engagement should mean if it has any meaning at all. I am inclined to agree with my friend Mr. Crockett who is puzzled as to what it means.

We come forward with this initiative, and 6 months later it has been impossible to get the administration to take a position on it.

Mr. LYMAN. I don't really think that is fair, Mr. Solarz. We don't have the authorizing legislation.

Mr. SOLARZ. We ask you whether you support the authorizing legislation. We still have to get it through the Congress.

Mr. LYMAN. We, as I have mentioned in the testimony, believe that this is a very valuable program, and we are actively working on planning on how to implement it, but we don't have the legisla-

tion, and the legislation is different, as you know, somewhat in the Senate.

We don't have the authorization, but even without the authorization, as you know, in authorities we did have, we began a small program in this regard in 1981. We are actively working on how to implement the one in 1982, and I think my testimony made clear, we think this is a good example.

Mr. SOLARZ. Finally, let me just say, in response to your observation that the enactment of this legislation would require the establishment of a vast bureaucracy in South Africa to enforce it, that our labor attaché over there who is, I think, a very dedicated Foreign Service officer, Frank Gallino, has told us that in his view it could adequately be implemented and enforced with a modest increase in the staff at the Embassy. I think he talked about three. Even if he was somewhat off-base, and you needed six, it doesn't seem to me that we are talking about the establishment of some enormous new governmental bureaucracy.

In light of what Mr. Gallino has said, and he has lived with this problem more intimately than anybody else, would you like to reconsider the contention that the enactment of this legislation would pick up the slack brought about from the elimination of the CETA program?

Mr. LYMAN. I certainly share your admiration for Mr. Gallino and his views. He is a very dedicated and capable officer.

We are facing a situation, quite frankly, where we are taking reductions in personnel levels, and so three is hard, and six is harder.

In addition to the staff you need on the ground, the legislation opens up judicial appeal by the companies, therefore, you have a back-stopping role and a legal role, and those things get multiplied in the processing of reports. So in addition to the people on the ground, you have additional bureaucracies, and so it mounts up.

Mr. SOLARZ. Thank you very much, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Solarz.

Mr. Crockett.

Mr. CROCKETT. I have no questions, Mr. Chairman, but I assume that this presentation was intended to reflect to some extent what these gentlemen think represents the view of American business with respect to the Sullivan principles.

I am sure the people over the Treasury and over at the State Department read Business Week. The current issue of Business Week, gentlemen, carries a very interesting article on black labor unions in South Africa, and the extent to which American business interests over there are doing business with those black labor unions notwithstanding those labor unions themselves are not in compliance with South Africa's registration laws.

I mention that to buttress what I indicated earlier, that South Africa is prepared to change its tune where its economic interest is concerned, and if we could just get the State Department and the Treasury Department, that some of you gentlemen represent, to get off dead-center, and really start thinking positively about doing something about the violation of human rights in South Africa, I am persuaded that not only would the situation change, but we wouldn't be hated nearly as much in international circles as we are today because of our tilt toward South Africa.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Crockett.

Mr. Erdahl.

Mr. ERDAHL. Thank you, Mr. Chairman. I have no further questions. I thank the panel for being with us today.

Mr. WOLPE. Mr. Bingham, my cochairman.

Mr. BINGHAM. Thank you.

I would like to ask a rather general question. I don't see anything in the statements that I have been able to read, and in the answers to questions that you have given since I arrived, to indicate to me what the philosophy of this administration is about bringing about changes in the apartheid system, and changes in the oppressive forms of government in South Africa.

Is it your position that essentially this is none of our business, and we should adopt a policy of neutrality on that subject and simply not get into it; or do you have some other approach?

Mr. LYMAN. Mr. Bingham, we are not neutral. I think it is very clear that we don't feel we can simply walk away from it, not only on moral grounds, but on political and U.S. interest grounds.

What we feel is that there are some forces working for change in South Africa. Mr. Crockett has pointed to some interesting developments that go on, like the developments that are going on with regard to the black trade union movement, and their ability to operate, and the ability of companies and others to deal with them.

There are other elements of change going on, some encouraging. There are groups and individuals working for change for a lot of different reasons. There are economic incentives for change. There are moral and political incentives for change.

We feel that we should be working in ways that we can be constructive, if I can use that phrase again, to support and encourage those people working for change. Some are in the Government, some are outside the Government. We have a role to play as a government. We have a private sector in the United States operating in South Africa which as a private sector can be very effective.

Our problem with this legislation is that we don't want to take away the role of the private sector as the private sector. There are a lot of things that the private sector can do as the private sector that governments can't do. Mr. Crockett has alluded to that very, very well. That is a dynamic role. There are a lot of private forces in the United States in touch with elements of South Africa.

We think those are the ways in which we can encourage change. It is not an easy process, and nobody is saying that it is, and nobody says that it is going to happen tomorrow to everybody's satisfaction, and there are going to be a lot of differences of opinion along the way, differences of opinion on whether the pace of change is significant, whether we are doing enough, whether the tactics are right. Those are honest differences, and it is useful to discuss them.

The philosophy is that there are a lot of ways in which we can be engaged in encouraging the forces for change. We hope that we are doing it right, and we hope that the private sector is active in this regard, and we hope that that change is going to take place with our help. That is really where we are at, and we have a stake in it, we really have a stake in it.

Mr. BINGHAM. Are you saying that there is no role for governments in the international community to bring pressure to bear on South Africa that might cause it to change its ways in some respects?

Mr. LYMAN. No, I am not saying that at all, there is that.

Mr. BINGHAM. It sounds that way.

Mr. LYMAN. No, on the contrary.

Mr. BINGHAM. What kind of pressure?

Mr. LYMAN. When you say, bring pressure to bear, sometimes it is moral pressure, and sometimes it is private pressure rather than public pressure. Sometime it takes place outside the glare of publicity, and it does not necessarily work best if it is done through, let's say, putting sanctions on the private sector. That is what I am saying.

So there are clearly roles for Government controls on the private sector, but it is not necessarily always the best way to do it. Sometimes, in some circumstances, it is appropriate. In these circumstances, we think we can follow a slightly different line and produce some results.

Mr. BINGHAM. Aren't you concerned with respect to our attitude toward South Africa, with your responsibilities, with our relationship to other countries in Africa, specifically black African countries?

Mr. LYMAN. Very much concerned. Clearly there are differences there just as there are differences here about what is the best way to deal with South Africa. I think our feeling, and the position that we have expressed to the other countries of Africa, outside of South Africa, is that we feel that given what we can do, and what our influence is, and what our role is, that this particular kind of approach is the way we can produce the most results in Namibia, which is very important to the rest of Africa, and over time within South Africa.

We think we can do it best this way. It doesn't mean that everybody agrees with us that this is the best way. Hopefully, hopefully, they will understand that we are sincere about what we are saying. We really do think that this is the best way, both for our interests and the long-term interests of Africa.

We are very much aware that there are differences, and we are very sensitive to the views of other African states, and we are constantly in touch with them on this and other issues. Hopefully, we will be able to show them that this is a policy based on our best judgment of what we think we can do most constructively.

Mr. BINGHAM. Thank you.

Mr. WOLPE. Thank you, Mr. Bingham.

I would like to just understand more clearly the rationale that is involved here.

On the one hand, you do believe that the Sullivan code is making a constructive contribution to the process of change in South Africa. On the other hand, the moment that becomes mandatory, so that everyone has to adhere to it, it suddenly becomes contrary to the goals of constructive engagement. Why is that?

Mr. LYMAN. For two reasons, Mr. Chairman. One is that while by making it mandatory you get at that group of American companies maybe that had not signed or would not sign, but you are also plac-

Also, there should be assistance with development on the broadest possible scale of efforts to enhance the self-image of black people who for hundreds of years have been brainwashed into inferiority.

I strongly support Congressman Solarz' bill which proposes: One, requiring that all U.S. companies sign the equal opportunity principles; two, onsite monitoring of all American companies in South Africa and three, tax penalties and sanctions imposed on companies that refuse to sign and do not comply with standards set.

I strongly support Congressman William Gray's bill which calls for a halt to all new investments except for essential retooling; and I urge, in addition, that there be no further expansion of operations already in South Africa until changes are made in the prevailing conditions.

Beyond the principles, I want to reemphasize my position on bank loans. I believe it is necessary to open a second front banning new bank loans and new investments to match the business initiative already undertaken by the 138 signatories of the Sullivan Principles.

For your information and records, I want to repeat the statement I have made concerning banks: Until apartheid has been ended and there is clear, tangible evidence and demonstration thereof, no U.S. bank shall make any further loans to the South African Government or its agencies and will give consideration only to specific, privately sponsored projects or programs developed in cooperation with blacks and other nonwhites which contribute to their social and economic advancement and equality and that do not support apartheid.

Finally, Mr. Chairman, I want to express my appreciation to the committee for your forthright and courageous commitment to pursue the course you are taking, that hopefully can help lead to a peaceful solution rather than a violent one, of the problem the world faces in the Republic of South Africa.

But let me conclude that in the meantime I shall continue to pursue my course and to apply whatever pressures I am capable of mounting. I therefore appeal for divestment from all companies that refuse to sign the principles and be measured by them. Further, I appeal for divestment from companies who have signed but who receive a failing grade in implementation and refuse to give assurances they will do better.

I further appeal for a withdrawal of all deposits and funds and the curtailing of all business from banks that continue to lend money to the South African Government or its agencies until apartheid ends.

My aim is not to make apartheid more comfortable but to help end it.

Three weeks from now I will be issuing a new report card on the companies and I am hoping these kinds of actions will follow across America.

Thank you all for your interest and for inviting me here to testify, and with the help of God may our efforts succeed in this matter of such dire necessity and urgency for the world.

Mr. WOLPE. Thank you very much, Reverend Sullivan.

ing a burden on all the companies that already did sign, and you are putting them in a different relationship vis-a-vis the U.S. Government, a legal one, an administrative one, and a bureaucratic one of filling out papers, and having the U.S. Government judging their performance. That is all required in the legislation.

Mr. WOLPE. In other words, the issue that you are concerned about is not the impact on South Africa. You are concerned about the relationship of the American firms and our government?

Mr. LYMAN. No, but there is an important point here. I don't want to turn the attention of the American companies who are signatories of the Sullivan principles away from what they are doing in South Africa, to what they have to do to meet a bureaucratic requirement coming out of the State Department in compliance with the legislation.

I want the CEO's to continue to be focused on their role in South Africa and what they can do, and I think the Sullivan principles have helped to do that. But there is a second point—

Mr. WOLPE. Let's move on to the second after dealing with the first. I am intrigued by this notion that somehow there is a different set of obligations involved if one has a government mandate and a government monitoring mechanism, as distinct from an independent monitoring mechanism. Why does that follow; presumably there is a monitoring mechanism that you claim has credibility right now.

Mr. LYMAN. What the legislation does is create a set of potential sanctions which can be implemented by the monitoring power of the State Department.

Mr. WOLPE. That is right.

Mr. LYMAN. If you are a company in South Africa, you have to be very worried about the judgments that are being made not by A. D. Little, not by Reverend Sullivan, not by your stockholders, and not by your employers. You also have to be worried about judgments being made by this bureaucratic mechanism because they can employ sanctions against you.

Mr. WOLPE. In other words, you are saying that the moment the company has to really worry that these sanctions mean that this code has teeth in it, that that becomes a problem?

Mr. LYMAN. It becomes just a different focus of your attention.

Speaking as a Government official, I should not say this maybe, but Government administrative and enforcement machinery can become pretty darn cumbersome. It creates paperwork, and it turns lawyers on to this, et cetera. This doesn't mean it cannot be done, but it shifts the focus of attention of companies from what they are doing in South Africa to an enforcement mechanism.

There is a second part to it—

Mr. WOLPE. In other words, right now they don't have to worry about an enforcement mechanism; is that what you are telling me?

Mr. LYMAN. No; what they have to worry about, hopefully, and what they are worrying about—

Mr. WOLPE. Why do they have to worry about it now?

Mr. LYMAN. They worry about it because of the objective of doing something for their own good and for the good of South Africa.

Mr. WOLPE. But they don't enforce the mechanism right now; is that correct?

Mr. LYMAN. There is no sanction. There is no governmental sanction.

Mr. WOLPE. In other words, they are going to be kind of more cooperative because they are doing that out of their own good will, rather than because they are forced to; is that what you are telling me?

Mr. LYMAN. What I am saying is that the focus is different, and the time and attention is different. I think that is important, I really do.

The second point, which I think is perhaps more important, is that the legislation puts the U.S. Government into a different relationship with the South African Government, and it is not a relationship—again I am sorry to keep going back to the phrase—of constructive engagement, of seeing which ways we can encourage change. It puts us into a different relationship.

It puts us into a struggle over the issues of extraterritoriality, of how to verify, and a whole range of issues, and it again diverts our attention and their attention from what I think is the heart of the issue here, how to promote change within South Africa.

What I am saying is, the principles are extremely helpful, and they have been helpful, and in part they have been very helpful because they come from the private sector, they are enforced by the private sector, and the private sector has elected to do this, and that is very different from what would come out of this legislation.

Mr. WOLPE. Let me just indicate that I am intrigued by the proposition that somehow there is more paperwork, more bureaucracy, and all that. There is a reporting mechanism right now, is there not?

Mr. LYMAN. Yes.

Mr. WOLPE. There is data that has to be filed by the signatories?

Mr. LYMAN. Right.

Mr. WOLPE. The issue is twofold. One is, there are many companies that are not signatories, No. 1, and at this point there is not even an indication on the part of this administration of a willingness to try to get those other companies to sign on. Second, we have had testimony from signatories that many of the signatories are giving lip service to this operation.

Finally, we have the testimony of Reverend Sullivan himself, the author, the architect of this code and of this effort, and you know there is no one who is more enthusiastic about its potential for accomplishing good and facilitating the process of change, coming to the conclusion that it is at a dead end.

I for one don't find very persuasive the arguments that are advanced. I can understand why you may feel the companies that don't want to sign on are going to feel imposed upon. I recognize that.

I guess the question at that point becomes one of whether American national self-interest is going to override the issue of corporate preference with respect to the Sullivan code.

Mr. LYMAN. I think the issue is not the objectives that you are seeking, but whether a Government enforcement mechanism, as described here with judicial appeal, and enforcement by the State Department is going to have that result. Our feeling is that it will

not. It will not produce exactly what it is you and Reverend Sullivan want to produce.

I think there is a conception that somehow if the State Department is out there monitoring compliance, and there is a law behind it, that we are going to get a lot more positive change.

Our feeling is that while this may be the intention, that will not be the result.

Mr. WOLPE. I just want to indicate that, again, the issue of compelling change is not the exclusive consideration underlying this or any other legislation that is before this committee. There are a lot of other questions involved, including the one that was reported to us while we were in South Africa, which is that the very signals we are giving out at this point, as part of the process for constructive engagement which I think are genuinely intended—

I have no question with respect to Dr. Crocker's direction, I think he genuinely believes, and I am hoping that he is correct, that this new approach will yield a greater degree of American influence and leverage with respect to the issue of apartheid, and with respect to the Namibian discussion, but I think we have some obligation to recognize that inside the country itself as of this point, there are many people who feel that the signals are being interpreted quite differently.

The white minority regime is interpreting the new positive gestures as an indication of an endorsement, if you will, of apartheid, and a new accommodation of the regime. Black, nonwhite, Asian, and whites who were concerned with the process of change reported to us their sense of abandonment, their sense of betrayal.

To the extent that these feelings are reinforced by a lack of progress with respect to the issue of internal change, and the lack of progress with respect to the Namibian discussions, then I would suggest that American self-interests are being very severely compromised in South Africa itself, and over the long term throughout the continent.

This leads me to the final set of questions I would put to you.

What is your assessment of the direction of change in South Africa as of this moment? Over the past year, do you think the government is moving in the direction of the elimination of apartheid, or has it in fact retreated from the reformist commitments that had been held about a year ago?

Mr. LYMAN. I think you have some elements of change, and some commitments to change, and you have a lot of questions about how fast and in what direction it will go. I don't think it is a monolithic situation. I don't think you can say, the Government in a single way is committed and is going in this particular direction.

I think there are a lot of elements within the Government and within the society that are working for change, and there are some signs of change.

Mr. WOLPE. What is positive that has occurred within the last year?

Mr. LYMAN. I think there has been changes in the environment for African labor organization and operation. There are problems involved, but there have been opportunities which the black African labor union movement have taken advantage of.

Mr. WOLPE. Before you go on to the list, could we go back to the first point about labor leader improved environment. Are you aware that the number of bannings and detention of labor leaders had increased over this past year?

Mr. LYMAN. I am not saying that you have a unilinear line of progress in one direction.

Mr. WOLPE. I thought you were indicating that there is an improved atmosphere with respect to labor discussions.

Mr. LYMAN. There has been over the past year changes in the law, such as eliminating references to race with regard to labor. There have been some other changes with regard to desegregation in private education.

There are conflicting forces at work in South Africa, and I don't want to give a single characterization to the process. I think it is too complicated for that.

I do get, as other people do, conflicting signals. As you said, you think that some people are reading the U.S. policy one way. I have talked to people from South Africa who don't read it that way, who read the U.S. policy as one of encouraging change, but they feel that change must come if the relationship is in fact to grow. That is a signal that we wanted to send, and some people seem to have received it that way.

I guess there are different parts of society reacting different ways. I don't want to characterize the situation as having made leaps and bounds in the last year or so. There are elements of change that are positive, and there are a lot of problems.

Mr. CROCKETT. Mr. Chairman, would you yield a minute?

Mr. WOLPE. Surely.

Mr. CROCKETT. Since Assistant Secretary Crocker and several others have spent so much time telling us about these changes, and nowhere have they enumerated these changes, I think it would be beneficial to the committee to request from the State Department an itemization of these changes that they think have occurred in South Africa that represent an improvement of the situation with respect to apartheid.

My own observation is that the basic changes have all been for the worse. The parliament of South Africa has appointed a commission, and we met with that commission, whose job it is to propose constitutional amendments that will legalize the establishment of 10 homelands to which the approximately 20 million blacks in South Africa will be banished and denied their citizenship, and permitted only to come back into South Africa as aliens with permits to work. That to me does not indicate a change for the better. It indicates a decided change for the worse.

That is why I repeat, Mr. Chairman, that I personally would like to see an enumeration by the State Department of the changes that have occurred for the better.

Mr. WOLPE. I think that your suggestion, Congressman Crockett, is a very good one, and we will put that request to the State Department. We would be interested in seeing this assessment of the positive changes that you believe have taken place.

I would like to ask, just as a preliminary to that formal written presentation that I hope we will receive from the State Department, whether Mr. Lyman believes there are any changes of sub-

stance in the area of power sharing that have taken place over the past year?

Mr. LYMAN. As you know, there is a lot of debate going on on that. Certainly not in a formal sense that changes in the structure of constitutions, voting, and so forth have taken place with regard to power sharing.

Mr. WOLPE. In the right to say how the Nation's resources are to be used. Are there any modifications or changes in that area?

Mr. LYMAN. There are things going on. It is hard, when you are caught in a question of saying, give me examples of changes, and then you point to that, and then you can point to something on the other side, and you get caught.

I really don't want to try to get into a position of trying to characterize the movement and direction, but let me just try to give a sense of the different things going on. Mr. Crockett himself has indicated that. He talked about American companies dealing with a union that is not registered, but which is actually playing a role as a union.

Mr. WOLPE. But that is the Government looking the other way.

Mr. CROCKETT. That is without the assistance of the American Government.

Mr. LYMAN. Private American companies was the example you were mentioning. That is something going on. Some people can look at that and say, that is something significant because that kind of thing, over 10 years, can have a profound effect. Someone else can look at that and say, that is insignificant. I don't want to be the one to sit here and judge those now.

I think there are things going on in South Africa. I think there are forces working for change. I think there are economic forces, people and interest groups working for change. I think there are a lot of examples that can be cited here that would suggest there is no change going on.

I don't want to characterize it, except that I think the situation offers the opportunity to encourage change. That is what we are saying, and that is what we think we have an opportunity to do. We are open to suggestions on how we can do it, both from the public and the private sides.

We can try and give you a written indication of some of the things going on, but I don't want to try to characterize it, saying Mr. Lyman says there is a lot of positive change, and you say give me evidence. I am not trying to characterize it that way.

Mr. WOLPE. I appreciate that, Mr. Lyman, but let me just indicate very candidly, the reason you are not prepared to characterize it is because there is nothing fundamental happening that you can point to.

Mr. LYMAN. No, I would not say that.

Mr. WOLPE. All right, but let me at least suggest that that is a suspicion that I shall continue to entertain for some time.

Beyond that, the concern that I have is that that is simply irresponsible. If, indeed, you have a policy out there that is an effort to achieve a certain goal, then at some point, I submit, it behooves those who are the advocates and the architects of the policy to be able to characterize the extent to which their goal is in the process of being achieved.

To say that you are not willing to characterize it is to say that you are effectively not willing to cast a judgment as to whether there is any progress toward the achievement of your goal.

Mr. LYMAN. No, that is not correct.

Mr. WOLPE. It seems to me that that is not intellectually a very honest way of proceeding.

Mr. LYMAN. Mr. Chairman, you did not ask me that. You didn't ask me to characterize the measurement of the success or the failure of our policy. You asked me to characterize the state of change within South Africa.

Mr. WOLPE. Over the past year.

Mr. LYMAN. Over the past year. What I tried to suggest is a very fluid and dynamic situation. I didn't want to put a single characterization on it because I don't think that is an honest representation of what is happening, nor am I prepared to say that because this administration has a certain policy, we can now measure X, Y, and Z in terms of internal policy at this point in time. Hopefully some day we can say that.

I certainly accept your premise. If one has a policy and a certain set of goals, one ought to be able to measure success or failure of that. I don't think we are at that point yet in this particular situation of internal change in South Africa.

Mr. WOLPE. Let me just indicate, if I may—

Mr. LYMAN. I just want to stress again that one is dealing with a very complex situation. You are talking about economic factors, social, political, a whole range of issues on which you can construct measurements, and that is why I find it hard to put a single characterization on it. There are lots of things going on. I will try in the written paper to outline them.

[The following questions and responses were subsequently submitted by Mr. Lyman:]

QUESTIONS AND RESPONSES SUBMITTED BY MR. LYMAN

Q. Could you enumerate the changes that have occurred in South Africa which represent an improvement of the situation with respect to apartheid.

A. I would be glad to cite some of the specific changes which have occurred or are occurring in South Africa -- not for the purpose of endorsing any specific item, but as a clear indication that progress is being made. What I want to underline here is that the process of change, which we see as a continuing evolution away from apartheid, is in fact underway. It is actual change, rather than manifestations of it, which the administration supports.

As I have already testified, formal changes in the constitutional structure providing for power sharing have not yet taken place. Nevertheless, for the first time the Government has created a multi-racial, consultative body called the President's Council (which includes "coloreds" and Asians, but not Africans). The task of this body is to make recommendations to the Government for legislative or other action concerning a new constitutional framework for South Africa. We fully recognize the limited nature of the representation on the President's Council-- the deliberate exclusion of Africans and the apparent failure of the Government to act on the Council's initial recommendations. A final determination on the President's Council may be possible after the submission of its recommendations. In the interim, it is important to note that the President's Council represents a partly inclusive multi-racial deliberative body at the national political level.

There have also been other developments which, although not essentially political, are particularly important for the future of South Africa's blacks. They indicate that South Africa is beginning to think in terms of one unitary economy encompassing all its people, rather than ten or eleven separate ones. We have seen the South African Government moving to:

-- Co-opt the private sector through the forging of an informal political, military and business elite as an ally in the reform effort.

-- Emphasize regional development based more on economic growth than on ideological consideration as in the past. The new strategy embodies both development corridors (deconcentration) and regional growth poles (decentralization).

-- Establish a workable labor conciliation mechanism.

-- Accept in practice, if not in principle, the permanence of some urban blacks through the creation of a 99-year household program and demonstrate more responsiveness to their economic needs and aspirations. In this regard, the South African Government recently authorized, for the first time, private real estate development in the urban black townships, thereby abandoning the Government's monopoly on township housing and eliminating a major obstacle to alleviating the chronic black housing shortage.

Although all developments in the implementation of the limited reform program outlined above have not been clearly positive, there are some indicators of forward movement. These indicators include the following:

-- As a result of black wage gains in manufacturing and mining, the black share of national income has risen appreciably since 1970. The ratio of white wages to African wages in manufacturing dropped from 5.8 to 1 in 1970 to 4.3 to 1 in 1979. In mining, it dropped from 19.8 to 1 to 6.6 to 1 over the same period. Some redistribution of wealth from whites to blacks as a group has probably taken place.

-- The South African Government in recent years has substantially increased public spending on blacks, both in the urban areas and in the homelands. Soweto is being supplied with electricity and more is being spent on black schools. Spending on black education increased from R13.2 million in 1952-53 to R369 million in 1981-82. The 1981-82 budget is 51 percent higher than the comparable budget for the preceding year. Still, the disparities remain enormous, with per capita expenditures for black students estimated at R113 against R1071 for whites. A Government-created commission recently endorsed both the principle of equality of educational opportunity for all racial groups and the creation of a single Ministry of Education.

-- Some petty apartheid has been eliminated, as well as certain restrictions on black business and housing. I should point out, however, that many of these changes in petty apartheid have been made by creating legal exceptions to apartheid laws, the basic structure of which remains intact.

-- Most significant with respect to the basic economic structure, black unions have won recognition and black apprentice training has been accelerated.

-- The Government has moved to deracialize sports by eliminating all Government laws and regulations in this area, permitting sports bodies and athletes to compete on the basis of personal choice.

In conclusion, I wish to reiterate that there are both positive and negative aspects to the present South African dynamic of change. Mr. Crockett mentioned the South African Government's homeland policy. I would just like to make clear that we continue our firm policy of non-recognition of these so-called "independent" homelands as a just or viable solution to South Africa's racial problems.

Mr. WOLPE. There is no member of this committee that is not cognizant of the complexity of the forces at work within South Africa.

I do want to say that when we went over to South Africa, a number of us had studied South Africa at some length for many, many years, in fact, I used to teach the subject in my own instance, and what we experienced inside that country really surprised all of us who were part of that particular congressional delegation.

A year ago, Helen Sussman, one of the Progressive Party leaders, was in this country and met with a number of members of this subcommittee, and at that point was urging upon all of us who were concerned about the issue of change inside South Africa, not to dismiss lightly the reform proposals that Prime Minister Botha had enunciated as newly characterizing the direction of his administration.

She indicated that it was her belief then, and others, that there was something that perhaps was fundamental in process of beginning to happen, and that rather than condemn those kinds of changes as cosmetic, or a token, that it was important that we encourage and support the positive indications. I think all of us were very receptive to that suggestion.

We must report, on the basis of our discussions with Mrs. Sussman now, and all the others white and black who have been most directly impacted by what South Africa is, and who have been most deeply involved in the process of change, that this time, a year later, they were reporting to us a sense, as one of the leaders said, all is lost. There has been a total retreat from the commitments that were held out by Prime Minister Botha a couple of years ago, and the reasons that were advanced were twofold.

The South African election in which 200,000 Africans voted against the Prime Minister from the right; and, second, the American election and the new policy which is being perceived in many

Could you give us a rough estimate at this point as to the proportion of American companies that have signed the Sullivan Code or principles that have failed to favorably comply with their implementation?

Reverend SULLIVAN. Of the 138 companies who have signed the principles thus far, 85 of them, according to the fourth report, would receive a passing mark, and the remaining 50 or so would receive failing marks. There are, according to our records and utilizing the list we have secured from the U.S. Government, some 150 American companies who thus far have not yet signed the principles.

Mr. WOLPE. When we were in South Africa we received abundant testimony from individuals in black and coloured communities in particular, affirming the importance of the Sullivan Code and the efforts that were underway in terms of implementation of the Sullivan Code. There were, however, two broader concerns, two critical concerns, that were raised.

One was related to the absence of any independent monitoring mechanism. There was a real concern that the implementation was a far cry from the intent which, I take it, is part of what your testimony is today and why you reached the conclusion that a purely voluntary action is insufficient.

The second criticism or concern that was voiced was that the Sullivan Code in its initial formulation related to essentially matters of the workplace; they did not go to the core issue within apartheid, which is, namely, the issue of the sharing of power and the political arrangement that comprises that system. I would be interested in your reaction to that critique.

Second, in your assessment, based upon your conversations with corporate leaders over the past several years as to whether the corporations doing business within South Africa have at any point taken initiatives to challenge the political dimension of apartheid.

Reverend SULLIVAN. With respect to your first question, I am convinced that the necessity for the monitoring is essential, whether it be a voluntary monitoring process that would apply to all the companies on an annual report monitoring basis or however it is structured, but that it is a necessity in order for us to get the full impact, "Someone is coming; we had better straighten out; and someone else is looking; we had better see what we are doing wrong." It is the push that is just a part of the way things and institutions and people are built. You do better when somebody is looking at you.

With respect to your second question, when the principles were developed they were developed as an evolving process. The first aim was to get a foot in the door, remembering that we started first with 12 companies and understanding that of those 12, 6 were being held on with a thread, but to get the foot in the door and then to amplify and to strengthen from that; and that is just what has happened.

So, if you follow the last 4 years' evolvement of the principles, you will find them strengthening, point by point by point and they are still strengthening point by point by point to the extent whereas 4 years ago cooperation with unions was implied but not com-

quarters, rightly or wrongly, as the entering of a new accommodation with the regime.

I think those are perceptions that are part of the political reality, and a part of the diplomatic reality that we all need to address.

In raising questions at this point, it is not by way of wanting to prove the initiatives that are in process as inherently flawed, but it is a way of saying that, I think we need to be cautious that we are not sending out some very dangerous signals.

I would hope that the legislation that is before the Congress right now, before this committee, will be viewed not only in the context of the process of change itself, but in the context of the kinds of messages and signals that our country is conveying to parties within South Africa, and the rest of the continent.

I look forward to receiving of the developments in South Africa, and I hope that in the course of that assessment you might spell out with some specificity your criteria for fundamental change, and what you are really looking toward as the ultimate goal within South Africa, and your indication, perhaps, of an appropriate time-frame within which we can expect to see some things happen.

I think it would be very useful to give us a better sense of what, indeed, the policy is, and sets benchmarks for the kind of evaluation that I think we all need to undertake.

I want to thank all three of you for your testimony this afternoon, and the time that you spent with the committee.

Mr. LYMAN. Thank you, Mr. Chairman.

Mr. WOLFE. Thank you very much.

The subcommittees will now stand adjourned.

[Whereupon, at 4:15 p.m., the subcommittees adjourned, subject to call of the Chair.]

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

THURSDAY, OCTOBER 22, 1981

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEES ON INTERNATIONAL ECONOMIC POLICY AND TRADE AND ON AFRICA,

Washington, D.C.

The subcommittees met at 2:15 p.m., in room 2255, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. The joint committee hearing will come to order at this point.

This afternoon the Subcommittees on Africa and International Economic Policy and Trade are holding their third hearing on two bills—H.R. 3008 and H.R. 3597—on American business activity in South Africa.

Introduced by Congressman Steve Solarz, H.R. 3008 requires all American companies operating in South Africa to adopt and implement a nondiscriminatory fair employment code for all its workers. It also prohibits the import into this country of South African kruggerand and bars American lending institutions from making loans to the South African Government or its state-run corporations.

H.R. 3597, sponsored by Congressman Bill Gray, bans all new investments in South Africa by American companies.

In the two previous hearings, the subcommittees have heard from the principal proponents of the legislation as well as from senior representatives from the Departments of State, Commerce, and Treasury.

Because of widespread interest in American business involvement in South Africa by American church groups, State legislators, labor leaders, university officials, and civil rights groups, today's hearing will be devoted to hearing testimony from representatives of some of these concerned organizations.

Our first witness today will be Congressman Carl Pursell, a colleague from my home State of Michigan and a member of the House Appropriations Committee.

Our second witness will be Rev. William Howard, president of the National Council of Churches, an organization which has been deeply interested in South Africa for many years.

Our third witness will be Mr. William Gould, professor at law at Stanford University and America's leading expert on South African labor questions.

Our fourth witness will be Mr. Randall Robinson, executive director of TransAfrica. Mr. Robinson is an expert on Africa and testified before this committee on many occasions in the past.

And our final witness will be Dr. Broadus Butler, director of international affairs for the NAACP, America's largest civil rights movement.

Before beginning this afternoon's hearing, I would like to comment briefly upon the committee's plans in terms of future hearings and action on this legislation.

We had scheduled and still have tentatively scheduled a hearing to take testimony from representatives of America's business community, particularly those corporations that are doing business in South Africa.

Up to this point, we have extended something like 10 invitations to American corporations, only one of these corporations has responded affirmatively to our invitation to testify before this committee and that is General Motors.

We have yet to receive any positive responses from all the other corporations.

I am frankly both puzzled and bothered by that American corporate response to the invitations of this committee. I would have thought it would have been in the interest of the business community to share this news with respect to developments inside South Africa, as well as with respect to the legislation that is before this committee.

We wanted very much to provide an opportunity for the business perspective on this set of very difficult issues to relate before the committee and before the public.

We have two choices before the committee at this point. One of them will be to force the testimony through possible use of the subpoena power of the committee. The other is to simply move to markup of the legislation without the benefit of the corporate perspective on this legislation having been formally presented to the committee.

I don't know what the committee will decide to do, and that decision will be before us within the days ahead, but I, again, would like to restate our hope and desire that the American businesses who are deeply involved in South Africa and who have a stake in the legislation that is before this committee will see fit to cooperate with the committee and to voluntarily choose to testify before we move to the markup on this legislation.

At this point, I would like to turn now to my cochairman of these hearings, Congressman Jack Bingham, who is on the Committee for Economic Policy.

Mr. BINGHAM. Thank you very much. I would just like to associate myself with the remarks of Chairman Wolpe. I find it very disappointing and indeed difficult to understand that the American companies concerned should be so bashful about coming forward and giving us the benefit of their experience and their views.

I don't know whether it is because they have something to hide or whether they don't want it known that they are doing business in South Africa or what the reasons might be.

But whatever the reasons, it doesn't seem to me that it is in their interest or in the public interest for them to decline to give

us the benefit of their thinking and their experience and I hope very much that those companies that have been invited will reconsider and will arrange to appear before us.

Mr. WOLPE. Thank you very much.

With that, I would like to turn to the testimony of our first witness, Congressman Carl Pursell, who has been deeply involved in South African issues for many years and has been particularly active in the consideration of the Sullivan code and the effort to try to mobilize American business communities for the effective implementation of the Sullivan code.

It is a pleasure to have you before us this afternoon.

Let me just also indicate that all the written statements that are presented to the committee will, of course, be embodied within the committee record in their entirety. We would hope that all the various witnesses, in order to facilitate the discussion and maximum time for questions and answers, might summarize their written testimony.

STATEMENT OF HON. CARL D. PURSELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. PURSELL. Thank you, Mr. Chairman, I first want to congratulate you and Mr. Bingham, who I know is sponsoring specific legislation, and Mr. Gray, with respect to current legislation now before your subcommittee.

I would like to preface my remarks by indicating that my outstanding staff member whom I am very proud of, sitting next to me on my right, Mr. John Brooks, graduate of Notre Dame and University of Michigan Law School, helped collaborate with me in drafting remarks for today's testimony.

I want to say I had an opportunity to spend some time in Africa over a period of years. A very close friend, Dr. Leon Sullivan, who presented earlier testimony to the committee, I have great, deep respect for his international leadership and I appreciate the committee taking time to spend some time with him as an outstanding leader, not just in the Sullivan codes itself, but his enormous contribution.

I also had an opportunity to speak at his church in Philadelphia and that was an exciting experience on my behalf.

I am just going to read excerpts from my remarks because I know you have a long schedule today, as all of us do.

The American citizen who has given a casual interest in international relations is quite aware of the racial problems in South Africa. With a little more study he or she would discover a continuing pervasive pattern of overt discrimination based on skin color with no immediate prospect for change.

Ironically, just as the problem becomes more evident, so do the commonsensical answers to that problem. In other words, the solutions to South Africa's dilemma which is also the world's dilemma, are well known, as is the knowledge that a massive conflagration will occur if those solutions remain unheeded. What stays a mystery is how to implement those solutions without causing a national, perhaps international trauma. That puzzle is why we are here today.

Several considerations, important in arriving at a national consensus with respect to South Africa, compete for the top rung on the ladder. What is it finally to be; human rights, the economic well-being of all South Africans, U.S. reliance on South Africa's strategic materials and geography, or possible Soviet influence in Southern Africa?

None of them can be clearly isolated from the other. The dignity of the human spirit, the promise of an adequate living standard, stemming the tide of a totalitarian regime that has made open avowals of world domination, are all worthy of highest attention.

Apartheid is not a crystal pattern, but a patchwork quilt system of shifting Government policies of discrimination and what some assert to be a legitimate differentiation. The definitions of those two terms are not obvious, worse, they are not firm.

In 1979, Prime Minister Botha announced a 12-point total national strategy. One of those goals pledged an end to "unnecessary discriminatory measures." Yet, speaking before the Parliament, Prime Minister Botha defined "necessary discrimination" as whatever is necessary to preserve "good neighborliness."

Further reading of his remark seems to indicate that this phrase translates to preservation of the various racial communities within South Africa. Of course, that understanding means no more than preservation of the status quo.

Many of those forms of discrimination call forth reminders of our own Nation's past practices. However, South Africa's policy is a national one, still on the books. The legal foundation is the Preservation of Separate Amenities Act of 1953.

The statute, enacted after the South African courts ruled against the separate but equal doctrine, allows anyone in control of public premises to reserve separate and unequal facilities along racial lines and excludes the courts from consideration of such acts.

Discrimination is firmly entrenched, from buses to trains, to parks and beaches, to cafes and libraries. Exceptions are few and reserved only for cases of immediate necessity or certain services provided and maintained directly by the Government entities.

Establishments which desire to integrate are handled on a case-by-case basis. Nonetheless, profitmaking concerns in white areas licensed to serve alcoholic beverages are usually forbidden from admitting blacks.

Other forms of discrimination are without significant parallel. All darker peoples find their residences determined by law, but blacks particularly so. They are required to call one of the three reservations carved out of 13 percent of South Africa their homeland.

However, many migrants are employed in urban centers out of the reservations, where they are crucial to maintaining both the local and national economy.

By law, the vast majority of black urban workers exist in single-sex facilities away from their families for the length of their labor contract.

These migrants are required to carry passbooks which must be produced on demand by police. In addition to the permit to work, the passbook contains information of a personal nature such as em-

ployment and tax records. In 1978, 273,000 blacks were arrested for passbook violations.

Penalties for challenging preservation of neighborliness are no less serious in the white community. Civil rights for all citizens have diminished since the early 1960's, with the latest blow struck in 1978, with the preventive detention provision, which is part of the Internal Security Act.

It authorizes the Minister of Justice to detain persons he suspects as dangerous to state security or the public order for as long as he desires. Unfortunately, the terms "state security" and "public order" also carry loose meanings.

I could go on with additional examples of what I saw in Africa. I could continue at length with a myriad of other enforced instances of apartheid injustice covering every aspect of South African life; work, school, and government. My point would become even more apparent: That only world opinion, the desire for future economic growth, and the fear of overwhelming international disruption work to counteract South Africa's extreme racial policies.

So, while I, as everyone else, must grapple with questions of Western and South African political, economic, and security considerations, I fully realize that a policy based on a deliberate strategy to maintain pressure on South Africa to work for resolvment of racial problems must remain in force.

There is little to be gained, no improvements to be made by looking away. Strict and official neutrality while maintenance of economic cooperation strictly on South African terms is and will continue to be taken as a sign of condonation of the status quo.

We must not be deluded into thinking that it is a matter of choosing between black and white. The problem of apartheid affects all citizens of South Africa. Nor must we assume a policy necessarily meant to be appealing to other nations.

The crux of the issue is not how black Africa feels, but how we respond to the way of life that we, as Americans, find intolerable. An affirmative policy adopted must not be composed of vigorous works without the proper amount of conviction behind them. Neither must it be so harsh as to allow for no improvement in the quality for everyone.

Recognizing the complexity of the issue, we must employ our influence in every avenue we have; government, business, and individually. I am confident that our stance toward South Africa will not disrupt the stability of its Government, but nonetheless, will remain in line with the unwavering goal of our Nation: To expand the opportunities for genuine self-rule by all peoples no matter what their racial and ethnic origins.

Thank you, Mr. Chairman. I would be happy to respond to any questions which you might have.

Mr. WOLPE. Thank you very much.

As you know, we have before the committee the two sets of measures which represent an effort to try to put some teeth behind our rhetorical statements in terms of opposition to apartheid.

I would be interested in your response to that such as the investment which Reverend Sullivan has now embraced and also the legislation introduced by Congressman Solarz.

Mr. PURSELL. I think that this Congress ought to address those issues forthrightly and in times of economic budget debates around here and Congress. I serve on the Appropriations Committee and I find it very appropriate that you take some leadership as a committee in looking at this legislation.

I specifically have not looked at all of the legislation in the two bills. I like the basic principles of both and would consider support of both particular bills when I finish and do my homework appropriately.

So, I join with you in taking that leadership and the eventual markup of those bills, I am not sure of your timetable but I would be happy to participate not only here but on the floor and any leadership that you provide toward that end.

I do feel very strongly that I am concerned that the companies are not responding to your request, Mr. Chairman. I can speak on behalf of those companies that I did meet with in Africa and I would say very categorically here that the Ford Motor Co. seemed to me, the vice president and people that I met with, are providing some outstanding leadership in the way of additional housing, vocational technical programs, and equal pay in trying to eliminate some discriminatory practices on the assembly line in their plant.

I can't speak for the other companies. I don't think they have a very good track record in that respect. I have been watching the Sullivan reports that have been monitored as to the progress and the evaluation reports that are coming forth on a continued basis.

I don't think the progress has been very strong in terms of leadership. I am disappointed about that leadership. Obviously, I had met with the black trade union leaders. I met with business. I met with community leaders who privately feel that America doesn't take a strong posture on this to give them some support.

If you look at Zimbabwe and what Mugabe has done in an obvious transition from white to black power, I think if the United States speaks out aggressively in this area, I think we could show the American people that an orderly transition in Zimbabwe was a great, positive development for majority rule and the world with respect to South Africa and I think that is a good example.

Mr. Mugabe indicated to me that if the United States would speak out more clearly on our stated policy of being opposed to apartheid and offering some creative legislative proposals it would be better for us to do that than even Mugabe himself, because of his trading partnership with South Africa.

So he asked our consideration and I told him we would try to do that in the congressional ranks.

Mr. WOLPE. Thank you very much.

Congressman Shamansky.

Mr. SHAMANSKY. I have no questions.

Mr. WOLPE. Congressman Erdahl?

Mr. ERDAHL. Thank you very much, Mr. Chairman.

I want to thank my good friend for being here today. I am sorry I wasn't here for the first part of your statement, but your response to Mr. Wolpe's concern gives good indication of the leadership that you represent here and I thank you very much for being with us.

Mr. PURSELL. I don't know how many members have been to Africa and I suggest that it is a beautiful country with beautiful

people and I have traveled to about 12 countries there, Tanzania, Ethiopia, Morocco, and South Africa.

We have some great people there and great resources. I am really concerned about their military and strategic policies having a higher priority than their human policies in terms of foreign aid and helping develop educational and road programs and agricultural programs that you are very close to, Mr. Erdahl.

So I appreciate anybody having an opportunity to visit Africa to see what a beautiful country and what beautiful people there are.

It is our purpose to have some forward-looking policies in a military and in an economic sense, but that should not be our priority.

Mr. WOLPE. Congressman Solarz?

Mr. SOLARZ. I always suspected that our good friend from Michigan was a shrewd practitioner of the legislative process, someone, now that he has testified in favor of my bill, I can see that my original perceptions were accurate and I simply want to thank you for weighing in in support of this legislation.

I am sure it will be most helpful to the other members of the committee and our colleagues in the Congress as a whole.

Mr. PURSELL. I appreciate your previous leadership, too, as a past chairman and member of the committee.

Mrs. FENWICK. I have a question if I may.

Did you hear anything about what Rev. Leon Sullivan has reported to us which is, in my opinion, remarkable efforts to comply with the Sullivan code on behalf of Barlow Rand, which employed, of course, five times as many people as American companies do. Did you hear anything about that while you were there?

Mr. PURSELL. No, I haven't, Mrs. Fenwick. I haven't seen the current testimony. I spent a lot of time with Leon in Philadelphia. I am watching and monitoring those reports, but I haven't seen his latest testimony and I would be glad to take a look at this current statements with respect to South Africa.

Mrs. FENWICK. Because that would be extremely interesting. What it suggests, of course, is that the African laws, outrageous though they may be to permit African companies which are based in South Africa to comply with the Sullivan code without any difficulty despite the equal pay for work and so on.

I wonder if you heard anything about it?

Mr. PURSELL. No, his enforcement procedures have been principally voluntary on the part of the American companies and, frankly, there is a great disparity about certain corporations who are doing quite well socially and politically and economically to help within their corporate circles and other companies are not doing anything.

So, I think it is a very untested area that needs a lot of attention by the congressional committee to monitor more carefully and find other means as well as the Sullivan to address South Africa as a whole.

Mrs. FENWICK. Are you not satisfied with the Sullivan code?

Mr. PURSELL. I am excited about the principles and the basic intent. The followup and monitoring and encouraging the corporate leaders to take a more aggressive stand there needs to be encouraged and the legislation that you are looking at may attempt to do some of that, so I think in principle, you are on the right track.

Mrs. FENWICK. Thank you.

Mr. WOLPE. I want to thank you. I think you are aware, as are all the people here, that there are a number of Members of Congress that would hope the South African issue would just go away. It is an issue that many people don't want to deal with and your willingness to initiate your own advocacy and to lead in this issue, I think is terribly important, I thank you.

Mr. PURSELL. Thank you very much, Mr. Chairman.

[Mr. Pursell's prepared statement follows:]

PREPARED STATEMENT OF HON. CARL D. PURSELL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MICHIGAN

MR. CHAIRMAN:

THE AMERICAN CITIZEN WHO HAS EVEN A CASUAL INTEREST IN INTERNATIONAL RELATIONS IS QUITE AWARE OF THE RACIAL ANOMALIES IN SOUTH AFRICA. WITH A LITTLE MORE STUDY, HE OR SHE WOULD DISCOVER A CONTINUING AND PERVASIVE PATTERN OF OVERT DISCRIMINATION BASED ON SKIN COLOR WITH NO IMMEDIATE PROSPECTS FOR CHANGE. IRONICALLY, JUST AS THE PROBLEM BECOMES MORE EVIDENT, SO DO THE COMMONSENSICAL ANSWERS TO THAT PROBLEM. IN OTHER WORDS, THE SOLUTIONS TO SOUTH AFRICA'S DILEMMA WHICH IS ALSO THE WORLD'S DILEMMA, ARE WELL KNOWN, AS IS THE KNOWLEDGE THAT A MASSIVE CONFLAGRATION WILL OCCUR IF THOSE SOLUTIONS REMAIN UNHEEDED. WHAT STAYS A MYSTERY IS HOW TO IMPLEMENT THOSE SOLUTIONS WITHOUT CAUSING A NATIONAL, PERHAPS INTERNATIONAL TRAUMA. THAT PUZZLE IS WHY WE ARE HERE TODAY.

SEVERAL CONSIDERATIONS, IMPORTANT IN ARRIVING AT A NATIONAL CONSENSUS WITH RESPECT TO SOUTH AFRICA, COMPETE FOR THE TOP RUNG ON THE LADDER. WHICH IT IS FINALLY TO BE ... HUMAN RIGHTS, THE ECONOMIC WELL BEING OF ALL SOUTH AFRICANS, U.S. RELIANCE ON SOUTH AFRICA'S STRATEGIC MATERIALS AND GEOGRAPHY, OR POSSIBLE SOVIET INFLUENCE IN SOUTHERN AFRICA? NONE OF THEM CAN BE CLEARLY ISOLATED FROM THE OTHER. THE DIGNITY OF THE HUMAN SPIRIT, THE PROMISE OF AN ADEQUATE LIVING STANDARD, STEMMING THE TIDE OF A TOTALITARIAN REGIEME THAT HAS MADE OPEN AVOWALS OF THE WORLD DOMINATION, ARE ALL WORTHY OF HIGHEST ATTENTION.

plied, now it is an implicit part of the necessity of concurrence with the principles.

The evolving nature of the principles is fundamental to an understanding not only of their origin but also their goals within their purpose. Realizing that fair employment practices I mentioned here are not sufficient to change the system, that other forces are necessary, led me then to what I call the Sullivan position regarding banks and to follow through on that position, that it should remain so until separate development itself comes to an end.

I think that as the principles evolve more and more companies will come to realize that that is also a fundamental lead in whatever pressures the companies are expected to apply.

The third is that now, for the first time within the last year or two, companies are beginning to apply what I call lobbying pressure. Not many; only a few. I might even call a few names, but I won't because I hope to get others to come along. But ultimately I am hoping that all the companies, with whatever lobbying resources or support they have, will begin to say to the Government, "This thing must come to an end."

The greatest strength that we can have in South Africa is the use of economic power from the private sector. South Africa is South Africa, incorporated. It is as much a business almost as it is a government.

So, I have proceeded with the assumption and belief that if somehow it is possible to knock down industrial discrimination and apartheid, then it will have an effect as to what will happen to political apartheid. That is an assumption that will have to be tested but it is something that we are testing now. That is why I said it is not going to be enough to get 300 American companies even. It has to be a worldwide effort. I am saying if the world moves ahead on it and the American Government and companies take the initiative, I think this kind of concept might follow.

Mr. WOLPE. Thank you.

I will do my best today to adhere to the 5-minute rule. It is easier since Congressman Solarz is a witness rather than a member of the panel. So let me turn to Mrs. Fenwick.

Mrs. FENWICK. Thank you, Mr. Chairman.

Dr. Sullivan, you will remember last year when you were here, you seemed to be so hopeful, as I remember. I wish you could clarify this for us: The 138 companies that signed up involved the majority of the employees, I believe, and some of the 150 left out were two-man offices of correspondents of newspapers.

I wonder if you could clarify that situation for us.

Second, the proportion of the workmen employed, the numbers of workmen employed in the 138 that have signed, as compared to the 150 that are out. You remember telling us about a South African company that employed something like 750,000 people, how did that come out?

Reverend SULLIVAN. Of the companies that have signed, some 80 percent of the South African work force is related to those signatory companies; some 20, 23, 24, 25 percent would fall in the remainder of the other companies, which speaks to your interest of just several persons in a company.

I MAKE NO SPECIAL CLAIMS TO ORDERING THAT HIERARCHY. INSTEAD, BECAUSE OF MY VISITS TO THAT PORTION OF THE WORLD, AND MANY DISCUSSIONS WITH DR. LEON SULLIVAN, CREATOR OF THE SULLIVAN PRINCIPLES, MY PERSPECTIVE ON APARTHEID IS FROM THAT OF A SOUTH AFRICAN, WHETHER WHITE OR BLACK, WHO CARRIES THE BURDEN OF RACISM NOT FOR A FEW WEEKS A YEAR ... OR A FEW HOURS A DAY, ... BUT MINUTE BY MINUTE. I HAVE A SPECIAL CONCERN FOR THE BLACK WHO MUST DEAL WITH THE INDIGNITIES AND FRUSTRATION OF APATHEID. HE MUST WATCH HIS CHILD RAISED IN AN AURA OF DEFEAT AND ANGER. BUT NO LESS AM I CONCERNED WITH THE SOUTH AFRICAN BLANKE, THE WHITE WHO LIVES IN DREAD OF A THREATENED BLACK ERUPTION, AND THE ARBITRARY DEPRIVATION OF HIS FREEDOM BY HIS GOVERNMENT. HE MUST FRET ABOUT HIS CHILD BEING RAISED IN A MILIEU OF DISTRUST AND FEAR.

APRATHEID IS NOT A CRYSTAL PATTERN, BUT A PATCHWORK QUILT SYSTEM OF SHIFTING GOVERNMENT POLICIES OF DISCRIMINATION AND WHAT SOME ASSERT TO BE A LEGITIMATE "DIFFERENTIATION." THE DEFINITIONS OF THOSE TWO TERMS ARE NOT OBVIOUS, WORSE THEY ARE NOT FIRM. IN 1979, PRIME MINISTER BOTHA ANNOUNCED A TWELVE POINT TOTAL NATIONAL STRATEGY. ONE OF THOSE GOALS PLEDGED AN END TO "UNNECESSARY DISCRIMINATORY MEASURES," YET SPEAKING BEFORE THE PARLIMENT, PRIME MINISTER BOTHA DEFINED "NECESSARY DISCRIMINATION" AS WHATEVER IS NECESSARY TO PRESERVE 'GOOD NEIGHBORLINESS'." FURTHER READING OF HIS REMARK SEEMS TO INDICATE THAT THIS PHRASE TRANSLATES TO PRESERVATION OF THE VARIOUS RACIAL COMMUNITIES

WITHIN SOUTH AFRICA, OF COURSE, THAT UNDERSTANDING MEANS NO MORE THAN PRESERVATION OF THE STATUS QUO.

MANY OF THOSE FORMS OF DISCRIMINATION CALL FORTH REMINDERS OF OUR OWN NATION'S PAST PRACTICES. HOWEVER, SOUTH AFRICA'S POLICY IS A NATIONAL ONE, STILL ON THE BOOKS. THE LEGAL FOUNDATION IS THE PRESERVATION OF SEPARATE AMENITIES ACT OF 1953. THE STATUTE, ENACTED AFTER THE SOUTH AFRICAN COURTS RULED AGAINST THE SEPARATE BUT EQUAL DOCTRINE, ALLOWS ANYONE IN CONTROL OF PUBLIC PREMISES TO RESERVE SEPARATE AND UNEQUAL FACILITIES ALONG RACIAL LINES AND EXCLUDES THE COURTS FROM CONSIDERATION OF SUCH ACTS. DISCRIMINATION IS FIRMLY ENTRENCHED, FROM BUSES AND TRAINS, TO PARKS AND BEACHES, TO CAFES AND LIBRARIES. EXCEPTIONS ARE FEW AND RESERVED ONLY FOR CASES OF IMMEDIATE NECESSITY OR CERTAIN SERVICES PROVIDED AND MAINTAINED DIRECTLY BY THE GOVERNMENT ENTITIES. ESTABLISHMENTS WHICH DESIRE TO INTEGRATE ARE HANDLED ON A CASE BY CASE BASIS. NONETHELESS, PROFIT MAKING CONCERNS IN WHITE AREAS LICENSED TO SERVE ALCOHOLIC BEVERAGES ARE USUALLY FORBIDDEN FROM ADMITTING BLACKS.

OTHER FORMS OF DISCRIMINATION ARE WITHOUT SIGNIFICANT PARALLEL. ALL DARKER PEOPLES FIND THEIR RESIDENCES DETERMINED BY LAW, BUT BLACKS PARTICULARLY SO. THEY ARE REQUIRED TO CALL ONE OF THE THREE RESERVATIONS CARVED OUT OF 13% OF SOUTH AFRICA THEIR HOMELAND. HOWEVER, MANY MIGRANTS ARE EMPLOYED IN URBAN CENTERS OUT OF THE RESERVATIONS, WHERE THEY ARE CRUCIAL TO MAINTAINING BOTH THE LOCAL AND NATIONAL ECONOMY. BY LAW, THE

VAST MAJORITY OF BLACK URBAN WORKERS EXIST IN SINGLE-SEX FACILITIES AWAY FROM THEIR FAMILIES FOR THE LENGTH OF THEIR LABOR CONTRACT.

THESE MIGRANTS ARE REQUIRED TO CARRY PASSBOOKS WHICH MUST BE PRODUCED ON DEMAND BY POLICE. IN ADDITION TO THE PERMIT TO WORK, THE PASSBOOK CONTAINS INFORMATION OF A PERSONAL NATURE SUCH AS EMPLOYMENT AND TAX RECORDS. IN 1978, 273,000 BLACKS WERE ARRESTED FOR PASSBOOK VIOLATIONS.

PENALTIES FOR CHALLENGING "PRESERVATION OF NEIGHBORLINESS" ARE NO LESS SERIOUS IN THE WHITE COMMUNITY. CIVIL RIGHTS FOR ALL CITIZENS HAVE DIMINISHED SINCE THE EARLY 1960'S, WITH THE LATEST BLOW STRUCK IN 1978, WITH THE PREVENTIVE DETENTION PROVISION WHICH IS PART OF THE INTERNAL SECURITY ACT. IT AUTHORIZES THE MINISTER OF JUSTICE TO DETAIN PERSONS HE SUSPECTS AS DANGERS TO STATE SECURITY OR THE PUBLIC ORDER FOR AS LONG AS HE DESIRES. UNFORTUNATELY, THE TERMS "STATE SECURITY" AND "PUBLIC ORDER" ALSO CARRY LOOSE MEANINGS.

ALSO AUTHORIZED BY THE INTERNAL SECURITY ACT, IS "BANNING" (OR "SHUNNING"). IN ITS MORE EXTREME FORM, IT CAN DESTROY ALL SEMBLANCE OF A NORMAL EXISTENCE. THE PERSON "BANNED" MAY BE CONFINED TO A PARTICULAR MAGISTERIAL DISTRICT; BARRED FROM EDUCATIONAL INSTITUTIONS AND THE COURTS; AND MAY NOT BE ALLOWED TO ATTEND POLITICAL OR PURELY SOCIAL GATHERINGS OF THE MOST TRIVIAL SORT. IT CAN EVEN ASSUME THE FORM OF HOUSE ARREST CONFINING ONE

TO HIS OR HER RESIDENCE FOR AS LONG AS TWELVE HOURS PER DAY DURING THE WEEK AND 40 HOURS ON THE WEEKEND. YET THERE IS NO OPPORTUNITY TO LEGALLY CHALLENGE THE ORDER.

MR. CHAIRMAN, I COULD CONTINUE AT LENGTH WITH A MYRIAD OF OTHER ENFORCED INSTANCES OF APARTHEID INJUSTICE COVERING EVERY ASPECT OF SOUTH AFRICAN LIFE ... WORK, SCHOOL, AND GOVERNMENT. MY POINT WOULD BECOME EVEN MORE APPARENT: THAT ONLY WORLD OPINION, THE DESIRE FOR FUTURE ECONOMIC GROWTH, AND THE FEAR OF OVERWHELMING INTERNATIONAL DISRUPTION WORK TO COUNTERACT SOUTH AFRICA'S EXTREME RACIAL POLICIES.

SO, WHILE I, AS EVERYONE ELSE, MUST GRAPPLE WITH QUESTIONS OF WESTERN AND SOUTH AFRICAN POLITICAL, ECONOMIC, AND SECURITY CONSIDERATIONS, I FULLY REALIZE THAT A POLICY BASED ON A DELIBERATE STRATEGY TO MAINTAIN PRESSURE ON SOUTH AFRICA TO WORK FOR RESOLUTION OF RACIAL PROBLEMS MUST REMAIN IN FORCE. THERE IS LITTLE TO BE GAINED, NO IMPROVEMENTS TO BE MADE BY LOOKING AWAY. STRICT AND OFFICIAL NEUTRALITY WHILE MAINTENANCE OF ECONOMIC COOPERATION STRICTLY ON SOUTH AFRICAN TERMS IS AND WILL CONTINUE TO BE TAKEN AS A SIGN OF CONDONATION OF THE STATUS QUO.

WE MUST NOT BE DELUDED INTO THINKING THAT IT IS A MATTER OF CHOOSING BETWEEN BLACK AND WHITE. THE PROBLEM OF APARTHEID AFFECTS ALL CITIZENS OF SOUTH AFRICA, NOR MUST WE ASSUME A POLICY NECESSARILY MEANT TO BE APPEALING TO OTHER NATIONS. THE CRUX OF THE ISSUE IS NOT HOW BLACK AFRICA FEELS, BUT HOW WE RESPOND TO THE WAY OF LIFE

THAT WE, AS AMERICANS, FIND INTOLERABLE. AN AFFIRMATIVE POLICY ADOPTED MUST NOT BE COMPOSED OF VIGOROUS WORKS WITHOUT THE PROPER AMOUNT OF CONVICTION BEHIND THEM. NEITHER MUST IT BE SO HARSH AS TO ALLOW FOR NO IMPROVEMENT IN THE QUALITY FOR EVERYONE.

RECOGNIZING THE COMPLEXITY OF THE ISSUE, WE MUST EMPLOY OUR INFLUENCE IN EVERY AVENUE WE HAVE ... GOVERNMENT, BUSINESS, AND INDIVIDUALLY. I AM CONFIDENT THAT OUR STANCE TOWARD SOUTH AFRICA WILL NOT DISRUPT THE STABILITY OF ITS GOVERNMENT, BUT NONETHELESS, WILL REMAIN IN LINE WITH THE UNWAVERING GOAL OF OUR NATION: TO EXPAND THE OPPORTUNITIES FOR GENUINE SELF RULE BY ALL PEOPLES NO MATTER WHAT THEIR RACIAL AND ETHNIC ORIGINS.

RESPECTFULLY SUBMITTED,

CONGRESSMAN CARL D. PURSELL

10/22/81

CDP:JBB:DW

Mr. WOLPE. I would like to invite now the panel of witnesses to perhaps move forward and all take seats at the table.

I would like to invite as our second witness this afternoon Rev. William Howard, president of the National Council of Churches. Again, I would just repeat in order to allow maximum time for discussion, I would hope that all the panelists might be able to summarize their testimony rather than to read it in full.

The full text, however, will be incorporated in the committee record.

Mr. Howard.

STATEMENT OF REV. WILLIAM HOWARD, PRESIDENT, NATIONAL COUNCIL OF CHURCHES

Reverend HOWARD. Thank you, Mr. Chairman, let me ask if it is possible that these documents I brought with me be added. I would be happy to give you the titles of those.

Mr. WOLPE. Would you please?

Reverend HOWARD. First, I have a document here which summarizes the positions of some churches on the issue of bank loans in South Africa.

And I have a paper prepared by a member of our staff on the role of foreign banks in South Africa which was presented to the International Conference on Sanctions in Paris earlier this year under the auspices of the United Nations.

And finally, a paper from one of our publications regarding the marketing of the Krugerrand.

Mr. WOLPE. Without objection, those documents will be incorporated with the committee record.¹

Reverend HOWARD. Thank you.

My name, of course, is M. William Howard, Jr., president of the National Council of Churches of Christ in the United States of America. The National Council of Churches is a cooperative agency of 32 Protestant and Orthodox communions in the United States.

The council is very much concerned about the situation in Southern Africa and has repeatedly issued policy statements and resolutions regarding the overall regional situation and particular concerns such as the role of U.S. companies and investments in South Africa.

It is against this background that I appear before these subcommittees of Congress today to testify on the proposed legislation under consideration.

Having critically commented on the present policy stance of the U.S. Government toward South Africa, I want to say that I consider the two bills before the committee definite steps in the right direction.

This is the kind of message we should be sending South Africa. I do believe that the emphasis on no new investment and no new bank loans is a very appropriate signal to send to the apartheid Government of South Africa.

The involvement of U.S. churches on these issues has been considerable. Over the past 15 years, Roman Catholic orders and Prot-

¹See app. 2, p. 266.

estant denominations have carefully examined the role of U.S. banks and corporations in South Africa and developed far-reaching policy statements.

As a logical result of these policy mandates, dozens of church agencies have worked cooperatively through the NCC's Interfaith Center on Corporate Responsibility to press banks to end lending to South Africa and press corporations in South Africa to:

First, disclose relevant information; second, commit themselves to a policy of no expansion; third, end sales to the South African Government of strategic equipment, such as computers; fourth, end sales to the South African police and military of products such as oil and trucks which are still being sold despite a U.S. Government embargo; and finally, terminate operations in South Africa and withdraw from the country.

We are not advocating that these pressures are exerted in the belief that they will lead to a magical solution, rather they should be applied to complement the pressures which are being applied from other quarters.

This is not a policy of pressures which are being applied. This is not a policy of pressures of the United States being a kingmaker, but rather an indication that the values of our Nation and of our institution will no longer permit cooperation with white supremacy.

U.S. churches have helped spearhead a nationwide campaign to stop bank lending to South Africa, particularly to the Government of that country and its agencies. Through appeals to management, stockholder resolutions, withdrawals of accounts from banks, working with other organizations, testifying for a U.S. Government prohibition on bank loans, U.S. churches have worked to end this form of financial support of apartheid.

These loans contained an accompanying political message undercutting diplomatic condemnation.

The message is that South Africa can expect to do business as usual on the most basic level even while condemned by the State Department.

The churches have been hardened by the increasing number of banks which have adopted specific policies prohibiting certain loans to South Africa. These have included the Chemical Bank, Irving Trust, Bankers Trust, Mellon Bank, Pittsburgh National Bank, the First National Bank of Boston and others.

Many other banks have conveniently argued that the risk situation in South Africa, partly resulting from the instability created by apartheid, makes Government lending unfeasible.

The designed result of vigorous protest in the United States and growing black unrest inside South Africa is that the flow of U.S. loans has been cut back considerably.

A growing number of churches are sending a message to major lenders to South Africa that they will lose significant institutional accounts in the United States if they refuse to adopt policies to end loans to South Africa firms, particularly to the Government and its agencies.

However, one bank continues to act as a financial pillar supporting apartheid and that, Mr. Chairman, is Citibank. In particular, Citibank's continued support of apartheid is costing them business.

Last year, the National Council of Churches, along with the Global Ministers of the United Methodist Church, Union Theological Seminary in New York, announced the withdrawal of approximately \$65 million in accounts from Citibank because of Citibank's South Africa policy.

In May of last year, the American Lutheran Church announced the divestment of some \$2 million of Citibank securities. In April of this year, the Riverside Church in New York withdrew a \$6 million account.

Critics have also raised many arguments. On the 19th of March of this year, Dr. Leon Sullivan, the author of the Sullivan principles and I, acting as president of the National Council of Churches, issued an important joint statement pledging to initiate a new phase of the campaign to end bank lending in South Africa and in part our joint statement read:

If the United States banks perceive that our Government has abandoned its past emphasis on human rights and opposition to apartheid, they may be attempted to respond to the South African Government's request for loans with a flood of new lending.

Last fall, Citibank participated in a loan of \$250 million to the South African Government. This loan may be the forerunner of a new wave of U.S. bank loans. Our message to U.S. banks is unmistakably clear. The U.S. banks considering a return to a lending as usual relationship with South Africa, we pledge our united efforts to vigorously oppose such loans.

Lending to South Africa, to the Government or its agencies and other loans that support apartheid will be met with a massive withdrawal of deposits, accounts, and the divestiture of securities.

We will urge the U.S. public, including our colleagues in the Nation's churches to hold the banks lending to South Africa accountable.

That was a joint statement issued by myself and Dr. Sullivan.

Campaigners have been greatly inspired by these efforts, by the brave public witness of many South African leaders, both black and white. Bishop Tutu, my good friend who serves as general secretary of the South African Council of Churches, and one of South Africa's most prominent black leaders, stated in a recent visit to the United States that apartheid is, and I quote, "one of the most vicious systems since Nazism."

He urged the entire international community, in his words, "for the sake of the children of all South Africans, black and white, for God's sake, for the sake of world peace, that they take action, that they exert pressure on South Africa, political pressure, diplomatic pressure and above all, economic pressure." So says Bishop Tutu.

Because of his statement, Bishop Tutu was angrily attacked by Prime Minister Botha and his passport was revoked as a reprisal. Apparently, South Africa is too threatened by this man of peace who called for economic pressures against the white supremacists in the Government.

Perhaps actions and statements like this will send an economic message to Citibank. The message is this: Increasingly, your support of South Africa will affect your bottom line in this country. That is the message that needs to be heard and understood, and that is why we have called upon Citibank to end its financial partnership with South Africa.

We urge a policy of no further lending to the South Africans until the system of apartheid has been dismantled.

The National Council of Churches calls on Citibank to withdraw its operations from that country unless majority rule is established.

I have urged Mr. Riston, the chairman of the board of that corporation, to resign from the board of Manor Co., thus removing his time and talent from the services of South African corporations wanting to invest overseas.

As I close, Mr. Chairman, let me say that a number of companies, including General Motors, Kodak, Control Data, Johnson & Johnson, and so forth, have agreed not to significantly expand operations or begin new operations under present racial conditions.

It is a logical parallel to the call for no new bank loans to urge a moratorium on any new investment in South Africa by U.S. companies. Similarly, a prohibition of sales of the Krugerrand in the United States would cut South Africa off from an important source of American dollars as well as the favorable publicity they receive in our country by selling this coin so extensively.

While the legislation before this committee does not deal with the subject of sales to the police and the military, it is a vital matter that deserves our attention, especially as the Commerce Department reviews what the U.S. policy should be.

Last year, a number of church shareholders requested that Mobil Oil follow the spirit of the Commerce Department regulations and cease all sales to the South African police and military.

Mobil's response to our call, I will excerpt very briefly in part, says that:

Total denial of supplies to the police and military forces of a host country is hardly consistent with an image of good citizenship in that country.

The great bulk of the work of both the police and the military forces in every country, including South Africa, is for the benefit of all of its inhabitants. All have a basic interest in the maintenance of public order and safety. A policy of the character advocated would deny resources for response to grave emergencies or the apprehension of common criminals and for the protection and security of all individuals and property, including that of the corporation.

That was actually sent to us as a response by the Mobil Co.

Mobil's response deserves an award for twisting the truth. Their defense makes the South African police and military dedicated to upholding white supremacy. Never before have I seen a U.S. corporation go to such lengths to defend the actions of the police and military. When pressed to alter that statement at its shareholders' meeting last year the chairman simply said we stand by it.

In short, we watch as Mobil sells to the police and the military, defending the necessity of doing so, tries to sugar-coat the role of the police and military, thus implying that the Commerce Department regulations are unnecessary.

This committee has also asked for an analysis on the six principles introduced by Reverend Sullivan, their adequacy, as a result of the system of apartheid and when such codes of Congress should be legislated by the Congress.

Let me be clear. The churches very consistently raised questions about decency and lessening discrimination in the workplace by U.S. corporations. Of course, we are relieved when racist signs are removed or black employees received training and make a decent wage or when scholarships are provided.

But I want to make emphatically clear here, I believe that the real issue in South Africa for the 1980's, I am afraid, is not simple

decency in the workplace. It is the sharing of political, economic, social, and legal rights with all citizens regardless of race.

Do these workplace principles and codes address that reality? These hearings are also dealing with the role of American corporations and the role they play in South Africa, positive and negative, and whether the Congress should introduce new legislation barring new investments and bank loans to South Africa.

Some brief comments: Unfortunately, despite workplace progress under the principles, corporations from our country are increasingly captives in South Africa, bound to follow Government laws, fearful of losing Government business, providing technology and strategic equipment that help keep the apartheid system running.

Supporters of the oppressive military and police, public opinion-formers in the United States arguing that the South African racial situation is improving.

On balance, I believe the investment of 350 U.S. companies totaling some \$2 billion strengthens the system of apartheid more.

In conclusion, let me say that I am advocating in this testimony and I do so with the full support of our constituency, that it is the Protestant denominations and Roman Catholic orders that are active in their concern about this issue that the legislation prohibiting new American investments and bank loans in South Africa deserves our full support.

I believe that his is a reasonable step to follow to show South Africa that our rhetoric and our actions are beginning to coincide. To indicate that the time of business as usual is over, to show that America stands firmly on the side of speedy change.

Let me indicate to the committee that our counterparts and colleagues in South Africa themselves have asked for this kind of escalation of economic pressures. Despite the fear of reprisals under the so-called Terrorism Act, a growing chorus of voices have been heard urging the West to exert economic pressures in asking the churches to take leadership in calling for these policy changes.

I believe restrictions on new investments and future bank loans are the least we can do to show the seriousness of the United States in supporting full human rights for all in South Africa.

Thank you very much.

Mr. WOLPE. Thank you very much, Reverend Howard.

I now would like to invite Mr. William Gould, professor of law at Stanford University and an expert in South African labor questions to address the committee.

**STATEMENT OF WILLIAM B. GOULD, PROFESSOR AT LAW,
STANFORD UNIVERSITY LAW SCHOOL**

Mr. GOULD. Thank you very much, Congressman Wolpe, for this opportunity to speak here to you today. I am heartened that this subcommittee is considering the kind of legislation which is before it in the form of bills by both Congressman Solarz and Congressman Gray.

I might say preliminarily that I don't intend to read from my prepared statement although I will refer to it from time to time.

I should say, also preliminarily, that as I have indicated in my prepared statement my involvement with South Africa and South

The problem is that those companies, although many of them have a small work force, have significant economic capabilities to participate not only inside the workplace, inside the office, but also outside the workplace and outside the office.

The difference between the principles and the other codes of America is that the American principles address strongly outside the workplace, in housing, in education, in scholarships, and bursars, in creating black economic development and also now with the evolving nature of the programs, the lobbying within the framework of the Government process itself, so that we find some companies that have only 2 or 3 persons in the office, such as a magazine, that if not according to the word but the spirit they determine how they could comply with the principles in the context of their power and influence, could perhaps do more than a company that employs 1,000.

Mrs. FENWICK. How about the African company that had the 750,000?

Reverend SULLIVAN. One of the most hopeful signs of the principles has been the participation of a number of South African companies themselves. I found that there was a greater desire among many South African businessmen to change the conditions than American businessmen. The American businessmen were looking at it from the standpoint of what they can do as an expatriot. There were those who are committed to the existence of a continuing nation, are concerned about the future of their nation. Therefore, one company, called the Barlow-Rand Co., one of the largest employers in South Africa, sent representatives to talk with me and committed themselves to follow through on the principles.

Since that time, they were able to secure the cooperation of other companies, to the extent that now those companies together employ more than 1 million workers, so that the catalyst, again, of the American company effort is important, whereas we only employ some 90,000 workers, which is an infinitesimal percentage of 5 to 10 million workers in the Republic of South Africa.

Mrs. FENWICK. 90,000 represents what figure?

Reverend SULLIVAN. Less than 1 percent of the total work force.

Mrs. FENWICK. Was it 90,000?

Reverend SULLIVAN. It is in the range of 90,000 to 100,000, which is only a small percentage of the total work force. People say you can't have that much impact anyway; you are such a small group, but the principles are a valuable catalyst; the catalytic impact of the principles already has shown up not only in the creation and stimulation of other codes of conduct around the world but also what is happening in South Africa.

Some of the strongest initiative for change and lobbying of the government for change and actually presenting papers for legal change is coming from business leadership within South Africa.

Mrs. FENWICK. Tell me something. None of this code is contrary to the law; it does not put any of our people in defiance of any South African law, since South African companies are also prepared to do it, or we won't go into that?

Reverend SULLIVAN. We won't go into that. May I say, when we talk about apartheid and apartheid laws, any effort to move toward the desperation of the races is contrary to statutory, what is consid-

African labor practices stems from a number of visits that I have made to that country, first as a lecturer under the auspices of the U.S. Department of State, lecturing about American labor law and American fair employment practices, and staying on for a period of a month under the auspices of the Ford Foundation for the purpose of writing about South African black unions and South African labor relations; second, as a participant in the first annual human rights conference, which was held in Capetown in January 1979; and most recently as a consultant to the Thomas Commission, a commission whose work I think this subcommittee has some familiarity.

I have not addressed Congressman Gray's bill in my remarks for two basic reasons.

It is my considered judgment that it is unlikely in any political climate, let alone the very unfortunate one that exists in 1981 in this country, that legislation along these lines will be enacted, and therefore, as a practical matter, it seems to me that our primary focus ought to be upon the legislation introduced by Congressman Solarz.

I might say that my hope is that this country will yet have sufficient moral concern with the grave inequities and repressive practices which not only continue to exist in South Africa, but which are at present being intensified by the South African Government, so that it will give Congressman Solarz' bill the consideration that it deserves and that it report it favorably from this committee and that the House will vote affirmatively on it.

I have not, as I say, given up hope that this country will have sufficient moral concern so as to address this matter through legislation.

Now, I start my approach to this legislation with three essential assumptions.

One is that the black trade union movement is on the move in South Africa. It represents, really, the last and perhaps the best hope for, not peaceful change, but change which is short of serious violence in the sense of military warfare or armed conflict.

I don't think one can talk any longer about peaceful change as opposed to nonpeaceful change in South Africa. But I think the black trade union movement is of considerable importance in South Africa.

As I indicated in my prepared statement, it has more than doubled since the first time that I visited that country in 1977. It holds the potential for change. One of the reasons the South African Government is so concerned with the black trade union movement is because its focus must be political as well as related to the work place just as the focus of trade union movements in other countries such as Poland, Brazil, and Chile, which have a tradition of repression, must also be political by the very nature of the system and the lack of alternate opportunities.

The second assumption I start with in approaching this legislation is that the Sullivan principles simply have not worked and have not addressed adequately the basic issues involved here—the basic issues in my judgment being the black trade union issue which is very closely related to, potentially in any event, the issue of overall political change in South Africa.

The monitoring that has been provided by the Sullivan people does not provide us with an accurate picture about how American companies behave in South Africa.

Consider this key issue of black trade union recognition. In last year's report issued by the Sullivan people they said that they asked all the American companies, "do you have an in-house grievance procedure which affects both blacks and whites and/or do you recognize a black union?"

So if you establish some kind of in-house committee, you get good marks from the Sullivan people even though you may be denying, as many American companies such as the Colgate-Palmolive Co., until the past few months, have denied the right of their black workers to freely associate in trade unions.

This year's report issued by the Sullivan people in the first week of October, is even more remarkable because they don't even purport to try to tell you what the state of labor-management relations is amongst American companies that are operating in South Africa.

They simply say, "do you support the idea of black trade unions?" "Do you think this is a good idea?" Of course, 99 percent of the people who responded on behalf of the corporations in South Africa said, "Oh, yes, we think this is a good idea." This is like being for God, motherhood, and the Nation.

Naturally, anyone who responds to a questionnaire like this is going to respond in such a manner.

So, the Sullivan principles in my judgment have become a facade for discriminatory practices. They are, as I have said in my prepared statement, actively welcomed by the South African Government officials who are deeply involved in this system of apartheid in that country.

I have had South African Government representatives tell me in face-to-face conversations that they welcome the Sullivan principles because they stave off the dreaded day of more serious regulation or limitations upon investment or ultimately sanctions of a more serious nature.

And so, third, in my prepared statement I started with the assumption that Congressman Solarz's legislation is a necessary piece of work. I think it is a carefully drafted, good bill which is addressed not only to basic principles of morality but also the peculiar problems that we confront and that American companies confront in the context of South African industrial relations.

The bill which you, of course, are familiar with is important in a number of respects. It provides for the appointment of third-party neutrals to resolve a variety of industrial relations problems including questions that might arise with regard to whether or not the union is representative, whether or not the company should be obliged to bargain with the union.

I think we must be careful that these third-party neutrals, however, are acceptable to the black trade union movement in South Africa and more specifically to the parties that are involved in the particular dispute that gives rise to the need for third-party intervention and perhaps the subcommittee might give some thought to language which might clarify this to a greater extent than it has been in the current version.

As I have said in my prepared statement, I think that the legislation is most important in the sense that it provides for the right to union access to company property.

This is particularly important in South Africa because of the discriminatory laws which divide geographical areas on the basis of race, making it difficult for union organizers to have access to company property, and to make it difficult not only to have access to company property, but more importantly, to have access to the black townships in which the employees reside, so that union organizers can carry the message of unionization to them.

Next, I should like to comment upon Congressman Solarz's bill insofar as it prohibits so-called company-dominated or company-financially-assisted unions.

This again, while it mirrors the National Labor Relations Act as much as Congressman Solarz' bill does, is important because, quite frankly, my experience in South Africa leads me to believe that American multinationals and other companies—both multinationals and South African nationals have, as soon as they were confronted with new labor legislation in 1979, looked around for convenient unions, congenial unions with which to do business, and those unions often exist in the form of so-called parallel unions, which are affiliated with Tucsa, which is a multiracial federation, which is in favor of the Government. The South African Government sends Tucsa representatives under the auspices of the South African Information Organization to the United States to explain and rationalize South African labor legislation to Americans.

Let me also address myself to the question of precedent for legislation which is extraterritorial in nature. There is, as I have indicated in my prepared statement, precedent for this in the form of antitrust legislation, in the form of legislation relating to the Arab boycott of American companies which do business with Israel and also in connection with Fair Labor Standards Act cases which apply—or the Supreme Court has held can apply—extraterritorially.

I did not make reference to that aspect of precedent in my statement, but should the subcommittee wish, I will provide citations with regard to that as well.

Beyond extraterritorial legislation, of course, it would seem to me that it ill-behooves American multinationals to complain about the extraterritorial nature of legislation when they are in a country which is party to the OECD guidelines, which our country is a part of, which govern the industrial relations practices of American multinationals in Europe and other OECD countries—and Japan as well—and which requires our companies to engage in bona fide negotiations.

We are also a member, thank goodness, of the International Labor Organization now, and the International Labor Organization, as I have indicated in my prepared statement, has passed the Tripartite Declaration, which is far more ambitious in scope than Congressman Solarz' bill, as much as I support Congressman Solarz' bill.

Now, with regard to South African law itself, the question has been asked by the subcommittee and correspondents to me and I

presume others as well, as to whether Congressman Solarz' legislation would conflict with South African law.

I, in my prepared statement, have addressed the issue of labor-management relations, although I would be happy to comment upon other aspects of the bill in question and answer questions subsequent to the close of my remarks, and it is clear that there is no conflict between the Solarz bill and the South African labor law insofar as labor-management relations are concerned.

Indeed, this year, the South African Government has introduced 1981 Amendments to the Industrial Conciliation Act, which provide for full freedom of association of workers without regard to race and without regard to whether or not they are migratory workers or not, two previous deficiencies which existed in South African labor legislation. So there is no conflict in law.

But there is, of course, conflict in practice, and that is why the Solarz bill is so important. Mr. Lelyfeld, the New York Times correspondent in South Africa, in an article on August 10, 1981, entitled, "South African Discloses Bid to Break Black Unions," dramatized as others have in the South African press as well as in the Western press the sharp discrepancy between what South African law now provides for and the actual practices of the South African Government.

Because, as the New York Times noted on August 10, 1981, while the Government was introducing legislation in Parliament providing for freedom of association, it was meeting with American companies and other multinationals, advising them as to how they could break black unions and how they could break strikes and whether they could find strikebreakers and attempting to get multinationals to cooperate with the South African Government.

I think that it will be very important to have American corporations testify to this subcommittee, because one of the things that should be raised with these companies is exactly what it is that the South African Government has been attempting to get American companies to do in South Africa.

Have they been provided with guidelines on how to break black unions in South Africa? Have they been asked to provide information about black trade union activity? Have they been asked to resist legitimate bids by black trade unions for recognition?

Looking at the extent to which the South African Government has gone to ask American companies and other companies to cooperate with it and the extent to which it has provided these companies with information about how to undermine legitimate black trade unions, it would be very interesting to know what the role of American corporations in this regard has been, what the contact has been both from their side and the South African Government side and I would hope that this subcommittee would, if necessary, issue subpoenas for the purpose of obtaining that information.

Now, let me penultimately mention that contrary to the statements that have been made by the Treasury Department and the State Department about the avalanche of paperwork and staff that would be required by the Solarz bill, the fact is the Solarz bill, as much as I support it and I commend Congressman Solarz—I followed his work in this area for a considerable period of time and I am a great supporter of his efforts in this area—is a mild cup of

tea by American fair employment practices standards. The legislation that we have in place prohibits in very broad and absolute terms discrimination on a variety of grounds.

The executive order has established law which deals with Government contractors. Goals and timetables which must be adhered to, as much as the current administration would wish it otherwise, are provided for by the executive order.

Congressman Solarz' bill provides for a reasonable effort in a reasonable time—I am paraphrasing his language—and this must be engaged in toward a view to comply with the standards established in the bill through mediation, negotiation, and persuasion.

I don't wish to be unkind to the Congressman by suggesting that the language is somewhat amorphous, but certainly it ill behooves, it seems to me, American companies to complain about these burdens and I am quite surprised that the executive branch of Government speaking, I guess, on behalf of the American corporations in this instance, comes to this subcommittee and complains about the burdens that will be placed upon the corporations in terms of paperwork.

It doesn't compare in any way, and you should reject, categorically, the attempt to analogize it to the relatively rigorous standards that are imposed by virtue of American fair employment practices legislation.

Let me lastly say that the primary problem that we had vis-a-vis South Africa during the Carter years was that we had a lot of very fine statements. Initially in 1977, we had great expectations which were based upon statements made by President Carter and Vice President Mondale, particularly at his meeting with Mr. Vorster in Vienna in the spring of 1977.

The problem is that we didn't have any deeds to back up those nice words. There really was nothing in place beyond the Sullivan principles to which I have already adverted.

The result is that in South Africa today, this very summer, not only do we have the relocation of blacks, the relentless pursuit of apartheid intensified as it has never been before; the Christian Science Monitor, the New York Times, the London Economist have all reported on this in a very detailed fashion, it seems to me—but we also have a crackdown on black trade unions through bannings, surveillance, arrests, people held incommunicado, which is without parallel since October 1977. So that is the result of the policies that have been pursued thus far. The result is that we are moving backward with regard to South Africa which has never felt more confident, more self-assured, not only in terms of its internal policies but with regard to how it deals with its neighbors.

It has never felt more self-assured than it does now. I support the Solarz bill. I do not believe it is adequate in all respects, but I think it represents an important first step forward in an attempt to take on this evil system of apartheid.

[Mr. Gould's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM B. GOULD, PROFESSOR OF LAW, STANFORD
UNIVERSITY LAW SCHOOL

Mr. Chairman, I thank you for the invitation to appear before the subcommittees today. The subcommittees have addressed a wide variety of questions relating to H.R. 3008 (introduced by Congressman Solarz) and H.R. 3597 (introduced by Congressman Gray).

I shall respond to most of the questions put forward by the subcommittees, although my principal focus will relate to labor-management relations of American corporations doing business in South Africa. In this connection, by way of background, I should note that my area of specialization as Professor of Law at Stanford Law School is Labor Law, Employment Discrimination Law, and Comparative Labor Law, that I have visited South Africa three times to both examine South African labor practices and legislation, as well as to give lectures on American labor law and fair employment practices legislation, and that I have written a number of articles dealing with the South African labor movement and labor law. Because of this background, and also because I regard H.R. 3008 as the most practicable first step forward to influence South African labor practices and apartheid in that country, I shall focus principally upon those provisions of that bill which concern labor-management relations.

I support H.R. 3008, and urge the Subcommittees and the Foreign Affairs Committee to report it to the House favorably. I support the Solarz Bill because I regard it as right, both morally and legally, and attuned to the peculiar problems which black workers and trade unions face in South Africa.

Ever since the early 1970's, despite the serious obstacles presented by a variety of laws which restrict black worker mobility and institutionalize a system of migratory labor based upon race, the black unions have been on the move. The uprisings of 1976, first sparked in Soweto, have pushed this process forward despite continuous police surveillance, detention of union officials without trial, and bannings. Today, it appears as though black union members exceed 200,000, which more than doubles their membership since I first visited that country in 1977. Most prominent amongst the new unions which developed just during the past year or so is the South African Allied Workers Union with 20,000 members, based principally in the eastern Cape. It has recently secured recognition agreements with a number of American multinationals including Johnson & Johnson and the British company S. A. Chloride. Along with other new unions, it refuses to accede to government registration regulations, and it is quite likely, therefore, that the extent of harrassment that it now faces will be increased in the future.

In addition to this increasing membership, there is a growing black worker militancy in the country. According to the National Manpower Commission, the number of strikes and work stoppages more than doubled in 1980 to 207 as compared to 101 in 1979. The number of work days lost trebled, i.e., 175,000 from 67,000. 1980 was South Africa's most turbulent industrial relations year. The strikes in that country continue to be spontaneous and are often called without not only union sponsorship but knowledge. In substantial part, this is attributable to the evils and inequities associated with the migratory labor system, the preservation of the wage gap between black and white workers, and, most importantly, the Government's rigid adherence to apartheid. (Indeed, as such respected jour-

nals as The London Economist, The Christian Science Monitor, and The New York Times have noted, neo-apartheid during this very year has meant a more rigorous policy of relocating blacks from white South Africa to the rural and desolate homelands in which there is no work, let alone sustenance.)

The Solarz Bill is correct to focus upon both segregation of races and employment facilities as well as discriminatory employment conditions relating to job reservation, fragmentation, apprenticeship restrictions, etc., and discriminatory wage payments. But the economic reality, while preserving the racially hierarchical structure that exists in South Africa to the extent that it is possible, is eroding much of this. Only one of 25 job reservations remains in existence, although private practices and agreements provide for discrimination beyond that which is required by law.

The one free institution remaining in South Africa is the black trade union movement. That is the principal source of any potential to modify or dismantle apartheid. Whether we or South Africans of all races like it or not, that is the institution most likely to affect societal changes, short of substantial violent conflict. Just as in Poland and in Latin American countries such as Brazil and Chile, where the trade union movement has shouldered political and societal grievances in systems where government does not provide the opportunity for the democratic process to operate, so also in South Africa, the black trade unions have been pushed into cooperation with community groups and other organizations whose concern is broader than the work place. This political involvement, of course, is in the great tradition of Western trade unions that have always had to focus upon legislation as well as the collective bargaining process. But it is particularly important in countries like South Africa where the alternate avenues for change are closed off.

H.R.3008, the Solarz Bill, tracks the unfair labor practice language of the National Labor Relations Act insofar as it relates to "labor union recognition and fair labor practices." The Amplified Sullivan Principles have also called for the recognition of black unions. But a principal difference between the Sullivan Principles and the Solarz Bill is that the latter, like the European Economic Community Code, addresses itself to the question of how the objective of union organization is to be achieved.

Accordingly, the Solarz Bill specifically provides that American employers controlling companies in South Africa are to allow "...employees to exercise rights of self-organization, including solicitation of fellow-employees during nonworking hours, allowing distribution and posting of union literature by employees during nonworking hours in nonworking areas, and allowing reasonable access for labor organization representatives to communicate with employees on employer premises at reasonable times..." The Bill also would allow employee representatives to meet with employers during working hours without loss of pay for the purpose of collective bargaining, negotiation of agreements, or representation of employee grievances. These provisions - the former in particular - provide for the avenues of communication which are an essential prerequisite to the realization of self-organization rights. These provisions of the Solarz Bill are particularly important in a country like South Africa where access to black townships may be denied union organizers, thus making recruitment at the workers' homes particularly difficult, and emphasizing more the need for contact at the work place which is provided for by the Solarz Bill. It has long been recognized in the West that communication at the work place is particularly important in connection with the right of workers to freely organize. This is especially true in South Africa.

The Solarz Bill's prohibition against company dominated or financially assisted unions, a provision taken from the National Labor Relations Act, is particularly appropriate in connection with South Africa inasmuch as many companies, American included, have attempted to seek out so-called parallel unions - which are not independent and are susceptible to control by both the employer and elements in the white trade union movement - for the purpose of establishing relationships which are not bonafide.

None of the provisions to which I have referred are contrary to South African law. Indeed, 1981 amendments to the Industrial Conciliation Act appear to provide more clearly for freedom of association without regard to race than was the case with the Amendments enacted in 1979 and 1980 in the wake of the Wiehan Commission report. What is ominous about the current situation - and what makes, therefore, the Solarz Bill all the more necessary - is (1) tighter controls that are being fashioned for both registered and unregistered unions insofar as political freedom is concerned, i.e., an attempt to thwart black trade union and community group cooperation; (2) governmental supervision of trade union and internal affairs such as strike ballot; (3) provisions which would prohibit unions from maintaining offices in black homelands where they might organize the sleeping giant of the black trade union movement, the black mine workers who are migrant workers; (4) the prohibition of check-off facilities for unregistered unions such as the new unaffiliated group which have emerged on the Eastern Cape. While much of South African law and practices are at odds with freedom of association, the Industrial Conciliation Act explicitly protects it. Therefore, no direct conflict is presented.

ered as a statutory requirement. Now, whether that can be construed as a legal requirement is another matter, but my aim, as I have said, is for the sake of the nation and the world, that the principles and the codes and the needs for the workers and the people must take precedence over whatever else.

Mrs. FENWICK. Thank you.

Thank you, Mr. Chairman.

Mr. WOLPE. Mr. Bingham?

Mr. BINGHAM. Thank you, Mr. Chairman.

Reverend Sullivan, I certainly want to join in paying tribute to you for the work you have done in this field and also for the splendid work you have done in our country.

I have had a fine OIC in my district which is doing excellent work.

You approach the kind of questions which I was able to discuss with some of the leaders in Soweto and elsewhere on a visit to South Africa a few years ago. I would like to ask you a question which focuses perhaps more on Mr. Gray's bill than on that of Mr. Solarz.

The argument is made by some that in order for the blacks in South Africa to achieve political strength and move toward political equality, they have to have economic strength and economic leverage. In order to achieve economic strength and economic leverage, they need not only the kind of advancement that is represented by adherence to the Sullivan Code, but also they are better off if there is more capital available to put them to work. If there is capital available, more blacks will get promoted to positions of skill, leadership, and so on.

On the other hand, there are those who say that is wrong; you have to cut off new investment if you can and apply the toughest sort of economic sanctions.

How do you perceive that issue?

Reverend SULLIVAN. Within the framework of what might be construed as a peaceful solution to the situation, we have to get closest to the greatest economic strength, and pressure, and restraint as we possibly can.

There is a question as to the extent that broadened investment in a structurally racially segregated society will help the masses. It might even serve to create a wider economic disparity. For example, if where we are in South Africa you have those who are in homelands that comprise one-third of the black population and one-third who are in the urban areas, and then the other third divided more or less within what you might call the rural areas, you might be able by investments to advance; along with the whites, blacks would have jobs in the companies and enhanced opportunities for a relative percentage, but still the majority of the population remains unmoved because in a structurally segregated society there is one class that remains dormant, and therefore our aim is to give mobility as in the traditional Roman sense, mobility and equality of all workers, all men, all women, and all people.

Therefore, looking at justice and looking at what is expected in a free society, we have to be concerned about economic advancement in terms of the opportunities for the total population.

Of course, it is quite possible that the Government intends to prohibit or seriously discourage unregistered unions. Such an approach, as well as the 1981 provisions, would seriously hobble the black trade union movement, and many of the by-products which might flow from their emergence as a significant force in South African society. But the Solarz Bill does not focus directly upon any of the areas covered by the 1981 amendments, and there is no potential collision in this regard or with other aspects of South African labor law.

There is provision for the extraterritorial application of American laws affecting American subsidiaries abroad. The courts have held that the antitrust laws affect conduct engaged in abroad, and thus have extraterritorial impact. The Export Administration Amendments of 1977 (EAA) have prohibited American companies, with certain exceptions, from complying with Arab boycotts against doing business with Israel or doing business with companies that do business with Israel. Here also, the United States has regulated extraterritorial business conduct. Moreover, even under the National Labor Relations Act where Congress has not expressed the requisite affirmative intent to regulate the labor relations policies of American companies abroad, *McCulloch v. Sociedad Nacional*, 372 U.S. 10 (1963), the Court has upheld Labor Board jurisdiction over foreign ships operating in American waters where the focus is on practices which directly affect American workers, *International Longshoremen's Association, Local 1416, AFL-CIO v. Ariadne Shipping Co. Ltd.*, 397, U.S. 195. (1970).

The Board has held that employees of foreign corporations located in the United States are subject to the National Labor Relations Act. *State Bank*

of India, 229 NLRB 838 (1977); S.K. Products Corp., 230 NLRB 1211 (1977). Conversely, however, employees of American corporations located in other countries are not protected by the Act, even if they were United States citizens and were hired in the United States, since the Board does not have jurisdiction under the National Labor Relations Act. GTE Automatic Electric Inc., 226 NLRB 1222 (1976). But it is important to stress that the Solarz Bill would provide the affirmative intent to regulate labor policies, the critical defect of the NLRA. And under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on account of race, sex, religious or national origin - and where the extraterritorial issue has not been resolved, the major limitation upon Congressional authority would be against the imposition of "...standards of non-discriminatory conduct on other nations through its legal system..." *Fernandez v. Wynn Oil Company*, 26 FEC Cases 815, 818 (9th Cir. 1981). The Solarz Bill would only prohibit discriminatory conduct by American companies operating in South Africa.

There is ample support for the regulation of labor practices of American companies doing business abroad. The Declaration on International Investment and Multinational Enterprises to which the Guidelines on Multinational Enterprises was appended in 1976 does so. Amongst other things, it requires American companies to engage in "bonafide negotiations" in other OECD countries. The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the International Labor Organization (of which America is a member) contains even more ambitious labor and non-discrimination requirements for American companies throughout the world.

It is difficult to determine how American companies have implemented the Sullivan Principles in South Africa. The same holds true of the EEC Code of Conduct, although some governments, like Great Britain, have required reports and have issued their findings, and, therefore, more public information is available. Quite clearly, in the case of both codes, the fact that they do not have the sanction of law behind them has proved to be a serious deficiency.

Clear and precise information relating to the Sullivan Principles has not been forthcoming because, in the past, subsequent to the Amplified Guidelines which were issued in 1979 relating to trade unions, companies were simply asked whether they recognized unions or had a grievance procedure for black and white workers. Accordingly, the answers provided no indication of whether American companies had any relationship, bonafide or not, with black unions.

Under the most recent report issued by the Reverend Sullivan, there does not appear to be any reference to the extent to which companies actually recognize unions. The question asked respondents is whether they support the idea of trade union recognition. Not surprisingly, 99 percent answered affirmatively, and only one percent answered negatively! This figure hardly comports with any statistical pattern relating to corporate recognition of black unions by American companies or, indeed, by any company. The Sullivan Principles, as previously indicated, are also deficient in that they do not guarantee black worker unions access to company property as is provided by the European Economic Community Code and, in a more detailed fashion, by the Solarz Bill.

Accordingly, the Sullivan Principles have become a vehicle through which American companies may maintain a posture of respectability which, insofar as trade union rights are concerned, is, for the most part, not deserved. The Sullivan Principles were devised without consultation with any black South African, let alone representatives of black trade unions. So far as I am aware, to this date, little consultation has been undertaken in connection with the black trade unions, and their ideas have not found their way into the Principles. On the other hand, the South African Government and many supporters of apartheid actively welcome the Principles because they create the illusion of change and stave off the dreaded day of more serious regulation or sanctions. This, of course, is not to deny the good faith and intentions of many of the proponents of the Sullivan Principles. The Principles may be regarded as useful in the sense of having created a climate in which legislation such as the Solarz Bill can be debated seriously. It is only to say that, viewed as a whole, their impact has been counterproductive in achieving the elimination of apartheid.

It seems to me that the Solarz Bill's provisions for Advisory Councils for both the United States and South Africa are appropriate. Hopefully, the provisions contained in Section 3(a) which would include South Africans "from among persons representing trade unions committed to nondiscriminatory policies" and "from among South African community and church leaders who have demonstrated a concern for equal rights" would prompt any Administration to select those who are concerned with achieving its statutory objectives. It would seem that provisions relating to the United States Chamber of Commerce in South Africa and the South African academic community should contain the same language establishing eligibility only for those concerned with equal rights. Moreover,

with regard to the United States Advisory Commission itself, similar language should be set forth for all representatives - government, academics, labor, business, etc. As is well known, there are still difficulties with the enforcement of civil rights legislation in this country, let alone South Africa.

The federal courts, upon whom the ultimate burden of enforcement would be thrust, would have a considerable burden. But this is not without precedent as the legislation referred to above demonstrates. Judicial enforcement would be dependent upon the effectiveness of monitoring devices. The Advisory Commissions are important first steps in this connection. However, only strong and independent black trade unions can provide adequate monitoring devices in the final analysis.

One final limitation in the Solarz Bill in its necessary dependence upon the Executive Branch, most particularly the President and Secretary of State. The Reagan Administration has thus far failed to appreciate the immoral nature of apartheid. It has failed to understand that its friendship for the Botha Government and its consequent complicity in the policies of the latter - demonstrated through both word and deed - play into the hands of the Soviet Union, a nation which is always pleased to fish in troubled waters. But this reality does not argue against legislation of the kind proposed by Congressman Solarz. Rather it demonstrates that the enactment of H.R.3008 might assist in the education of American government officials as much as it might regulate the conduct of American companies in South Africa.

Mr. WOLPE. Thank you very much, Mr. Gould.

We now turn to Mr. Randall Robinson, executive director of TransAfrica. It is good to have you before the committee.

STATEMENT OF RANDALL ROBINSON, DIRECTOR, TRANSAFRICA

Mr. ROBINSON. Thank you, Mr. Chairman. I have a strong feeling of *deja vu* being here today. My testimony today is essentially the same as it was in 1978 and I remember having some of my first divided discussions with this subcommittee with Mrs. Fenwick and Mr. Solarz and I expect that we will see some renewal of that today, but in any case, let me proceed.

Mr. SOLARZ. Maybe we should just have somebody read from the transcript of the last hearing.

Mr. ROBINSON. Mr. Chairman, I welcome the opportunity to testify here today on the two bills before this subcommittee, H.R. 3597 and H.R. 3009. While Americans who value freedom are alike in their abhorrence of white minority rule and apartheid in South Africa, black Americans perhaps are uniquely interested in the scope and quality of our Government's response to the South African system of tyranny.

This obtains not only because we are bound to Africa by linkages of race and heritage but more compellingly because we have been provided through our struggle for equality in America a frame of reference for empathetically understanding something of the pain that 20 million black South Africans have been caused to endure.

There are, however, critical dissimilarities between respective quests of black Americans and black South Africans. In America, ours has been and remains in its essentials a struggle for civil rights and economic equality.

Among the various black South African objectives, the *sine qua non* is political enfranchisement, the right of every man and woman, irrespective of race, to cast an equally weighted vote in a unitary state.

All other objectives are secondary and perforce achievable, given a solution to the central problem of franchise denial, including abolition of the practice of petty apartheid.

Although South Africa, in response to internal and external pressure, has shown a grudging inclination to make cosmetic changes by lifting some petty apartheid restrictions, it has made clear to its black majority and to the world that it has no intention of allowing blacks full political participation within the Republic. On this point, South African leadership promises in a believable fashion that there can and will be no compromise.

Recently, the world has seen a demonstration of how South Africa responds to a diminution of external pressures brought about in the instant case through an unfortunate hand of friendship extended by the Reagan administration to the Pretoria regime.

Since January 1981, barely discernible trends toward cosmetic amelioration of South Africa's racial policies have been reversed. Prime Minister P. W. Botha has publicly announced South Africa's abandonment of a previous commitment to the slow liberalization of petty apartheid.

Reflecting the Government's renewed pursuit of grand apartheid, South African Government trucks cartloads of corrugated metal daily to worthless and remote bantustans on which tin huts are being rapidly erected to house the tens of thousands of black South

Africans the Government plans to deport. Only recently, South African police arrested 1,500 squatters outside Capetown.

They comprise but a tiny segment of those scheduled for relocation to arid patches of land upon which the Pretoria regime plans to confer "independence."

Earlier this year, for implying support for corporate disinvestment while visiting the United States, the South African Government confiscated the passport of Bishop Desmond Tutu upon his return home.

Bishop Tutu, general secretary of the South African Council of Churches and a prominent moderate, is now a subject for consideration of a government banning order.

In its external relations, South Africa of late has pursued a violently aggressive course similar in character to its recent domestic behavior patterns.

Since January of this year, South African forces have invaded Mozambique, assembled an assassination squad to assassinate anti-apartheid leaders in the neighboring states, trained in the Transvaal anti-Zimbabwe guerrillas, conspired with Ian Smith and Bishop Muzorewa to destabilize the Zimbabwean Government, massed occupation troops in Namibia and massively invaded Angola.

South African observers, white and black, agree that the new increase in Government aggressive and repressive activity is in large part a consequence of the Reagan administration's permissive policy of "neutrality" and "constructive engagement." Expecting no criticism from the United States, the Pretoria regime has acted with Draconian impunity.

From all of this, one is compelled to conclude that under no circumstances, absent extreme international pressure or war, or both, will the ruling white minority accept majority rule. The lines now appear indelibly drawn. The middle ground that once existed appears to have eroded completely.

Thus, the value of the two bills before the subcommittee must be measured against answers to the following questions: Does American corporate presence in South Africa enhance the capacity of the governing white minority to deny political power to the black majority? Are any inroads narrowly made against petty apartheid in the American corporate workplaces, more than offset by advantages to the South African Government drawn from American corporate infusions of capital and technology? The available evidence suggests that both questions be answered affirmatively.

In a January 1978 report to the Senate Foreign Relations Committee, Senator Dick Clark, chairman of the Subcommittee on African Affairs, wrote that "the net effect of American investment has been to strengthen the economic and military self-sufficiency of South Africa's apartheid regime."

Hence, while we applaud the sincerity of purpose of the sponsors and cosponsors of H.R. 3008, TransAfrica urged that the subcommittee report out favorably H.R. 3597 inasmuch as this measure sponsored by Congressman William Gray would cause the cessation of U.S. corporate capital inflow.

It serves little constructive purpose to integrate the eating rooms of some 100,000 black and white South Africans employed by

American companies in South Africa, if, at the same time, we proceed apace in allowing American companies to join with their counterpart multinationals in underpinning the backbone of white minority rule.

While H.R. 3597 does not require a needed disinvestment of American capital, its provisions would at least begin to move us in the right direction.

Alternatively, we recommend that the subcommittee combine with H.R. 3597 those sections of H.R. 3008 that are meaningful and enforceable, that is, a ban on loans by U.S. banks to the South African Government or its parastatal entities, public disclosure of U.S. bank loans to any South African corporation and a ban on the importation of the South African Krugerrand into the United States.

Before discussing the current investment role of the United States in South Africa, I would like to argue the nearly complete inadequacy of an American legislative response that would suggest fair employment standards as an answer to apartheid.

The voluntary Sullivan principles and any mandatory fair employment standards the Congress would entertain must be discussed within the context of South African law. On June 30, 1978, the Protection of Business bill was passed by the South African Parliament unopposed. Under this law, it is a crime for a firm operating in South Africa to give information about its activities without the permission of the Minister of Economic Affairs. Even foreign court judgments must be ignored.

Given the restrictions of this act, even if the persons covered by H.R. 3008 were inclined to submit to the Secretary of State the indicated annual progress reports, they would be forbidden from doing so without leave of the South African Government.

In short, foreign companies in South Africa are hostage to the South African Government. The companies understand this and not unhappily. Moreover, any ameliorative efforts to be made would be frustrated not only by the Protection of Business bill but also by a spate of additional restrictions with which the subcommittee is no doubt familiar: The Factories Act; the Industrial Conciliation Act; the Shop and Offices Act; the Apprenticeship Act.

Those have been discussed by Mr. Gould. I understand to some degree they have been amended, but the reality in South Africa is much the same as it has always been.

In view of the preparations South Africa has made to contain the outflow of corporate information, it appears to us that not only will the fair employment standards called for in H.R. 3008 be rendered meaningless in terms of their impact on apartheid, but unimplementable as well.

Returning once again to the central thesis, the real issue to be confronted here is not whether the investing companies can chip away more than negligibly at discrimination in their own workplaces, but whether they serve by their considerable presence to assist in underpinning the government's continuing capacity to repress its black majority.

A few examples will help to illustrate this point. The Fluor Corp. of California, General Motors, Ford Motor Co., and Control Data are all signers of the Sullivan principles and presumably would

comply with any mandatory fair employment standards insofar as compliance is allowed by the South African Government.

In early 1979, Fluor announced it had received a \$2 billion contract from South Africa to expand an oil-from-coal plant it has been building in that country.

The expansion was needed because oil-dependent South Africa had had its supplies cut off by all of the major oil-producing countries.

Notwithstanding Fluor's subscription to fair employment standards, the company has helped South Africa to lessen its dependence on imported oil, thus reducing Pretoria's vulnerability to world pressure.

Similarly, Ford and General Motors continue to supply trucks and other vehicles to the South African military and police while Control Data supplies computers to a regime with no capacity for local production.

While the United States accounts for only about 17 percent of foreign investment in South Africa, the American companies are concentrated in the most strategically essential sectors of the country's infrastructure: the automotive industry; the petrochemical industry; electronics; and computer technology.

About 75 percent of the total American investment is accounted for by just 12 corporations that not only dominate their particular industry in South Africa, but are also some of the largest companies in the United States. Their value to the South African regime is beyond question. The statement made 10 years ago by the manager-director of Burroughs South Africa, C. Cotton, remains relevant today:

We are entirely dependent on the United States. The economy would grind to a halt without access of the computer technology of the West. No bank could function, the government couldn't collect its money and couldn't account for it, business couldn't operate, payrolls could not be paid. Retail and wholesale marketing and related services would be disrupted.

U.S. firms control over 70 percent of the South African computer market, 25 percent of the automotive market, and 44 percent of the petroleum producers market. Against a background of unshakeable proof that these firms render an essential service to the regime, American companies have long defended their presence by auguring that a growing South African economy, with increased need for skilled labor, will ultimately bring about apartheid's demise.

Elizabeth Schmidt, author of "The Sullivan Principles: Decoding Corporate Camouflage," writes convincingly that American corporations operating in strict compliance with fair employment principles, could not begin to confront the South African system:

To sustain an annual growth rate of 6.4 percent, it is augured 6,000 blacks could be promoted into previously "white" positions each year. However, the black labor pool is growing by at least 100,000 per year. Such a promotion rate would mean that fewer than one out of 1,000 African workers would move into a white vacancy each year, assuming that all of the vacancies would be filled by black workers.

Meanwhile, the trend toward capital-intensive is actually eliminating black jobs on the other end of the spectrum. Even if all American corporations were to sign the Sullivan principles, they would have little positive impact on the black population as a whole. Largely capital-intensive, American corporations in South Africa provide disproportionately few job opportunities.

In summary, American corporations, while providing immense support to South Africa, have sought cover from criticism behind fair employment principles. They look good and do nothing.

For these reasons outlined above, we find section 1 of H.R. 3008 to be unenforceable and not significantly meaningful. American, South African, and more generally, world interests can only be served through a search for American legislative responses that might cause the South African regime to alter its course.

Unfortunately the Congress does not appear to be prepared to take the steps indicated by circumstances in South Africa, that is, total American corporate disinvestment coupled with support for comprehensive sanctions imposed under chapter 7 of the U.N. Charter.

While the prescriptions of H.R. 3597 fall far short of an adequate American response to apartheid, they do at the very least take the United States in a defensible direction.

Majority rule is inevitable. It behooves the United States to position itself clearly now on the right side of the growing challenge to apartheid. This cannot be done as long as American businesses, fair employment standards notwithstanding, continue to help meet the rulership needs of the white minority.

In our view, only H.R. 3597 could begin to make an impact on the economic and strategic fortunes of South Africa—an impact that would reveal to the world that the United States is sincere in its commitment to human rights, a commitment which would put human dignity and self-determination before the greed of multinational corporations.

Mr. WOLPE. Thank you very much, Mr. Robinson.

We turn last to Dr. Butler, the director of international affairs for the NAACP.

STATEMENT OF BROADUS N. BUTLER, DIRECTOR, INTERNATIONAL AFFAIRS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. BUTLER. Mr. Chairman, ladies and gentlemen, I feel like Mr. Robinson did when he said we are back again. I remember in 1978 when we were here.

I would like to just note that there is need for the approaches which are represented in the two bills before us because in Congressman Gray's testimony to this committee there is an interesting item on the second page of his testimony which shows that while the U.S. investments have grown by 11 percent between 1977 and 1978, they grew by only 1 percent in the year that this was being entertained, but when the administration changed, or when there was a signal that the administration was going to change, it is very interesting that the investments in South Africa increased dramatically to 18 percent between 1979 and 1980.

Now, if that is the case, I would never suggest that you not follow a bill that ought to be forwarded on the prospect that it may not be politically expedient. The NAACP has been at this for many years, as you know; and these floors are needed because there is little evidence of voluntary progress, even by American corporations in South Africa.

As it is now [demonstrating], one cup will move ahead and two other cups will remain stagnant. The aim is to get all the cups moving ahead. The only way we can get all the cups moving ahead is to get the barriers down and to help encourage an open society.

We believe that the continuing flow of capital within the nation will only retard the kind of changes that we see are necessary within the apartheid framework. It cannot only come from investments in America but we have to look at investment around the world, the banking institutions around the world, the investment houses around the world, the businesses around the world. We must get all the cups moving together.

It was said by someone that a full tide lifts all the boats, but it does not help those who have no boats to sail. Two-thirds of the people, even with all that you have put in, because of the structural restrictions within South Africa, have no boats to sail. That is the reason why I support the no-new-investment concept.

I add that I am a realist. The companies who are there will need in 4 or 5 years retooling investment; lathes have to be retooled; millers will have to be retooled. I say there is need there for basic retooling to remain competitive. I think when we look at the whole picture, when I talk of assessments and measurements and monitoring, that is the kind of thing I am talking about.

It is tougher than many people thought I would ever try. Believe me, I don't have many supporters in industry with me on it, but that doesn't matter. I haven't had much support in many things other than the good Lord.

Mr. BINGHAM. Thank you.

Mr. WOLPE. Congressman Erdahl.

Mr. ERDAHL. Thank you very much, Mr. Chairman.

Reverend Sullivan, I, too, want to compliment you for the remarkable work you have been able to head up and really serve as a catalyst. I think all of us, hopefully, acknowledge by words and actions that the apartheid system in South Africa is immoral and abhorrent.

I had a chance to be in South Africa recently. It seems to be inefficient, when you look at the problems there of finding skilled workers, and dual transportation systems. I was reminded during this brief stop there and also by your comments today of something Abraham Lincoln said during the terrible days of the Civil War, in acknowledging or wondering that for every drop of blood drawn by the lash, another might be required by the sword.

I think we as a people have an awesome responsibility to try to do what I think you are trying to do, Reverend, and that is, to achieve change by peaceful means. The alternative is rather frightening and terrifying.

I think you have answered a couple of questions that I had.

In answer to my distinguished colleague, Mrs. Fenwick, in response to her question you told about the 80 percent of the people involved in the American companies at least had signed these principles which you have advocated and proposed. I wrote a question down and before you got done you answered my question. By voluntary effort, are you going to be able to achieve this? You acknowledge there might not be many companies behind you. If many of these companies are actively behind this, Congress, I am

I was happy that Mr. Robinson reminded the committee that in 1978 when the representative of Citibank was here with us, he made a very particular and excellent presentation suggesting that Citibank had stopped future investments; and on question from the chairman he referred to the fact that he would not submit the supporting information to this committee on the grounds that it would be in violation of the Protection of Business Act by South Africa.

It was appropriate, I think, that I remember Congressman Solarz asking, "Are you an American corporation or a South African corporation?"

We are still in the same arena.

I think that particularly for the reason that there has been serious regression, and I think seriously wrong signals sent by the United States to South Africa, and disturbing signals to the other African countries and to our own European and NATO allies, that the encouragement that we are giving now by the overtures from this administration to South Africa are going to be very costly to all of us.

What these bills ask of our country, the NAACP has been asking by letter, petition, testimony, and organization since 1910.

The NAACP organized the Pan-Africa movement in 1910 and, for the record, the NAACP also participated in the organization of the African National Congress then in the context of peaceful protest and in the context of the effort to secure universal release from the conditions of colonialism and oppression and that Congress has now, because of the recalcitrance of the South African Government, been forced to go underground and has been forced to engage in activities which I am sure that it did not contemplate, and its distinguished leaders did not contemplate in the early years.

The NAACP has been unremitting over the years in opposition to both European colonial and white racist settler domination of any African peoples.

We have supported developments which have shown promise of achieving full participatory and indeed multiethnic, multicultural, and multiracial governments in all African countries.

We opposed and continue to oppose governments which are either black dominated or white dominated, that are still conducted in the manner that has plagued the history of that continent since the 1880's.

We rejoiced in the successes of the national movement which brought full independence beginning with Ghana in 1957 and now find all of the sub-Saharan countries, except Namibia, have achieved independence.

As early as 1946 the NAACP protested the demand by South Africa for annexation of South-West Africa. We still seek the complete independence of Namibia. It was in 1960 that the NAACP finally determined that the only nonviolent course of address to South Africa was by economic boycott.

That was before the infamous Sharpsville massacre of black workers by South African police as they were making nonviolent protest of oppressive work, living, and transportation conditions.

That crisis resulted in the banning of the African National Congress, the exiling, banning, and imprisonment of virtually all of its

leaders and, of course, forcing the organization to operate underground instead of in the normal political and economic arena.

The NAACP called for a boycott of all South African goods and after Sharpsville, that call was heard. The boycott was adopted by the United Nations in 1965.

In that same year we recommended that the U.S. Government cooperate with the U.S. Special Committee Against Apartheid.

We further urged the Congress to discourage—if not prohibit—further U.S. investments in South Africa.

The two bills before us represent again a concrete and definitive effort to enforce a mandatory cessation of future investment in South Africa.

Now, as before, the sanction is needed but it is wisely contingent or conditioned upon a show of substantive change of the conditions of the oppressed and subjugated indigenous Southern Africa peoples including the people of Namibia.

It is also well established that there are only four means by which subordinated people can secure change in such a dominant government.

One is by the willingness of the Government itself to produce change by just an orderly operation of law and justice. If I could comment at this point, the United States provided to the world just a few years ago what I think is the first and most remarkable demonstration of how a government can be changed by orderly and constitutional process when we indeed changed the entire executive branch of our Government by such a process without violence and with a final note of forgiveness which saved the Nation a lot of pain and potential agony.

The second way in which government changes from initiative of the subordinated is by response to nonviolent petition, persuasion, or protest.

A third is by governmental change in response to economic boycott or work stoppage.

Failing those, the final effort must be made to secure change by violence.

Now, whether any earlier effort degenerates from one stage to the next depends more upon the degree of recalcitrance or oppressiveness of the Government than upon the just demands being put forth by the petitioners.

The South African Government itself has by violence of act and of law deprived its total citizenry, not just the indigenous petitioners, of the first two options.

These options must now be restored by an inverse process beginning with economic sanctions and with support for the affected people before they are further moved toward a final desperation and the greater violence that may quickly escalate into global warfare.

If the third step is not undertaken and successfully by the United States, then the fourth, which is already a process by the Africans themselves, will escalate as a last and final resort.

It is widely believed and now even being reported that American indirect financial support to the strengthening of the South African military capability is both substantial and sustained.

We urge this committee and the Congress, if it has not done so, to read the notes and documents of the U.N. Center Against Apartheid, the Department of Political Security Affairs Document No. 381, 18876 dated July 1981.

The title of that document is "Israel and South Africa—An Unlikely Alliance" by Rosalynde Ainslee.

The document actually focuses upon the United States by indirection, although the United States was omitted from the title. Whether one agrees with the details or not, the facts cited there should convey to the Congress a sense of the urgency of such measures as are recommended in this legislation offered by Representatives Gray and Solarz.

It is further recommended that the legislation on the prohibition of future investment should be strengthened in recognition of the facts in this document to prohibit evasion of the law, if enacted, by laundering investments and business operations through third party countries which is a common current practice.

America has helped to regenerate and restore the South African economy to its highest point of prosperity in this century.

It has done so by our own financial and monetary policies which have increased and skyrocketed the price of gold and diamonds and by direct purchases of the Krugerrand, even in spite of our own legislation which authorized the minting of gold medallions honoring such distinguished Americans as Miss Willa Cather, Mr. Mark Twain, Miss Marian Anderson, and Mr. Grant Wood.

Our Government, in its recent overtures, both diplomatically and culturally, has treated South Africa almost as though it enjoys most favored nation status.

This administration has attempted to set the stage to invite the Prime Minister to the United States on what would have been tantamount to a State visit.

It brought the Chief of South Africa Military Intelligence and his staff to meet with our National Security Council officers, Defense Intelligence officers, and created a national crisis when it was reported that they met both secretly and socially with the American Ambassador to the United States.

Mr. WOLPE. Dr. Butler, could I intrude for a moment? I do so with some embarrassment. Two members of our panel have to leave early. I want to be certain we do move to questions. I wonder if it would be possible for you to summarize the latter part?

Mr. BUTLER. I would be very happy to do so. Most of what is contained in this paper is certainly just a repetition of what you already heard.

Mr. WOLPE. The full statement, of course, will appear in the record.

Mr. BUTLER. Yes. Let me just conclude, Mr. Chairman, with a brief statement.

It is then in our own national interests and in the interests of the continuation and survival of Western civilization that we find a final peace with indigenous South Africans in order that we may be in a position in our respective Western nations to make domestic peace with ourselves.

It is in our own national interests that all indigenous South Africans be made full partners with settler Southern Africans and that

indigenous peoples of other nations and regions, including our own, be made full partners of the still acquisitive settlers.

The very survival of the world may rest on that proposition. Never in history has it been necessary for settlers to alienate, persecute, or racially subjugate indigenous peoples to survive.

Yet they have repeatedly done so throughout history. If we are yet unable to see that relationship between South Africa and ourselves and if we are yet unwilling to do what must be done in the interests of mankind by seeking a reorientation of the South African Government rather than give support to its present regression, then it may be not they but we for whom the bell tolls.

Thank you, Mr. Chairman.

[Mr. Butler's prepared statement follows:]

PREPARED STATEMENT OF DR. BROADUS N. BUTLER, DIRECTOR OF INTERNATIONAL AFFAIRS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE STRONGLY ENDORSES AND URGES PASSAGE BY THE UNITED STATES CONGRESS OF HOUSE BILL 3597 INTRODUCED BY THE HONORABLE WILLIAM H. GRAY. IT DIRECTS THE PRESIDENT OF THE UNITED STATES TO USE HIS EMERGENCY POWERS TO ISSUE REGULATIONS TO PROHIBIT FURTHER INVESTMENT IN SOUTH AFRICA BY AMERICAN PERSONS AND CORPORATIONS. WE STRONGLY ENDORSE ALSO HOUSE BILL 3008 INTRODUCED BY THE HONORABLE STEPHEN J. SOLARZ WHICH WILL PROHIBIT NEW LOANS BY AMERICAN FINANCIAL INSTITUTIONS TO THE SOUTH AFRICAN GOVERNMENT OR TO SOUTH AFRICAN CORPORATIONS OR OTHER ENTITIES, PROHIBIT THE IMPORTATION OF SOUTH AFRICAN KRUGERRANDS OR OTHER SOUTH AFRICAN GOLD COINS, AND WILL REQUIRE AMERICAN CORPORATIONS DOING BUSINESS IN SOUTH AFRICA TO COMPLY WITH THE FAIR EMPLOYMENT PRINCIPLES AND CIVIL RIGHTS STANDARDS OF THE UNITED STATES.

THESE LAWS ARE NEEDED BECAUSE THERE IS LITTLE EVIDENCE OF VOLUNTARY PROGRESS BY AMERICAN CORPORATIONS IN SOUTH AFRICA OR BY THE SOUTH AFRICAN GOVERNMENT IN THE TREATMENT OF INDIGENOUS SOUTH AFRICAN NATIVES AND OF THE INDIGENOUS PEOPLE OF NAMIBIA. THIS IS THE CASE, IN SPITE OF THE LONG HISTORY OF EFFORTS BY THE NAACP AND OTHER NATIONAL AND INTERNATIONAL ORGANIZATIONS AND BODIES, AND EVEN THE RECENT NOBLE EFFORT BY THE REVEREND LEON H. SULLIVAN. ON THE CONTRARY, SERIOUS RETROGRESSION IS EVIDENT. INDEED, SINCE THE CHANGE

OF ADMINISTRATION IN OUR AMERICAN GOVERNMENT, MATTERS HAVE RETROGRESSED IN SOUTH AFRICA EVEN FROM THE POINT OF THE LITTLE PROGRESS WHICH APPEARED TO TAKE PLACE BEFORE THE ELECTION.

THERE IS INCREASING APPEARANCE THAT SOUTH AFRICA IS FIRMLY CONVINCED THAT THE UNITED STATES DOES NOW AND WILL CONTINUE UNDER THIS ADMINISTRATION TO SUPPORT ITS AIMS TO COMPLETE ITS INTERNAL GRAND APARTHEID SCHEME, TO SET UP ITS OWN SOUTH AFRICA-CONTROLLED GOVERNMENT IN NAMIBIA BY REPEATED INVASION, KILLING AND DESTRUCTION OF VILLAGES IN SOUTHERN ANGOLA---EVEN BY EVENTUAL DESTABILIZATION OR OVERTHROW OF THE ANGOLAN GOVERNMENT THROUGH SUPPORT OF THE FORCES OF MR. JONAS SAVIMBI. MOREOVER, THE SOUTH AFRICAN GOVERNMENT APPEARS CONVINCED AND CONFIDENT THAT THE UNITED STATES' PRIVATE CORPORATIONS AND BANKING INTERESTS WILL CONTINUE TO INVEST IN AND STRENGTHEN THE ECONOMY OF SOUTH AFRICA AND THAT THE UNITED STATES GOVERNMENT ITSELF WILL CONTINUE, THOUGH INDIRECTLY, TO SUPPORT AND STRENGTHEN ITS MILITARY AND NUCLEAR CAPABILITY.

WHAT THESE BILLS ASK OF OUR COUNTRY, THE NAACP HAS BEEN ASKING BY PETITION, LETTER, TESTIMONY, AND ORGANIZATION SINCE 1910. FROM THE PAN-AFRICA MOVEMENT WHICH THE NAACP HELPED ORGANIZE IN 1910 AND THE AFRICAN NATIONAL CONGRESS OF SOUTH AFRICA WHICH IT HELPED TO ORGANIZE THEN IN THE CONTEXT AND EFFORT OF PEACEFUL PROTEST IN 1912, THE NAACP CO-SPONSORED FIVE PAN-AFRICAN CONFERENCES JOINTLY WITH OTHERS AND CONDUCTED IN EUROPE AND IN THE UNITED STATES FROM 1919 TO 1945. A SIXTH CONFERENCE WAS HELD ON THE AFRICAN CONTINENT IN 1974. THOSE WERE SERIOUS

EFFORTS WHICH PRODUCED THE MODEL, THE LEADERSHIP AND THE SUBSTANCE FOR THE ORGANIZATION OF AFRICAN UNITY. THEREFORE, WE HAVE A DEEP AND VESTED INTEREST IN THIS LEGISLATION BY THE UNITED STATES CONGRESS, NOT FOR OURSELVES BUT FOR THE SURVIVAL OF WESTERN CIVILIZATION THROUGH THE FINAL EMANCIPATION OF ALL OF THE PEOPLES OF THE AFRICAN CONTINENT FROM OPPRESSIVE AND EXPLOITATIVE GOVERNMENTS, WHITE OR BLACK.

IN 1953, OUR ORGANIZATION URGED THEN AMBASSADOR HENRY CABOT LODGE, JR., TO VOTE FOR APPROVAL OF A UNITED NATIONS' RESOLUTION DENOUNCING THE RACIAL POLICIES OF SOUTH AFRICA. APARTHEID HAD BEEN THAT EARLY FIRMLY ENTRENCHED IN SOUTH AFRICAN GOVERNMENT POLICY AFTER THE NATIONALIST PARTY VICTORY IN 1948. THE NAACP HAS BEEN UNREMITTING OVER THE YEARS IN OPPOSITION TO BOTH EUROPEAN COLONIAL AND WHITE RACIST SETTLER DOMINATION OF ANY AFRICAN PEOPLES, AND WE HAVE SUPPORTED DEVELOPMENTS WHICH HAVE SHOWN PROMISE OF ACHIEVING FULL PARTICIPATORY AND, INDEED, MULTI-ETHNIC, MULTICULTURAL AND MULTIRACIAL GOVERNMENTS IN ALL AFRICAN COUNTRIES. WE OPPOSED AND CONTINUE TO OPPOSE GOVERNMENTS WHICH ARE EITHER BLACK-DOMINATED OR WHITE-DOMINATED THAT ARE STILL CONDUCTED IN THE MANNER THAT HAS PLAGUED THE HISTORY OF THE CONTINENT SINCE 1880. WE REJOICED IN THE SUCCESSES OF THE NATIONAL MOVEMENTS WHICH BROUGHT FULL INDEPENDENCE TO GHANA IN 1957 AND FINDS NOW ALL OF THE SUB-SAHARAN COUNTRIES, EXCEPT NAMIBIA, HAVE ACHIEVED INDEPENDENCE. AS EARLY AS 1946, THE NAACP PROTESTED THE DEMAND BY SOUTH AFRICA FOR ANNEXATION OF SOUTH-WEST AFRICA. WE STILL SEEK THE COMPLETE INDEPENDENCE OF NAMIBIA.

IN 1960, THE NAACP FINALLY DETERMINED THAT THE ONLY NON-VIOLENT

COURSE OF ADDRESS TO SOUTH AFRICA WAS BY ECONOMIC BOYCOTT. THAT WAS BEFORE THE INFAMOUS SHARPEVILLE MASSACRE OF BLACK WORKERS BY SOUTH AFRICAN POLICE AS THEY WERE MAKING NON-VIOLENT PROTEST OF OPPRESSIVE WORK, LIVING AND TRANSPORTATION CONDITIONS. THAT CRISIS RESULTED IN THE BANNING OF THE AFRICAN NATIONAL CONGRESS, THE EXILING, BANNING AND IMPRISONMENT OF VIRTUALLY ALL OF ITS LEADERS AND, OF COURSE, FORCING THE ORGANIZATION TO OPERATE UNDERGROUND INSTEAD OF IN THE NORMAL POLITICAL AND ECONOMIC ARENA. THE NAACP CALLED FOR A BOYCOTT OF ALL SOUTH AFRICAN GOODS AND, AFTER SHARPEVILLE, THAT CALL WAS HEARD.

THE BOYCOTT WAS ADOPTED BY THE UNITED NATIONS IN 1965. IN THAT SAME YEAR, THE NAACP RECOMMENDED TO THE UNITED STATES GOVERNMENT THAT IT COOPERATE WITH THE UNITED NATION'S SPECIAL COMMITTEE AGAINST APARTHEID AND SUPPORT THE UNITED NATIONS RESOLUTION ON POLITICAL AND ECONOMIC DISENGAGEMENT FROM SOUTH AFRICA. WE FURTHER URGED CONGRESS TO TAKE ACTION TO DISCOURAGE, IF NOT PROHIBIT, ANY FURTHER UNITED STATES INVESTMENTS IN SOUTH AFRICA. THE NAACP PASSED AND COMMUNICATED TO THE CONGRESS AND TO THE PRESIDENTS FURTHER RESOLUTIONS BY CONVENTIONS IN 1966, 1968, 1971, 1972, 1975 AND A COMPREHENSIVE PATTERN OF RECOMMENDATIONS CONTAINED IN THE TASK FORCE COMMITTEE ON AFRICA REPORT OF 1977. WE SUBMITTED TESTIMONY ON THE BINGHAM, SOLARZ, AND DIGGS BILLS OF 1978 WHICH WERE INTENDED TO ACHIEVE THE SAME OBJECTIVES THAT WE NOW SEEK.

THE TWO BILLS BEFORE US REPRESENT AGAIN A CONCRETE AND DEFINITIVE EFFORT TO ENFORCE A MANDATORY CESSATION OF FUTURE INVESTMENT IN SOUTH AFRICA. NOW AS BEFORE, THE SANCTION IS NEEDED AND CONDITIONED UPON A SHOW OF SUBSTANTIVE CHANGE OF THE CONDITIONS OF THE OPPRESSED AND SUBJUGATED INDIGENOUS SOUTHERN AFRICAN PEOPLES, INCLUDING THE PEOPLE

OF NAMIBIA. FOR THOSE AMERICAN CORPORATIONS CURRENTLY DOING BUSINESS IN SOUTH AFRICA, THE BILLS ASK ONLY THAT HUMAN WORK AND WAGE STANDARDS BE CARRIED OUT IN SOUTH AFRICA BY THE SAME CRITERIA THAT BUSINESS IS TO BE CONDUCTED IN THE UNITED STATES, THAT IS, BY PROVIDING EQUAL PAY AND EQUAL CONDITIONS OF WORK AND PROMOTION FOR BLACK AS FOR WHITE WORKERS.

IT ALSO IS WELL ESTABLISHED THAT THERE ARE ONLY FOUR MEANS BY WHICH SUBORDINATED PEOPLE CAN SECURE CHANGE IN A DOMINANT GOVERNMENT. ONE IS BY THE WILLINGNESS OF A GOVERNMENT TO PRODUCE CHANGE BY JUST AND ORDERLY OPERATION OF LAW AND JUSTICE. A SECOND IS BY GOVERNMENTAL RESPONSE TO NON-VIOLENT PETITION, PERSUASION OR PROTEST. A THIRD IS BY GOVERNMENTAL CHANGE IN RESPONSE TO ECONOMIC BOYCOTT OR WORK STOPPAGE. AND, FAILING THOSE OTHERS, A FINAL EFFORT IS MADE TO SECURE CHANGE BY VIOLENCE. WHETHER ANY EFFORT DEGENERATES FROM ONE STAGE TO THE NEXT DEPENDS SOLELY UPON THE DEGREE OF RECALCITRANCE OR OPPRESSIVENESS OF THE GOVERNMENT, NOT UPON THE JUST DEMANDS BEING PUT FORTH BY THE PETITIONERS. THE SOUTH AFRICAN GOVERNMENT ITSELF HAS BY VIOLENCE OF ACT AND OF LAW DEPRIVED ITS TOTAL CITIZENRY, NOT JUST THE INDIGENOUS PETITIONERS OF THE FIRST TWO OPTIONS. THESE OPTIONS NOW MUST BE RESTORED BY AN INVERSE PROCESS BEGINNING WITH ECONOMIC SANCTIONS AND WITH SUPPORT FOR THE AFFECTED PEOPLE BEFORE THEY ARE MOVED FURTHER TOWARD THE FINAL DESPERATION AND THE GREATER VIOLENCE THAT MAY QUICKLY ESCALATE INTO GLOBAL WARFARE. IF THE THIRD STEP IS NOT UNDERTAKEN AND SUCCESSFULLY BY THE UNITED STATES, THEN THE FOURTH, WHICH IS ALREADY IN PROCESS BY THE AFRICANS THEMSELVES, WILL ESCALATE AS A LAST AND FINAL RESORT.

WHETHER THE UNITED STATES GOVERNMENT ACTUALLY SUPPORTS OR OPPOSES THE AIMS OF THE SOUTH AFRICAN GOVERNMENT WILL BE BOTH DECISIVE AND SUBSTANTIAL IN THE DETERMINATION OF THE FUTURE OF THE WORLD, NOT ONLY FOR THE REASON OF THE POLITICAL, ECONOMIC AND MILITARY IMPLICATIONS, BUT IN RECOGNITION OF THE POWERFUL AND OPPRESSIVE EMOTIONAL OPERATION OF THE SYMBOLISM OF RACISM AND RELIGIOUS EXTREMISM IN THE CURRENT PRECARIOUS BALANCE BETWEEN WAR AND PEACE. THE ECONOMIC AND STRATEGIC SUPPORT WHICH HAS SHORED UP THE SOUTH AFRICAN MILITARY CAPABILITY PLUS THE POLITICAL SUPPORT FOR THE SOUTH AFRICAN GOVERNMENT IN THE UNITED NATIONS BY THE UNITED STATES ARE PROVIDING IN MANY WAYS MISLEADING SIGNALS BOTH TO SOUTH AFRICA AND TO THE OTHER COUNTRIES OF THE AFRICAN CONTINENT---AND EVEN TO OUR OWN EUROPEAN AND NATO ALLIES.

IT IS WIDELY BELIEVED AND NOW EVEN BEING REPORTED THAT AMERICAN INDIRECT FINANCIAL SUPPORT TO THE STRENGTHENING OF THE SOUTH AFRICAN MILITARY CAPABILITY IS SUBSTANTIAL AND SUSTAINED. WE URGE THIS COMMITTEE AND THE CONGRESS IF IT HAS NOT DONE SO TO READ THE NOTES AND DOCUMENTS OF THE UNITED NATIONS CENTRE AGAINST APARTHEID, DEPARTMENT OF POLITICAL AND SECURITY AFFAIRS 381-18876 DATED JULY 1981, TITLED "ISRAEL AND SOUTH AFRICA AN UNLIKELY ALLIANCE" BY ROSALYNDE AINSLEE. THE DOCUMENT ACTUALLY FOCUSSES UPON THE UNITED STATES BY INDIRECTION, ALTHOUGH THE UNITED STATES WAS OMITTED FROM THE TITLE. THAT DOCUMENT ITSELF, WHETHER ONE ARGUES ITS DETAILS OR NOT, SHOULD CONVEY TO THE CONGRESS A SENSE OF THE URGENCY OF SUCH MEASURES AS ARE RECOMMENDED IN THE LEGISLATION OFFERED BY REPRESENTATIVES GRAY AND

confident we can pass the bill in committee. I am not confident that such a bill would pass this body.

What change could be done by the companies themselves acknowledging the reality of the situation, recognizing economic benefits if we have to go that far, recognizing the social and humanitarian concerns?

Reverend SULLIVAN. The companies will move by economic benefits more than for any humanitarian reasons. Companies have no social conscience; they have balance sheets; they want to see profits. That is the direction we have to look at even in terms of companies remaining there.

I am a realist. I realize the difficulty of the kind of legislation we are suggesting here and that you are advancing to pass through Congress. But strange things happen in the world. The fact is that we have to find a nonviolent alternative to the South African situation, not only for the sake of South Africa, not only for the sake of the broad world, but also—and this is the first time I have mentioned this, and one reason I am so concerned about it, because of the effect it will have on America—we cannot afford a war in South Africa. We cannot expect black soldiers to fight for white South Africa. There will be revolts in the army, mutiny in the navy, and chaos in the air force. Our cities will break out into riots. We cannot afford it.

The other thing is that we cannot afford a war in South Africa, if we can avoid it in any way, because it involves more than America and South Africa, Namibia, Angola, or Mozambique or even Cuba. It will involve the whole world.

I can foresee a confrontation of the two great nuclear powers of this world. Somehow, we have to find some peaceful, nonviolent way to resolve this thing before it comes to that. We will have some violence in South Africa. It is going on now, but the major kind of violence is what disturbs and concerns us all.

Realizing then that I am still hoping that something can happen congressionally, somehow America has to speak out, through the Congress, through a group of Congressmen and Senators; somehow the world has to hear us say that this is where we stand on this issue and it includes businesses that are there; it includes our institutions that are there; it includes our Government that is there.

That is what I am pushing for. There was a suggestion that I hope would have possibility—may I say something about it?

A group of Congresspersons sent a communication to the President, asking that he convene a meeting of American businesses to request that the businesses support and comply with these kinds of practices so that we might get the support of the American community behind it. That was an idea, an idea in the direction that should be tested and might open some door. Something could happen. But somehow we have to find some steps to take to get to where we want to go before it is too late, because, Mr. Congressman, time is running out.

Persons like myself, I am alone except with the good Lord; I can only go so far.

Mr. ERDAHL. You are both in good company.

This follows up on a question by Chairman Bingham and also the concern I have, and I suppose we in this country have little reason

SOLARZ. OUR FURTHER RECOMMENDATION IS THAT THE LEGISLATION ON THE PROHIBITION OF FUTURE INVESTMENT SHOULD BE STRENGTHENED TO PROHIBIT EVASION OF THE LAW, IF ENACTED, BY LAUNDERING INVESTMENTS AND BUSINESS OPERATIONS THROUGH THIRD PARTY COUNTRIES, WHICH IS A COMMON CURRENT PRACTICE.

AMERICA HAS HELPED TO REGENERATE AND TO RESTORE THE SOUTH AFRICAN ECONOMY TO ITS HIGHEST POINT OF PROSPERITY IN THIS CENTURY BOTH BY DIRECT AND INDRECT FINANCIAL AND MILITARY MEANS IN SPITE OF OUR OWN LAWS AND THE UNITED NATIONS RESOLUTIONS TO THE CONTRARY. AMERICA HAS HELPED IMMENSELY THE ECONOMIC PROSPERITY OF SOUTH AFRICA BY OUR OWN MONETARY POLICIES WHICH HAVE CONTRIBUTED TO THE SKYROCKETING OF GOLD AND DIAMOND PRICES AND BY DIRECT PURCHASES OF THE KRUGERRAND EVEN IN SPITE OF OUR OWN LEGISLATION HR 13567 AUTHORIZING THE MINTING OF AMERICAN GOLD MEDALLIONS HONORING SUCH DISTINGUISHED AMERICANS AS MISS WILLA CATHER, MR. MARK TWAIN, MISS MARIAN ANDERSON AND MR. GRANT WOOD.

OUR GOVERNMENT IN ITS RECENT OVERTURES BOTH DIPLOMATICALLY AND CULTURALLY HAS TREATED SOUTH AFRICA ALMOST AS THOUGH IT ENJOYS MOST FAVORED NATION STATUS. THIS ADMINISTRATION ATTEMPTED TO SET THE STAGE TO INVITE PRIME MINISTER P.W. BOTHA TO THE UNITED STATES ON WHAT WOULD HAVE BEEN TANTAMOUNT TO A STATE VISIT. IT BROUGHT LT. GENERAL P.W. VANDER WESTHUIZEN AND FOUR OTHER SOUTH AFRICAN MILITARY INTELLIGENCE CHIEF OFFICERS TO MEET WITH BOTH NATIONAL SECURITY COUNCIL OFFICERS AND DEFENSE INTELLIGENCE OFFICERS OF THE UNITED STATES AND CREATED A NATIONAL CRISIS WHEN IT WAS REPORTED THAT THEY MET BOTH SECRETLY AND SOCIALLY

WITH AMERICAN AMBASSADOR TO THE UNITED NATIONS, JEANNE KIRKPATRICK.

OUR GOVERNMENT ALSO INDICATED THAT IT MIGHT INVITE TO THE UNITED STATES MR. JONAS SAVIMBI, THE LEADER OF THE UNITA FORCES OF ANGOLA, WHO IS SUPPORTED BY SOUTH AFRICA IN THE EFFORT TO OVERTHROW THE GOVERNMENT OF ANGOLA. IN ADDITION, OUR GOVERNMENT TWICE STOOD ALONE IN OPPOSITION TO RECENT UNITED NATIONS ACTIONS AGAINST SOUTH AFRICA WHICH RESULTED FROM SOUTH AFRICA'S MASSIVE DESTRUCTION OF VILLAGES IN SOUTHERN ANGOLA WHICH INCLUDED THE KILLING OF CIVILIAN WOMEN AND CHILDREN AND THE DECIMATION OF DWELLINGS.

THE PRIMARY RESULT OF ALL OF THIS IS THAT BOTH OUR ALLIES IN EUROPE AND, MORE SIGNIFICANTLY, AFRICAN NATIONS HAVE BECOME DEEPLY CONCERNED ABOUT WHAT THEY PERCEIVE AS A DEFINITE AND SHARP TILT BY THE UNITED STATES TOWARD SOUTH AFRICA AND AGAINST THE INTERESTS WHICH THE UNITED STATES ITSELF HAS IN ALL OTHER SUB-SAHARAN COUNTRIES. A SECOND RESULT HAS BEEN TO EMBOLDEN THE SOUTH AFRICAN GOVERNMENT TO RETURN TO ITS OLD OPPRESSIVE AND RACIST WAYS WITH A RENEWED ADAMANT AND VIOLENT POSTURE OF AGGRESSIVENESS AT HOME AND TOWARDS NAMIBIA, ANGOLA, AND MOZAMBIQUE BEYOND ITS BORDERS.

IT IS WORTHY OF NOTE THAT A LITTLE OVER TWO YEARS AGO, AND BEFORE THE LAST NATIONAL ELECTION, MR. PIETER KOORNHOOF, THE MINISTER OF PLURAL RELATIONS (THE FORMER BANTU COMMISSION), MADE AN ELOQUENT AND PERSUASIVE SPEECH HERE IN WASHINGTON BEFORE THE NATIONAL PRESS CLUB AND AT OTHER LOCATIONS IN THE UNITED STATES WITH MEDIA COVERAGE IN WHICH HE FLATLY PROCLAIMED THAT PRIME MINISTER BOTHA HAD DECLARED THAT

APARTHEID IS DEAD IN SOUTH AFRICA AND THERE HAD BEEN ADOPTED AN EIGHT-POINT PLAN TO FINALLY BURY IT. HE DESCRIBED A PLAN OF STAGED REMOVAL OF RACIAL BARRIERS TO PUBLIC ACCOMMODATIONS, TO SPORTS AND ENTERTAINMENT, TO COLLECTIVE BARGAINING AND EQUAL JOB OPPORTUNITY, TO ECONOMIC AND EDUCATIONAL DEVELOPMENT, AND TO EVENTUAL POLITICAL AND SOCIAL PARTICIPATION BY BLACK AND COLOURED SOUTH AFRICANS. THE SPEECH WAS ROUNDLY APPLAUDED BY MEDIA AND CORPORATE AUDIENCES, AND NEWS FROM SOUTH AFRICA EVEN SUGGESTED SOME SMALL SIGNS OF PROGRESS. BUT NOW ALL OF THOSE PROMISES HAVE BEEN REVERSED BY THE ACTIONS OF THE SOUTH AFRICAN GOVERNMENT. IT IS, THEN, IMPORTANT THAT ANY LAWS SUCH AS THOSE HERE RECOMMENDED BY THE CONGRESSMEN HAVE INCORPORATED INTO THEM A GOOD FAITH FACTOR WHICH IS DIRECTED TO REAL, NOT PROPAGANDA, PROGRESS.

NOT ONLY HAVE BLACK WORKERS BEEN FIRED BY AMERICAN CORPORATIONS AFTER THE SOUTH AFRICAN GOVERNMENT APPEARED TO OPEN UP TO THEM THE RIGHT TO COLLECTIVE BARGAINING, BUT; IN RECENT MONTHS, OVER 100 BLACK UNION LEADERS HAVE BEEN JAILED OR BANNED IN A WAVE OF ARRESTS. BISHOP DESMOND TUTU OF THE SOUTH AFRICAN COUNCIL OF CHURCHES HAD HIS PASSPORT LIFTED BY THE SOUTH AFRICAN GOVERNMENT WHICH DEPRIVES HIM OF A RIGHT TO TRAVEL OR TO FREELY SPEAK. BLACK MIGRANTS HAVE AGAIN BEEN BRUTALLY REMOVED AND DISPOSSESSED OF THEIR MEAGER DWELLINGS IN CAPETOWN, A REPUTATION OF CROSSROADS. THAT IS THE TYPE OF REGRESSION WHICH IS SUPPORTED BY OUR GOVERNMENT IN THE GUISE OF NEUTRALITY. THE SOUTH AFRICAN GOVERNMENT HAS BEEN FURTHER EMBOLDENED BY THE RECENT ACTION OF THE UNITED STATES SENATE TO SEEK THE REPEAL OF THE CLARK AMENDMENT WHICH PROHIBITED

UNITED STATES PARTICIPATION IN COVERT OPERATIONS IN ANGOLA. AMERICAN CORPORATIONS EVEN VOICED THEIR OWN OBJECTIONS TO OUR GOVERNMENT'S POLICY TOWARD ANGOLA. A FINAL DISTRESSING SIGN IS THAT THE ADMINISTRATION HAS SENT OUT SUGGESTIONS THAT SOUTH AFRICA BE BROUGHT INTO THE NATO ARRANGEMENT; OR, FAILING THAT, AN EFFORT IS BEING MADE TO ESTABLISH A SOUTH ATLANTIC STRATEGIC ALLIANCE INVOLVING THE REPRESSIVE GOVERNMENTS OF BOTH SOUTH AFRICA AND ARGENTINA.

WE CITE THESE MATTERS TO EMPHASIZE THAT THERE IS CRITICAL NEED BY THE HOUSE OF REPRESENTATIVES TO INITIATE A COURSE WHICH WILL GO COUNTER TO THE PRESENT TILT OF THE AMERICAN SOUTHERN AFRICA POLICY, A POLICY WHICH STILL HAS POWERFUL SUPPORT IN THE UNITED STATES SENATE. THAT POLICY, WE FEEL, IS A POSITIVE DANGER TO WORLD PEACE AND THEREBY TO THE SECURITY OF THE UNITED STATES ITSELF. THE RECENT EVENTS AND TRAGEDIES OF THE MIDDLE EAST ARE NOT SEPARABLE FROM THE TRAGEDIES OF SOUTHERN AFRICA. THE ROLE OF THE UNITED STATES IS NOT SEPARABLE FROM EITHER.

IN THE CASE OF SOUTH AFRICA, FROM THE PERCEPTION OF THE SOUTH AFRICAN GOVERNMENT ITSELF, APARTHEID STILL IS AN ECONOMIC, NOT JUST A POLITICAL ARRANGEMENT. IN THE WORDS OF FORMER PRIME MINISTER JOHN VORSTER:

BLACKS ARE NOT A PART OF THE MORALITY, RELIGION OR POLITICS OF SOUTH AFRICA. WE HAVE NEITHER A MORAL NOR A POLITICAL OBLIGATION TO THEM. OUR RELATIONSHIP TO THEM IS ONE OF GOVERNMENT TO GOVERNMENT CONTRACTS FOR THEIR LABOR. WE CONTRACT WITH EXTERNAL GOVERNMENTS SUCH AS MOZAMBIQUE, BOTSWANA, LESOTO, AND OTHERS AS WELL AS INTERNAL TRIBAL AND INDEPENDENT BANTUSTANS FOR THE LABOR OF THEIR PEOPLE. WE HAVE NO OTHER CLAIMS UPON THEM OR THEY ON US IN THE WHITE RESERVATION AREAS OF THIS COUNTRY.

THAT IS IN SUMMARY AND PARAPHRASE A STATEMENT MADE DIRECTLY TO THE NAACP TASK FORCE WHICH VISITED THE OFFICE OF THE PRIME MINISTER IN CAPETOWN IN APRIL 1977. THAT CONTINUES TO BE THE REAL ATTITUDE OF THE SOUTH AFRICAN GOVERNMENT. THE NAACP TASK FORCE UNDERTOOK AN INTENSIVE STUDY OF SEVENTEEN AFRICAN COUNTRIES, INCLUDING SOUTH AFRICA AND NAMIBIA. THAT WAS BEFORE THE SULLIVAN PRINCIPLES WERE ANNOUNCED AND WELL BEFORE THE RECENT TWO-YEAR INTENSIVE STUDY BY THE SPECIAL STUDY COMMISSION ON U.S. POLICY TOWARDS SOUTHERN AFRICA HEADED BY MR. FRANKLIN THOMAS OF THE FORD FOUNDATION. THE NAACP CONTINUES ITS OWN STUDY AND CONTINUES TO LOOK FOR SIGNS OF TRUE PROGRESS.

THE SAD TRUTH IS THAT IN SPITE OF THE MASSIVE INVESTMENT BY SOUTH AFRICA IN IMAGE BUILDING AND PROPAGANDA IN THE UNITED STATES, SOUTH AFRICA HAS NOT MADE ANY SIGNIFICANT CHANGE FOR THE BETTER IN ITS RACIAL POLICIES WHICH ARE NOT COSMETIC OR WHICH ARE NOT AS QUICKLY REVERSED AS THEY ARE FORWARDED. THERE HAS BEEN A PATTERN OF FACTUAL CONTRADICTIONS BY GOVERNMENT ACTIONS OF ALL OF THE VERBAL CLAIMS OF PROGRESS OVER THE PAST FIVE YEARS OF OUR OWN CONTINUOUS STUDIED OBSERVATIONS OF EVENTS AND OF GOVERNMENT POLICY CHANGES IN SOUTH AFRICA. IN SHORT, THERE HAS BEEN NO PERCEPTIBLE RACIAL PROGRESS THAT SHOWS PROMISE. YET, THERE HAS BEEN SIGNIFICANT ECONOMIC RECOVERY AND THE HIGHEST DEGREE OF IMPROVEMENT IN MILITARY CAPABILITY AND ADVANCEMENT IN NUCLEAR TECHNOLOGY WITH AMERICAN, ISRAELI, BRITISH, FRENCH AND GERMAN ASSISTANCE.

SINCE ALL OF THAT ECONOMIC PROGRESS IS ROOTED IN RACIST

ECONOMIC POLITICS AND OPPRESSIVE LEGAL ACTION, IT STANDS TO REASON THAT THE ONLY STRATEGY TO SUCCESSFULLY MOVE THAT GOVERNMENT FROM THAT COURSE HAS TO BE A STRATEGY OF ECONOMIC SANCTIONS. UNFORTUNATELY, BOTH OUR GOVERNMENT AND OUR CORPORATE COMMUNITY ARE EXTREMELY RELUCTANT TO UNDERTAKE ECONOMIC SANCTIONS. IT IS WIDELY BELIEVED AND WITH SUBSTANTIAL REASON THAT THIS RELUCTANCE ON THE PART OF THE UNITED STATES IS DEEPLY EMBEDDED IN THE CRISIS OF ITS OWN INABILITY TO FINALLY RESOLVE ITS OWN RACIAL PROBLEMS. TO THAT EXTENT, SOUTH AFRICA IS A KIND OF ALTER EGO WHICH MIRRORS IN THE EXTREME AMERICA'S OWN RACIAL PROBLEMS AND PERPLEXITIES IN A WAY THAT AMERICA IS UNWILLING TO FACE OR FINALLY TO RESOLVE HERSELF.

IN THE STUDIED AND LONG-TIME HISTORIC JUDGMENT OF THE NAACP, AND IN VIEW OF THE CONSUMMATE AND REGRESSIVE INTRANSIGENCE OF THE SOUTH AFRICAN GOVERNMENT, ONLY ONE OPTION REMAINS OPEN TO THE UNITED STATES. THE UNITED STATES GOVERNMENT MUST PURSUE CHANGE WITHIN SOUTH AFRICA. IT IS IN OUR OWN LONG-TERM SECURITY AND STRATEGIC INTEREST AS WELL TO LIVE UP TO OUR OWN MORAL RESPONSIBILITY TO DEMOCRACY, TO WORLD LEADERSHIP AND TO THE FREEDOM OF HUMANKIND. THAT IS THE CHARGE AND THE COURSE WHICH IS ADDRESSED TO THE CONGRESS AND TO THE NATION BY HR 3008 AND HR 3597.

IF THE UNITED STATES IS UNWILLING TO PLACE INTO LAW THOSE ECONOMIC SANCTIONS, CIVIL RIGHTS AND FAIR LABOR STANDARD OF WORK REQUIREMENTS IN BEHALF OF THE BLACK, COLOURED AND THE ASIAN POPULATIONS OF SOUTH AFRICA, THEN WE SHALL CONTINUE TO BE PARTY TO REINFORCING THE STIGMA THAT SOUTH AFRICA BRINGS UNNECESSARILY UPON ITSELF. EVEN MORE, WE SHALL

REINFORCE AND JUSTIFY THE PERCEPTION BY ALL OTHER NATIONS, INCLUDING OUR OWN NATO ALLIES, THAT WE HAVE INDEED TILTED NOT TO A NEUTRAL POSTURE, AS WE SAY NOW OF OUR SOUTHERN AFRICA POLICY, BUT TO A POSITIVE INVOLVEMENT WITH SOUTH AFRICA IN THEIR VIOLATIONS OF HUMAN RIGHTS AND OF INTERNATIONAL LAW.

CONTRARY TO OURS AND TO THE SOUTH AFRICAN GOVERNMENT'S VIEW OF WHAT SO OBVIOUSLY TO THEM APPEARS TO BE WEAKNESSES AND DEFICIENCIES IN ANC AND SWAPO MILITARY TECHNOLOGY AND SOPHISTICATION, AND EVEN OF THE TACTICAL INCAPABILITY OF THOSE BANNED AND EXILED INDIGENOUS GROUPS; AND, IN SPITE OF THE KNOWN NUCLEAR CAPABILITY AVAILABLE TO THE SOUTH AFRICAN GOVERNMENT, IT MAY WELL BE REMEMBERED THAT THOSE VERY INDIGENOUS SOUTHERN AFRICANS ARE THE DESCENDANTS OF THE OLDEST KNOWN PROGENITORS OF HUMANKIND. THEY HAVE LIVED THROUGH AND SURVIVED ALL OF THE FALLEN EMPIRES AND CIVILIZATIONS WHICH THE AGGRESSORS AMONG MANKIND HAVE CREATED AND DESTROYED. THEY WILL SURVIVE US AND THE PRESENT SOUTH AFRICAN GOVERNMENT, AND THAT IS THEIR ULTIMATE STRENGTH. WHAT THEN IS OUR STRENGTH--CREATIVE NEW VISIONS OF HUMAN GOVERNMENT OR MERE CAPABILITY FOR TECHNOLOGICAL ADVANCEMENT WITH EMPHASIS UPON HUMAN DESTRUCTION?

WE CANNOT ESCAPE THE FINAL OBSERVATION THAT IN SPITE OF THE APPARENT COMMITMENT OF OUR GOVERNMENT TO GIVING SUPPORT TO THE SUBJUGATED IN SOUTH AFRICA, PAGE XXXII OF YOUR OWN REPORT OF HEARINGS ON ECONOMIC AND SECURITY ASSISTANCE PROGRAMS IN AFRICA REVEALS THAT WHILE IN THE PAST OUR GOVERNMENT HAS BEEN A RELIABLE SUPPORTER OF THE UNITED NATIONS TRUST FUND FOR SOUTH AFRICA, THE CURRENT ADMINISTRATION DID NOT REQUEST

ANY APPROPRIATION FOR THAT FUND. YET IT IS THAT FUND WHICH HAS PROVIDED THE LEGAL ASSISTANCE, EDUCATIONAL AND WELFARE ASSISTANCE AND REFUGEE ASSISTANCE TO THE FAMILIES OF THOSE WHO HAVE BEEN ACCUSED, EXILED, OR IMPRISONED UNDER SOUTH AFRICAN SECURITY LAWS. THAT IS A FURTHER REASON THAT OUR CONGRESS MUST MAKE STRONG LAWS. OUR NATION CANNOT COUNTENANCE WHAT GOES ON UNDER THE GUISE OF QUIET DIPLOMACY, AND SOUTH AFRICA WILL CERTAINLY TAKE ADVANTAGE OF IT.

IT IS, THEN, IN OUR OWN NATIONAL INTEREST AND IN THE INTEREST OF THE CONTINUATION AND SURVIVAL OF WESTERN CIVILIZATION THAT WE FIND A FINAL PEACE WITH INDIGENOUS SOUTH AFRICANS IN ORDER THAT WE MAY BE IN A POSITION IN OUR RESPECTIVE WESTERN NATIONS TO MAKE DOMESTIC PEACE WITH OURSELVES. IT IS IN OUR OWN NATIONAL INTEREST THAT ALL INDIGENOUS SOUTH AFRICANS BE MADE FULL PARTNERS WITH SETTLER SOUTHERN AFRICANS AND THAT INDIGENOUS PEOPLES OF OTHER NATIONS AND REGIONS, INCLUDING OUR OWN, BE MADE FULL PARTNERS AND PEERS OF THE STILL ACQUISITIVE SETTLERS. THE VERY SURVIVAL OF THE WORLD MAY REST ON THAT PROPOSITION. NEVER IN HISTORY HAS IT BEEN NECESSARY FOR SETTLERS TO ALIENATE, PERSECUTE, OR RACIALLY SUBJUGATE INDIGENOUS PEOPLES TO SURVIVE. YET, THEY HAVE REPEATEDLY DONE SO THROUGHOUT HISTORY, INCLUDING HERE IN OUR OWN COUNTRY. IF WE ARE YET UNABLE TO SEE THAT RELATIONSHIP BETWEEN SOUTH AFRICA AND OURSELVES, AND, IF WE ARE YET UNWILLING TO DO WHAT MUST BE DONE IN THE INTEREST OF MANKIND BY SEEKING A REORIENTATION OF THE SOUTH AFRICAN GOVERNMENT RATHER THAN TO GIVE SUPPORT TO ITS PRESENT REGRESSION TOWARD RENEWED OPPRESSION AND ECONOMIC EXPLOITATION OF THE MAJORITY OF SOUTHERN AFRICAN PEOPLES---SO BLATANTLY RESUMED BY THE SOUTH AFRICAN GOVERNMENT---THEN, IT MAY BE WE, NOT THEY, FOR WHOM THE BELL TOLLS.

Mr. WOLPE. Thank you very much. I am terribly sorry to have to press you a little bit.

Mr. BUTLER. That is OK.

Mr. WOLPE. Mr. Gould, you and Mr. Robinson have somewhat different perspectives on the Solarz legislation that would focus upon the question of the Sullivan code in addition to bank laws and the sale of Krugerrands.

I want to focus on the Sullivan law aspect of that legislation. I would be interested in your response to Mr. Robinson's critique that essentially any legislation that would attempt to make more effective the Sullivan codes would have the unintended effect of simply essentially providing an escape or a subterfuge from which the South African Government can continue with the system of apartheid as essentially a cover for an absence of a real challenge to the system of apartheid.

Mr. GOULD. Let me respond in a number of ways:

Of course, I have the greatest respect for Mr. Robinson and I have listened very carefully to what he has to say today. To begin with, the Solarz bill is more ambitious substantively than are the Sullivan principles.

I identified a number of areas in which that is so, particularly with regard to the means through which the goal of self organization of employees is to be implemented.

That is very important.

The Solarz bill emphasizes this particular concern; the Sullivan principle deemphasizes it, at best.

Second, as I have indicated, there is no conflict even, I would say, prior to the 1981 amendments with regard to freedom of association, because this South African Government can permit and has on occasion administratively through its registrar, operating under the Industrial Conciliation Act, permitted full freedom of association on paper for some unions.

So there is no conflict insofar as the labor/management relations situation is concerned.

Now, when we move to other areas—which I did not comment directly on in my prepared statement, nor in my remarks here earlier—when we move beyond the right of workers to self-organize, to engage in self-organization, to engage in collective bargaining, access to property, and so forth, and we move into segregated facilities at the workplace and job reservation, there is a potential conflict in these areas, but I do not believe that the potential to the extent that it exists is a serious one for two reasons:

One is that job reservation, as a matter of law—even though discrimination is alive and well in South Africa—is virtually dead. Only 1 of the 25 job reservations remain intact.

Second—and this is a comment that goes to segregated working facilities as well—there is a great discrepancy between practice and law.

When I went to South Africa, I visited plants and had corporate officials say to me, "look at that fellow over there. He is working in a skilled trades job. The job reservation law says he shouldn't be there, but he is not being prosecuted."

So as a practical matter in that area to the extent that the potential for conflict exists, it is extremely minimal.

Second, with regard to job facilities themselves, it is interesting to note that the Factory Act, which deals with segregated facilities in connection with most blue collar jobs, gives the Minister discretion to implement segregated facilities in particular plants.

There can be a conflict. Of course, there have been conflicts with regard to segregated facilities themselves. I might add in this connection though that—I think like most of the witnesses here—in contrast to the Sullivan people, believe that the issue of segregated facilities, while important, is of secondary importance.

I think the essential thrust of the Solarz bill—and this is one of the failings of the Sullivan principles—is its stress upon labor/management relations where, as a matter of law, there is no conflict.

I hope that I have responded adequately to your question.

Mr. WOLPE. Mr. Robinson, would you care to respond?

Mr. ROBINSON. Let me see if I can put my remarks in a sharper perspective. It is something about which I have been giving a good deal of thought over the last few years.

I remember the last time I talked with Mrs. Fenwick about it. I described this as rearranging the deck chairs on the *Titanic*, the application of principles of this kind, because I think it misses the point.

I am not so much saying that the principles are a bad thing. I think they could be if they misled one to believe that one is doing something really significant, but I think it misses the point.

I think it is an entirely inadequate American response to what is going on in South Africa. I have talked recently to members of SWAPO, and to Oliver Tomball, the president of ANC at the OAU, to Africans generally, diplomats in this country.

I am certain that they share my view, that when one does a balancing of what service these corporations provide to the regime in giving it the strength to do what it does, when one looks at General Electric setting up plants in Bandustan and one looks at General Motors being a national key point industry that under the Procurement Act, the Government would be prepared to order to produce implements of war. And there is precedent for this.

During World War II General Motors did the same thing for Nazi Germany.

When one looks at the kinds of tools these corporations have put into the hands of the South Africans that more than slightly offsets the value of these principles.

I am not so much concerned with section 1 of the bill as I am with the other parts that I think put this country on the right course, but I think we ought to at least add to that the provisions of the Gray bill to stop the inflow of the investment capital.

That is the important thing.

Now, when we look at which way the capital is going, how much is coming out, how much new is going in, we see a pretty rapid rate of voluntary disinvestment.

If we could just put a doorstop on that that is going in, and on the political question I am not prepared to compromise a deeply held view simply to increase in some small way the probability of passage of a bill the significance of which I have some serious doubt about.

sometimes to be self-righteous, but how does performance of the American companies compare with two other big groups of companies, South African companies themselves, and other foreign companies? Many countries are involved in South Africa.

Reverend SULLIVAN. I have made three journeys to Europe to attempt to develop a cooperative relationship between the European companies and the American companies in a unified effort on the South African scene, including the South African businesses. Several meetings have already been held in Europe and other meetings are contemplated. We have already broken the ground for a world international effort.

The Principles are at this point the leading performers, the American companies are the leading performers in the world in terms of implementation of the principles and codes. But as I said before, all the efforts of the American companies will be insufficient unless the companies of which you speak join aggressively in implementation of their own codes.

Primarily, the British, the West Germans, the French, the Dutch, and the Japanese. Now, there are those who say the Japanese have no investment in South Africa. Indirectly, they control a whole lot of it. It has to come from the kind of spectrum that you have suggested. An effort is already underway. I again appeal for the action somehow of the Congress, in legislation, because it will give impetus not only to what we do here but also impetus around the world.

There are many companies and leaders, some of whom are here, who want to see this thing happen. From business, many of these businesses are making tremendous attempts to comply with the principles and the codes and are way out in leadership, and I am proud of them.

What we need to do is get the rest of them to catch up. When we do, there will be more changes.

Mr. ERDAHL. Thank you for your eloquent testimony.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you.

You indicate the letter to which Dr. Sullivan is making reference was sent about 2 months ago to the President. The only response we have received is an indication it was referred to the proper agency, so we are still awaiting a definitive response.

I turn to Congressman Crockett from Michigan.

Mr. CROCKETT. Reverend Sullivan, I too appreciate your appearance before us today and the testimony you have given.

I have been wondering, in the course of these proceedings, if you really are not too late to come in now and ask the Congress to enact legislation that will put into effect your Sullivan Principles? I think your chances might have been better had you come before the last election; especially when you consider that we have had an official policy of fair employment practices and affirmative action programs in this country for several years and yet today serious questions are being raised about whether or not affirmative action has not gone too far.

In my own district, in Detroit, I have just received a communication from a group of employers asking me to come back and debate the question: Hasn't affirmative action gone too far? And they of-

I don't believe, and I don't believe many in this room believe, that either bill is going to pass through the Senate. So if we are going to compromise, let us at least compromise on something that has a good chance.

I don't think now is the time to do that, and I don't think that section 1 takes us that far.

I think it leads a lot of people to believe that the American Congress and the United States in general has done something when it may have done a disservice to those it would intend to serve.

This may not be as welcome a piece of legislation as we think it might be by those it would intend to serve.

Mr. WOLPE. I am going to, because there are so many people here who would like to participate, I was going to get to my cochairman, Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I just have one question which may give you a chance, Mr. Robinson.

I was interested in pursuing the same subject.

Do I understand you to say that you are really for both bills, as Mr. Butler says he is, or do you think that the support of the Sullivan principle is actually something we ought to stay away from?

Mr. ROBINSON. Mr. Bingham, I am for both bills. I think that there is a danger in section 1 of Mr. Solarz' bill inasmuch as I think it misleads and leads us to believe we have done something when we haven't.

I genuinely believe, contrary to Mr. Gould's belief, that it is unenforceable. I think the Protection of Businesses bill leaves the authority in the hands of the South Africans.

I think the procurement bill, the Procurement Act, is another important act.

In the last analysis, all corporations operating in South Africa are hostage to that Government. One bill, one piece is enforceable.

The other pieces of Mr. Solarz' legislation, the other provisions are not. This piece is not. It just simply is not.

I think what Mr. Gould is talking about really is confined to the industrial relations law in South Africa and has little to do with the whole apparatus of repressive South African law that keeps that place in the kind of configuration it finds itself in.

Neither one of these—well, at least section 1 of this disguises it. Even Mr. Gray's bill doesn't go far enough, but at least it gives this country something to say about something that begins to approach an adequate response.

I just don't believe that Mr. Solarz' bill does.

Mr. GOULD. I think—if I may simply say one of the major differences between Mr. Robinson and myself lies in our assessment of how important industrial relations is in South Africa.

I think particularly in light of the lack of available alternatives that the black trade union movement is of considerable importance in spite of governmental policy and practice and is becoming more important each day.

I think also that—if I may, sir—in large part the black unions have gained a beachhead in multinational corporations. The Volkswagen settlement in 1980 was particularly significant in achieving

the kinds of figures in terms of black union membership that I have referred to in my prepared statement.

I don't know what the response of the South African Government will be with regard to various aspects of this legislation.

Mr. Robinson has expressed some views about this. I don't think anybody really knows what the South African Government's response will be.

If its response is one of total noncooperation, then I think we move to the next step, which is the Gray bill. Then there is no alternative to the Gray bill.

But, let's at least try to enforce fair employment practices, which we haven't done thus far, before we say oh, well, they are not going to cooperate and let's forget about it and let's just isolate ourselves.

Last, let me point out Congressman Solarz' bill itself provides for a prohibition against the export of goods or technology in the event a company is not in compliance with the standards that are in this bill.

Mr. WOLPE. Mr. Shamansky?

Mr. SHAMANSKY. Thank you, Mr. Chairman.

The general thing which is bothering me as I hear the testimony from all of you is supposing the United States, the Government, this perfect Congress, passed a law requiring disinvestment by American companies in South Africa.

The thing that is troubling me is this: Would the symbolic value in your opinion be sufficient to outweigh the possibility that the losses to the American stockholders, plus the ability of foreign investors to come in and replace that, be a sufficient good from the American point of view to have that as American foreign policy?

Mr. ROBINSON. I don't think, Mr. Shamansky, I would suggest that in isolation.

While I would say it would be a good idea if the United States would move with that kind of unilateral carriage and conviction in the same way that Sweden has and a few other countries have, I think it would be useful for the United States to exercise its leadership in the U.N. Security Council to have applied to South Africa what was applied to Rhodesia.

It worked in Rhodesia. It was slow, but two things worked:

One, the war effort by Zapu and Zanu, coupled with the application of comprehensive sanctions that at times leaked like a sieve, but nonetheless made it more difficult for Ian Smith and his people to buy arms and acquire the kinds of goods that they needed.

In the last analysis it was the point of that, the cost of that, that brought them to heel to negotiate a solution.

Mr. SHAMANSKY. Excuse me. You are not responsive.

I am talking about what we can do, not the U.S. executive branch.

Mr. ROBINSON. I think it is an important leadership thing for the Congress to do to get itself on record in support of unilateral action on this matter.

Mr. SHAMANSKY. Do you think its symbolic value—in other words, if it wouldn't have much of an economic value—

Mr. ROBINSON. I think it would have an economic value.

Mr. SHAMANSKY. Who would suffer more, the South Africans or the American companies?

Mr. ROBINSON. That is a question the South Africans have to answer for themselves.

They are saying to me for all of us, to them it is not a question of jobs. It is a question of their very freedom. They are prepared and they have demonstrated that recently; they are prepared to die for this freedom.

We are talking about a war in its early stages.

Mr. SHAMANSKY. Mr. Howard, do you have an opinion?

Mr. HOWARD. Yes, I do if I might have a microphone.

I have had over the last 10 years the opportunity to meet with many business leaders on this issue.

The thing that has always been a bit perplexing to me is their remark about how insignificant their involvement in South Africa is to their overall business enterprise.

It seems to me that is an argument for an easy withdrawal from South Africa.

Mr. SHAMANSKY. Doesn't that cut both ways? If it is a small amount, would it really hurt South Africa if, say, a European country came in and replaced them?

Mr. HOWARD. I think we have statements from South African Government officials which would suggest that it is quite important both economically and—I would not in this case separate the symbolism of it from the economic impact.

For example, in my own testimony I referred to the loan of Citibank. There a South African Finance Minister says while they did not need the funds, they did regard it as essential to the image of South Africa abroad to see if they could in fact secure loans.

So I think in this case South African Government officials have articulated over the years that they value not only the business, but the international prestige of that business.

Mr. SHAMANSKY. Mr. Butler?

Mr. BUTLER. I think that we must recognize that the United States is different from all of the other countries of the world when we talk about symbolism.

A country like South Africa is very comfortable with our ideations as long as the supports to 17 percent of their economy are not threatened.

When we talk about symbolism in this matter, I can remember very well—and I will have to repeat what we said in 1978 in these hearings—that plans for progress were put forth in the United States as a great initiative, a voluntary initiative.

It was on that background that we came to the concept of affirmative action.

Had there not been in law an enforcement capability upon the very companies which were engaging in ceremonials, we wouldn't have had the substantial progress that is represented in these past 15 years in the United States.

Now we know that such an initiative is not going to be taken by the South African Government and we know if such initiative is going to be taken, it has to be undergirded by law, even though you may anticipate that that law is going to find evasions and other things.

Let me just say one thing:

The greatest support that bolstered the Rhodesian Government for the length of time that it held out was the combination of the knowledge that the U.S. Government was not going to do too much and the support that went directly from American corporations through South Africa, particularly in the supplies of oil and weaponry to the white Rhodesian Government.

Mr. GOULD. Let me say that it seems to me we always, as the leader of the free world, must be true to our ideals.

If you call that symbolism, I think that it is a very important symbolism.

A second consideration is that as a practical matter——

Mr. SHAMANSKY. Would it make a difference as a practical matter? That is what I am trying to get you to comment on.

Mr. GOULD. The Gray bill——

Mr. SHAMANSKY. I want to go even further.

Let's say we require disinvestment. I want to get to the logical conclusion. Supposing we had disinvestment. Do you think that would severely hurt South Africa?

Mr. BUTLER. Yes.

Mr. GOULD. I think it would certainly have an impact on South Africa.

Whether it would achieve the objectives, that is, the dismantling of the system, quite frankly, Congressman, I don't know.

Mr. SHAMANSKY. Thank you.

Mr. HOWARD.

Mr. HOWARD. Congressman, since that was not the precise question that I had the occasion to respond to——

Mr. SHAMANSKY. My apologies. I was curious as to the effectiveness of the logical conclusion.

If it isn't effective economically, then is the value symbolically worth it?

Mr. HOWARD. I don't mean to be oblique, but I think the best indication of the meaning of such a position is in South Africa's law we find a number of leaders for a just society in South Africa either jailed or banned or suffering the threat of these punitive measures simply for speaking for divestiture.

I think that is a clear indication of the meaning of the adoption of such a policy to the South Africans.

Mr. WOLPE. Congressman Solarz.

Mr. SOLARZ. Thank you, Mr. Chairman. I am supposed to chair a reception for a group of visiting Pakistanis at 4 o'clock.

Mrs. FENWICK. I am supposed to go to it.

Mr. SOLARZ. So I will be relatively brief.

Let me say to my friend from Ohio, in addition to the substantive impact which this legislation or any other legislation may or may not have on South Africa, the prospects for the elimination of apartheid, which is very important, there are at least two other criteria that I think it is useful to match the legislation up against.

The first is the impact which its adoption would have on our international position, how other peoples would view us.

The second is, how it would be received by the indigenous majority in South Africa who will ultimately one day be determining the destiny of that nation and whose good will it is very much in our interests to have.

I certainly would not want to adopt legislation which was counterproductive in terms of our effort to get rid of apartheid.

Any legislation which prolonged the apartheid system directly or indirectly would obviously be objectionable.

Even if you came to the conclusion it didn't significantly advance the day when the whole system collapsed, one still might on balance favor it if it satisfied those other criteria.

Let me say with respect to all of the panelists that those who supported my legislation, I compliment.

The one who opposed part of it, I forgive.

I have mellowed somewhat with age.

Mr. SHAMANSKY. It becomes you.

Mr. SOLARZ. I would like to explore with Mr. Robinson a little bit further his testimony on the fair employment aspects of the legislation because I am not sure we are all that far apart.

First of all, let me say that I think the real issue that confronts us is not whether we should be for disinvestment or for a fair employment code because in terms of the alternative possibilities available to the U.S. Government, given the prevailing political realities in the country, it seems to me the issue is not disinvestment or fair employment, but fair employment or the continuation of American investment for the time being without any mandatory fair employment requirements.

Looked at in those terms, it is fair to say, Mr. Robinson, that you do support the other provisions of my legislation, the prohibition on new loans, the requirement to the Government—the disclosure requirements with respect to loans in the private sector, and the ban on Krugerrands?

Mr. ROBINSON. Very much so.

Mr. SOLARZ. Insofar as the Fair Employment Code is concerned, I gather you would agree that under the Protection of Business Act, the South African Government retains the right to refuse to give a private corporation the ability to disclose the information sought by my legislation, but it is not clear whether they would enforce that right.

I am told—and I would like to know if you have information which would indicate otherwise—that insofar as the Evans Amendment is concerned, for example, the South African Government has not specifically refused to permit any corporation doing business in South Africa that has applied for Eximbank funds to disclose the information which the Evans Amendment requires them to disclose as a condition for receiving the support of the Eximbank?

Mr. ROBINSON. No; I have no information to the contrary.

One is automatically circumspect about this kind of legislation or the idea of fair employment principles when the South Africans endorse them; Carney Moulder, the Prime Minister, others think they are a pretty good thing.

One feels almost reflectively if the South Africans feel that way about them, they have got to be pretty meaningless.

Mr. SOLARZ. You would agree while the South African Government has the right to prohibit firms from disclosing this information, so far we have no specific evidence that where the information has been sought, the South African government has prohibited the firm from disclosing it?

Mr. ROBINSON. First of all, I would like to look more closely into the Evans amendment on that question to see who under the new law has sought that and whether what you are raising here is really applicable.

Mr. SOLARZ. Let's assume just for the purposes of discussion that pursuant to the Protection of Business Act, if my legislation were adopted, the South African Government refused to permit American firms doing business in South Africa to disclose the information that would clearly be required in order to determine whether they had complied with the Fair Employment Code.

Now, under those circumstances, it would be—the legislation could very easily be amended to require a positive certification by the Secretary of State that the American firms doing business in South Africa were complying with the Fair Employment Code.

Right now there is a kind of negative certification. He has to say that they are not in violation of it.

If we required a positive certification that the firms were complying with the code, which would not be possible if the information was not disclosed, then the American firms doing business in South Africa would have one of two choices.

Either they could—they would have to accept the—they could continue to do business in South Africa, in which case they would face all the penalties in the bill, which are quite onerous, or they would have to come to the conclusion that they would have to close up shop in South Africa because the penalties are too onerous for them to justify continuing the business.

Now, it seems to me under those circumstances the South African Government would be very loathe to prohibit them from disclosing this information because the net effect of it would be to force many of them to go out of business in South Africa.

Consequently, if the South African Government refused to permit them to disclose the information, your disinvestment objections would be achieved through the back door as it were, by virtue of the obstinacy of the South African Government, because the penalties in this legislation are quite draconian. You can't have contracts with the U.S. Government, can't get export licenses.

I think most of the American firms doing business there would have no alternative but to go out of business in South Africa.

Mr. ROBINSON. You are saying then you are prepared to amend your legislation?

Mr. SOLARZ. I would be—well, frankly, I had thought that under the terms of my legislation that if the Secretary of State didn't have access to the information needed to make a determination as to whether the firms were complying, that the firms would at that point be faced with the penalties.

But, upon a closer reading of the legislation, which I took a look at following your testimony, it was clear to me that it was not worded in the way I thought it had been worded.

The way it is worded right now, it says here, "No United States person who is determined under subsection (c) not to be in compliance with the first section of this act or any regulations issued to carry out such sections may" and then all the penalties come.

It is clear to me that the way it is currently worded, if the South African Government refused to permit the firms to disclose the rel-

evant information or to give access to the investigators who would come to make the determination, it would be impossible for the Secretary of State to say that they are not in compliance with the Fair Employment Code because he really wouldn't know.

He wouldn't have access. However, if we reword it to provide for a positive certification—in other words, anybody doing business in South Africa, an American firm must comply with this Fair Employment Code.

Mr. ROBINSON. May I ask you a question, Mr. Solarz?

Mr. SOLARZ. Yes.

Mr. ROBINSON. Let me say what continues to bother me about the legislation.

What you seem to suggest is that if the firms complied, South Africans allowed the compliance, and all were fine and well in the workplace, then it would be all right for American corporations to invest heartily in South Africa and to continue doing that.

I disagree with that wholeheartedly. If you were prepared to alter your language and to accept the basic provisions of the Gray bill that capped the investment, then we would be prepared to take another look at that, but at the same time let me finish my point.

You know the political realities of the Congress better than I do. I think you know what the chances are in the Senate of the passage of your bill, amended or unamended.

I don't understand why—I think if you had your druthers, you would offer a bill that was tougher than the one you have offered.

Why offer one that is as weak and tepid as the one that we have here if neither has any chance to pass?

Mr. SOLARZ. I guess the short answer is that I am an incrementalist. I believe in moving the process——

Mr. ROBINSON. But which way, Mr. Solarz?

Mr. SOLARZ. In the right direction.

Mr. ROBINSON. Sometimes——

Mr. SOLARZ. Let me——

Mr. WOLPE. The Chair is waking up here.

Mr. SOLARZ. Let me respond if I might.

First, let me make it clear there is nothing in this bill, in my legislation, which explicitly legitimizes investment.

It doesn't say investment is permissible or not permissible. It doesn't address that question. All that it does is say if you do have investment, then you have to comply with this code.

Second, you make the point that if that were what we did, it might create the misleading impression that we had struck a significant blow against apartheid.

To the extent that that argument has some merit, let me point out that my fair employment code is in the context of a bill which has other provisions as well.

It prohibits loans to the South African Government and prohibits the importation of the Krugerrand. So it doesn't stand by itself.

Third, I would say that while I personally have no problems with Congressman Gray's legislation, and indeed I introduced legislation along those lines myself in the past, my judgment is that the prospects for that legislation are not that good.

I will strongly support it. I hope it can pass, but I think that if it doesn't pass, it would be better to have something along the lines I have introduced than nothing at all.

Last, you make the point that even my legislation is unlikely to pass, therefore why don't we go for the strongest bill we can come up with?

I think the answer to that is I may be a little more optimistic than you about the prospects for this legislation.

We have come up with a legislative strategy that I think has some prospect of success, namely this: I agree with you you would never get legislation even as tepid as mine through the Senate de novo, as a separate bill, with this Senate. It is impossible.

However, this legislation is germane to the State Department authorization bill. If it received the imprimatur of these subcommittees and then of our full committee, it is not at all inconceivable that it could be adopted on the floor of the House, particularly if it had your support, as an amendment to the State Department authorization bill.

If it is adopted as an amendment to the State Department authorization bill, I do not preclude the possibility that we could get the Senate to accept it in conference, which is exactly what happened with the Evans amendment.

The Evans amendment would never have passed in the Senate as separate legislation, but it was adopted to the Eximbank bill in the House and then the Senate yielded to the House conferees in conference.

That is precisely what we are trying to do here.

Mr. ROBINSON. One point, in response to an earlier question that you raised, Mr. Solarz, about the Evans amendment and the Protection of Businesses Act.

In the testimony of Princeton Lyman of the Department of State, on page 6 of that testimony he testified that "In reaction to the Secretary's efforts to implement the Evans amendment, the South African Government has invoked its Protection of Businesses Act to prohibit furnishing of information to the Secretary without prior case-by-case approval and potential censorship."

He has testified to that. I can't verify what the State Department—

Mr. SOLARZ. On that point, the staff, which follows this very closely, contends that that is a factually inaccurate assessment, but leaving it aside, because it is entirely possible the South African Government will exercise its legal rights under the Protection of Businesses Act to prohibit American firms from providing the information the legislation would require.

All I say to you is that if my legislation were adopted and the South African Government acted in the way you think it would, we would have achieved your objectives of disinvestment because I am sure you would agree that, given the Draconian penalties in our bill for noncompliance, any American firm doing business there, which is deemed to be in noncompliance, which it would be deemed if they didn't provide the information, would say to the South African Government we have no alternative now but to go out of business.

Mr. ROBINSON. I take your point. At the same time, the signal remains. What will remain from this legislation. The signal to the world, and we can count on it, is that if these requirements are satisfied, then it is OK for companies to invest in South Africa, thereby denying the essential role that America plays there.

Mr. SOLARZ. I think on this we perhaps have an honest fundamental difference of opinion. My final observation on it is this: That in the discussions I have had in South Africa, without exception every black leader with whom I met, ranging from homeland leaders on the right to urban activists on the left, including a number of people like Dr. Matlana for whom I know you have high regard as I do, whose credentials as critics of the South African Government are beyond question, without exception they all took the position, even those who said at great risk to themselves that they felt all American investment should get out of South Africa, took the position that so long as the investment remains, they would like to see a fair employment code of conduct.

Mrs. FENWICK. I have to leave, unfortunately.

I want to say I am again happy to see Mr. Robinson with whom I find myself in accord. I am very happy to see also Mr. Butler, being a live member and a happy one of the NAACP.

Of course, you and I differ on the question of improving conditions while you wait for the lifeboat on the *Titanic*. The lifeboat isn't quite there yet.

I was touched that you remember our conversation. It is better to have it off you than on you. I do think we ought to listen to something Mr. Robinson said to us.

It accords with my view. We should be moving with the other European nations beyond Sweden into some concert on this.

It is perfectly useless if we have 17 percent not to take some serious action with the other European countries. I think that it would be absurd for the United States to step out in some big gesture that made relatively small difference except symbolically to the whole economy.

I think we ought to move as we did before.

I have to go.

Mr. WOLPE. Thank you for that contribution.

Mr. Robinson, I would like to make a couple of observations.

It seems to me what is not helpful is to have nonissues become issues.

I don't think it is helpful in terms of the common goals we have here.

I heard Mr. Robinson say something earlier in terms of the issue is not whether or not the Sullivan principle, if implemented effectively, may censure.

The important thing is, what will be the signal. Will it be misinterpreted as a means of allowing apartheid to flower in full bloom then clearly the wrong signal would have been conveyed.

During the recent delegation tour of South Africa that I recently led, we raised the set of issues with the trading leaders, with urban black leaders, with a whole variety of constituencies within South Africa.

Repeatedly we were told two things: One is that the Sullivan issue, what was taking place within the workplace was indeed secondary to the core of apartheid which was power sharing.

To the extent people began to think that that in and of itself was significant progress, it would be illusory. On the other hand, we were also told that indeed, if we cannot move toward a policy of disinvestment, that if American firms or other firms are going to be involved in South Africa, then it is important that the goals of the Sullivan principle be implemented effectively because they have represented some real changes in the capacity of blacks to organize within the trade union movement which has profound political implications.

The concern they had was whether or not the legislation that is contemplated by the Congress would be effectively enforced.

That is, they were very reluctant to see a government monitoring mechanism, thought that perhaps an advisory mechanism such as is called for in this bill that would operate in South Africa in conjunction with whatever monitoring mechanism we had in the United States, that that could be helpful.

This is a way of providing a further catalyst, product, within the trade movement.

I just happen to think we are kind of crazy here to view these things as in opposition, but rather as complementary. The Solarz bill not only relates to the Sullivan principle, but also carries us beyond the Sullivan issues to talk about the role of the banks, the role of permitting the sale of Krugerrands in this country and so on.

Clearly it is a step beyond that. It seems to me we ought to be working together to try to get as far along that path as we can possibly get.

Mr. SHAMANSKY. Mr. Chairman, one final question to Mr. Robinson.

Recognizing your concerns about section 1 of the bill, if in the final analysis the legislation were reported out of committee, or was being considered by the committee in an effort, say, to amend the bill to delete section 1, or if it were defeated, and on final passage we had to make a decision whether to support the entire bill or to reject it, what would be your position then?

Mr. ROBINSON. Mr. Solarz, as far as I understand, the Gray bill is still before us, and I am not prepared to say anything now about how I am going to feel about the Solarz bill if the Gray bill doesn't get out of the committee.

I am still hopeful the Gray bill will get out or some combination of the two of them.

I am not prepared to say how I would feel about your legislation at this point.

I am disappointed that we are prepared to talk so much about what the political realities are that limit our horizon so much that we make our own realities.

We have got to broaden this question. We have got to push this thing out.

Mr. SOLARZ. I think we each have a role to play here.

To some extent our roles are determined by our positions. I think what you do is entirely legitimate, very useful, and very important.

ferred me a very sizable lecture fee if I would come back to do it. So the question is being asked seriously.

The fact that this question is being raised, I think, tells us something. Then when you consider also that with the fact that in South Africa you have legislation that is diametrically opposed to the Sullivan Principles, how much chance do you think there will be, even if we enacted the principles into law, of getting them implemented in South Africa, when we can't get them implemented here in the United States with the active assistance in the past of our Government, and in South Africa it would be the active opposition of the South African Government?

Reverend SULLIVAN. Maybe you need some Sullivan Principles in America.

Mr. CROCKETT. Let me ask you another question: If we enacted the Sullivan Principles, obviously, we would be working on behalf of blacks in South Africa. For 6 months the present administration has been trying to formulate an African policy. Within the past few weeks they have stated a so-called African policy and it calls for strict neutrality as far as doing anything about the apartheid system in South Africa. As a matter of fact, the Under Secretary for African Affairs in his formal presentation committed us to a policy of not taking sides in the conflict between blacks and whites in South Africa.

Now, you are asking the Congress to legislate in opposition to that official U.S. foreign policy?

Reverend SULLIVAN. I am asking the U.S. Congress to provide legislation that will greatly provide strengths and assurance behind implementation of these principles on a humanitarian and moral basis. My effort is a moral more than an economic one, Congressman Crockett. I come to you not as a politician. I come to you not as a businessman. I come to you as a black preacher who comes to you about a condition in South Africa that has to be addressed before violence erupts and, that will engulf not only that nation but the world, and in a large measure our own country.

America has acted before in instances like this in our history and I have faith that America can and will act again.

The other thing I should say to you is that in South Africa, although many things I am saying might be opposed to statutory commitments in law, in South Africa there is a growing awareness among the young and old for change. We are not alone now. You would be surprised how many people would like to have just something to hang a hat of justice upon. If we start the tide going, I believe there is a possibility in the world it can become a wave.

I move by faith. That is the only thing I have. What did the Lord say? Those without faith are dead.

Mr. CROCKETT. I am the son of a Baptist preacher, but occasionally there comes a time when patience runs out even as far as Baptist preachers and sons of Baptist preachers are concerned. Therefore, I have been asking myself—and this is not just with respect to Sullivan Principles but also some portions of Congressman Solarz' bill—to what extent do we want to encourage reformism as far as the situation in South Africa is concerned? To the extent that we make it easier for blacks—and that is what the aim is here as far as employment practices are concerned? Don't we dull to that

At the same time, those of us who were charged with the responsibility of moving the legislative process forward, want to have some sense of what will fly and what won't.

I want to assure you I am going to support the Gray bill if the chairman calls it up for consideration in the committee.

I think it would be a very significant step forward.

But in the event that that does not succeed, I would like to feel that there is still a fallback position which would carry us forward in comparison to where we are now.

Mr. WOLPE. I know Mr. Gould has to catch an airplane.

Mr. Robinson also has to leave at this point. He has to catch his children, I understand.

I want to thank you both for your testimony before this committee and to all of you, Reverend Howard, Dr. Butler, thank you so much.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

TUESDAY, MAY 18, 1982

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEES ON INTERNATIONAL ECONOMIC POLICY AND TRADE AND ON AFRICA,

Washington, D.C.

The subcommittees met in open markup session at 2:25 p.m., in room 2200, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. The subcommittees will come to order for what will be a very brief session.

Let me first of all yield to my colleague, Mr. Solarz.

Mr. SOLARZ. Thank you very much, Mr. Chairman.

I simply wanted to take this opportunity to express my very profound appreciation to you and the very distinguished gentleman from New York, my colleague from the Big Apple, Mr. Bingham, for calling this joint meeting of the two subcommittees in order to consider the legislation which Congressman Gray has introduced, and the bill which I have introduced as well.

Our subcommittees have considered this legislation and the whole question about what to do about our relationship with South Africa for the last few years now. I think there are few issues which have received more continuous or exhaustive consideration by the Foreign Affairs Committee.

It is nice to know that all of this work, all of this effort, all of these hearings will not have been completely for naught, and that after having heard all points of view, and I think all points of view were heard, that we are finally proceeding to the actual consideration of the legislation itself.

I don't know what will ultimately happen at the end of the day in terms of whether these bills or anything like them will be adopted, but I do think it is a tribute to the process that the work will be proceeding, and that in one fashion or another the Congress will be given an opportunity to work its will with respect to this very important issue.

I know that at the moment there are other matters in the world which have gotten most of the headlines. Tension is focused these days in the South Atlantic, on the Falklands crisis. Martial law in Poland continues to concern us. There are periodic flurries of speculation in the press about nuclear arms negotiations. The whole question of what we do about Taiwan and our relationship with China. But I daresay that going into the rest of this century, South

Africa and American foreign policy toward southern Africa is going to loom increasingly large in determining the future, not only of our own Nation, but of that part of the world.

So I do think it is important for us to consider this legislation. I had hoped that we could actually begin the process of marking it up today. I gather that we don't have a quorum which would enable us to do that. I certainly hope that the lack of a quorum is not due to any effort on the part of other members of the committee to stay away from the proceedings. I hope we will be able to get a quorum later on in the week to consider the legislation, and then let's see where the chips fall, and make whatever decisions the committees in their wisdom decide to make.

I do want to personally express my appreciation to you for your willingness, and the gentleman from New York also, to proceed with the markup of this legislation into which all of us have put so much effort over the years.

Mr. WOLPE. Let me just say, in response to my colleague from New York, that I am most appreciative of the leadership that both he and Mr. Gray have exercised with respect to a question that my colleague, Mr. Bingham, and I believe to be a very urgent importance in terms of not only the immediate developments within the southern African region, but also in terms of American security interests as they relate to that region.

So I do hope we will be able to proceed to markup in the very near future. It is our intention to schedule another markup session for sometime on Thursday, providing that all the committee room scheduling can be accommodated.

With that, let me yield to my colleague, Mr. Bingham, for any remarks he might care to make.

Mr. BINGHAM. I am just wondering if there is anything to be gained by proceeding with the markup, short of reporting out the bills, because we could proceed to mark up on the basis of one-third, and we have such a quorum, I think, in both subcommittees.

Mr. WOLPE. Forgive me.

Mr. BINGHAM. I am saying that we could proceed to consider any amendments on the basis of one-third for a quorum. We don't have a quorum for reporting out either bill.

Would it serve any purpose to proceed with the markup as far as consideration of amendments is concerned? I don't know if there are amendments which have been suggested.

Mr. SOLARZ. I have three or four technical amendments, as it were, to the legislation that I have introduced designed to deal with problems that were pointed out in the bill during the course of the hearings.

I don't know whether the minority members who are not here have any amendments. If they have none, then the gentleman's suggestion might make sense. If they have a whole series of amendments, we would only have to go back over the same thing.

Mr. BINGHAM. No, we should then take up further amendments the next time we meet, unless you want to withhold presenting your legislation.

Mr. SOLARZ. I would be perfectly prepared to proceed, if you wish.

Mr. BINGHAM. Why don't we proceed with the amendments to the extent that we can. When we meet again, other amendments may be considered.

Mr. WOLPE. If that is agreeable, why don't we proceed, then. Let us begin with H.R. 3008.

Mr. SOLARZ. Mr Chairman.

Mr. WOLPE. Before offering the amendments, we ought to have the bill read procedurally.

Mr. SOLARZ. Yes.

Mr. WOLPE. The staff director will read the bill.

Mr. CARSON [reading]:

H.R. 3008, a bill requiring United States persons who control enterprises in South Africa to comply with certain fair employment principles, prohibiting any new loans to United States financial or lending institutions to the South African Government or to South African corporations or other entities owned or controlled by the South African Government, requiring reports with respect to loans to other South African entities, and prohibiting the importation of South African krugerrands or other South African gold coins.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

Endorsement and Implementation of Fair Employment Principles

SECTION 1. Any United States person who controls a corporation, partnership, or other enterprise in South Africa in which more than twenty people are employed shall take the necessary steps to insure that, in operating such corporation—

Mr. BINGHAM. Mr. Chairman, I ask unanimous consent that the bill be considered as read and open for amendment at any point.

Mr. WOLPE. Is there objection?

[No response.]

Mr. WOLPE. Hearing none, the bill will be considered as read and open to amendment at any point.

Mr. WOLPE. Mr. Solarz.

Mr. SOLARZ. Thank you, Mr. Chairman.

I have an amendment at the desk to page 11 of the bill. If somebody would read that, I will then briefly explain it.

Mr. CARSON [reading]:

Amendment to H.R. 3008 offered by Mr. Solarz. page 11, strike out lines 17 through 20 and insert in lieu thereof the following:

(d)(1) Any United States person with respect to whom the Secretary has made a determination under subsection (c) or (f)—

Mr. SOLARZ. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Mr. WOLPE. Is there objection?

[No response.]

Mr. WOLPE. Hearing none, the amendment will be considered as read.

Mr. SOLARZ. Let me try to briefly explain this. In the legislation, we provide for the establishment of a fair employment code of conduct to which every American firm or American controlled subsidiary in South Africa with 20 or more employees would have to subscribe.

It is very similar to the Sullivan code, which has been a voluntary code, but unlike the Sullivan code it would be mandatory. Also unlike the Sullivan code, which applies to every American firm doing business in South Africa, the code in our legislation would apply only to those firms with 20 or more employees. Finally,

unlike the Sullivan code, with respect to the violation of which there are no penalties, our legislation provides that American firms that violate the fair employment code would be subject to a variety of different penalties.

Under the legislation as it was originally drafted, the penalties would only have been invoked where the Secretary of State made a finding that the American firm in question had actually violated the fair employment code. But it was pointed out during the course of the hearings that you have a situation where it was impossible for the Secretary to make that determination because the firm refused to provide the necessary information upon which a determination could be made.

Some people felt that this was a loophole which could create a situation in which the Government of South Africa would, in effect, be able to completely scuttle the operation of the fair employment code by prohibiting any American firm doing business in South Africa from providing the U.S. Government with information about its employment practices.

So this amendment is designed to deal with that situation and close that loophole by providing that the penalties in the law would be applicable to those firms which clearly violate the code, or with respect to which it is not possible for the Secretary to make a determination because they failed to provide the information requested by the U.S. Government.

My feeling is that the South African Government is exceedingly unlikely to put American firms in a position where they are legally unable, under South African law, to provide the requested information for a number of reasons.

First of all, they have not prevented any American firms from voluntarily providing the information requested by Reverend Sullivan in order to measure compliance with his code.

Second, they have not prohibited any of the EEC firms doing business in South Africa from providing information to the EEC monitoring committee which attempts to determine compliance with the EEC code.

In 1978, the Congress adopted the so-called Evans Amendment, which prohibits the Export-Import Bank loans to any corporation doing business in South Africa which does not adhere to fair employment principles. In order to determine whether such firms are adhering to fair employment principles, they obviously have to provide information to the U.S. Government.

My understanding is that our own Government has just about completed negotiations with the South African Government which would facilitate the ability of firms doing business in South Africa to provide our Government with that information.

Finally, if the South African Government decided that it simply didn't want American firms to report to the U.S. Government about whether blacks in South Africa were receiving equal pay for equal work, or whether or not the facilities on the premises of the business were desegregated, that would put the American firms in a position where they either had to, in effect, stop doing business in South Africa or be subject to the penalties of the law.

Given the importance of American business in South Africa to the South African Government, it is virtually inconceivable that

the South African Government would actually adopt its legislation or administrative rulings prohibiting American firms from disclosing this information because were it to do so, the American firms would undoubtedly, given the penalties of the law, decide that they had no alternative but to stop doing business in South Africa.

I think that the information we are requesting in this legislation is perfectly reasonable for us to request. It is information the South African Government has not objected to being provided in the past. But without this amendment, we will, in effect, create an incentive in the law for the South African Government to prohibit American firms from providing the necessary information. If they were to do that, it would render the fair employment principles contained in the law null and void.

One final point, if I might, Mr. Chairman, and that is, after the hearings that we held, I think about a year ago at which Reverend Sullivan testified, where he came out very strongly in favor of mandating fair employment principles in legislation like this, I think the gentlewoman from New Jersey, who has been seized of this issue, as they say in the State Department, for quite some time now, suggested that if we could somehow or other succeed on a voluntary basis in inducing all the American firms doing business in South Africa to comply with the Sullivan code, that would be a better way to proceed.

She was aware of the fact, as the rest of us were, that about half of the 350 American firms doing business in South Africa do not subscribe to the Sullivan principles. She suggested that we might ask the President to call a conference, as it were, of the chief executive officers of each of the 350 firms doing business in South Africa in an effort to use some gentle persuasion, as it were, with these firms to persuade them that it was in their interest, as well as in our national interest, for them to comply with the equal employment principles in the Sullivan code.

I think every member of our subcommittee, Republicans as well as Democrats, signed the letter to the President asking him to convene such a meeting. Over a year later, I regret to say that not only hasn't such a conference been held, but the members of the subcommittee who signed the letter have not even received a reply from the White House.

Consequently, it appears that there is no hope of enlisting the participation of the President in an effort to persuade the American companies to voluntarily comply with the Sullivan code. Reverend Sullivan himself has made exhaustive efforts to beseech all of the American firms doing business there to comply with his code, but his efforts obviously have been unavailing in terms of getting more complete and effective participation.

So we are now at the point where Reverend Sullivan himself has agreed that if we are going to make these principles really applicable, legislation is going to be required.

I just want to say in conclusion on this point that during the course of my several trips to South Africa, I have spoken at great length about the whole question of American investment in South Africa with many of the black and colored leaders of that country.

While I have found differences of opinion about whether or not American investment in South Africa is in the interest of the black

majority in that country, with many of the black leaders feeling that they would be better off if we disinvested, some arguing that it would be better if we maintained and even increased our investment—without exception, every black and colored leader with whom I met felt that if we were going to have investment, even those that thought there should be no investment, we ought to mandate a fair employment code of conduct. Because if there is any moral justification for American investment in South Africa, it has to rest on the extent to which that investment objectively provides jobs and opportunities for blacks that would otherwise not exist. But if the investment is going to be administered in a discriminatory fashion, then obviously that justification cannot stand up.

So I would very much hope that the committee would approve the legislation which mandates a fair employment code. But this amendment is important because without it, the whole effort to require compliance could easily be subverted by the South African Government.

Mr. WOLPE. Is there further discussion of the amendment?

Mr. BINGHAM. Mr. Chairman, I see the point of the amendment, and I agree with it. I would like to ask a question, though, about a section which has just caught my eye.

Under that section (d)(1)(A), is it the intention that that prohibition of exporting of goods and technology directly or indirectly to South Africa should apply to sales by a U.S. person to South Africa from some location other than the United States?

Mr. SOLARZ. You are talking, I gather, about an American subsidiary.

Mr. BINGHAM. Not necessarily an American subsidiary, but an American corporation.

Mr. SOLARZ. Right.

Mr. BINGHAM. It could be either.

Mr. SOLARZ. Right, that is the intent.

Mr. BINGHAM. I am simply asking what is the intention. I think it should be in the record, if that is the intention of the sponsor.

Mr. SOLARZ. Yes, it is a very good question. It is the intention of the legislation to prohibit exports from American companies, corporations, or their subsidiaries, either in the United States or abroad, if it is an American company controlled by an American firm. If it is not controlled by an American interest, then it wouldn't be under the purview of this legislation.

Mr. BINGHAM. I understand that.

Mrs. FENWICK. Mr. Chairman.

Mr. WOLPE. Mrs. Fenwick.

Mrs. FENWICK. On page 12, line 5, "No agency of the United States may enter into any contract with a United States determined not to be in compliance." Would that refer to, for example, a company operating in South Africa, found not to be in compliance, could not sell to the Defense Department here?

Mr. SOLARZ. This would apply only to American firms that were found to be in violation of the fair employment principles.

Mrs. FENWICK. Yes.

Mr. SOLARZ. If an American firm, corporation, or individual was found to be in violation of the fair employment principles, then

they would not be eligible to enter into any other contract with the U.S. Government.

However, if the gentlewoman will read further in the bill, she will see that we have put a waiver in the bill whereby, if the President believes national security interests are involved, he can waive that restriction on the ability of an individual, found to be in violation of the employment code, to enter into contracts with the U.S. Government.

Mrs. FENWICK. I am correct, then, in believing that this means that no company here could, for instance, sell to the Defense Department or to the Agriculture Department, or any other Department of the Government, if the company in South Africa is not in compliance.

Mr. SOLARZ. Right, that is true, but we wanted to put some real teeth in the law.

On the other hand, if we had a situation where such a company was selling material to the U.S. Government which was deemed to be vital to the national security interests, and where we couldn't get it anywhere else, then the President would be entitled, on national security grounds, to issue a waiver.

Mr. WOLPE. Is there any further discussion of the amendment?
[No response.]

Mr. WOLPE. Hearing none, I will put the amendment to a vote.

All in support of the amendment that is being offered by Mr. Solarz will signify by voting "aye."

[Chorus of "ayes."]

Mr. WOLPE. All opposed.

[No response.]

Mr. WOLPE. The "ayes" have it.

Mr. SOLARZ. Mr. Chairman, I have another amendment. I don't have a copy of it, if the members can follow me. It simply strikes on page 16, lines 6 through 14, and lines 17 and 18.

What this does is remove that section of the bill that required all private banks in the United States that make loans to the South African Government to disclose them. There was some concern expressed about this provision by some of the members of the subcommittees, and in their interest of maximizing support for the legislation, I decided to offer this amendment.

So, while loans to the South African Government, except for non-segregated health or educational facilities, would be prohibited, private banks would be in a position to give loans to private individuals or corporations in South Africa, and they wouldn't be obligated to disclose them.

Mr. WOLPE. Would the gentleman yield?

Mr. SOLARZ. I will be happy to yield, but I am informed by staff that what the amendment does is, on page 16, it strikes out lines 6 through 14, and on page 17, it strikes out lines 17 and 18. The language on page 17, lines 17 and 18, was the penalty for violating the requirement that you have to publicize the loans that is provided for on page 16.

Mr. WOLPE. The gentleman, in summarizing the effect of the prohibition on loans referred to any loans to the South African Government, inclusive within the language that would still exist

within the bill would be a prohibition of any loans to any "parastatals" organizations as well.

Mr. SOLARZ. The gentleman is right.

Mr. WOLPE. Is there further discussion of the amendment that has been offered?

Ms. FENWICK. What about a bank that wants to loan to some company in South Africa that is not in compliance?

Mr. SOLARZ. This would have no effect whatsoever. In other words, right now American banks can loan money to whomever they want in South Africa.

Mr. WOLPE. Other than the Government.

Mr. SOLARZ. Right now, they can loan to the Government. Under this bill, they would be prohibited from loaning money to the Government, but they could continue to loan money to anybody else.

They would also, however, under this bill, be able to loan to the Government or to its parastatals, but only for projects or programs designed to benefit the people of South Africa in terms of health, housing, or education a nondiscriminatory basis. In other words, if they want to build a hospital which will administer to blacks and whites, and others, then the loan would be possible, but otherwise, not.

Mr. WOLPE. Is there any further discussion of the amendment?

[No response.]

Mr. WOLPE. All in favor of the amendment will signify by voting "aye."

[Chorus of "ayes."]

Mr. WOLPE. All opposed, "no."

[No response.]

Mr. WOLPE. The amendment carries.

Are there further amendments?

Mr. SOLARZ. Two more.

Mr. WOLPE. Mr. Solarz.

Mr. SOLARZ. I have another amendment. This is to page 19, and I think it should be distributed.

Mr. WOLPE. The clerk will read.

Mr. CARSON [reading]:

Page 19, strike out lines 13 through 17 and insert in lieu thereof the following:

(1) The term "United States person" means any United States resident or national and any domestic concern, including any foreign concern operating under the laws of the United States.

Mr. SOLARZ. Mr. Chairman, this amendment as suggested by legislative counsel who, in reviewing the bill over the weekend, came to the conclusion that we had unwittingly gone beyond the definition of U.S. persons. It was our original intention to make the application of this bill stand foursquare with the application of the antiboycott provisions of the Export Administration Act. As I understand the language, which is very technical and perhaps the gentleman from New York who has devoted so much of his time to these arcane aspects of our commercial relations with other countries, and who is the acknowledged expert on these subjects in the House, can perhaps give a clearer explanation.

As I understand it, this amendment would limit the definition of U.S. persons, and therefore the applicability of the bill, to U.S. residents or nationals, including corporations and other business asso-

ciations. The definition contained in the bill, without this amendment, would include foreign subsidiaries and affiliates of domestic concerns controlled, in fact, by domestic concerns.

I don't know what I just said, but perhaps legislative counsel will assist us. Is legislative counsel here?

Mr. CARSON. Yes.

Mr. SOLARZ. Can you rescue me from this embarrassing, rhetorical swamp in which I find myself?

Ms. STROKOFF. The only thing I discovered was that the antiboycott provisions of the Export Administration Act, where they apply to foreign subsidiaries, they do so only with respect to their activities in U.S. commerce, and that is contained in section 8 of the Export Administration Act.

If you simply take the definition of U.S. persons, this bill would apply to foreign subsidiaries when there might be absolutely no link to U.S. commerce or interstate commerce because you would be talking, say, about a French subsidiary of a U.S. company which might have a company in South Africa. This would, in essence, be applying the provisions of this bill to that French subsidiary when they may have no other link with the United States.

Mr. SOLARZ. You mean, they wouldn't be controlled by the parent American company?

Ms. STROKOFF. They would, whatever that means, but the activities vis-a-vis the South African concern might not involve U.S. interstate commerce at all.

Mr. SOLARZ. With this amendment, we would be exactly where we are with the antiboycott provisions of the Export Administration Act?

Ms. STROKOFF. Not precisely; because under the terms of the Export Administration Act, the regulations set forth some very precise tests as to under what circumstances foreign subsidiaries would be subject to those provisions, and there has to be a direct link with U.S. commerce. Let's say, there were U.S. origin goods or there were specific services provided by the parent company, which directed benefited the boycotted country. There are just some very specific tests as to when indeed the provisions would attach.

Mr. SOLARZ. Would it be possible to draft an amendment which would make this legislation stand foursquare with the antiboycott provisions of the Export Administration Act?

Ms. STROKOFF. Perhaps, if we adopt some language that would say, "and it includes the foreign concern controlled, in fact, with respect to its activities in U.S. interstate commerce."

Mr. SOLARZ. I would be interested in the views of the gentleman from New York on this.

My feeling had been originally that for political reasons we would be best off maintaining the applicability of the relevant provisions of antiboycott sections of the Export Administration Act, and not making it broader or more restrictive. That is what I thought we had originally done. Then I was told that this wasn't what we had done. Now I find out that the amendment to correct it doesn't do that either.

The gentleman from New York might have a better sense of how to proceed here.

extent the revolutionary spirit of black South Africans? Don't we postpone the day of reckoning and to that extent aren't we playing into the hands of white South Africa's leadership?

You know, there was a time, even in the Bible when Jesus Christ lost his cool and resorted to violence in driving the moneylenders from the temple. Do you remember that?

Reverend SULLIVAN. Yes, I do.

Mr. CROCKETT. I think on the whole, black South Africans have reached that stage. The net effect of passing reformist legislation is an effort to cool it down. I would like your reaction to that.

Reverend SULLIVAN. My effort is to try to find a nonviolent means for the situation in South Africa and the world that can go in one of two directions, either one to find a nonviolent, peaceful means that will break down the barriers and provide opportunities in the framework of equity for all the people who live there, hopefully by using these kinds of alternatives, or to go the route of warfare and destruction.

Many people have said to me it won't work. What I am saying to you, if you have to balance it out with a million lives, the effort is worth it, and I am only trying, I am only trying to see if it is possible for a nonviolent, peaceful alternative to be successful. I am not sure that it will work but the try has to be made and that is what I am doing * * * I am trying.

Mr. CROCKETT. Thank you.

Thank you, Mr. Chairman.

Mr. WOLPE. Mr. Eckart.

Mr. ECKART. You said in the course of examining firms that have already agreed to your principles some had received a passing grade and others had received failing grades. You certainly can be heartened by one and saddened by the other.

I would like to focus, however, on those firms that you said received passing grades and get into a little bit of what my colleague, Mrs. Fenwick, was raising, and that is, among the number of the firms that may have received a passing grade, was there not still some great concern about the number of blacks who had been hired for strictly very menial positions and that many had not, in fact, been promoted into trainee positions, management positions, upper level positions, so that it is one thing to meet a guideline of hiring all floorsweepers, it is another to start to bring people into management and training levels.

Could you comment on what the experience and response has been in that regard?

Reverend SULLIVAN. I said the principles are an evolving process. One of the requirements of the principles as they are now constituted requires the employment of blacks and other nonwhites at all levels of the company's occupations, so that you will not have a beanbag, as I have called it, of all blacks at the bottom. Equal pay for equal work does not mean anything if everyone is at the bottom. Therefore, the future measurement—and it will begin with a report that will be coming out next month—will begin to measure also the advancement of blacks through the whole spectrum of a company.

I have even set a goal, looking at the evolving nature of these programs, that ultimately managerial and supervisory positions

Mr. BINGHAM. Mr. Chairman, I suggest that we pass over this amendment. I am a little troubled by it, too. It seems to me that we are arriving at an answer to my earlier question which is in conflict with what I was told at that time. I think we really need to consult a little further on this.

I notice also that the gentleman's first amendment does not say "any U.S. person," or person controlled by a U.S. person. In other words, I think that this has proven to be, as you know, a very tricky area. I think we do want to be as nearly technically exact as we can. I am not clear, and I would like to know whether the gentleman's intention is to cover—

For example, supposing a U.S. corporation has a controlled corporation operating in France that is proposing to sell goods to South Africa, not necessarily U.S. goods, as I recall and as I think counsel just indicated, in that situation the antiboycott law would not apply. But is it the gentleman's intention that in this situation, it should apply?

Mr. SOLARZ. This legislation does not deal with the sale of materials to South Africa.

Mr. BINGHAM. It prohibits exports. It is one of the sanctions.

Mr. SOLARZ. It is one of the penalties, right. What it attempts to positively regulate is the employment practices of American controlled firms within South Africa, and then it prohibits loans to the South African Government.

Mr. BINGHAM. But in terms of the penalty of the sanction, and specifically the gentleman's first amendment, I think we ought to be very clear whether this is intended to cover sales by way of a subsidiary that are not necessarily in the U.S. commerce.

Mr. SOLARZ. I think the gentleman raises a good question, and I think that since we are going to have to come back for another session, perhaps we can deal with this in the interim.

I would ask unanimous consent, Mr. Chairman, to withdraw this particular amendment at this time and, hopefully, we can resolve some of the terminological and substantive differences with respect to it.

Mr. WOLPE. Without objection, the amendment will be withdrawn at this point.

Mr. SOLARZ. Mr. Chairman, I have one final amendment to offer, I think that it is at the desk, on page 20 of the bill.

Mr. CARSON. Page 20, insert the following after line 8:
Miscellaneous Provisions.

Section 10(a) Nothing in this Act shall be construed—

Mr. SOLARZ. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Mr. WOLPE. Without objection, the amendment will be considered as read.

Mr. SOLARZ. The sole purpose of this amendment is to make it clear that nothing in the act shall be construed as constituting recognition by the United States of any of the homelands that have been established as so-called "independent states" in South Africa.

The only reason we need this is that on the previous page, there is reference to some of the homelands in South Africa because we wanted the provisions of this legislation to be applicable there as

well, but we did not want this to be interpreted as signaling American recognition of the homelands.

I might point out that it has been a bipartisan policy of the last two administrations, Democratic as well as Republican, not to confer any kind of official recognition on the homelands in that country. Neither the Reagan nor the Carter administrations have established diplomatic relations with any of the homelands, which to my knowledge have not yet established diplomatic relations with any country other than South Africa itself, since no one, either in Africa or elsewhere around the world, recognizes them as genuinely legitimate, independent states.

Mr. WOLPE. Is there any further discussion?

Mrs. FENWICK. Yes, Mr. Chairman, but not on this amendment, which I think is very sound. I am still troubled by that section on page 12.

Mr. WOLPE. Before moving on to that, if I may just interject, could we dispose of this amendment.

Mrs. FENWICK. Yes, of course.

Mr. WOLPE. Is there further discussion of this amendment?

Hearing none, all in favor signify by saying "aye."

[Chorus of "ayes."]

Mr. WOLPE. All opposed, "no."

[No response.]

Mr. WOLPE. The amendment carries.

Mrs. Fenwick.

Mrs. FENWICK. Thank you, Mr. Chairman.

I see a small company here, for example, trying to sell a little electrical motor to the Department of Housing and Urban Development in Veniceville, N.J. There has to be a waiver, maybe their parent company is behaving very well in Africa.

I really think that having no escape clause, but going to the President and saying that we have to have a national emergency, for any part of any company—I don't want to pick any particular company, but suppose that we have some dealers of a company that is in violation in Africa, are we really going to apply this to every agency of the U.S. Government here?

Mr. SOLARZ. That is the intent.

Mrs. FENWICK. I honestly think that that is going too far, Steve.

Mr. SOLARZ. Let me ask legislative counsel, if you could tell us what are the penalties that are applicable to firms that violate the antiboycott provisions of the Export Administration Act.

Ms. STROKOFF. Before I do that, in order for the penalties here to attach, the parent company would have to be here in the United States. If it were a company in South Africa that had a subsidiary here in America, the penalties wouldn't attach because it has to be a U.S. company which controls a South African company. So it would have to be the other way around.

If it were a South African company that had a subsidiary here, the subsidiary wouldn't be subject to the penalty.

Mrs. FENWICK. That is just worse. Every American company is going to be penalized, and no South African company is going to be. I think that is madness.

Mr. SOLARZ. Let me say to the gentlewoman, it is not within our capacity to penalize South African companies because they don't

come under the purview of the American law. What we are attempting to do with this legislation is to say that if you are an American firm doing business in South Africa, and you are not selling to South Africa, then you don't come under the purview of this legislation.

You only come under the purview of this legislation if you have 20 or more employees working for you in South Africa, either directly or through a subsidiary controlled by a U.S. firm.

Mrs. FENWICK. Steve, what I see is every dealer, let's say an automobile dealer of a certain company that may be making automobiles in South Africa, the automobile dealer in New Jersey is not going to be able to sell to HUD or to any of the other agencies. It is fantastic. Think of the fuss, and we can't have the President exempting every minute.

Mr. SOLARZ. Supposing that we exempt New Jersey from the purview of the bill, with the proviso that if the gentlewoman does not prevail in the election that that provision will terminate, self-destruct, so we can give all the automobile dealers in New Jersey—

Mrs. FENWICK. I think that we are going too far, Steve, I really do.

Mr. BINGHAM. Would the gentlelady yield to me?

Mrs. FENWICK. Yes.

Mr. BINGHAM. To answer a question that was raised a moment ago. There is no comparable penalty or sanction in the antiboycott legislation. We have penalties there that may be quite severe involving criminal penalties, imposition of fines, or denial of any further licensing exports, but we don't have this type of penalty.

Mrs. FENWICK. Why do we go in for it here?

Mr. SOLARZ. I think the feeling was that we wanted to put some teeth into the law. Remember that what we are talking about is a fair employment code. There is going to be ample opportunity to resolve legitimate differences of opinion. There are consideration procedures as an advisory council both in South Africa and in the United States.

We are talking about a situation where a company is kind of willfully, blatantly violating the equal employment provisions. What we are saying is that if that company is going to discriminate in such a fashion, they ought to be on notice that one of the penalties will be that they can't sell or enter into contracts with the U.S. Government. Presumably, that is a sufficiently strong penalty to induce compliance with the Fair Employment Code.

Let me say finally to the gentlewoman that these are precisely the penalties that are already in American law with respect to equal employment violations in the United States, which is the fundamental reason why they were included here.

With respect to the provisions of the Fair Employment Code, what we tried to track were not the anti-boycott provisions of the Export Administration Act, but the equal employment provisions already in the United States Code with respect to employers in the United States.

In other words, take the automobile dealer in New Jersey, or anywhere else, if the parent company for which they work is violating equal employment provisions of the U.S. law in Michigan, in

New Jersey, or anywhere else, they are precluded from entering into contracts with the U.S. Government.

Mrs. FENWICK. I can see why my brilliant colleague from New York has abandoned the antiboycott provisions and moved to the fair employment. But I must say that the law which provides for our relations with exporting companies is more to the point than the one that concerns American things here.

I would like to offer an amendment, Mr. Chairman, if it is appropriate, that we delete on page 12, lines 5 through 9. I really think that that is a very unwise provision.

Mr. WOLPE. The amendment has been moved to delete lines 5 through 9 on page 12.

Mr. BINGHAM. Would the gentlelady yield?

Mrs. FENWICK. I will be pleased to.

Mr. BINGHAM. I would like to suggest to the principal sponsor of the legislation that he accept the amendment. I think, for the very reasons that the gentlelady has spelled out, this amendment adds a burden to the bill that is probably not necessary and really might make it more difficult to get the bill enacted into law. I don't think that it is an essential part of the bill. I understand the logic behind it, but it doesn't seem to me to be essential to the bill. So I would hope that the gentleman would accept it.

Mr. SOLARZ. Mr. Chairman.

Mr. WOLPE. Mr. Solarz.

Mr. SOLARZ. This may be the last time I have the opportunity to do something for the gentlewoman from New Jersey because, for better or for worse, win or lose, she is not going to be with us, on this subcommittee at least, after this session.

May I say that over the course of the last few years, we have worked very closely on this committee, and one of the reasons we have been able to work so well together is that there has been a spirit of give and take, and we have been able to make compromises, dispose with the nonessentials but coalesce around the essentials.

On the assumption that this amendment would make the legislation far more acceptable to the gentlewoman from New Jersey, and that she would be able to come out of the markup supporting the bill as it is, I would be prepared, in the interest of harmony, to accept her suggestion.

Mrs. FENWICK. The gentleman, my colleague, is irresistible as always. But I must say that I will have to study it a little more carefully before I promise my quid for the quo.

But I am grateful, and this will be probably one of the last times. I would like to say to my dear colleague from New York how much it has meant to work with him on so many important questions with such harmony.

Mr. SOLARZ. I thank the gentlewoman.

What I would like to suggest, if it is acceptable to my good friend, is that since we are going to come back on Thursday, why don't we look this over until then because some questions have been raised about the effectiveness of the sanctions that would remain if this is deleted.

While I take the gentlewoman's point, perhaps between now and then we can consider how we can go about, if we are going to elimi-

nate this provision, making sure that the remaining sanctions are sufficiently tough to effectuate compliance with the law.

So why don't we take it up on Thursday. Between now and then, let's consult and I am sure we can work out an agreement.

Mr. WOLPE. Is there objection to the discussion of this amendment being deferred until Thursday?

[No response.]

Mr. WOLPE. Are there any other amendments to be offered at this time?

[No response.]

Mr. WOLPE. The bill will still be open for amendment on Thursday. We will also move, provided that we can establish the meeting that we intend to establish, to the markup of Congressman Bill Gray's legislation at that point as well.

With that, this meeting will be adjourned.

[Whereupon, at 3:15 p.m., the subcommittee adjourned.]

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

THURSDAY, JUNE 10, 1982

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEES ON INTERNATIONAL ECONOMIC POLICY AND TRADE AND ON AFRICA,

Washington, D.C.

The subcommittees met in open markup session at 10:38 a.m., in room 2172, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) and the Hon. Jonathan B. Bingham (chairman of the Subcommittee on International Economic Policy and Trade) presiding.

Mr. WOLPE. This morning, the Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade, chaired by my colleague, Congressman Bingham, will resume their markup on two pieces of legislation, H.R. 3008 and H.R. 3597, introduced respectively by Congressman Steve Solarz and Congressman Bill Gray concerning American business in South Africa.

Since our last meeting, Congressman Solarz has made some perfecting amendments to his proposed legislation. We indicated last week that the Solarz bill would be open for further amendment today, and I think it would be appropriate to begin with Mr. Solarz' amendment.

Mr. SOLARZ. Thank you very much, Mr. Chairman.

I have an amendment in the nature of a substitute, which I would like to submit at this time, then, with your permission, explain basically what it entails.

Mr. WOLPE. Is there any objection?

[No response.]

Mr. WOLPE. Hearing none, so ordered.

Mr. SOLARZ. Thank you.

I believe that copies of the substitute were made available to the members' offices yesterday. Let me briefly explain the alterations in this substitute in relationship to the original legislation.

Essentially, those changes were designed to deal with problems that were pointed out during the course of the first markup by my very good friend, the gentlewoman from New Jersey and possibly the next Senator from that State, my very good friend from New York, Mr. Bingham, and my new friend from Ohio, Mr. Shamsky.

Basically, what we have done: First, with respect to Mrs. Fenwick's objection. She pointed out that she felt that the penalty in the original bill which would have prohibited any American firm

found in violation of the fair employment code in South Africa from entering into any and all contracts with the U.S. Government was a little bit draconian.

If I recall correctly, she was particularly concerned about its potential consequences on the automobile dealers in New Jersey. There certainly is no one in the entire Congress more vigilant in the protection of the New Jersey interests than Mrs. Fenwick.

So taking her objection into account, we have eliminated the penalty and instead have substituted civil penalties for a violation of the code which are equivalent to the civil penalties for a violation of the antiboycott provisions of the Export Administration Act.

Mrs. FENWICK. Could I ask my colleague. Those civil penalties will be levied against the parent company and not against the individual company that may be operating in the United States, or the small dealers?

Mr. SOLARZ. That is correct.

Mrs. FENWICK. Thank you.

Mr. SOLARZ. Then the gentleman from New York, Mr. Bingham, raised some very thoughtful questions about whether this legislation applied to subsidiaries overseas, and what was the definition of a subsidiary.

We are fortunate to have someone like the gentleman from New York on the committee, since he has devoted so much time over the years to these arcane aspects of our trade legislation, and is sensitive to nuances that escape the rest of us.

However, as a result of his questions, we have defined the definition of subsidiary to, in effect, be identical to the one we have in the antiboycott law. It would apply to those subsidiaries of American firms in South Africa which are effectively controlled by the parent company in the United States.

Insofar as there are any penalties applied to American firms for violating the fair employment code, and one of those penalties is a prohibition on any exports to South Africa, the subsidiaries of the American parent that are subject to such penalties that are doing business, say, in France, or in Germany, or anywhere else overseas, would not be prohibited from continuing to export to South Africa, except insofar as the American parent company attempted to evade the penalties by diverting business, that otherwise would have gone to them directly, to the subsidiary. But in the absence of a demonstration of evasion, that subsidiary doing business in a third country would be able to continue doing business with South Africa.

Finally, the gentleman from Ohio, who had a very distinguished legal career prior to his arrival in the Congress, apparently developed a good deal of expertise in the area of international law and trade, indicated that there could be some problems here in terms of whether American firms that are doing business in South Africa, that would be under the provisions of the fair employment code, would know whether or not any of their practices would be in violation of the code.

We have, therefore, put a provision in the substitute bill which would require the Secretary of State, upon the application of any firm in our country or individual, to render advisory opinions to

such a firm or individual in order to clarify any ambiguities about whether the fair employment code applies to them.

I might also say that I plan to offer an amendment to the substitute which would require the Secretary of State, before promulgating the fair employment code, to publish it for comment and to receive comments from any interested individual firms within the 30-day period before the code becomes final, so that if there are constructive suggestions for altering the code, they can be made.

Basically, that is what the substitute would do. Let me just say, in conclusion and to remind the members, fundamentally what this legislation does is to mandate a fair employment code of conduct for American firms doing business in South Africa, with 20 employees or more. If they have under 20 employees, the code doesn't apply.

Second, it would prohibit all loans to the South African Government, except for projects or programs designed to benefit the health, education, and welfare of all the people of South Africa on a nondiscriminatory basis.

Finally, it would prohibit South African Krugerrand sales in the United States. I would point out to my colleagues that this is fundamentally an extension of the Evans amendment, which the Congress adopted a few years ago, which prohibits any Eximbank loans directly to the South African Government or its subsidiaries, unless the President makes a determination that more progress has been made toward eliminating apartheid. It also requires that any firm doing business in South Africa, which is the recipient of an Eximbank loan comply with the fair employment code of conduct.

So all we are doing in this legislation is, in effect, extending the provisions of the Evans amendment, which apply only to the Eximbank, to American firms doing business in South Africa and to any other loans from private banks or individuals to the South African Government.

Let me also say that at the suggestion of the gentlewoman from New Jersey some time ago, we agreed to delete an original provision in the bill which would have required the disclosure of all private bank loans to South Africa. That is no longer in the bill.

So I think that this final product does represent a real effort to accommodate the concerns of all the members of the committee. It incorporates the suggestions that were made. I would not suggest for a moment that this is going to bring apartheid to its knees, but I do believe that it would send a useful signal to the South African Government that we take seriously our commitment to do something about apartheid.

To the extent that the justification for American investment in South Africa is that it provides opportunities to blacks they otherwise wouldn't have, this fair employment code is designed to make sure that they have that opportunity.

Thank you, Mr. Chairman.

Mr. BINGHAM. Would the gentleman yield?

Mr. SOLARZ. Yes, I will be happy to yield.

Mr. BINGHAM. I thank the gentleman for yielding.

I do think this represents a very distinct improvement, and I am prepared to support the bill in its present form.

One of the principles which is made mandatory by this bill is the improvement of the quality of employees' lives outside the workplace. That normally would strike us as something pretty vague and perhaps going beyond the scope of what we normally try to impose as a legal requirement.

My question is: has experience under the code indicated that this is a measurable standard which can be fairly determined one way or the other?

Mr. SOLARZ. The gentleman asks a very good question in his usual thoughtful observation.

I would point out that there obviously are difficulties in measuring this, but if you look at the language on page 5 of the substitute, lines 4 to 5, it specifically says,

Taking necessary and appropriate steps whenever possible to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation and health.

I think that the "whenever possible" provides ample flexibility in the implementation of these guidelines.

I would point out that this particular provision is virtually identical to the Sullivan code itself. There are one or two respects in which this legislation goes beyond the Sullivan code, particularly with respect to the requirement that they enter into good faith negotiations with trade unions. But with respect to making efforts to improve the quality of employees' lives outside the work environment, this is identical with Sullivan.

Mr. BINGHAM. Would the gentleman yield further.

Mr. SOLARZ. I will be happy to yield.

Mr. BINGHAM. My question really is: is the experience under the Sullivan code such as to indicate that it is possible to determine whether companies are complying with this standard or not.

Mr. SOLARZ. As the gentleman may know, Reverend Sullivan has utilized the services of Arthur D. Little to monitor the compliance of the signatories and they, apparently, have found that it is possible to measure this.

For example, they make determinations about whether there are contributions to scholarships or other educational programs. They found that contributions on the part of the signatory companies were increasing, and that such efforts were being made by most of the signatories.

I would assume, if this code were ever promulgated, there would be ample flexibility here. I don't think that there would be quotas. There wouldn't be numerical minimums. I think what it would require is simply a good-faith effort, where possible, to help with things like housing or education—some effort on the part of the company.

Mr. SHAMANSKY. Would the gentleman yield?

Mrs. FENWICK. Would the gentleman yield?

Mr. SOLARZ. I will yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

I think, also, there were measurable advances being made in the cadet schools, for example, that were established, and Reverend Sullivan spoke to us about that, not just in the American companies but in Barlow Rand and others that have clearly demonstrated

steps to provide education in the cadet schools for the black employees.

Mr. SOLARZ. I should also point out that in addition to the Sullivan code, the EEC code also has a comparable provision. I think all that is being asked here is that the company make some effort to improve the quality of their employees outside the workplace to the extent possible.

Mr. SHAMANSKY. Would the gentleman yield?

Mr. SOLARZ. Yes.

Mr. SHAMANSKY. At least to this lawyer, the very words "whenever possible" is extremely broad. Things are possible, when they may well be highly improbable. I am dreadfully serious here now. You can say: "Is it possible at all to do something?" It is possible at an enormous cost and a lot of problems, but it is possible.

Mr. SOLARZ. I would say to the gentleman that if you were to take the phrase "whenever possible" out, then there would be no flexibility at all. The "whenever possible," I think, in effect, modifies the obligation by indicating that there may be circumstances where it isn't. For example, if a company is losing money, you can't appropriately expect them—

Mr. SHAMANSKY. I am sorry, but it is possible even with a company losing money to do these things. As a lawyer, I am going to take the words literally, and you have to, Steve.

Mr. BINGHAM. Would the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from New York.

Mr. BINGHAM. I am inclined to agree with my friend from Ohio about the words "whenever possible," and I would like to suggest this solution. Those words and the word "necessary" in the first line be omitted, so that the phrase would then read: "Taking appropriate steps to improve the quality of employees' lives," et cetera. That is a much more feasible thing to do.

The word "necessary" troubles me because, in the context of South Africa, there is so much that is necessary. There is almost an unlimited amount that is necessary. So I would be happier, frankly, with that paragraph if you would omit the necessary. If you omit the "necessary," I don't think you need the "whenever possible."

Mr. SHAMANSKY. Would the gentleman yield?

Mr. BINGHAM. The gentleman from New York has the time.

Mr. SHAMANSKY. I would like again to suggest a word, as long as we are suggesting words. We use the word "reasonable" frequently in contracts and in law because it would not be reasonable if the company were losing money. Reasonable is a word of art which we use in these situations.

Mr. SOLARZ. I can see, if I ever go into business, I will endeavor to retain the gentleman's services.

Mr. SHAMANSKY. That would be a reasonable thing on your part.

Mr. SOLARZ. I have no doubt that it would also be a constructive thing.

I would ask unanimous consent to incorporate the suggestions of both the gentleman from New York and the gentleman from Ohio, and have the language on lines 4 and 5 of page 5 read: "Taking reasonable and appropriate steps—"

should reach 70 percent of a total company's work force as we look ahead at the evolving of it, which means education, training in skills.

You can't put a person to run a computer until he learns how to use a slide rule.

Mr. ECKART. What is being done in an ancillary way to give people the skills to be able to move into these upper levels?

Reverend SULLIVAN. Education, technical education, is a major part of our thrust at this time. I have said the most massive need in South Africa today is the ending of separate development and therefore the new front to try to lobby the government for a change in education and it must be massively done, not only elementary but also in the higher technical areas, too.

Mrs. FENWICK. Would you yield?

Last year you told us about the cadet schools that are being formed by some of the companies so that the black students who pass those cadet school courses can get into the white universities where they can study for the higher metallurgical and mineral skills. There is a mix?

Reverend SULLIVAN. There are requirements at this point. The companies do that. They will be measured also by that as much now as by the desegregation of workplace. We are beyond that. We say the emphasis on desegregation of the workplace is less. We passed that a year ago. Now we are emphasizing education just as you have indicated, upgrading the management and supervisory as well as education outside the workplace, so that we can reach not only people working in the plants but also those outside on the communities where the plants exist.

Mr. ECKART. In your analysis of the industrial mix of the companies that have agreed to your principles, are there any industries where there is no penetration?

Reverend SULLIVAN. In mining we are weak because you don't have that many American companies in mining. I might say it is in mining that we have our weakest support of the principles. That is one of the areas where by all means we need to push for support and implementation of the principles, because it is in the mining that you have one of your largest, industrial needs. That is a key area if we intend to really strike at the hard core of labor problems in South Africa.

Mr. ECKART. Thank you.

Mr. WOLPE. Thank you very much.

I know, Dr. Sullivan, you have to leave at this point. I want to express on behalf of the two committees that are involved in the hearing today our appreciation for the time you have taken to be with us. Your eloquence has been deeply appreciated, as always, and I think that your change of thinking in some regards and an expansion of the Code of Principles that you have expounded upon today ought to be considered very carefully by all Members of Congress and by our country.

I thank you.

Reverend SULLIVAN. There is a new thrust; there is a new direction; there is a new, stronger effort. I hope and pray that you will come and help us.

Mr. SHAMANSKY. Excuse me, but are you sure that you want both?

Mr. BINGHAM. You don't need both.

Mr. SHAMANSKY. You don't want both.

Mr. SOLARZ. OK.

Mr. SHAMANSKY. You want "reasonable," if I may suggest.

Mr. SOLARZ. Why doesn't it read, on advice of counsel, "Taking reasonable steps to improve the quality of employees' lives," et cetera. That would delete the phrases "necessary and appropriate," and "whenever possible."

I would ask unanimous consent to make that change.

Mr. WOLPE. Is there objection to that amendment to the substitute?

[No response.]

Mr. WOLPE. Hearing none, that amendment will be accepted.

Mr. ERDAHL. Would the gentleman yield?

Mr. SOLARZ. I will be happy to yield.

Mr. ERDAHL. I thank the gentleman from New York for yielding.

I think what we are looking at, and I guess we are talking about amendments in the concept of the bill, there are some rather fundamental ideas and maybe fundamental extension of our country into other countries. I think all of us would agree that the policy of apartheid in South Africa is an abhorrent policy, but I question, by this legislation, who are we ultimately going to help and who are we ultimately going to hurt.

It seems to me that we should learn from our experience, whether it is in Afghanistan with the grain embargo, or Southeast Asia, that when we endeavor to carry out a unilateral policy to modify the internal policies of other countries, that very posture seems to negate the possibility of success.

Also, as we look at our companies functioning in South Africa, you claim, Mr. Solarz, that this would not stop them from being there for providing the employment that they provide.

In a sense, I guess, if I could coin a word, we are "statutizing" the Sullivan code, which has worked, perhaps not as successfully as many would have hoped, but I think has been an influence, has been a help to the working people, the men and women of South Africa.

Yet, we must be aware that as we deal with our companies that are doing business around the world, whether it is in China, or South Africa, or in countries with oppressive regimes, either the right or the left, I think we would all acknowledge that these companies are functioning in some of those countries.

By putting into statute a voluntary program that has been started, and is promoted with some success by Reverend Sullivan and others, how much are we really accomplishing? Are we discouraging American companies from expanding, or from locating in South Africa? Are we negating the possibilities for employment? Even though some people will say, there are 7,000 black Africans employed by American firms, to the people employed it is total employment.

Mr. SOLARZ. Would the gentleman yield?

Mr. ERDAHL. These are questions that I would like to raise, and I will yield for an answer, obviously.

Mr. SOLARZ. The gentleman raises some very good questions.

Let me say, first of all, that while there are a lot of people who believe that we should prohibit all American investment in South Africa, and there are some who feel that we should disinvest and there are some who feel that we should prohibit new investment, this bill doesn't do any of that. It leaves the existing investment intact, and it permits new investment.

Second, insofar as the applicability of the Sullivan code is concerned, I would say to the gentleman, Reverend Sullivan himself has testified before our committee in favor of precisely this legislation because, in spite of his efforts, he has found that there are over 150 American firms doing business in South Africa which don't even nominally subscribe to the principles. And, unfortunately, many of the firms that do subscribe to the principles honor them more in the breach than in the observance.

Last year, when we had hearings on this, the suggestion was made, I think once again by the gentlewoman from New Jersey who is very much committed to the principle of voluntarism, that we make a much greater effort to try to get the American firms there to voluntarily do what they ought to be doing.

The suggestion was made that they should try to get the White House to call a conference of all the American firms. We asked the President to put his prestige on the line and ask these firms to subscribe to and adhere to the Sullivan code. Unfortunately, although every member of the subcommittee signed the letter to the President asking him to take such an initiative, over a year later not only hasn't the initiative been taken, but we haven't even received a response to the letter. I think many of us felt that we had tried every other alternative, and the only way to secure compliance with the Sullivan code effectively at this point was to mandate it.

Let me just make one or two additional observations in response to the points you raised. Insofar as trying to improve the situation in South Africa, I would say to the gentleman that we have already adopted the Evans amendment which requires that any firm in South Africa—not just American, but South African—which wants Eximbank loans has to comply with the Fair Employment Code. In that sense, we have already crossed the Rubicon on this issue.

Finally, I would say that, rightly or wrongly, Congress has consistently taken the position that where there are situations in other countries that constitute a real injustice, where appropriate, we will take necessary action. We have established embargoes against Uganda, the Central African Empire, Cuba, Vietnam, Cambodia, Argentina, and North Korea. The list could go on and on.

There are a lot of people who have said that this legislation singles out South Africa and, therefore, it is unfair. The truth is, we have singled out all the other countries but South Africa. I think, therefore, to be consistent, we ought to take some action here. But this is really very minimal action.

I don't think that it is going to force any American firm out of business in South Africa. If it does, if a firm is forced to stop doing business in South Africa because it is not providing equal pay for equal work, or equal promotional opportunities or the like, then I really don't think they ought to be doing business there in the first place. If there is any justification for American investment in

South Africa, it is the extent to which it provides opportunities that blacks otherwise wouldn't have.

This is simply designed to make sure that those opportunities in fact exist.

Mr. ERDAHL. If the gentleman would yield further for just a couple of observations.

Mr. SOLARZ. Sure.

Mr. ERDAHL. I thank the gentleman from New York for yielding.

In a sense, and I am not trying to be facetious about it, but we are putting a greater restriction by the legislation, even though I know it is not as severe as the legislation proposed by Mr. Gray, which would prohibit, I think, investment in South Africa. We are putting greater restriction on some company doing business in South Africa than we do on companies doing business within the United States of America.

We talk and we are proud of trying to have equal pay for equal work. If you look at the statistics, you will find that the average woman in this country working are not getting the same pay for most jobs as men are.

Mr. SOLARZ. Would the gentleman yield on that point?

Mr. ERDAHL. Yes.

Mr. SOLARZ. That is one thing that this legislation does not do, nor would I want it to do. The provisions of the Fair Employment Code, which are essentially modeled after the Sullivan principles, also come from our own Equal Employment Act. My understanding is that there is no specific legal obligation imposed on American companies here with respect to how they treat their employees that American firms doing business in the United States don't have to meet as well.

The only difference is the provision we referred to a little bit earlier about the obligation on the part of the company to make reasonable efforts to improve the quality of life of the employees outside of the work environment. Other than that, equal pay for equal work, that sort of thing, companies here in the United States have to adhere to also.

There may be many that get around it, who are violating the law. The law perhaps isn't effectively enforced, but that is the law and the legal obligations, I think, are more or less the same.

Mr. ERDAHL. Would the gentleman yield for just one more point.

I would agree with you, as I read your bill, it would not prohibit American companies from expanding, locating, or staying in South Africa, but I think you will have to acknowledge when companies, either abroad or at home, are faced with tight economic conditions which are not unique in the United States, I think we could say that it could discourage this type of expansion and relocation.

Thank you very much for yielding.

Mr. SHAMANSKY. Would the gentleman yield?

Mr. SOLARZ. I will be happy to yield.

Mr. SHAMANSKY. If I may point out again, I cannot eliminate from my memory as many years of being a lawyer as I have been. I have no problem with the motivation of this statute, but it is a statute, it is a law. I smiled when our colleague from Minnesota coined the word "statutized." I think that it may fill a niche that needed filling unfortunately.

I don't think that this can work, and I think that it is imposing in real life something which strikes me as being an administrative nightmare. If I represented a company that in good faith tried to reach these standards and, say, it reached 90 percent of it, the very effort of trying to prove the case at this removal from South Africa—I have been through this, the gentleman from New York must understand.

I have represented companies with the Federal Trade Commission that involved enormous difficulty and expense of simply getting information to somebody in Washington from as close as Columbus, Ohio. It is a burden, and I am not attacking the good intentions of either party.

I am talking about reasonable people, good-faith efforts, and you simply are opening up a Pandora's box when you are applying statute. We are dealing with laws here, and there are real penalties involved here. You are invoking law, and not moral injunction.

I have no question about the good-faith effort made by the author with respect to the changes in the substitute and his most recent amendments. In terms of what we would be doing with this statute, I personally cannot support.

Mr. SOLARZ. The gentleman, obviously, will act on the basis of what he thinks best.

For my own part, I don't consider it an administrative nightmare at all. I think that we have adopted legislation governing the behavior of Americans overseas in other circumstances, I doubt that the gentleman would have voted against the antiboycott provisions of the Export Administration Act.

Mr. SHAMANSKY. If the gentleman would yield.

Mr. SOLARZ. Yes.

Mr. SHAMANSKY. I truly do not feel that these are analogous. The embargo things, I do not think are analogous. In the embargo, we were shielding American companies from the imposition by foreign companies of penalties on their activities with a friendly power. It is not analogous. The embargoes with respect to Uganda, again, are not analogous.

Mr. SOLARZ. I am not talking about the embargoes here. I happen to think that it is precisely in point. If I understand the gentleman's objection, you are saying that this is difficult to administer because it involves Americans doing business abroad, where the writ of American law doesn't run. To that extent, obviously, it does pose certain problems that the application of similar legislation in the United States doesn't pose.

However, you have precisely the same problem in applying American law to the subsidiaries of American firms doing business overseas that are alleged to be in violation of the antiboycott provisions.

You have similar problems with respect to the Foreign Corrupt Practices Act, where Americans can be subject to draconian penalties for attempting to bribe foreign officials in other countries, where you have all the same problems of assembling the kind of evidence you need to sustain the allegation, et cetera.

The gentleman would not oppose equal employment legislation that was applicable within the United States. Your argument, if I understand it, is that by virtue of the fact that we are imposing

this in other countries, there are problems of assembling evidence and whatever that we wouldn't have in the United States, therefore, it creates a real problem.

All I am saying is that I think those problems are surmountable. To the extent that they exist, they exist with respect to the Foreign Corrupt Practices Act and the antiboycott provisions, which do reach American subsidiaries and individuals who are operating in other countries. So in that sense I do think it is identical, and I think we have crossed the rubicon.

I would say to the gentleman that I think that his objections would have been equally meritorious with respect to those bills, but I strongly suspect that weighing the pros and the cons, on balance he would have joined those of us on the committee and in the Congress who voted in favor of the antiboycott provisions because we believed that on balance it was better to prohibit American compliance with the Arab boycott, even if there were administrative and evidentiary problems in proving a violation of the law.

I would hope that here, too, the fundamental character of the principle that in a country like South Africa, which is based on a system utterly repugnant to us——

Mr. SHAMANSKY. I have no trouble with the repugnance of the policies of the Government of South Africa. I have great trouble following how this thing would work in fact, even with a good-faith compliance.

Mrs. FENWICK. Would the gentleman yield?

I would like to say something. I do hope that we will support this legislation. It is not as though we were suddenly in our firms doing something that South African firms themselves are doing. There are 700,000 employed in the Barlow Rand and they are doing almost exactly this now in South Africa.

I cannot see why we cannot mandate that our firms operating there should rise to the standards that the South Africans themselves have seen fit to impose on their own firms by the actions of the firm, of course, rather than the Government.

I thank the gentleman.

Mr. WOLPE. I thank the gentlewoman for her comment.

The committee will recess for a very few minutes. I think we are very close to being able to vote finally on this legislation, and also to take up the Gray bill. I hope the members will return expeditiously.

[Recess.]

Mr. WOLPE. We will resume the markup at this point. Pending before the committee is the amendment that has been offered in the nature of a substitute by Mr. Solarz.

I think, at this point, if there is no further discussion, before we move to an amendment to the substitute, which will be before us momentarily, I think it would be appropriate to move to accept the substitute.

Mr. BINGHAM. Did you say that there is an amendment to the substitute?

Mr. SOLARZ. Upon advice of counsel on the lower tier, I have decided to refrain from offering the amendment to the substitute. The only thing now pending is the amendment in the nature of a substitute.

Mr. WOLPE. Is there any further discussion?

Mr. STUDDS. Mr. Chairman.

Mr. WOLPE. Mr. Studds.

Mr. STUDDS. Mr. Chairman, I don't want to prolong the discussion, but I guess I should make a plea to the gentleman from Ohio, continuing our conversation from the other day, that he obviously has been wounded, whether mortally or not I don't know, by his years at the Harvard Law School. There is no known cure for that except sustained absence from those environs and from those who have been subjected to them.

I hate to think what would happen if we had the Ten Commandments before this committee, some of them are quite vague.

[General laughter.]

Mr. STUDDS. For example, the proposition that you should love thy neighbor as thyself is subject to a variety of interpretations. I would think that graduates of even a lesser law school might conclude that the verb to love has a number of possible interpretations and that this formulation of the exhortation is clearly out of order and could lead to endless litigation with respect to the proper form of love for one's neighbor, to say nothing of the proper form of love for oneself.

Mr. SHAMANSKY. You have just earned an honorary degree, sir.

[General laughter.]

Mr. STUDDS. The idea of honoring thy father and mother. What if they don't deserve it? What if they have done something awful? What if they in turn fail to honor their mother and father? It is subject to litigation without end it seems to me and would never have been adopted by this subcommittee.

[General laughter.]

Mr. SOLARZ. Would the gentleman yield?

Mr. STUDDS. Certainly.

Mr. SOLARZ. I met with the Setma Rabbi on Sunday evening in Williamsburg, and I feel obliged to say to the gentleman that he has told me that the commandment to honor thy father and mother is an absolute. There is no exception or justification for doing otherwise.

Mr. STUDDS. Let me just say that I had suggested earlier that these two gentlemen switch their conversation to Latin, so that it might be more precise. But I do think that one ought to rise above, occasionally, these kinds of textual niceties and think in terms of values and symbols, and that is really what is at stake here.

I would urge the gentleman to rise above his training.

Mr. SHAMANSKY. If the gentleman would yield.

I have no trouble rising above my training. I have trouble rising above my experience.

Mr. STUDDS. That is also a challenge, but it can be surmounted.

[General laughter.]

Mr. WOLPE. Is there further discussion of the amendment in the form of a substitute by other members of the committee?

[No response.]

Mr. WOLPE. I would like to make just a brief remark.

First of all, I think the legislation before us is really a very modest effort. It is not one that would in any sense inhibit investment in South Africa, or prohibit investment in South Africa. It

would not abandon other kinds of economic relationships to South Africa. But it would, it seems to me, address the present very deep ambiguity in the way in which America approaches South Africa.

This ambiguity, that many have within South Africa itself and throughout the African Continent that the United States is indeed ambivalent with respect to apartheid, and is entering into a new kind of accommodation with the present regime, is destructive in terms of our aspirations for fundamental change within South Africa. I think it has fed in some respects the most intransigent of the present South African regime in their belief that this is a system that can indeed be sustained. But it is also, I think, deeply destructive of American national security interests, both within South Africa itself, within the southern African region, and throughout the African Continent.

I see this legislation, as I do the legislation that has been offered by Mr. Gray that we will turn to momentarily, as an effort to begin to correct that ambiguity. Particularly now at a time when we have an administration that seems to be anything but intent on making clear America's historic opposition to apartheid, I think that it is terribly important that there be a congressional expression on that point.

Mrs. FENWICK. Would the gentleman yield?

Mr. WOLPE. Surely.

Mrs. FENWICK. I seem to be the only Republican here, and I must take exception to the remarks of the chairman in regard to the administration.

I worked for many years, from 1948 on, in civil rights in my State, and I know that there are various ways of approaching the goal and the determination to achieve a goal of racial justice. I know that in trying successfully to get black employment in our banks, in our telephone companies, and the various institutions of our State, quiet diplomacy worked far better, allowing the praise to go to that institution which had opened its door as it should have long before, but nevertheless allowing the praise to go to them and not engaging in a series of confrontations.

I don't think that it is fair to say that the administration is not concerned about apartheid. I think there are different ways of doing things. I think it is a mistake to have it on the record unchallenged that we are now departing from a very strong position against a most loathsome policy.

Mr. WOLPE. If I may reclaim my time.

I thank the gentlelady for her remarks.

I think that the language that I used, and it was done with some care, was that this present administration has been anything but diligent in expressing our concern about apartheid. I am not saying, because I do not believe it to be the case, that there are not members of this administration, most notably the Assistant Secretary for Africa, who are not deeply concerned by the system of apartheid.

As I have indicated repeatedly over the past several months, my quarrel with the administration is not so much in terms of a statement of opposition to apartheid that they have rendered on several occasions, but it is indeed with respect to the approach to South

Africa that in my view undermines that statement, undermines that commitment.

I think we have, in some instances, unintentionally reinforced some of the most intransigent elements of the South African regime. I think the evidence in the past 1½ to 2 years of growing repression within South Africa speaks for itself, and I think it needs to be challenged.

I also happen to be one who thinks that the debate between those who are advocates of quiet diplomacy and those who are advocates of the application sticks and more valuable rhetoric, that debate is nonsensical on its face. Any effective diplomacy is always a combination both of carrots and of sticks, of quiet diplomacy and of public statements. My quarrel with the present administration is that I see very little of the teeth that I think are essential to make our foreign policy protestations meaningful.

Mrs. FENWICK. If the gentleman would yield.

If there has been, as the gentleman has suggested, backward steps on the part of the Government of South Africa in relation to apartheid, why is it that the National Party is having such reverses?

In fact, according to what we read in our newspapers, Mr. Botha is getting into trouble with the more intransigent elements of the population. So that I don't see that we can say that because we have had an administration since January 1981, there have been backward steps.

Mr. WOLPE. I thank the gentlelady.

Are there any further comments?

Mr. SHAMANSKY. Mr. Chairman.

Mr. WOLPE. The gentleman from Ohio.

Mr. SHAMANSKY. I have an amendment to the amendment in the nature of a substitute, which I would appreciate the staff distributing, if it has not already been distributed.

Basically, it is a procedural matter. As you can see, I have had concerns about procedures. I think this would be a strong step in the right direction.

Mr. WOLPE. If the gentleman would yield for just a moment.

We don't have the amendment before us. Does someone have it?

Mr. SHAMANSKY. I can read it, it is just a couple of sentences, if I may, while it is being distributed.

Basically it says:

Before issuing final regulations pursuant to subsection (a), the Secretary shall publish in the Federal Register the regulations proposed to be issued, and shall give interested persons at least 30 days to submit comments on the proposed regulations. The Secretary shall take into account the comments submitted in issuing the final regulations.

I feel that that would be helpful to the Secretary in the promulgation of any regulations issued pursuant to this.

Mr. SOLARZ. If the gentleman would yield.

I think that this strengthens the substitute and I will be happy to accept it.

Mr. SHAMANSKY. Thank you, Mr. Chairman.

Mr. WOLPE. Is there any objection to the amendment that has been offered by the gentleman from Ohio?

[No response.]

Mr. WOLPE. Hearing none, the amendment will be considered accepted.

Are there any further amendments, or any further discussion?

Mr. BONKER. Mr. Chairman.

Mr. WOLPE. The gentleman from Washington.

Mr. BONKER. Mr. Chairman, I would simply like to commend you, Mr. Bingham, and particularly Mr. Solarz for the drafting of the substitute. I know that it has been a long process that has involved considerable effort to find language that could be effective and still not be excessive in its application.

As the gentleman from New York knows, I have had long-term concerns about how we approach this particular issue because I feel that U.S. businesses could be role models in South Africa, leading the way toward desegregation, equal employment for employees, equal pay and benefits, and so forth.

My view is that South African companies simply don't know what to do to bring about progressive change in their society. So we could either approach the issue by policies that would get American businesses out of South Africa, or we could develop policy that would lead them there but have them serve as role models, emulating hopefully the U.S. experience by way of using economic institutions and practices to bring about full equality in that society. I think you have come as close as possible to achieving that desired goal in this particular draft.

So I would like to commend you and thank you, particularly the gentleman from New York for being sensitive to my concerns. I am very pleased to support this final version.

Mr. BINGHAM. Is there further discussion on the amendment in the nature of a substitute?

[No response.]

Mr. BINGHAM. If not, the vote occurs on the amendment in the nature of a substitute offered by the gentleman from New York, Mr. Solarz, as amended. All those in favor signify by saying "aye."

[Chorus of "ayes."]

Mr. BINGHAM. Opposed, "no."

[No response.]

Mr. BINGHAM. The "ayes" have it. The substitute is agreed to. The vote occurs now on final passage.

Mr. WOLPE. Mr. Eckart is on his way over here, and he will be arriving momentarily.

Mr. SOLARZ. Mr. Chairman, I would suggest we proceed to a vote. If it passes on voice vote, which I hope and trust it will, unless somebody asks for a record vote, Mr. Eckart's presence, though highly desirable, may not make any difference. If they do request a record vote, we could keep the rollcall open.

Mr. WOLPE. The vote, then, at this point, will be on the final passage of the Solarz legislation. All in favor signify by saying "aye."

[Chorus of "ayes."]

Mr. WOLPE. All opposed, "nay."

[No response.]

Mr. WOLPE. The "ayes" appear to have it. The "ayes" have it.

At this point, we would now turn to the legislation that has been introduced by Congressman Bill Gray. I understand that Congressman Gray is on his way.

Mr. BINGHAM. I wonder if in the meantime we could turn to the bill that is before the Subcommittee on International Economic Policy and Trade, since we have four members of that subcommittee and will have five shortly.

If the members would turn to H.R. 6393.

The members will recall that in the consideration of the foreign aid bill, we adopted an amendment to reimpose foreign policy export controls as they were on February 26 of this year, when the Secretary of Commerce made certain changes.

It was suggested at the time by the chairman and others that because of questions about whether the aid bill would move rapidly toward enactment, that it would be desirable to deal with these same provisions in separate legislation, and that is the import of this bill.

I would remind you of what the bill would accomplish. It would restore controls on civil aircraft to be exported to countries which support international terrorism and restore Iraq to the list of terrorist countries. It would restore controls on all exports to military and police entities in South Africa, and all computer exports to government agencies in South Africa. It would restore controls on certain crime control and detection equipment items destined for countries which violate human rights.

The bill also has the effect of resuming the requirement that the administration notify Congress before approving the export of civil aircraft to terrorist countries. In the light of the administration's decision on May 25 to license the export of six Lockheed L-100 aircraft to Iraq, I feel that it is essential that we restore foreign policy export controls on civil aircraft to Iraq. These controls will assure that such applications are subjected to the most rigorous of reviews and that the Congress is notified before such sales are licensed.

I would remind the members, however, that the bill would not deny export of these commodities to any of these destinations. It merely restores our previous system of reviewing each of these transactions on a case-by-case basis.

Finally, the bill doesn't have any effect on the additional foreign policy export controls which have been imposed, for example, with respect to Libya since the first of the year. The bill simply restores those controls which were allowed to lapse.

I would welcome any questions.

Mrs. FENWICK. Mr. Chairman.

Mr. BONKER. Mr. Chairman.

Mr. BINGHAM. The gentlelady from New Jersey.

Mrs. FENWICK. My only question is that I am surprised not to see my name as one of the sponsors.

Mr. BINGHAM. I am sorry. I apologize to the gentlelady and that will be corrected for the record.

Mrs. FENWICK. I thank the chairman.

Mr. BONKER. Mr. Chairman, the full committee has already acted on a similar provision in the supplemental appropriation that is destined for floor action at some point?

Mr. BINGHAM. That is correct.

Mr. BONKER. It seems to me that the history of this issue stems from efforts earlier by the gentlewoman from New Jersey in correspondence to the State Department to identify certain countries as

Mr. WOLPE. Your heart and spirit we welcome and it is so good to hear from you.

Mrs. FENWICK. I love you, too.

Reverend SULLIVAN. I love you.

Mr. WOLPE. We will next hear from Congressman Solarz from the State of New York.

**STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. SOLARZ. Thank you, Mr. Chairman.

You referred a bit earlier to the onerous constraints imposed upon me by the 5-minute rule. I take it that as a witness before this distinguished panel I will not be comparably constrained. Indeed, I may one day be forced to run for the Senate on the grounds that this 5-minute rule constitutes a violation of my fundamental human rights with which I can no longer put up.

Mr. ERDAHL. If interrupted, the whole world would wait for a filibuster by our distinguished colleague.

Mr. SOLARZ. I never thought rule 22 was such a bad idea until I contemplated the possibility of taking a position in the other body.

In all seriousness, Mr. Chairman, you are to be complimented for your initiative in holding these hearings. I genuinely believe that if they lead to some concrete legislative action, they could constitute a profound and singularly salutary contribution to the national interest of our own country.

I also would like to say that I am a little bit uneasy following in the footsteps of Reverend Sullivan, who is clearly one of the most impressive witnesses ever to appear before a congressional committee. The Lion of Zion, as I discovered he was called when he appeared before us last, certainly has lived up to his reputation. I fear being sandwiched in between the Lion of Zion and the Light of Bright, which I think is the name by which our good friend from Philadelphia is called on his home turf when he is in his clerical garb rather than his congressional clothes, will mean my testimony will be little noted nor long remembered.

Nevertheless, I will do my best.

I don't think it is necessary today to argue about how objectionable the apartheid system is. I think, quite clearly, we would all agree that any system of government which excludes by definition the overwhelming majority of the people who live in that country merely by virtue of the color of their skin is a system of government which we would all find fundamentally objectionable.

I want instead to address myself to what I think are the two crucial questions confronting the committee and the Congress at this time: First, whether we should do anything about the situation in South Africa other than periodically expressing our distaste for it; and, second, to the extent that we ought to be doing something concrete, as distinguished from being purely rhetorical about the situation in South Africa, what is it that we ought to do?

I would begin by arguing that a more affirmative policy toward South Africa would be compatible not only with our ideals but also with our interests. To be sure the future of South Africa is going to be determined primarily by the people within South Africa, itself,

terrorist governments in which case an export license shall be denied under certain circumstances for the sale of various items.

I am just wondering how this has evolved. Earlier, it was through correspondence between the Congress and the State Department. Apparently, the State Department has subsequently attempted to modify the procedure which then necessitates legislative action to be consistent with the earlier action. Is that roughly correct?

Mr. BINGHAM. The administration on February 26 of this year took various actions with respect to foreign policy controls. One of those was to remove Iraq from the list of terrorist countries, and to ease these various controls on exports to South Africa that I mentioned, to ease certain controls on crime control and detection equipment.

All we are doing by this move is to restore the controls to the status that they occupied before February 26. In other words, it is a kind of rollback.

I would emphasize to the gentleman, because I know of his interest in the export of aircraft, that this does not prohibit the export of aircraft. It simply means that these cases will be looked at and licenses will have to be issued if the administration desires to issue them. They will have to be considered on a case-by-case basis as they were in the past, rather than being given a kind of blanket exemption.

This is the same as we did in the aid bill. The reason for pressing with separate legislation is with the hope that we can move this ahead and push it through to enactment without having to wait for the very dubious prospect that the aid bill will eventually be enacted into law.

Mr. BONKER. I can certainly understand that, Mr. Chairman.

With respect to Iraq, since it is one of the four countries so identified, does the chairman have any comments about recent political developments in that country? Does it reinforce our earlier concerns about their terrorist activities, or because a new government is apparently in place, that it ought to have a new review?

Mr. BINGHAM. All the evidence that we had at the hearing is that the Government of Iraq is still engaged in the support of terrorism. They still occupy a very far out position as far as the confrontations in the Middle East are concerned. I don't think we have any reason at this stage to treat them more gently.

We really don't know what the nature of the political upheaval that may be in process there will produce. It may produce a worse government or it may produce a better government.

Mr. BONKER. I thank the chairman.

Mr. BINGHAM. Is there further discussion on H.R. 6393?

[No response.]

Mr. BINGHAM. This is a matter that is only before the Subcommittee on International Economic Policy and Trade. If there is no further discussion, all those in favor of reporting H.R. 6393 favorably to the full committee will signify by saying "aye."

[Chorus of "ayes."]

Mr. BINGHAM. Those opposed, "no."

[No response.]

Mr. BINGHAM. The motion is agreed to, and it is so ordered.

Mr. WOLPE. We now will take up the legislation introduced by Congressman Gray, H.R. 3597.

Without objection, the legislation will be considered as read and before the committee for amendment at any point. Is there objection?

[No response.]

Mr. WOLPE. Hearing none, the bill is before the committee and is open to amendment at this point.

Congressman Bill Gray has joined the committee, and I am delighted to welcome him before us, not to participate directly in the markup, but to help us through our deliberations. I would invite Congressman Gray, at this point, to make an introductory statement.

Mr. GRAY. Thank you very much, Mr. Chairman.

It is indeed a privilege to have the opportunity to come and share with the subcommittees our concerns with regard to H.R. 3597, and perhaps give the subcommittees some information with regard to the need for this legislation.

First of all, let us point out that American investment in South Africa is about 17 percent of the total direct foreign investment in that country, and is concentrated mainly in such areas as manufacturing, chemicals, and machinery.

U.S. investments, which have grown by 11 percent between 1977 and 1978, grew by only 1 percent between 1978 and 1979. However, the rate of U.S. investments has increased dramatically to 18 percent between 1979 and also 1980.

It is our feeling and it is our intent, through this legislation, to make it very clear that American investments should not be utilized to continue the support of apartheid. Certainly, when one looks at the South African situation there has not been substantial change in apartheid. When one looks at the bare facts that the white minority holds 87 percent of the best land, that the disparity continues to exist in wages and in social services, that black labor leaders continue to be suppressed and their leadership silenced, with over one-third of them being arrested in recent months.

That is the reason why we introduced H.R. 3597, the South African Investment Prohibition Act which provides that upon the effective date, the President shall prohibit any person from the United States from making any new investments in South Africa.

This act includes a prohibition on any reinvestment of earnings or profits by persons currently investing in South Africa. Violation of these provisions may result in civil penalties of not more than \$10,000 and criminal penalties of not more than \$50,000 or 10 years in jail, or both. Firms may be subject to a maximum fine of \$1 million.

Such a no expansion, or no investment by the United States seems to me would make it possible that we would, in this country, be stating clearly our opposition to apartheid and that we do not wish that American investments would continue to support economically that apartheid. I think, clearly, when one looks at the record, one can see that there has been practically no progress in terms of the human rights situation in South Africa.

I believe that H.R. 3597 is a workable policy, and that it is possible to monitor the results. There are already established monitor-

ing devices resulting from other related legislation. The Department of the Treasury employs a series of controls governing the economy of the U.S. corporations and individuals abroad covering such problems as taxation on foreign assets, earnings, and profits.

We have often heard that if the investment activity of American business is curtailed, others would feel the resulting vacuum. Indeed, Mr. Chairman, and my colleagues, this may be true, but it may also cause a crisis of confidence so severe that it may take a considerable period for it to be filled.

More importantly, this argument implies that American business should be allowed as extension of our country and a way of our life to operate under the most odious circumstances anywhere in the world. I strongly object to this notion and, thus, have introduced H.R. 3597 which basically prohibits new investment in South Africa.

In conclusion, let me reemphasize the fact that change in South Africa has not occurred without pressure. External and internal pressures have been responsible for even the most modest movement inside South Africa relative to change.

What we do by permitting the expansion of American investment is to take the pressure off of the South African regime for such serious change, and I believe that this runs counter to what this Nation stands for. H.R. 3597 is an attempt to limit American investment so that it will not become a part of the underpinning of the apartheid regime.

Thank you, Mr. Chairman.

Mr. ECKART. Mr. Chairman, could I be heard out of order, if I may, for one moment?

Mr. WOLPE. Without objection, Mr. Eckart.

Mr. ECKART. Thank you very much.

Mr. Chairman, I was on my way over here from the last four votes to urge my colleagues favorably on House Resolution 3008, and in fact if I had been present, I would have voted in favor of it.

I am dismayed over our current administration's policies. I think that both of these pieces of legislation, H.R. 3008 and H.R. 3597 will state very forcefully the committee's very strong feelings about the misguided adventures and directions that our current administration is taking us in.

The current policy has America standing for so many things that I thought we would be historically against, and I would urge the favorable consideration by this committee of both of these pieces of legislation to continue the focus within our country, and to keep pressure without our country, on important issues that I think not only all Americans feel strongly about, but I think all freedom loving people around the world care about a great deal.

I thank the chairman.

Mr. WOLPE. Thank you very much.

The legislation is open to amendment.

Mr. SOLARZ. Mr. Chairman.

Mr. WOLPE. The gentleman from New York.

Mr. SOLARZ. I have an amendment which I think should be available to the other members.

Mr. WOLPE. I think the amendment has been distributed.

Do you have a copy of the amendment, Mrs. Fenwick?

Mrs. FENWICK. No.

Mr. WOLPE. It is being distributed now.

Mr. SOLARZ. Mr. Chairman, if I can explain the amendment, it is really quite simple.

Under the language currently in the bill on page 4 in which the term "investment" is defined, not only would all new investment in South Africa be prohibited but even reinvestment of profits or funds derived from American firms doing business in South Africa would be prohibited. In effect, this would be the functional equivalent of disinvestment because if a firm couldn't even reinvest its earnings to upgrade its machinery or to repair broken down facilities, they would all soon go out of business.

Now, one can be for disinvestment. One can be against it. But my understanding is that this legislation is not designed to require disinvestment. I think that it would therefore be a mistake and unfortunate to prohibit reinvestment.

The amendment I offer to lines 15 to 20 on page 4 would, in effect, permit an American firm doing business in South Africa to reinvest any earnings derived from that enterprise in South Africa in the enterprise itself, while it would retain the prohibitions on new investment by the firm or by any other firm of resources, derived from outside South Africa, in South Africa.

So I would hope that even those who may be opposed to the legislation would still support this amendment because insofar as this amendment does permit reinvestment, it perhaps makes it somewhat more acceptable.

Mr. WOLPE. I thank the gentleman for offering that amendment. Is there further discussion on the amendment?

I believe, as I understand it, that this is consistent with the original intent of the legislation. We had talked as a committee previously about some of the definitional problems if we did not have this kind of an amendment added to the legislation. I think this is helpful.

Mr. SOLARZ. I may say that my understanding is that this is acceptable to the author of the legislation, Mr. Gray, and it is consistent with what he is trying to do with his approach.

Mr. WOLPE. Thank you.

Is there further discussion?

[No response.]

Mr. WOLPE. If not, all in favor of the amendment being offered by the gentleman from New York will signify by saying "aye."

[Chorus of "ayes."]

Mr. WOLPE. All opposed, "nay."

[No response.]

Mr. WOLPE. The amendment is carried.

Mr. BINGHAM. Mr. Chairman.

Mr. WOLPE. Mr. Bingham.

Mr. BINGHAM. Mr. Chairman, I certainly agree with the objective of this legislation and I think that I can support it, but I would like to address a couple of questions to the author of the legislation.

I am a little puzzled by the references to the International Emergency Economic Powers Act. There is one reference in section 302 to the effect that:

The President may exercise such authorities contained in Section 203 of the International Emergency Economic Powers Act as he considers necessary to carry out the provisions of this section.

Then over in Section 305, it says,

The provisions of the International Emergency Economic Powers Act shall not apply to the exercise of authorities under this title.

My first question is, could the gentleman reconcile those two provisions for me?

Mr. GRAY. If I understand the question from my colleague from New York, you are saying that under section 302 there is a provision that allows the President to use the International Emergency Economic Powers Act as he considers necessary. But then in section 305, there seems to be a nullification of that which was granted under section 302.

Mr. BINGHAM. That is right.

Mr. GRAY. Is that correct?

Mr. BINGHAM. Yes. Section 305 says that "The provisions of the International Emergency Economic Powers Act shall not apply to the exercise of authorities under this title." May I suggest to the gentleman that maybe that means that the powers contained in section 203 International Emergency Economic Powers Act are made available by this act, but that the President does not have to declare an emergency as contemplated in section 202 of the International Emergency Economic Powers Act because that would create a difficulty, I think.

Section 202 of the International Emergency Economic Powers Act says that

The authorities granted to the President under Section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or in substantial part outside the United States, to the national security, foreign policy, or economy of the United States if the President declares a national emergency with respect to such threat.

I assume the gentleman doesn't expect that under this legislation, the President would have to find that kind of an emergency before he could use the powers that are specified.

Mr. GRAY. If the gentleman would yield.

The reason for the section 305, is that under the International Emergency Economic Powers Act, there are certain termination dates that are set. As a result of that, there has to be an exemption in order to comply with section 302.

I notice that legislative counsel is here, and if the gentleman wouldn't mind, I would like to ask legislative counsel to give a fuller explanation. It is my understanding that without such a provision, under the International Emergency Economic Powers Act, you would have certain termination dates set which would not be applicable to the legislation. So section 305 is an attempt, through the language, to provide for that exemption.

If the Chair would permit, could we get a clear statement on that from legislative counsel?

Mr. WOLPE. Would you use the microphone please?

Ms. STROKOFF. I think to be technically correct, on page 5, line 2, it would say, "except as provided in section 302 of this title, the provisions of the International Emergency Economic Powers Act," et cetera, "don't apply."

For the reasons that you stated, you don't want to require the declaration of international emergency, and you don't want the provision to expire after a certain period of time.

So really, there should be a technical amendment that says, "Except as provided under section 302." Section 302 gives the authority to the President to issue regulations and to require the submission of information, et cetera.

Mr. BINGHAM. Mr. Chairman, I ask unanimous consent that Section 305 be amended as suggested by legislative counsel.

Mr. WOLPE. Is there any objection?

[No response.]

Mr. WOLPE. Hearing none, the amendment will be accepted.

Mr. BINGHAM. May I emphasize what legislative counsel has said.

This does not require the President to find the emergency as contemplated by the International Emergency Economic Powers Act. This simply gives the President the authorities contained in section 203 of that act without having to find the emergency.

Mr. WOLPE. Thank you.

Are there any further amendments or any further discussion?

[No response.]

Mr. WOLPE. I would just make one very brief observation, which is that this legislation is indeed consistent with the recommendations of the Rockefeller Commission which undertook a very extensive study into American policy toward South Africa.

It was a very broad-based panel of distinguished American citizens, including many within the corporate community, who came to the conclusion that policy such as would be propounded within this legislation does make sense in terms of the mix of initiatives that our country should be pursuing in our own national self-interest.

Mr. SOLARZ. Would the gentleman yield?

Mr. WOLPE. The gentleman from New York.

Mr. SOLARZ. I thank the gentleman for yielding.

I would like to just briefly indicate why I support this legislation, but first I would like to pay tribute to the gentleman from Pennsylvania, who I think has really been tenacious in his efforts to promote this legislation. I think it is an obvious indication of the degree to which he takes seriously the responsibility of our country to do something about the situation in South Africa.

In all my years here, I have rarely seen a Member put as much time and effort into a bill, particularly if it doesn't fall under the jurisdiction of the committee on which he serves. I really think that all of us owe a debt of gratitude to the gentleman from Pennsylvania for forcefully promoting this legislation.

Very briefly, I support this legislation basically for two reasons. First, because I am completely convinced that the great majority of black people in South Africa would vote for this legislation if they had an opportunity to do so. I don't have any Gallup polls I can point to, but I have discussed this with the innumerable black leaders from South Africa.

Most of them I think are convinced that the benefits of American investment in South Africa are exceedingly limited, and that they have a better chance of eventually bringing about an end to apart-

heid in the context of prohibitions on new investment than they do by any effort to encourage new investment.

Occasionally, black leaders in South Africa are trotted out by the South African Government who say that they want more investment, but I don't find that very persuasive. When Bishop Muzorewa was one of the black nationalist leaders in Rhodesia calling for majority rule, before he made his arrangements with Ian Smith, he was calling for international support for sanctions against Rhodesia.

I think if you look at the history of these situations, you will find that people in these countries who feel victimized by the political system in their nations always prefer the international community to maximize rather than minimize pressure.

Second, I support it because while I am not at all persuaded that a prohibition on new investment, or even disinvestment for that matter, would bring apartheid to its knees, since I think American investment in South Africa is relatively limited—we are about 15 percent of all foreign investment, and foreign investment is only a small percentage of the total investment.

I think even if tomorrow all the American investments left South Africa, which isn't about to happen, it would have a relatively minimal impact. But I think the passage of legislation like this can have a major impact on how we are viewed in South Africa by overwhelming majority of the people in that country.

I don't know when it will happen, and I don't know exactly how it will happen, but as sure as we are sitting here today, I have absolutely no doubt that sooner or later the black majority in that country will determine the destiny of South Africa.

When that day comes, I think it will be in our interest to have been perceived by the black majority in the country as having actively identified with their cause. I think legislation like this would lend some real substance to our rhetorical opposition to apartheid.

Mr. WOLPE. Thank you.

Is there further discussion?

[No response.]

Mr. WOLPE. Hearing none, the bill is up for final passage at this point. All in favor signify by saying aye.

[Chorus of "ayes."]

Mr. WOLPE. All opposed.

Mrs. FENWICK. "No."

Mr. WOLPE. The "ayes" have it. The bill is reported.

I think this concludes our agenda for this afternoon.

[Whereupon, at 12:25 p.m., the subcommittees adjourned.]

APPENDIX 1

H.R. 3008 AS INTRODUCED BY MR. SOLARZ, APRIL 2, 1981

97TH CONGRESS
1ST SESSION

H. R. 3008

Requiring United States persons who control enterprises in South Africa to comply with certain fair employment principles, prohibiting any new loans by United States financial or lending institutions to the South African Government or to South African corporations or other entities owned or controlled by the South African Government, requiring reports with respect to loans to other South African entities, and prohibiting the importation of South African krugerrands or other South African gold coins.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1981

Mr. SOLARZ introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and Banking, Finance and Urban Affairs

A BILL

Requiring United States persons who control enterprises in South Africa to comply with certain fair employment principles, prohibiting any new loans by United States financial or lending institutions to the South African Government or to South African corporations or other entities owned or controlled by the South African Government, requiring reports with respect to loans to other South African entities, and prohibiting the importation of South African krugerrands or other South African gold coins.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 ENDORSEMENT AND IMPLEMENTATION OF FAIR

4 EMPLOYMENT PRINCIPLES

5 SECTION 1. Any United States person who controls a
 6 corporation, partnership, or other enterprise in South Africa
 7 in which more than twenty people are employed shall take
 8 the necessary steps to insure that, in operating such corpora-
 9 tion, partnership, or enterprise, those principles relating to
 10 employment practices set forth in section 2 are implemented.

11 STATEMENT OF PRINCIPLES

12 SEC. 2. The principles referred to in the first section of
 13 this Act are as follows:

14 (1) No segregation of the races in any employ-
 15 ment facility, including—

16 (A) removing all race designation signs;

17 (B) desegregating all eating, rest, and work
 18 facilities; and

19 (C) terminating all regulations which are
 20 based on racial discrimination.

21 (2) Equal employment for all employees, includ-
 22 ing—

23 (A) establishing nondiscriminatory health, ac-
 24 cident, and death benefit plans open to all em-

1 ployees, whether they are paid a salary or are
2 compensated on an hourly basis; and

3 (B) implementing equal and nondiscrimina-
4 tory terms and conditions of employment for all
5 employees, and abolishing job reservations, job
6 fragmentation, apprenticeship restrictions for
7 blacks and other nonwhites, and differential em-
8 ployment criteria, which discriminate on the basis
9 of race or ethnic origin.

10 (3) Equal pay for all employees doing equal or
11 comparable work, including—

12 (A) establishing and implementing, as soon
13 as possible, a wage and salary structure which is
14 applied equally to all employees, regardless of
15 race, who are engaged in equal or comparable
16 work;

17 (B) reviewing the distinction between hourly
18 and salaried job classifications, and establishing
19 and implementing an equitable and unified system
20 of job classifications which takes into account
21 such review; and

22 (C) eliminating inequities in seniority and in
23 grade benefits so that all employees, regardless of
24 race, who perform similar jobs are eligible for the
25 same seniority and in grade benefits.

white as well as black. There is relatively little that we can do in the United States to fundamentally change the situation in South Africa. It is not within our power by ourselves to eliminate the apartheid system or to retain it; but I do think that at the margins we can make a difference.

We do, after all, have over 300 firms currently doing business in South Africa. We have a total trade with that country of almost \$6 billion. We have a total of \$2.3 billion in direct investment in South Africa. We currently have outstanding private bank loans of \$1.1 billion to South Africa. So, in purely economic terms we do have leverage which can be applied to that country.

In addition to our economic interests in South Africa, our role as a superpower in the world, as a leader of the West, gives us additional political and diplomatic leverage with them. Leaving aside the extent to which any action we take can hasten the day when apartheid is eliminated, it seems to me that at the very least we can make it clear to the overwhelming majority of the people of South Africa where we stand on the critical question of their own future, while at the same time we can also make it clear to hundreds of millions of other people around the world where we stand on this issue as well.

People often ask what the impact of any proposed legislation would be on the whites in South Africa who currently have a virtual monopoly on political power there. I certainly think that is a very important question to address in considering any action we might take. But I think it is equally, if not more, important to take into consideration the impact which any actions on our part will have on the black majority within South Africa who in the final analysis, sooner or later, will inevitably come into their proper heritage as the overwhelming majority of the people in that country.

It seems to me in these terms sooner or later it is in our interest to match our rhetoric with deeds, and to reinforce the rhetorical opposition which we have from time to time expressed with respect to apartheid—although with this administration even the rhetorical opposition to apartheid seems to be diminishing—with some substantive deeds which will put some flesh on the bones of our pronouncements against it.

Now, in those terms I think that there is an opportunity for the Congress to take some action that I would consider genuinely meaningful. I want to say to my colleagues that there probably is no issue over the last few years to which I have given greater thought, time, or attention than this question of what we can and should be doing about South Africa. The legislation which I have introduced with 22 cosponsors and which is cosponsored among others by Congressman Crockett, Congressman Dymally, Congressman Rosenthal of our own committee, and Congressman Gray who will be testifying later, represents the result of 2 years of hearings before this committee, several visits to South Africa and literally hundreds of hours of thought and discussion about how we can appropriately and properly approach this problem.

The end result of that process of consideration and consultation which involved discussions with dozens and dozens of relevant actors in South Africa, white, black, and colored, in the govern-

1 (4) The establishment of a minimum wage and
2 salary structure based on a cost-of-living index which
3 takes into account the needs of an employee and the
4 employee's family.

5 (5) Increasing, by appropriate means, the number
6 of blacks and other nonwhites in managerial, supervi-
7 sory, administrative, clerical, and technical jobs for the
8 purpose of significantly increasing the representation of
9 blacks and other nonwhites in such jobs, including—

10 (A) developing training programs that will
11 prepare substantial numbers of blacks and other
12 nonwhites for such jobs as soon as possible, in-
13 cluding—

14 (i) expanding existing programs and
15 forming new programs to train, upgrade, and
16 improve the skills of all categories of em-
17 ployees, and

18 (ii) creating on-the-job training pro-
19 grams and facilities to assist employees to
20 advance to higher paying jobs requiring
21 greater skills;

22 (B) establishing procedures to assess, identi-
23 fy, and actively recruit employees with potential
24 for further advancement;

1 (C) identifying blacks and nonwhites with
2 high management potential and enrolling them in
3 accelerated management programs;

4 (D) establishing and expanding programs to
5 enable employees to further their education and
6 skills at recognized education facilities; and

7 (E) establishing timetables to carry out this
8 paragraph.

9 (6) Taking necessary and appropriate steps, when-
10 ever possible, to improve the quality of employees'
11 lives outside the work environment with respect to
12 housing, transportation, schooling, recreation, and
13 health, including—

14 (A) providing assistance to black and other
15 nonwhite employees for housing, health care,
16 transportation, and recreation either through the
17 provision of facilities or services or providing fi-
18 nancial assistance to employees for such purposes,
19 including the expansion or creation of in-house
20 medical facilities or other medical programs to im-
21 prove medical care for black and other nonwhite
22 employees and their dependents; and

23 (B) participating in the development of
24 programs that address the education needs of

1 employees, their dependents, and the local
2 community.

3 (7) Labor union recognition and fair labor prac-
4 tices, including—

5 (A) recognizing the right of all employees,
6 regardless of racial or other distinctions, to self-
7 organization, and to form, join, or assist labor or-
8 ganizations, freely and without penalty or reprisal,
9 and the right to refrain from any such activity;

10 (B) refraining from actions which would—

11 (i) interfere with, restrain, or coerce em-
12 ployees in the exercise of their rights of self-
13 organization under this paragraph,

14 (ii) dominate or interfere with the for-
15 mation or administration of any labor organi-
16 zation, or sponsor, control, or contribute fi-
17 nancial or other assistance to it,

18 (iii) encourage or discourage member-
19 ship in any labor organization by discrimina-
20 tion in regard to hiring, tenure, promotion,
21 or other condition of employment,

22 (iv) discharge or otherwise discipline or
23 discriminate against any employee who has
24 exercised any rights of self-organization
25 under this paragraph, or

1 (v) refuse to bargain collectively with
2 any organization freely chosen by employees
3 under this paragraph;

4 (C) allowing employees to exercise rights of
5 self-organization, including solicitation of fellow
6 employees during nonworking hours, allowing dis-
7 tribution and posting of union literature by em-
8 ployees during nonworking hours in nonworking
9 areas, and allowing reasonable access for labor or-
10 ganization representatives to communicate with
11 employees on employer premises at reasonable
12 times;

13 (D) allowing employee representatives to
14 meet with employer representatives during work-
15 ing hours without loss of pay for purposes of col-
16 lective bargaining, negotiation of agreements, or
17 representation of employee grievances;

18 (E) regularly informing employees that it is
19 company policy to consult and bargain collectively
20 with organizations which are freely elected by the
21 employees to represent them; and

22 (F) utilizing impartial persons mutually
23 agreed upon by employer and employee repre-
24 sentatives to resolve disputes concerning election
25 of representatives, negotiation of agreements or

1 grievances arising thereunder, or any other mat-
2 ters arising under this paragraph.

3 ADVISORY COUNCILS

4 SEC. 3. (a) The Secretary of State (hereinafter in this
5 Act referred to as the "Secretary") shall establish in South
6 Africa an Advisory Council (1) to advise the Secretary with
7 respect to the implementation of those principles set forth in
8 section 2, and (2) to periodically review the reports submitted
9 pursuant to section 4(a) and, where necessary, to supplement
10 the information contained in such reports. The Advisory
11 Council shall be composed of eleven members, appointed by
12 the Secretary, from among persons representing trade unions
13 committed to nondiscriminatory policies, the United States
14 Chamber of Commerce in South Africa, the South African
15 academic community, and from among South African com-
16 munity and church leaders who have demonstrated a concern
17 for equal rights. The United States Ambassador to South
18 Africa shall also be a member of the Advisory Council.

19 (b) The Secretary shall establish in the United States an
20 American Advisory Council to make policy recommendations
21 with respect to the labor practices of United States persons
22 in South Africa and to periodically review the progress of
23 such persons in carrying out the provisions of the first section
24 of this Act. The American Advisory Council shall be com-
25 posed of ten members appointed by the Secretary from

1 among qualified persons, including officers and employees of
2 the Department of State, the Department of Commerce, the
3 Department of Labor, and the Equal Employment Opportu-
4 nity Commission, and representatives of labor, business, civil
5 rights, and religious organizations. The Secretary shall pub-
6 lish in the Federal Register any recommendations made by
7 the American Advisory Council under this subsection.

8 (c) Members of the Advisory Council in South Africa
9 and of the American Advisory Council shall be appointed for
10 three-year terms, except that of the members first appointed,
11 three on each Council shall be appointed for terms of two
12 years, and three on each Council shall be appointed for terms
13 of one year, as designated at the time of their appointment.
14 Any member appointed to fill a vacancy occurring before the
15 expiration of the term for which the predecessor of such
16 member was appointed shall be appointed only for the re-
17 mainder of such term.

18 (d) The United States Ambassador to South Africa shall
19 provide to the Advisory Council in South Africa the neces-
20 sary clerical and administrative assistance. The Secretary
21 shall provide such assistance to the American Advisory
22 Council.

23 (e) Members of the Advisory Council in South Africa
24 and of the American Advisory Council shall serve without
25 pay, except that, while away from their homes or regular

1 places of business in the performance of services for the re-
2 spective Councils, members of such Councils shall be allowed
3 travel expenses, including per diem in lieu of subsistence, in
4 the same manner as persons employed intermittently in the
5 Government service are allowed expenses under section
6 5703 of title 5, United States Code.

7 **ENFORCEMENT; SANCTIONS**

8 **SEC. 4. (a)** Each United States person referred to in the
9 first section of this Act shall submit to the Secretary (1) a
10 detailed and fully documented annual report on the progress
11 made in complying with the provisions of such section, and
12 (2) such other information as the Secretary determines is
13 necessary.

14 **(b)** In order to insure compliance with the first section of
15 this Act and any regulations issued to carry out such section,
16 the Secretary shall—

17 (1) establish mechanisms to monitor such compli-
18 ance, including on-site monitoring of each United
19 States person referred to in the first section of this Act
20 at least once in every two-year period;

21 (2) make reasonable efforts within a reasonable
22 period of time to secure such compliance by means of
23 conference, conciliation, mediation, and persuasion;

24 (3) in any case in which the Secretary has reason
25 to believe that any person has furnished the Secretary

1 with false information relating to the provisions of the
2 first section of this Act, recommend to the Attorney
3 General that criminal proceedings be brought against
4 such person; and

5 (4) conduct investigations, hold hearings, issue
6 subpoenas, administer oaths, examine witnesses, receive
7 evidence, take depositions, and require by subpoena the
8 attendance and testimony of witnesses and production
9 of all books, papers, and documents relating to any
10 matter under investigation.

11 (c) The Secretary shall, within ninety days after giving
12 notice and an opportunity for a hearing to each United States
13 person referred to in the first section of this Act, determine
14 the compliance of such United States person with the provi-
15 sions of the first section of this Act and any regulations
16 issued to carry out such section.

17 (d)(1) No United States person who is determined under
18 subsection (c) or (f) not to be in compliance with the first
19 section of this Act or any regulations issued to carry out such
20 section may—

21 (A) export any goods or technology directly or in-
22 directly to South Africa;

23 (B) receive any credit or deduction under the In-
24 ternal Revenue Code of 1954 for any income, war

1 profits, or excess profits taxes paid or accrued to South
2 Africa; or

3 (C) use the services of the Export-Import Bank of
4 the United States.

5 (2) No agency of the United States may enter into any
6 contract with any United States person who is determined
7 under subsection (c) or (f) not to be in compliance with the
8 first section of this Act and any regulations issued to carry
9 out such section.

10 (3) Any person who violates the provisions of paragraph
11 (1)(A) of this subsection shall be subject to the penalties set
12 forth in section 11 of the Export Administration Act of 1979
13 for violations of that Act. For purposes of paragraph (1)(A) of
14 this subsection, "goods" and "technology" have the same
15 meanings as are given those terms in paragraphs (3) and (4)
16 of section 16 of that Act.

17 (e) The Secretary shall notify the appropriate agency
18 heads of all determinations made by the Secretary under sub-
19 sections (c) and (f). Such agency heads shall carry out the
20 provisions of subsection (d) in accordance with such
21 determinations.

22 (f)(1) The Secretary shall, at least once in every two-
23 year period, review and redetermine, in accordance with sub-
24 section (c), the compliance of each United States person re-
25 ferred to in the first section of this Act with the provisions of

1 such section and any regulations issued to carry out such
2 section.

3 (2) In the case of any person determined under subsec-
4 tion (c) or paragraph (1) of this subsection not to be in com-
5 pliance with the first section of this Act or any regulations
6 issued to carry out such section, the Secretary shall, upon the
7 request of that person and after giving that person an oppor-
8 tunity for a hearing, review that person's compliance within
9 sixty days after that person files the first annual report pur-
10 suant to subsection (a) after the negative determination is
11 made.

12 (g) Any United States person aggrieved by a determina-
13 tion of the Secretary made under subsection (c) or (f) may
14 seek judicial review of such determination in accordance with
15 the provisions of chapter 7 of title 5, United States Code.

16 (h) In addition to the penalties set forth in subsection (d)
17 of this section, the Secretary may, in the case of a United
18 States person determined not to be in compliance with the
19 provisions of the first section of this Act or any regulations
20 issued to carry out such section, recommend to the appropri-
21 ate agency heads cancellation, termination, or suspension of
22 any existing export license, contract with a Federal agency,
23 or transaction with the Export-Import Bank. Such agency
24 heads shall carry out any recommendations made by the Sec-
25 retary under this subsection.

ment, outside the government, friendly to the regime, opposed to the regime, and dozens of people in the United States, including our colleagues in Congress, representatives of the administration, and spokespersons for interest groups, is a bill which consists of the following components:

First, it would provide for a mandatory fair employment code of conduct very similar to the Sullivan Principles, but which differs from the Sullivan Principles primarily in the sense that it would be mandatory, and any American firms doing business in South Africa that violate the principles would then be subject to a series of penalties

Also, unlike the Sullivan Principles which apply to every American firm doing business in South Africa, the legislation which I have submitted would apply only to American firms with 20 or more employees, on the ground that legally mandating some of these obligations on American firms doing business in South Africa might be onerous on firms with only 1 or 2 employees.

Now, I am fully aware of the fact that there is a great debate both in our country and in South Africa about whether we ought to encourage additional American investment or whether we ought to prohibit it completely, whether we ought to have disinvestment or whether we ought to try to expand the existing investment.

My bill does not precisely address that question. It does not call for disinvestment. It does not call for a prohibition on new investment, but it is based on this fundamental principle and belief: To the extent that we do have investment in South Africa, the only moral justification for it can be the extent to which it objectively promotes and provides equal employment opportunities that otherwise would not exist.

I must tell you that I was very impressed and deeply moved by the fact that even within South Africa, literally every black leader with whom I met, ranging from activists on the left, some of the leaders of the Committee of Ten in Soweto, to homeland leaders on the right, ranging from those who privately whispered in my ear they would like to see all American investment out of the country, to those who said openly and publicly they only wished we would invest more money in South Africa because they felt that would help their cause, from left to right, without exception, everybody said that so long as you still have investments here and we recognize realistically that it is impossible for you to divest for political as well as other reasons, so long as investment remains, mandate the Sullivan Principles, make compliance with the fair employment code mandatory, because we know that most of the American firms do not comply with the principles and many of those who do subscribe to them in principle don't fully implement them in practice.

I think that the feelings of the black leaders within South Africa on this issue ought properly to be given a great deal of weight. I might also say that this part of the legislation provides for a presidential waiver which would enable the President to waive the mandatory character of the legislation in the event he felt the national security was at stake.

I don't happen personally to believe that our need for the importation of minerals from South Africa is likely ever to create that

1 (i) Any sanction imposed under subsection (d)(1)(B) on a
2 United States person shall first apply with respect to the tax-
3 able year in which the determination with respect to that
4 person is made under subsection (c) or (f), as the case may be.

5 (j) The Secretary shall submit an annual report to the
6 Congress on the compliance of those United States persons
7 referred to in the first section of this Act with the provisions
8 of such section.

9

REGULATIONS

10 SEC. 5. The Secretary shall, in consultation with the
11 Advisory Councils established pursuant to section 3 of this
12 Act, issue such regulations as are necessary to carry out the
13 first section and sections 2 through 4 of this Act.

14

WAIVER OR TERMINATION OF PROVISIONS

15 SEC. 6. (a) In any case in which the President deter-
16 mines that compliance by a United States person with the
17 provisions of the first section of this Act would harm the
18 national security of the United States, the President may
19 waive those provisions with respect to that United States
20 person. The President shall publish in the Federal Register
21 each waiver granted under this subsection and shall submit to
22 the Congress a justification for granting each such waiver.
23 Any such waiver shall become effective at the end of thirty
24 calendar days after the date on which the waiver is submitted

1 to the Congress unless both Houses of Congress, within such
2 thirty-day period, adopt a resolution disapproving the waiver.

3 (b) Upon a written determination by the President that
4 the Government of South Africa has terminated its practice
5 of systematic racial discrimination and allows all the people
6 of South Africa, regardless of race or ethnic origin, to partici-
7 pate fully in the social, political, and economic life in that
8 country, the provisions of the first section and sections 2
9 through 5 of this Act and any regulations issued to carry out
10 such sections shall cease to be effective.

11 PROHIBITION ON LOANS AND IMPORTATION OF GOLD

12 COINS

13 SEC. 7. (a)(1) No bank or other financial or lending in-
14 stitution operating under the laws of the United States (in-
15 cluding any insurance company) may make any loan directly
16 or through a foreign subsidiary to the South African Govern-
17 ment or to any corporation, partnership, or other organiza-
18 tion which is owned or controlled by the South African Gov-
19 ernment, as determined under regulations issued by the Sec-
20 retary. The prohibition contained in this paragraph shall not
21 apply to loans for educational, housing, or health facilities
22 which are available to all persons on a totally nondiscrimina-
23 tory basis and which are located in geographic areas accessi-
24 ble to all population groups without any legal or administra-
25 tive restriction.

1 (2) No person, including any bank or other financial or
2 lending institution operating under the laws of the United
3 States, may import into the United States any South African
4 krugerrand or any other gold coin minted in South Africa or
5 offered for sale by the South African Government.

6 (3) Any bank or other financial or lending institution
7 that makes a loan directly or through a foreign subsidiary to
8 any entity in South Africa other than the South African Gov-
9 ernment or a corporation, partnership, or other organization
10 owned or controlled by the South African Government shall
11 submit an annual report to the Secretary setting forth the
12 amount, recipient, and purpose of any such loan. All reports
13 submitted pursuant to this subsection shall be made available
14 to the public.

15 (b) The Secretary, in consultation with the Secretary of
16 Commerce, shall enforce the provisions of subsection (a). In
17 order to enforce those provisions the Secretary shall—

18 (1) issue such regulations as the Secretary consid-
19 ers necessary to implement those provisions;

20 (2) establish mechanisms to monitor compliance
21 with those provisions and any regulations issued pursu-
22 ant to paragraph (1) of this subsection;

23 (3) in any case in which the Secretary has reason
24 to believe that a violation of subsection (a) has oc-

1 curred or is about to occur, refer the matter to the At-
2 torney General for appropriate action; and

3 (4) in any case in which the Secretary has reason
4 to believe that any person has furnished the Secretary
5 with false information relating to the provisions of this
6 section, refer the matter to the Attorney General for
7 appropriate action.

8 (c)(1) Any person, other than an individual, that violates
9 paragraph (1) or (2) of subsection (a) shall be fined not more
10 than \$1,000,000.

11 (2) Any individual who violates paragraph (1) of subsec-
12 tion (a) shall be fined not more than \$50,000, or imprisoned
13 not more than five years, or both.

14 (3) Any individual who violates paragraph (2) of subsec-
15 tion (a) shall be fined not more than five times the value of
16 the krugerrands or gold coins involved.

17 (4) Any person who violates paragraph (3) of subsection
18 (a) shall be fined not more than \$50,000.

19 (d)(1) Whenever a person violates subsection (a) of this
20 section—

21 (A) any officer, director, or employee of such
22 person, or any natural person in control of such
23 person, who knowingly and willfully ordered, author-
24 ized, acquiesced in, or carried out the act or practice
25 constituting such violation, and

1 (B) any agent of such person who knowingly and
2 willfully carried out such act or practice,
3 shall, upon conviction, be fined not more than \$10,000, or
4 imprisoned not more than five years, or both.

5 (2) No person who violates subsection (a) may pay, di-
6 rectly or indirectly, a fine imposed under paragraph (1) of this
7 subsection on account of such violation.

8 (e) The prohibition contained in subsection (a) of this
9 section shall not apply to any loan or extension of credit for
10 which an agreement is entered into before the date of the
11 enactment of this Act.

12 (f) The President may waive the prohibitions contained
13 in subsection (a) of this section for periods of not more than
14 one year each if the President determines that the Govern-
15 ment of South Africa has made substantial progress toward
16 the full participation of all the people of South Africa in the
17 social, political, and economic life in that country and toward
18 an end to discrimination based on race or ethnic origin. The
19 President shall submit any such determination, and the basis
20 therefor, to the Congress. Each such waiver shall take effect
21 at the end of thirty calendar days after the date on which
22 such determination is submitted to the Congress unless both
23 Houses of Congress, within such thirty-day period, adopt a
24 resolution disapproving such determination.

1 COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

2 SEC. 8. (a) Each department and agency of the United
3 States shall cooperate with the Secretary in carrying out the
4 provisions of this Act, including, upon the request of the Sec-
5 retary, taking steps to insure compliance with the provisions
6 of this Act and any regulations issued under this Act.

7 (b) The Secretary may secure directly from any depart-
8 ment or agency of the United States information necessary to
9 enable the Secretary to carry out the Secretary's functions
10 under this Act.

11 DEFINITIONS

12 SEC. 9. (a) For purposes of this Act—

13 (1) the term "United States person" means
14 "United States person" as defined in section 16(2) of
15 the Export Administration Act of 1979, and includes
16 any foreign concern operating under the laws of any
17 State or the United States;

18 (2) the term "South Africa" includes the Republic
19 of South Africa; any territory under the administration,
20 legal or illegal, of South Africa; and the "bantustans"
21 or "homelands", to which South African blacks are as-
22 signed on the basis of ethnic origin, including the
23 Transkei, Bophuthatswana, and Venda; and

24 (3) a United States person controls a corporation,
25 partnership, or other enterprise if such person—

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3008, JULY 2, 1982

[Committee Print]

July 2, 1982

Amendment in the Nature of a Substitute to H.R. 3008

97th CONGRESS
2d Session

H. R.

IN THE HOUSE OF REPRESENTATIVES

Mr. SOLARZ introduced the following bill; which was referred to the Committee on

A BILL

Requiring United States persons who conduct business or control enterprises in South Africa to comply with certain fair employment principles, prohibiting any new loans by United States financial or lending institutions to the South African Government or to South African corporations or other entities owned or controlled by the South African Government, and prohibiting the importation of South African kruggerands or other South African gold coins.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,

1 TITLE I--LABOR STANDARDS

2 Endorsement and Implementation of Fair Employment Principles

3 Section 101. Any United States person who--

4 (A) has a branch or office in South Africa, or

5 (B) controls a corporation, partnership, or other

6 enterprise in South Africa,

7 in which more than twenty people are employed shall take the

8 necessary steps to insure that, in operating such branch or

9 office, corporation, partnership, or enterprise, those

10 principles relating to employment practices set forth in

11 section 102 of this Act are implemented.

12 Statement of Principles

13 Sec. 102. (a) The principles referred to in section 101

14 of this Act are as follows:

15 (1) Desegregating the races in each employment

16 facility, including--

17 (A) removing all race designation signs;

18 (B) desegregating all eating, rest, and work

19 facilities; and

20 (C) terminating all regulations which are based

21 on racial discrimination.

22 (2) Providing equal employment for all employees,

23 including--

24 (A) assuring that any health, accident, or death

25 benefit plans that are established are

1 nondiscriminatory and open to all employees, whether
2 they are paid a salary or are compensated on an
3 hourly basis; and

4 (B) implementing equal and nondiscriminatory
5 terms and conditions of employment for all
6 employees, and abolishing job reservations, job
7 fragmentation, apprenticeship restrictions for
8 blacks and other nonwhites, and differential
9 employment criteria, which discriminate on the basis
10 of race or ethnic origin.

11 (3) Establishing equal pay for all employees doing
12 equal or comparable work, including--

13 (A) establishing and implementing, as soon as
14 possible, a wage and salary structure which is
15 applied equally to all employees, regardless of
16 race, who are engaged in equal or comparable work;

17 (B) reviewing the distinction between hourly and
18 salaried job classifications, and establishing and
19 implementing an equitable and unified system of job
20 classifications which takes into account such
21 review; and

22 (C) eliminating inequities in seniority and in
23 grade benefits so that all employees, regardless of
24 race, who perform similar jobs are eligible for the
25 same seniority and in grade benefits.

situation, but if a situation develops in the future where the very security of the Nation depends on our ability to get a particular mineral from South Africa and the only way to get it is to have an American firm extract it and sell it, and the firm is not complying with the Principles, the President would have the right to waive this provision of the bill. I think this waiver is a prudent component of the legislation, designed to deal with what otherwise might be a serious objection to it.

Furthermore, the President would be empowered to waive all of the equal employment provisions at any point at which he determined that the system of apartheid had been eliminated, in which case there would presumably no longer be a need for these provisions.

The next component of the bill would establish a prohibition on all loans to the South African Government or its parastatal agencies except for projects involving housing, health, or education which would be available to all of the people of South Africa on a nondiscriminatory basis.

So, if they want the Government, for example, to build a hospital, it would have to be open to blacks as well as whites. If they wanted to build a school, it would have to be open to blacks as well as whites. If they wanted to borrow money from our country, a bank could loan them money only for facilities available on a totally nondiscriminatory basis, but if they wanted to build a hospital, school, or housing project on a segregated basis, then the money would not be available.

The reason that I think it makes sense to prohibit all loans to the South African Government other than for these purposes is that loans that go directly to the South African Government obviously are perceived as shoring up the apartheid regime.

I might also add here that this is not exactly a totally new initiative. There is substantial legislative precedent for it. You will recall a few years ago the Congress adopted the so-called Evans amendment to the Eximbank legislation which, in effect, prohibits any Eximbank loans to the South African Government unless the President certifies to the Congress that they have made substantial progress toward the elimination of apartheid. It also prohibits any Eximbank loans to private sector companies unless the President certifies that those companies are complying with a fair employment code of conduct.

All my legislation does in this regard is to extend the principle the Congress has already approved in the context of the Evans amendment, which applies only to loans provided by the Eximbank to all loans that could be provided by banks or private individuals in our country.

So, there is already a prohibition on Eximbank loans.

My bill would extend the prohibition to loans by private banks as well.

Third, the legislation would prohibit the importation of krugerrands, the gold minted South African coins, which netted the South Africans from the United States last year about \$1 billion in foreign exchange. It goes directly to the South African Government. It shores up gratuitously the system of apartheid. Prohibition on importation of krugerrands in the United States would not only save

1 (4) Establishing a minimum wage and salary structure
2 based on a cost-of-living index which takes into account
3 the needs of employees and their families.

4 (5) Increasing, by appropriate means, the number of
5 blacks and other nonwhites in managerial, supervisory,
6 administrative, clerical, and technical jobs for the
7 purpose of significantly increasing the representation
8 of blacks and other nonwhites in such jobs, including--

9 (A) developing training programs that will
10 prepare substantial numbers of blacks and other
11 nonwhites for such jobs as soon as possible,
12 including--

13 (i) expanding existing programs and forming
14 new programs to train, upgrade, and improve the
15 skills of all categories of employees, and

16 (ii) creating on-the-job training programs
17 and facilities to assist employees to advance to
18 higher paying jobs requiring greater skills;

19 (B) establishing procedures to assess, identify,
20 and actively recruit employees with potential for
21 further advancement;

22 (C) identifying blacks and other nonwhites with
23 high management potential and enrolling them in
24 accelerated management programs;

25 (D) establishing and expanding programs to

1 enable employees to further their education and
2 skills at recognized education facilities; and

3 (E) establishing timetables to carry out this
4 paragraph.

5 (6) Taking reasonable steps to improve the quality
6 of employees' lives outside the work environment with
7 respect to housing, transportation, schooling,
8 recreation, and health, including--

9 (A) providing assistance to black and other
10 nonwhite employees for housing, health care,
11 transportation, and recreation either through the
12 provision of facilities or services or providing
13 financial assistance to employees for such purposes,
14 including the expansion or creation of in-house
15 medical facilities or other medical programs to
16 improve medical care for black and other nonwhite
17 employees and their dependents; and

18 (B) participating in the development of programs
19 that address the education needs of employees, their
20 dependents, and the local community.

21 (7) Recognizing labor unions and implementing fair
22 labor practices, including--

23 (A) recognizing the right of all employees,
24 regardless of racial or other distinctions, to
25 self-organization and to form, join, or assist labor

1 organizations, freely and without penalty or
2 reprisal, and recognizing the right to refrain from
3 any such activity;

4 (B) refraining from--

5 (i) interfering with, restraining, or
6 coercing employees in the exercise of their
7 rights of self-organization under this
8 paragraph,

9 (ii) dominating or interfering with the
10 formation or administration of any labor
11 organization, or sponsoring, controlling, or
12 contributing financial or other assistance to
13 it,

14 (iii) encouraging or discouraging membership
15 in any labor organization by discrimination in
16 regard to hiring, tenure, promotion, or other
17 condition of employment,

18 (iv) discharging or otherwise disciplining
19 or discriminating against any employee who has
20 exercised any rights of self-organization under
21 this paragraph, or

22 (v) refusing to bargain collectively with
23 any organization freely chosen by employees
24 under this paragraph;

25 (C) allowing employees to exercise rights of

1 self-organization, including solicitation of fellow
2 employees during nonworking hours, allowing
3 distribution and posting of union literature by
4 employees during nonworking hours in nonworking
5 areas, and allowing reasonable access to labor
6 organization representatives to communicate with
7 employees on employer premises at reasonable times;

8 (D) allowing employee representatives to meet
9 with employer representatives during working hours
10 without loss of pay for purposes of collective
11 bargaining, negotiation of agreements, or
12 representation of employee grievances;

13 (E) regularly informing employees that it is
14 company policy to consult and bargain collectively
15 with organizations which are freely elected by the
16 employees to represent them; and

17 (F) utilizing impartial persons mutually agreed
18 upon by employer and employee representatives to
19 resolve disputes concerning election of
20 representatives, negotiation of agreements or
21 grievances arising thereunder, or any other matters
22 arising under this paragraph.

23 (b) The Secretary may issue guidelines and criteria to
24 assist persons who are or may be subject to this title in
25 complying with the principles set forth in subsection (a) of

1 this section. The Secretary may, upon request, give an
2 advisory opinion to any person who is or may be subject to
3 this title as to whether that person is subject to this
4 title or would be considered to be in compliance with the
5 principles set forth in subsection (a).

6 Advisory Councils

7 Sec. 103. (a) The Secretary shall establish in South
8 Africa an Advisory Council (1) to advise the Secretary with
9 respect to the implementation of those principles set forth
10 in section 102(a), and (2) to review periodically the
11 reports submitted pursuant to section 104(a) and, where
12 necessary, to supplement the information contained in such
13 reports. The Advisory Council shall be composed of ten
14 members appointed by the Secretary from among persons
15 representing trade unions committed to nondiscriminatory
16 policies, the United States Chamber of Commerce in South
17 Africa, and the South African academic community, and from
18 among South African community and church leaders who have
19 demonstrated a concern for equal rights. In addition to the
20 ten appointed members of the Advisory Council, the United
21 States Ambassador to South Africa shall be a member of the
22 Advisory Council, ex officio.

23 (b) The Secretary shall establish in the United States
24 an American Advisory Council to make policy recommendations
25 with respect to the labor practices of United States persons

1 in South Africa and to review periodically the progress of
2 such persons in carrying out the provisions of section 101
3 of this Act. The American Advisory Council shall be composed
4 of eleven members appointed by the Secretary from among
5 qualified persons, including officers and employees of the
6 Department of State, the Department of Commerce, the
7 Department of Labor, and the Equal Employment Opportunity
8 Commission, and representatives of labor, business, civil
9 rights, and religious organizations. The Secretary shall
10 publish in the Federal Register any recommendations made by
11 the American Advisory Council under this subsection.

12 (c) Members of the Advisory Council in South Africa and
13 of the American Advisory Council shall be appointed for
14 three-year terms, except that of the members first
15 appointed, three on each Council shall be appointed for
16 terms of two years, and three on each Council shall be
17 appointed for terms of one year, as designated at the time
18 of their appointment. Any member appointed to fill a vacancy
19 occurring before the expiration of the term for which the
20 predecessor of such member was appointed shall be appointed
21 only for the remainder of such term.

22 (d) The United States Ambassador to South Africa shall
23 provide to the Advisory Council in South Africa the
24 necessary clerical and administrative assistance. The
25 Secretary shall provide such assistance to the American

1 Advisory Council.

2 (e) Members of the Advisory Council in South Africa and
3 of the American Advisory Council shall serve without pay,
4 except that, while away from their homes or regular places
5 of business in the performance of services for the
6 respective Councils, members of the Advisory Councils shall
7 be allowed travel expenses, including per diem in lieu of
8 subsistence, in the same manner as persons employed
9 intermittently in the Government service are allowed
10 expenses under section 5703 of title 5, United States Code.

11 Enforcement; Sanctions

12 Sec. 104. (a) Each United States person referred to in
13 section 101 of this Act shall submit to the Secretary (1) a
14 detailed and fully documented annual report on the progress
15 made in complying with the provisions of this title, and (2)
16 such other information as the Secretary determines is
17 necessary.

18 (b) In order to insure compliance with this title and
19 any regulations issued to carry out this title, the
20 Secretary--

21 (1) shall establish mechanisms to monitor such
22 compliance, including on-site monitoring of each United
23 States person referred to in section 101 of this Act at
24 least once in every 2-year period;

25 (2) shall make reasonable efforts within a

1 reasonable period of time to secure such compliance by
2 means of conference, conciliation, mediation, and
3 persuasion;

4 (3) shall, in any case in which the Secretary has
5 reason to believe that any person has furnished the
6 Secretary with false information relating to the
7 provisions of this title, recommend to the Attorney
8 General that criminal proceedings be brought against
9 such person; and

10 (4) may conduct investigations, hold hearings,
11 administer oaths, examine witnesses, receive evidence,
12 take depositions, and require by subpoena the attendance
13 and testimony of witnesses and production of all books,
14 papers, and documents relating to any matter under
15 investigation.

16 (c) The Secretary shall, within 90 days after giving
17 notice and an opportunity for a hearing to each United
18 States person referred to in section 101 of this Act, make a
19 determination with respect to the compliance of that United
20 States person with the provisions of this title and any
21 regulations issued to carry out this title.

22 (d)(1) Any United States person with respect to whom the
23 Secretary makes a determination under subsection (c) or
24 (f)(1) of this section either that the person is not in
25 compliance with this title or any regulations issued to

1 carry out this title, or that the compliance of the person
2 with this title or those regulations cannot be established
3 on account of a failure to provide information to the
4 Secretary or on account of the provision of false
5 information to the Secretary, may not--

6 (A) export any goods or technology directly or
7 indirectly to South Africa;

8 (B) receive any credit or deduction under the
9 Internal Revenue Code of 1954 for any income, war
10 profits, or excess profits taxes paid or accrued to
11 South Africa; or

12 (C) use the services of the Export-Import Bank of
13 the United States.

14 (2)(A) In addition to the penalties set forth in
15 paragraph (1), the Secretary may impose upon any United
16 States person subject to those penalties--

17 (i) If other than an individual, a fine of not more
18 than \$1,000,000, or

19 (ii) If an individual, a fine of not more than
20 \$50,000.

21 (B)(1) Any officer, director, or employee of a United
22 States person subject to the penalties set forth in
23 subparagraph (A), or any individual in control of that
24 United States person, who knowingly and willfully ordered,
25 authorized, acquiesced in, or carried out the act or

1 practice constituting the violation involved and (ii) any
2 agent of such United States person who knowingly and
3 willfully carried out such act or practice, shall be subject
4 to a fine, imposed by the Secretary, of not more than
5 \$10,000.

6 (C) A fine imposed under subparagraph (B) may not be
7 paid directly or indirectly by the United States person
8 committing the violation involved.

9 (D) The payment of any fine imposed under this paragraph
10 shall be deposited in the miscellaneous receipts of the
11 Treasury. In the event of the failure of any person to pay a
12 fine imposed under this paragraph, the fine may be recovered
13 in a civil action in the name of the United States brought
14 by the Secretary in an appropriate United States district
15 court.

16 (3) Any United States person who violates the provisions
17 of paragraph (1)(A) of this subsection shall, in addition to
18 any other penalty specified in this Act, be fined, for each
19 such violation, not more than five times the value of the
20 exports involved or \$50,000, whichever is greater, or
21 imprisoned not more than five years, or both. For purposes
22 of paragraph (1)(A) of this subsection, "goods" and
23 "technology" have the same meanings as are given those
24 terms in paragraphs (3) and (4) of section 16 of the Export
25 Administration Act of 1979 (50 U.S.C. App. 2415).

us \$1 billion in foreign exchange but also would be a tangible expression of our distaste for apartheid and our opposition to it.

Just a few observations in conclusion:

I frequently hear people who agree with us that the system of apartheid in South Africa is objectionable say:

It is not fair to single South Africa out for special treatment. We agree with you, apartheid is distasteful; its continuation if not in our interest, but if you go after South Africa, how can you justify not going after a dozen other tyrannies around the world?

The argument, frankly, is not without some merit. But the answer to it is twofold: First, the fact is that we have gone after other countries. We had an embargo against Uganda, against Cuba. We have gone after tyrannies in Africa. We have gone after tyrannies in Eastern Europe and in Asia and in our own hemisphere as well. To the extent we have attempted through our economic policies to penalize black countries who are engaged in violation of human rights, I think we could argue we are being inconsistent in not going after South Africa in that way as well.

Second, the argument can be made that while all forms of tyranny and dictatorship are objectionable, there is something unique about a system of tyranny based on the doctrine of racial exclusion, because that strikes in a very fundamental and insidious way at the dignity of the human being. It says to people from the moment of their birth, not through any statement they may have made, not through any thoughts they have considered or actions they have taken, but merely by virtue of the color of their skin, they are third-, fourth- and fifth-class citizens. That strikes at one's sense of dignity and self-worth in a way that transcends the ordinary run of dictatorship—which is bad enough in its own right.

Second, I would point out that in my view this bill is the best we can hope for in terms of any legislation that could realistically pass the Congress. I have no problem at all with the legislation which my very good friend from Pennsylvania will testify to. I will be happy to vote for it. I introduced similar legislation a few years ago. If it is brought up, I will actively and vigorously support it.

I fear, however, the political realities are that it is unlikely to be adopted. Clearly, it would be impossible to get legislation through requiring disinvestments. So, I would say if we are going to do anything, it is something pretty much close to what I have suggested or it is nothing at all.

I am not contending that like the Ten Commandments my legislation is not open to amendment. I have no doubt, particularly with the wisdom of the members of this committee, that it could be improved, and if we reach the point where the chairman feels that it makes sense to mark it up and to move forward and bring it before our colleagues in the full committee, and maybe the House as a whole, we can try to improve the legislation.

But I would ask you to keep in mind in the search for the ideal which may not be attainable, let us not forgo achieving what little can be achieved.

Of this much I am sure—and this perhaps addresses itself to an observation made by Mr. Crockett in his closing colloquy with Reverend Sullivan—if this legislation were adopted, as weak in some respects as it may be, it would be hailed throughout South Africa

1 (e) The Secretary shall issue an order carrying out any
2 penalty imposed under paragraph (1) or (2) of subsection
3 (d).

4 (f)(1) The Secretary shall, at least once in every
5 2-year period, review and, in accordance with subsection
6 (c), make a redetermination with respect to the compliance
7 of each United States person referred to in section 101 of
8 this Act with the provisions of this title and any
9 regulations issued to carry out this title.

10 (2) In the case of any United States person with respect
11 to whom the Secretary makes a determination under subsection
12 (c) or paragraph (1) of this subsection either that the
13 person is not in compliance with this title or any
14 regulations issued to carry out this title, or that the
15 compliance of the person with this title or those
16 regulations cannot be established on account of a failure to
17 provide information to the Secretary or on account of the
18 provision of false information to the Secretary, the
19 Secretary shall, upon the request of that person and after
20 giving that person an opportunity for a hearing, review that
21 person's compliance within 60 days after that person files
22 the first annual report pursuant to subsection (a) of this
23 section after the determination is made.

24 (g) Any United States person aggrieved by a
25 determination of the Secretary made under subsection (c) or

1 (f) of this section may seek judicial review of that
2 determination in accordance with the provisions of chapter 7
3 of title 5, United States Code.

4 (h) Any sanction imposed under subsection (d)(1)(B) of
5 this section on a United States person shall first apply
6 with respect to the taxable year in which the determination
7 with respect to that person is made under subsection (c) or
8 (f), as the case may be.

9 (i) The Secretary shall submit an annual report to the
10 Congress on the compliance of those United States persons
11 referred to in section 101 of this Act with the provisions
12 of this title.

13 Regulations

14 Sec. 105. (a) The Secretary shall, after consulting with
15 the Advisory Councils established pursuant to section 103 of
16 this Act, issue such regulations as are necessary to carry
17 out this title. Such regulations shall be issued not later
18 than 180 days after the date of the enactment of this Act.
19 The Secretary shall establish dates by which United States
20 persons must comply with the different provisions of this
21 title, except that the date for compliance with all the
22 provisions of this title shall not be later than one year
23 after the date of the enactment of this Act.

24 (b) Before issuing final regulations pursuant to
25 subsection (a), the Secretary shall publish in the Federal

1 Register the regulations proposed to be issued and shall
2 give interested persons at least 30 days to submit comments
3 on the proposed regulations. The Secretary shall take into
4 account the comments submitted in issuing the final
5 regulations.

6 Waiver or Termination of Provisions

7 Sec. 106. (a) In any case in which the President
8 determines that compliance by a United States person with
9 the provisions of this title would harm the national
10 security of the United States, the President may waive those
11 provisions with respect to that United States person. The
12 President shall publish in the Federal Register each waiver
13 granted under this subsection and shall submit to the
14 Congress a justification for granting each such waiver. Any
15 such waiver shall become effective at the end of 30 calendar
16 days after the date on which the waiver is submitted to the
17 Congress unless both Houses of Congress, within that 30-day
18 period, adopt a concurrent resolution disapproving the
19 waiver.

20 (b) Upon a written determination by the President that
21 the Government of South Africa has terminated its practice
22 of systematic racial discrimination and allows all the
23 people of South Africa, regardless of race or ethnic origin,
24 to participate fully in the social, political, and economic
25 life in that country, the provisions of this title and any

1 regulations issued to carry out this title shall cease to be
2 effective.

3 TITLE II--PROHIBITION ON LOANS AND IMPORTATION OF GOLD COINS

4 Loans to South Africa

5 Sec. 201. (a) No bank or other financial or lending
6 institution operating under the laws of the United States
7 (including any insurance company) may make any loan directly
8 or through a foreign subsidiary to the South African
9 Government or to any corporation, partnership, or other
10 organization which is owned or controlled by the South
11 African Government, as determined under regulations issued
12 by the Secretary. The prohibition contained in this
13 subsection shall not apply to loans for educational,
14 housing, or health facilities which are available to all
15 persons on a totally nondiscriminatory basis and which are
16 located in geographic areas accessible to all population
17 groups without any legal or administrative restriction.

18 (b) The prohibition contained in subsection (a) of this
19 section shall not apply to any loan or extension of credit
20 for which an agreement is entered into before the date of
21 the enactment of this Act.

22 Gold Coins

23 Sec. 202. No person, including any bank or other
24 financial or lending institution operating under the laws of
25 the United States, may import into the United States any

1 South African krugerrand or any other gold coin minted in
2 South Africa or offered for sale by the South African
3 Government.

4 Enforcement; Penalties

5 Sec. 203. (a) The Secretary, in consultation with the
6 Secretary of the Treasury and the Secretary of Commerce,
7 shall take the necessary steps to insure compliance with the
8 provisions of this title, including--

9 (1) issuing such regulations as the Secretary
10 considers necessary to carry out this title;

11 (2) establishing mechanisms to monitor compliance
12 with the provisions of this title and any regulations
13 issued pursuant to paragraph (1) of this subsection;

14 (3) in any case in which the Secretary has reason to
15 believe that a violation of subsection (a) has occurred
16 or is about to occur, referring the matter to the
17 Attorney General for appropriate action; and

18 (4) in any case in which the Secretary has reason to
19 believe that any person has furnished the Secretary with
20 false information relating to the provisions of this
21 title, referring the matter to the Attorney General for
22 appropriate action.

23 (b)(1) Any person, other than an individual, that
24 violates section 201 or 202 of this Act shall be fined not
25 more than \$1,000,000.

1 the Government of South Africa has made substantial progress
2 toward the full participation of all the people of South
3 Africa in the social, political, and economic life in that
4 country and toward an end to discrimination based on race or
5 ethnic origin. The President shall submit any such
6 determination, and the basis therefor, to the Congress.
7 Each such waiver shall take effect at the end of 30 calendar
8 days after the date on which that determination is submitted
9 to the Congress unless both Houses of Congress, within that
10 30-day period, adopt a concurrent resolution disapproving
11 that determination.

12 TITLE III--GENERAL PROVISIONS

13 Cooperation of Other Departments and Agencies

14 Sec. 301. (a) Each department and agency of the United
15 States shall cooperate with the Secretary in carrying out
16 the provisions of this Act, including, upon the request of
17 the Secretary, taking steps to insure compliance with the
18 provisions of this Act and any regulations issued to carry
19 out this Act.

20 (b) The Secretary may secure directly from any
21 department or agency of the United States information
22 necessary to enable the Secretary to carry out the
23 Secretary's functions under this Act.

24 Definitions

25 Sec. 302. For purposes of this Act--

1 (1) the term ``United States person'' means any
2 United States resident or national and any domestic
3 concern (including any permanent domestic establishment
4 of any foreign concern);

5 (2) the term ``Secretary'' means the Secretary of
6 State;

7 (3) the term ``South Africa'' includes the Republic
8 of South Africa; any territory under the administration,
9 legal or illegal, of South Africa; and the
10 ``bantustans'' or ``homelands'', to which South African
11 blacks are assigned on the basis of ethnic origin,
12 including the Transkei, Bophuthatswana, and Venda; and

13 (4) a United States person shall be presumed to
14 control a corporation, partnership, or other enterprise
15 in South Africa if--

16 (A) the United States person beneficially owns
17 or controls (whether directly or indirectly) more
18 than 50 percent of the outstanding voting securities
19 of the corporation, partnership, or enterprise;

20 (B) the United States person beneficially owns
21 or controls (whether directly or indirectly) 25
22 percent or more of the voting securities of the
23 corporation, partnership, or enterprise, if no other
24 person owns or controls (whether directly or
25 indirectly) an equal or larger percentage;

1 (C) the corporation, partnership, or enterprise
2 is operated by the United States person pursuant to
3 the provisions of an exclusive management contract;

4 (D) a majority of the members of the board of
5 directors of the corporation, partnership, or
6 enterprise are also members of the comparable
7 governing body of the United States person;

8 (E) the United States person has authority to
9 appoint the majority of the members of the board of
10 directors of the corporation, partnership, or
11 enterprise; or

12 (F) the United States person has authority to
13 appoint the chief operating officer of the
14 corporation, partnership, or enterprise.

15 Applicability to Evasions of the Act

16 Sec. 303. (a) Title I of this Act shall apply to any
17 United States person who undertakes or causes to be
18 undertaken any transaction or activity with the intent to
19 evade the provisions of title I of this Act or any
20 regulations issued to carry out that title.

21 (b) Title II of this Act shall apply to any bank or
22 other financial or lending institution operating under the
23 laws of the United States, or to any other person, who or
24 which undertakes or causes to be undertaken any transaction
25 or activity with the intent to evade the provisions of title

by the black people of that country as a great step forward in American policy toward South Africa. It would also be hailed throughout the rest of Africa by all the other countries of the continent that would see in it a very significant step forward in terms of our opposition to apartheid.

I wish we could overthrow this miserable and rotten system tomorrow. I wish there were a way to bring about peaceful, nonviolent change. Maybe there isn't, but I agree with Reverend Sullivan that we have no alternative in terms of our principles as well as in terms of the practical reality that prevails in this country, but to proceed as if there were a hope for peaceful change, because what is the alternative? Even if you conclude that the only way to bring about change is through violent revolution, the fact of the matter is that we are not about to provide military assistance to guerrilla groups in South Africa. The Congress would never approve it; the American people would never support it. Rightly or wrongly, that is a reality.

So, why don't we try to help through a meaningful demonstration of our opposition to apartheid by moving in the direction of mandating fair employment principles, prohibiting new bank loans, banning the importation of krugerrands or some other measures along those lines, as opposed to doing nothing?

The fact is that we have done nothing for 30 years. There are people who say that you take an action like this and you are going to drive the whites into the laager; they will get tougher; they will be less willing to make change.

For three decades now we have tried to sweet talk the South Africans. We have refrained from taking vigorous, firm measures against that country, and it has not produced much progress. I am not one of those who says there has been no change. Obviously, there has been some change. The little change there has been has been welcomed.

But what strikes me is when you speak to the black people in South Africa and you ask them for their judgment about the changes that have been made, and you begin to list the implementation and recommendations of the Wiehand Commission, and integration of some of the athletic teams and some of the changes in petty apartheid which have taken place, they laugh, because while this may constitute tremendous and inconceivable forward progress on the part of unreconstructed white racists who are unwilling to give the blacks any opportunity in South Africa, to the black people it is next to meaningless because what they want is the opportunity to participate as equals in shaping the destiny of their society.

One final point, and that is, that in order to hold out a carrot, as well as a stick, my legislation provides for a Presidential waiver of the ban on bank loans as well as the importation of krugerrands if the President determines that substantial progress is being made toward the full participation of all the people of South Africa in the political, social, and economic life of the nation, so that we offer the South Africans, to the extent they want to get out from under some of the onerous provisions, an opportunity to do so, not if they establish utopia tomorrow, not if they instantaneously elim-

H.R. 3597 AS INTRODUCED BY MR. GRAY, MAY 14, 1981

97TH CONGRESS
1ST SESSION

H. R. 3597

Directing the President to exercise authorities contained in the International Emergency Economic Powers Act to issue regulations prohibiting investment in South Africa.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1981

Mr. GRAY introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

Directing the President to exercise authorities contained in the International Emergency Economic Powers Act to issue regulations prohibiting investment in South Africa.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Act entitled "An Act with respect to the powers of
4 the President in time of war or national emergency", ap-
5 proved December 28, 1977 (Public Law 95-223; 91 Stat.
6 1625), is amended—
7 (1) in title III—

1 (A) by striking out "TITLE III" and insert-
2 ing in lieu thereof "TITLE IV";

3 (B) by striking out "301" and inserting in
4 lieu thereof "401"; and

5 (2) by inserting after title II the following new
6 title III:

7 "TITLE III—PROHIBITION ON INVESTMENT IN
8 SOUTH AFRICA

9 "SHORT TITLE

10 "SEC. 301. This title may be cited as the 'South Africa
11 Investment Prohibition Act'.

12 "REGULATIONS PROHIBITING INVESTMENT

13 "SEC. 302. The President shall, not later than ninety
14 days after the date of the enactment of this section, issue
15 regulations prohibiting any United States person from
16 making any investment in South Africa. The President may
17 exercise such authorities contained in section 203 of the In-
18 ternational Emergency Economic Powers Act as he consid-
19 ers necessary to carry out the provisions of this section.

20 "AUTHORITIES OF THE PRESIDENT

21 "SEC. 303. (a) The President, in carrying out the provi-
22 sions of section 302, shall establish mechanisms to monitor
23 compliance with any regulation, license, or order issued
24 under such section.

1 of such United States person, who willfully ordered,
2 authorized, acquiesced in, or carried out the act or
3 practice constituting such violation; and

4 “(2) any agent of such United States person who
5 willfully carried out such act or practice,
6 shall, upon conviction, be fined not more than \$50,000 or
7 imprisoned for not more than ten years, or both.

8 “(e) Whenever a fine is imposed under this title upon
9 any officer, director, employee, or agent of a United States
10 person, or upon any natural person in control of such United
11 States person, such fine shall not be paid, directly or indirect-
12 ly, by such United States person.

13 “DEFINITIONS

14 “SEC. 304. For purposes of this title—

15 “(1) the term ‘investment’ includes—

16 “(A) an investment which consists, in whole
17 or in part, of earnings derived from an existing
18 enterprise and which is made in such enterprise;
19 and

20 “(B) a loan or extension of credit; and

21 “(2) the term ‘United States person’ means
22 United States person as defined in section 16(2) of the
23 Export Administration Act of 1979.

1 “INAPPLICABILITY OF OTHER LAWS

2 “SEC. 305. The provisions of the International Emer-
3 gency Economic Powers Act and the National Emergencies
4 Act shall not apply to the exercise of authorities under this
5 title.

6 “TERMINATION OF PROHIBITION

7 “SEC. 306. If the President determines that the Gov-
8 ernment of South Africa has made substantial progress
9 toward the full participation of all the people of South Africa
10 in the social, political, and economic life in that country and
11 toward an end to discrimination based on race or ethnic
12 origin, the President shall submit such determination, and the
13 basis therefor, to the Congress. The provisions of this title,
14 and any regulation, license, or order issued thereunder, shall
15 terminate ninety days after the date on which such determi-
16 nation is submitted to the Congress unless both Houses of
17 Congress adopt a resolution disapproving such determina-
18 tion.”.



Amendment to H.R. 3597

Page 4, strike out lines 15 through 20 and insert in lieu thereof the following:

"(1) the term 'investment' includes a loan or extension of credit but does not include an investment which consists of earnings derived from an existing enterprise in South Africa and which is made in that enterprise; and

H.R. 6393 AS INTRODUCED BY MR. BINGHAM, MAY 18, 1982, AND VOTED OUT OF
JUNE 18, 1982 MARKUP

1

97TH CONGRESS
2D SESSION

H. R. 6393

To amend the Export Administration Act of 1979 to extend until December 31, 1982, those foreign policy export controls in effect on December 31, 1981.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1982

Mr. BINGHAM (for himself, Mr. WOLPE, and Mr. GILMAN) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To amend the Export Administration Act of 1979 to extend until December 31, 1982, those foreign policy export controls in effect on December 31, 1981.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 6 of the Export Administration Act of 1979 (50
4 U.S.C. App. 2405) is amended by adding at the end thereof
5 the following new subsection:

6 “(1) EXTENSION OF CERTAIN CONTROLS.—Those
7 export controls imposed for foreign policy purposes which
8 were in effect on December 31, 1981, shall remain in effect
9 until December 31, 1982. After December 31, 1982, any

1 such controls may be extended by the President in accord-
2 ance with subsections (b) and (e) of this section.”.

○

APPENDIX 2

A POSITION STATEMENT OF U.S. CHURCHES ON BANK LOANS INVESTMENT IN SOUTH AFRICA AND DECEMBER 1980 ICCR BRIEF SUBMITTED BY REVEREND WILLIAM HOWARD, PRESIDENT OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

Numerous U.S. churches have issued statements against apartheid, opposing bank loans and calling for economic pressures against South Africa. The following are illustrative excerpts from the positions of some of the major U.S. Protestant denominations.

1. The American Baptist Church National Ministries - The Church monitors all corporations in their investment fund. They question foreign investments which have the effect of contributing to the economic support of governments whose policies seriously inhibit political and economic support rights. The ABC's position calls for corporations to cease further investments in South Africa and to terminate present operations as expeditiously as possible until South Africa changes its policies and takes meaningful steps to assure full political, legal and social rights for the majority population. ABC has actively sponsored shareholder resolutions on South Africa.

2. United Presbyterian Church, USA - In a Declaration of Conscience on South Africa and Namibia, which will be presented for a vote to the 193rd General Assembly (1981), the church reaffirms its commitment to "US economic and diplomatic policies regarding South Africa that are consistent with the moral condemnation of apartheid which has been voiced, encourage voluntary change by the white leadership of South Africa and support the independence of Namibia."

Also, to "Economic policies that deprive South Africa of both the tangible and symbolic support derived by the investment and loan practices of the U.S. government and corporations."

The declaration recognizes that economic support of and investment in South Africa contributes to the maintenance of systematic violence by the present government. It A) calls upon the Committee on Mission Responsibility Through Investment to continue to pursue all strategies, negotiations and stockholder actions that urge business or financial institutions to discontinue operations, investments and loans in South Africa, B) commends those banks and corporations that have examined their involvement and its social consequences, and have withdrawn from South Africa or refrained from further activity, C) directs all General Assembly agencies, insofar as practicable, to deposit funds and maintain accounts in financial institutions that have established policies that preclude future loans to the government of South Africa or any of its agencies, D) the intensified application of the investment policy guidelines (in cooperation with other denominations) in support of black South African criticism of US transnational enterprises, E) urges all judicatories to observe the investment policy guidelines and to cooperate with MRTI in strategies aimed at influencing the investment patterns in South Africa.

3. The American Friends Service Committee - In 1978 the American Friends Service Committee announced that it would sell over 45,000 shares of stock worth \$1.3 million in US firms operating in South Africa. This announcement represented part of an ongoing commitment of the AFSC not to invest in firms profiting from apartheid.

4. The United Methodist Church - In 1980 the General Conference of the United Methodist Church approved a statement of investment policy which included the following declaration on South Africa: "Specific reference must be made to the abhorrent system of apartheid as it exists and as it is practiced in the Republic of South Africa. Investments of any unit of the United Methodist Church must be carefully examined with respect to the possible

involvement in any business entity whose operations are supportive of apartheid. Agencies of the UMC should not do business with not invest in banks which have banking operations in or make loans to the Republic of South Africa, not should they do business with or invest in banks which make loans to the parastatal (government-owned) corporations of the RSA."

5. Reformed Church in America - At the 1980 meeting of its General Synod, the RCA adopted the following resolutions: (on investments in South Africa), "United States-based corporations which do business in South Africa have been unable to alter the apartheid system, which is the base for the injustices with which the majority of South African people must live. Indeed, the presence of those businesses in South Africa strengthens the apartheid system, postpones liberation and identifies the United States with the white minority. The benefit to the majority of the people is minimal, while all the people suffer under the system those businesses sustain....(This) task force believes that the Reformed Church in America should encourage those businesses in which it holds investments to end their participation in the economy of South Africa. If those businesses in which we participate refuse to end their activities in South Africa, the Reformed Church in America, as an act of conscience and witness, should withdraw its investments....In order to implement the recommendation, it is suggested that specific steps be taken to enable the corporations involved to act....to direct denominational agencies to strive to make sure that their money market investments be in banks and brokerages which do not grant or renew loans to the Republic of South Africa or semi-governmental corporations."

(On government policies and liberation) "The government of the United States has taken a number of policy positions intended to put pressure on the South African government to end apartheid. A church concerned about justice can and should support and encourage such policies....To endorse such United States policies as the arms embargo, the prohibition of sales of any kind to the South African military or police, the refusal to recognize the 'homelands' as independent nations, the prohibition of direct loans through the Export-Import Bank to American exporters doing business with South Africa, etc., and to encourage speedy prosecution of those who violate those policies.

6. The United Church of Christ - The following resolution was passed by the eleventh General Synod of the UCC in July 1977: "The practice of apartheid oppresses our brothers and sisters in South Africa. As a people of God, we affirm our oneness in Christ. Historically we share a partnership with them; now we seek to stand with them in their struggle to achieve basic human rights and freedom. Guided by the concerns of previous General Synods, prompted by the intransigence of the South African government, and aware of the inability of transnational corporations to affect movement toward majority rule: We now believe that withdrawal of business and investments from South Africa is a central expression of the Gospel witness. Therefore, we urge individuals, congregations, conferences and instrumentalities of the United Church of Christ to exert moral pressure on:

- 1) United States transnational corporations and businesses to withdraw from South Africa;
- 2) United States banks and financial institutions to refrain from further investments in and loans to South Africa;
- 3) The President, Congress, and our United Nations representatives to use diplomatic and economic influence to end apartheid practices.

We recognize the difficulties in implementation of withdrawal and call upon our boards and instrumentalities to work closely with transnational corporations in all ways that will help bring an end to the injustices of apartheid and transition to majority rule.

inate all the objectionable features of their system, but if they are making substantial progress toward the elimination of apartheid.

Last, I would simply conclude by quoting a phrase that appeared in Alan Paton's moving and memorable book on South Africa, "Cry the Beloved Country," in which he observed in the words of one of his characters, "My great fear is that by the time the whites turn to loving, the blacks will have turned to hating."

South Africa is a volcano on the verge of explosion. I don't know whether it will explode tomorrow or next month or next year or 5 years from now, but sooner or later an explosion is inevitable.

I think we have an obligation, reflecting our ideals and our interests, to take a more active stance toward South Africa, to encourage the process of peaceful change in that country.

I think my legislation is one small way in which we can make a meaningful contribution toward that objective.

Thank you very much.

[Mr. Solarz' prepared statement follows:]

7. The Lutheran Church in America - In 1980 the convention of the Lutheran Church in America considered 19 memoranda addressing the church's position regarding apartheid in South Africa. The convention voted to direct the Division for Mission in North America "to develop policy which designs criteria on the basis of which the option of divestment would be used, including the criteria for determining when total divestment from a given situation (such as South Africa) would be the most effective strategy; and to report this policy to the Executive Council by December 1980."

8. The Episcopal Church - The Episcopal Church General Convention and the Executive Council have passed a series of resolutions concerning investments in South Africa. The following reflects many of these resolutions:

RESOLVED, the House of Bishops concurring, that this General Convention:

1. Call upon the government of the United States of America to continue and increase its efforts to persuade the government of the Republic of South Africa to purge itself of its racist laws and practices and to work for a free and democratic society;

2. Urge United States banks and other businesses (a) to cease selling goods and services to the government of the Republic of South Africa, (b) not to increase their investments or expand in South Africa under present circumstances; and (c) to consider carefully both the possible good and the possible harm which their continued presence in South Africa results in, and urge such banks and other businesses to make an honest and careful evaluation of their participation in the economic and social life of that nation and, if after such evaluation, their conclusion is that their presence in South Africa does not, on balance, assist or cannot be made to assist, in the struggle for human dignity and freedom that such banks and businesses be urged to withdraw from South Africa; and

RESOLVED, that the Executive Council direct the Executive and Finance Committee to consult with the banks in which the said Council has deposits or investments, and which are members of the consortium extending credit to the government of South Africa; and that, unless the said Executive and Finance Committee concludes that the involvement of the said banks is positive in respect of helping to promote the activities listed in Section (c) of Resolution I, the Treasurer be directed to terminate the Council's involvement with such banks within a reasonable period of time.

RESOLVED, that the Executive Council shall report its action on the above resolutions to the dioceses and parishes and request them to examine their own investments and to take appropriate action along similar lines. To accomplish this the Council shall send the resolutions to the dioceses along with appropriate background materials and request the dioceses to draw these actions and materials to the attention of the parishes and other groups in their jurisdictions in the implementation of the 1967 General Convention's "Resolution on Apartheid."

9. The American Lutheran Church - In November 1980 the ALC Convention voted to "divest from corporations doing business in South Africa as the most legitimate strategy in opposing apartheid" in South Africa. The convention provided that divestment would take place "in a prudent manner that is consistent with legal requirements and (that) does not place undue risk upon the ALC investment portfolio." The same resolution urges the U.S. government to implement economic sanctions South Africa and to develop new ways for the ALC to "effectively support the non-white population in Southern Africa in its struggle for justice and reconciliation." The ALC reaffirms its past positions calling for:

- a) an end to future bank loans to the Republic of South Africa
- b) an end to any sales to the South African police and military
- c) a moratorium on any significant expansion efforts by U.S. corporations
- d) the ALC supports the call for withdrawal of investment by U.S. corporations if in the judgment of the Board of Trustees that investment on balance strengthens the apartheid system.

RANDS FOR RACISM: The Marketing of South African Krugerrands
by Gary F. Nelson

Since 1971 when the Episcopal Church filed a shareholder resolution asking General Motors to cease operations in South Africa, religious institutional investors have been active in the struggle against apartheid. Much of this effort has focused on investment, bank loans, and employment practices of U.S. companies in South Africa. Antiapartheid groups have also focused on sales of the South African gold coin known as the Krugerrand. After he returned from a 17-day fact finding tour of South Africa in the summer of 1979, the Rev. Jesse Jackson spoke to a Congressional committee of the significance of opposing Krugerrand sales:

The vast amount of foreign exchange that the South African government earns from the sale of the Krugerrand and bank loans covers its oil bill and defense budget and these are two very significant items in apartheid's survival.

This ICCR brief was written by Gary F. Nelson, a graduate student at the State University of New York at Buffalo, who during 1980 served as an intern to ICCR's work group on transnational corporations and human development.

The Krugerrand (containing one troy ounce of pure gold) and its smaller counterparts are gold bullion coins minted in South Africa and marketed internationally. By virtue of their association with the South African government (They are coined by the government mint.), Krugerrands and other South African gold bullion coins are symbols of that government's policy of enforced legalized racism known as apartheid. One cannot help but note the coin is named after the racist Afrikaner statesman, Paul Kruger (1825-1904). The obverse of the Krugerrand bears Kruger's portrait — a man who once declared that "the Black man had to be taught that he came second, that he belongs to the inferior class that must obey..." and that "savages must be kept within bounds..."¹

The black workers who mine the gold used in South African gold bullion coins are denied even the most basic of

human rights. The white minority government has adjudged black miners to be "foreigners" in the land of their birth and has declared them to be citizens of desolate and destitute "homelands" that many of them have never seen before. As foreigners and migrant laborers, black South African miners are forced to live apart from their families and are segregated into impersonal housing compounds. According to John Burns, writing in the *New York Times*, in the South African gold mining industry, "Almost all the backbreaking work underground is done by blacks. . . . They earn an average of \$180 a month, less than one-fifth the average for whites who fill most of the skilled and managerial jobs. . . ." and "A skilled black driller earns about a quarter of what a white high school graduate with no experience gets."² Moreover, "This gap between black and white mining salaries is the largest of any industry in South Africa and it is continuing to grow."³ In the South African mining industry, furthermore, black workers are not allowed to unionize and the racist remains prevalent.

The sale of Krugerrands and other South African bullion coins on the world market provides the South African government with much needed foreign exchange, profits and publicity at a time when the international community is attempting to ostracize the apartheid regime of South Africa for such abhorrent and inhuman racist policies.

South African national liberation movements and international antiapartheid groups have strongly condemned sales of South African gold bullion coins. In early 1977, a representative of the Pan-Africanist Congress of South Africa stated, "The money from the Krugerrand will be used to buy guns and bullets to kill black people — men, women, and children in South Africa."⁴ On February 24, 1977, the United Nations representative of the African National Congress of South Africa, speaking to firms involved in the marketing of the Krugerrand, told them that "by investing in South Africa you are investing in apartheid which is the enemy of the African people."⁵

The International Marketing of the Krugerrand

The gold used in the Krugerrand and other South African gold bullion coins comes from South Africa's approximately four dozen productive gold mines all of which are members of the South African Chamber of Mines, ". . . an industry organization which recruits African labor and refines all the gold the mines produce before handing it over to the government."⁶ While the South African government itself sells most of its gold production overseas (on the London and Zurich gold markets), "Krugerrands are handled differently. The Chamber of Mines gives the gold for Krugerrands to the government mint which stamps them and returns them to the Chamber for sales overseas. Krugerrands are sold outside of South Africa by the Chamber of Mines through its marketing arm, International Gold Corporation, Ltd. (Inter-gold)."⁷

According to an article which appeared first in the *Rand Daily Mail*,

Krugerrands were introduced in 1967, and are now the most widely traded gold coin in the world. . . . Exported Krugerrands are a valuable foreign exchange earner. More than 25 percent of present South African gold production now goes into Krugerrands sold abroad.⁸

Further, 40 percent of private transactions in the world gold market are made with Krugerrands.⁹

Backed by a massive promotional effort which employed extensive use of advertising and public relations, worldwide Krugerrand sales rose from 2.9 million in 1976 to 3.3 million in 1977 and rose again to an all-time high of 6.0 million in 1978.¹⁰ Owing to increased competition from gold bullion coins of other nationalities, the Krugerrand's market share dropped from 90 percent in 1978 to 75 percent in 1979. Yet, because of the rise in the price of gold export earnings from Krugerrand sales increased from \$1 billion in 1978 to \$1.298 billion (equivalent to \$1.7 billion) in 1979.¹¹ "Sales for the first eight months of 1980 come to only 1.6 million units."¹² In April 1980, a *New York Times* article stated that Krugerrands now ". . . account

Bank Involvement in International Krugerrand Sales

Canada	Bank of Nova Scotia*
South Africa	Barclays Bank, U.K. (through its subsidiary Barclays National Bank) Nedbank Standard Chartered Bank, U.K. (through its subsidiary Standard Bank of South Africa)
Spain	Banco de Urquiu
Switzerland	Swiss Bank Corporation* Swiss Credit Corporation* Union Bank of Switzerland*
United Kingdom	Barclays Bank (through its subsidiary Barclays National Bank in South Africa) Johnson Matthey (Bankers)* N. M. Rothschild & Sons* Samuel Montague & Co.* Sharps Pipers* Standard Chartered Bank (through its subsidiaries Standard Bank of South Africa in South Africa, Mocatta & Goldsmid* in the U.K., and Mocatta Metals Corporation* in the U.S.)
United States	Boatmen's National Bank of St. Louis, Missouri (1) Continental Bank of Chicago, Illinois (1) First National Bank of Birmingham, Alabama First National Bank of Chicago, Illinois (2) First National Bank of North East, Maryland First National Bank of North Kansas City, Missouri First National Bank of St. Louis, Missouri Home State National Bank of Kansas City, Kansas Indiana National Bank of Indianapolis, Indiana Pittsburgh National Bank of Pittsburgh, Pennsylvania (1) Princeton Bank and Trust of Princeton, New Jersey (1) Republic National Bank of New York, New York* Standard Chartered Bank, U.K. (through its subsidiary Mocatta Metals Corporation*) State Street Bank of Boston, Massachusetts Swiss Bank Corporation, Switzerland
West Germany	Bank für Gemeinwirtschaft Bayerische Landesbank Girozentrale* Deutsche Bank* Westdeutsche Landesbank

(*) indicates that bank has been appointed an agent of the South African Chamber of Mines for the purchase of marketing Krugerrands. (1) indicates that bank sells Krugerrands only when requested to do so by correspondents; (2) indicates that bank sells Krugerrands only on a wholesale basis to licensed dealers.

for a third of South Africa's gold exports.¹³

According to Kerr Cruikshanks, the international marketing of Krugerrands is a complex program: "We look at countries where legal implications and duties do not interfere with marketing Krugerrands."¹⁴ In December 1978, *South African Digest*, a publication of the South African government, reported that, "The International Gold Coin Exchange now has 21 offices in 17 countries. . .¹⁵ including Abu Dhabi, Argentina, Italy, Japan, Luxembourg, Spain and Venezuela, as well as those discussed in detail below.

Canada

The Toronto Committee for the Liberation of Southern Africa reported in late 1979 that

In Canada . . . Krugerrand sales have increased markedly over the past few months, according to a staff member of the Bank of Nova Scotia's Gold Department. The Bank of Nova Scotia is the sole agent in Canada for the South African Chamber of Mines. . . . Although the Scotiabank's staff member acknowledges that Krugerrand sales are rising, he refused to divulge sales figures. The Bank of Nova Scotia sells both to the public and to other dealers. These include coin dealers. . . . currency dealers like Deak of Canada Ltd. . . . as well as the other chartered banks. The Royal Bank is the only bank that does not sell Krugerrands. . . .¹⁶

Switzerland

According to the January 1980 issue of the *SAFTO Exporter*, "Swiss Bank Corporation is known to have overtaken Deutsche Bank as the biggest foreign buyer of Krugerrands - it has taken about 45 percent of this year's total overseas sales, and as much as 70 percent in some months."¹⁷ In 1979 " . . . Switzerland was one of the few countries which increased imports of Krugerrands from South Africa. . . . However, in the first six months of 1980 Krugerrand " . . . sales to Switzerland were no less than 66 percent lower. . . than in the corresponding period of 1979."¹⁸ In addition to the phenomenally large amount of Krugerrands sold by the Swiss Bank Corporation in Switzerland, it was reported in November

of 1976 that, "The Swiss Bank Corporation had been selling Krugerrands in the United States because of the strong demand there. . . ." The bank has offices in New York, Chicago, San Francisco and representative offices in Houston and Atlanta.¹⁹ In December 1979, Nicholas Deak, head of the Deak Ferrera Group, said that big U.S. purchases of gold bullion coins were also being made on the European market.²⁰

United Kingdom

Until recently, residents of the United Kingdom were forbidden to buy Krugerrands under strict exchange controls; these regulations had been responsible for a drastic drop in international Krugerrand sales when they were imposed several years ago. However, with the ending of exchange controls in 1979, South African gold bullion coins reentered the British market through banks and bullion dealers. In July 1979 *South African Digest* reported that " . . . Intergold. . . believes sales should gain a fillip from the decision of the United Kingdom to lift its ban on sales of the coin to residents."²¹ In October 1979 Intergold began a \$594,000 advertising campaign in the U.K. including buying full page ads in British newspapers.²² Because " . . . Britain levies a 15 percent sales tax on bullion but not gold that is minted as legal tender. . . ."²³ (Krugerrands are legal tender coins in South Africa), British government policy virtually promotes the sale of Krugerrands in the U.K.

United States

According to an April 1980 Intergold advertisement in the *Wall Street Journal*,

. . . there are over 1500 retail coin dealers in the United States who sell South African Krugerrands. . . . But coin dealers are not the only sources for Krugerrands. They are traded daily at firms specializing in precious metals and some brokerage firms and banks. . . .²⁴

In February 1980 the *Financial Mail* stated that, "The U.S. is still the Krugerrand's strongest market. . . . In the U.S. marketing will focus increasingly on direct response marketing techniques through precious metals brokerage companies. . . ."²⁵ Intergold's chief executive Don Mackay-Coghill recently stated, " . . . We've begun to develop U.S. banks especially in the more rural areas."²⁶

Three firms have been designated by the South African Chamber of Mines to be its agents in the marketing of the Krugerrand in the United States: Mocatta Metals Corporation of New York, J. Aron & Co. Inc. of New York, and the Republic National Bank of New York, which "distribute the coin in 250-coin lots for sale

to the public."³⁰

Doyle Dane Bernbach International, Inc. of New York, a public corporation, handles advertising for the Krugerrand in the U.S. as well as in Italy and West Germany. Robenstein, Wolfson & Co. of New York handles public relations for the Krugerrand. "The target audience, says Kerr Cruikshanks, is the inevitable market for upscale goods: well-off, educated and middle-aged." Furthermore, "David Mackay-Coghill, Intergold's chief executive, explains that barely 2.5 million Americans now own Krugerrands. They are conservative and they generally live in the West and Southwest."³¹ The United States accounted for approximately one-half of the 4.9 million Krugerrands sold worldwide in 1979 and the 6.0 million Krugerrands sold in 1978. U.S. sales had accounted for one-third of the 3.3 million Krugerrands sold in 1977.³² In the first six months of 1980 U.S. Krugerrand sales were 8 percent higher than in the same period of 1979.³³

In addition to the marketing of Krugerrands in the United States, in recent years a new phenomenon has arisen - Krugerrand replicas. At least five U.S. firms have advertised such replicas or "miniatures": the International Monetary Mint of Huntingdon Valley, Pennsylvania; MM Manufacturing of Los Angeles; the Columbia Mint of Washington, D.C.; Westport Mint of Westport, Connecticut and Merritt Mint of Perth Amboy, New Jersey. While these Krugerrand replicas presumably have no direct financial relation to Intergold or to South Africa (They are not legal tender in South Africa.), they nevertheless are supportive of apartheid in that advertisements for them resemble official Krugerrand promotional efforts, contributing to a favorable image for the Krugerrand and for South Africa.

West Germany

In the first six months of 1979, South African exports of Krugerrands to West Germany rose by almost 47 percent, the increase amounting to \$51.1 million.³⁴ In 1978 and 1979, West Germany was the second largest buyer of Krugerrands on the international market, second only to the U.S.³⁵ The Deutsche Bank, once the largest corporate purchaser of Krugerrands in the world, is now the second largest, having been surpassed by the Swiss Bank Corporation.³⁶ According to the *Financial Mail*, "In West Germany, two bank groups handle sales through 17,000 outlets."³⁷

Opposition to Krugerrand Sales

Marketing of South African gold trillion coins is a truly international

phenomenon and should be challenged on an international basis by coordinated actions on the part of antiapartheid groups worldwide.

In the U.S.

Many groups opposed to apartheid have used demonstrations and other means to convince the public that by selling or owning Krugerrands, they are directly supporting apartheid. These actions, ranging from petitions to campus protests to picketing of local stores, have served not only to make the public aware of the facts behind the Krugerrand, but have raised the level of concern generally about conditions in South Africa and the role the U.S. plays there.³⁸

Support for the antiKrugerrand movement in the United States was clearly shown by city councils of many major American cities, including Atlanta, Oakland, Boston, Chicago, Denver, Dayton, Milwaukee, Detroit, Austin, Duluth, San Antonio, and Portland, Oregon and the House of Representatives of the State of Massachusetts who urged their respective constituencies not to purchase Krugerrands.

A campaign against the advertising of Krugerrands in the U.S. has met with a good deal of success as demonstrations and other protest prompted at least eleven television stations (WNBC, WCBS, WABC in New York; WNAC, WBZ, WCVB in Boston; WBBM, WMAQ, WLS, WGN in Chicago; and WKGW in Portland, Oregon) to cease broadcasting advertisements for the Krugerrand. Moreover, the *Boston Globe* "temporarily refused Krugerrand ads" in 1977 and the *Bergen Record* (New Jersey) rejected some \$7,000 in advertising in the same year. Malcolm Borg, the president and chairperson of the *Bergen Record*, declared: "I don't feel this newspaper should carry ads from any country or company that pursues the apartheid or racial policies that South Africa does..."³⁹ In December 1976, Methodist church groups in Michigan sponsored an antiKrugerrand ad in the *Detroit Free Press*.⁴⁰

Other important actions are those in which local antiapartheid groups have successfully pressured business firms, often coin and jewelry stores, to discontinue selling Krugerrands. Three major department stores (Abraham and Straus in New York, the May Company in Cleveland and Carson, Pirie, Scott in Chicago) ceased sales of the Krugerrand after being picketed by antiapartheid groups.

Several banks stopped sales of the Krugerrand. "In Chicago, black-owned Seaway National Bank readily agreed to stop selling Krugerrands after being informed of the tie between the Krugerrand and apartheid."⁴¹ The New Jersey National Bank of Princeton; the Northwestern National Bank of Minneapolis; the Commerce Bank and Trust Company of Worcester, Massachusetts; the Hospital Trust National Bank of Providence,

Rhode Island and no less than five banks (among them Marshall & Illsley) in Milwaukee were all picketed and pressured by antiapartheid groups. As a result, the nine banks discontinued Krugerrand sales.

Merrill Lynch stopped sales of Krugerrands in January 1978 claiming lack of demand, although sales from 1976-1977 increased by almost 15 percent and then went on to double in 1978. A shareholder resolution, calling on Merrill Lynch to cease Krugerrand sales, was then withdrawn.⁴³

Several banks agreed to terminate all over-the-counter sales of the Krugerrand, while continuing to sell Krugerrands when requested by correspondents. In March 1977, after the Princeton Bank and Trust of New Jersey had been picketed by antiapartheid groups, the bank's vice-president Marmaduke Jacobs stated that

The bank does, upon request from a customer, aid the customer in securing all types of foreign coins and currency, including the Krugerrand... If a customer requests it, the bank will forward his order to a broker in New York who actually makes the sale... The bank charges only a small service charge.⁴⁴

Continental Bank of Chicago similarly discontinued all over-the-counter sale of Krugerrands (and other gold coins) effective January 1, 1978 while continuing sales only to correspondent banks.⁴⁵ However, in 1979 Continental Bank sold over 1,800 Krugerrands, approximately amounting to \$900,000.⁴⁶ According to Merle E. Gilliland, the chairperson, Pittsburgh National Bank, "... We do not... sell the coins except when directed to do so by customers maintaining accounts in our Trust Division."⁴⁷ Similarly selling only on request, Boatmen's Bancshares of St. Louis stated, "... None of the issuer's banking subsidiaries inventory or promote the sale of any gold coins, including South African gold Krugerrands."⁴⁸

In early 1980 a new strategy was employed in the U.S. antiKrugerrand campaign, the shareholder resolution. Church groups for the first time filed shareholder resolutions with major banking institutions calling on them to cease all involvement in the promotion and sale of the Krugerrand. The Dominicans (Province of St. Albert the Great) filed a resolution with the First Chicago Corporation (the parent corporation for the First National Bank of Chicago). A similar resolution was filed with the First Union Bancorporation (the parent of the First National Bank of St. Louis) by the Sisters of Loretto. The Vincentian Fathers and Brothers filed with Boatmen's Bancshares.

The resolution filed with Boatmen's Bancshares was withdrawn after it was revealed that the bank's sales of the Krugerrand were so minimal as to make filing a

shareholder resolution an infeasible strategy. However, Boatmen's disclosed its relatively restricted sales policy and sales figures regarding its marketing of Krugerrands. In January 1980, on Krugerrand sales, Boatmen's disclosed that "In 1979 the total service charges realized from this activity by this subsidiary amounted to \$1,994.50."⁴⁹ The First Union Bancorporation, however, announced that it would not change its policy of unrestricted marketing of the Krugerrand. The shareholder resolution was brought before the company's 1980 annual meeting and the resolution received approximately 3.3 percent of the votes cast, enough to resubmit the resolution for discussion at the corporation's 1981 annual meeting.

Shareholder action with the First Chicago Corporation resulted in a partial victory. The First National Bank of Chicago, which had reported 1979 Krugerrand sales of 70,000 coins ("... which at today's prices would provide South Africa with more than \$40 million..."), announced in February 1980 that it would henceforth "... suspend over-the-counter sales of the Krugerrand," but continue to wholesale the Krugerrand.⁵⁰ According to the *Chicago Tribune*, a bank spokesman said the decision... was made because of the continuing controversy over their sale.⁵¹

In response to this announcement, the two antiapartheid groups involved in the campaign against First Chicago - Clergy and Laity Concerned and the Chicago Coalition on Southern Africa - declared that "While we are encouraged by the bank's action, we will continue the campaign until First National ends all sales of the Krugerrand..."⁵² The shareholder resolution, filed by the Dominicans, was voted on at the 1980 annual meeting of First Chicago Corporation where it received 2.65 percent of the vote, short of the 3 percent required for resubmission. The campaign against First Chicago's Krugerrand sales and against the bank's international lending policy on South Africa continues in all of its other aspects.

As we go to press, the U.S. public is being bombarded with a massive advertising campaign aimed at promoting South African Krugerrands and introducing the new Krugerrands in half, quarter and tenth ounce sizes which appear as companion pieces to the original one ounce coin. The twelve-month advertising campaign for the four coins began October 13, 1980 with a budget of \$7 million and "... includes ads in *Business Week*, *Forbes*, *Money*, *Newsweek*, *Time*, and *U.S. News and World Report* as well as newspapers in the top fifty markets." Radio advertising for the new Krugerrands is being carried by WPAT-FM,

which broadcasts to the New York metropolitan area. Moreover, "Intergold is looking at cable television buys to reach its well-heeled audience."⁵³

Intended to appeal to households with incomes of \$25,000 and up instead of the traditional market of households with incomes of over \$50,000, the new coins, according to Intergold, appeal "... to a different market segment, thereby increasing the overall consumer interest in gold coins..."⁵⁴ The maxim that "Gold coin sales very definitely respond to advertising," proved true in the case of the new Krugerrands as October 1980 sales increased 38 percent from the previous month's figures, a 1980 record, with sales of the new half ounce, quarter ounce and tenth ounce coins being in good measure responsible for the increase.⁵⁵

Suggestions for Action

Antiapartheid groups wishing to challenge the marketing of South African Krugerrands might consider the following tactics:

1) Write elected representatives at local and national levels and urge them to completely ban the sales and promotion of all South African gold bullion coins. Also urge they sever accounts with corporations involved in promotion and sale of the Krugerrand.

2) Find out which firms in the vicinity deal in Krugerrands (Krugerrand ads often list the names of local dealers). Contact them and demand they stop selling Krugerrands. Organize picketing or boycotting of banks, bullion dealers and coin shops which are selling Krugerrands. If you or your group own stock in corporations which continue to sell Krugerrands, file shareholder resolutions with them requesting they terminate all Krugerrand sales.

3) Contact newspapers and magazines in your area which run Krugerrand ads and urge they stop accepting advertising for them. Organize picketing or boycotts if they refuse to do so. If you or your group own stock in media corporations which accept Krugerrand advertising, file shareholder resolutions with them requesting they cease accepting advertisements for the Krugerrand. Action against business firms involved in the promotion and sale of the Krugerrand continues to be a major focus of the work of antiapartheid groups in the United States.

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APPENDIX 3

STATEMENT SUBMITTED BY GENERAL MOTORS CORP. OCTOBER 23, 1981

General Motors is pleased to have this opportunity to submit a statement discussing our operations in the Republic of South Africa, our efforts to contribute to social change in that country, and our involvement as a signatory of the Sullivan Principles.

We testified before these subcommittees in May, 1980 and submitted an extensive statement for the record. We would like to confine our statement to a brief overview of our operations, our progress in South Africa and our comments on the two bills that are the subject of current hearings.

At the outset, we would like to emphasize our commitment to the principle of equal opportunity in every country where the Corporation operates. In this regard, General Motors is critical of, opposed to, and abhors the apartheid policies and practices of the Republic of South Africa. The Corporation has spoken out publicly and privately against apartheid on many occasions and continues to attempt, wherever possible, to change the policy of apartheid through the channels open to foreign manufacturers operating in that country.

In addition, the local management of GM's South African subsidiary has also communicated with South African government officials -- urging greater progress in eliminating apartheid.

General Motors South African Operations

We have had operations in South Africa since 1926. GM South African (PTY.) Ltd. (GMSA) -- a wholly-owned subsidiary of General Motors Corporation -- manufactures, assembles and markets GM cars and GM and Isuzu trucks, as well as locomotives and a number of automotive parts and components.

General Motors currently employs about 5,400 people in South Africa, primarily at assembly and manufacturing plants in Port Elizabeth and Aloes.

Employment Policies

GMSA policies provide for equal pay, regardless of race, for all employees with comparable seniority who do similar work in the same job classification.

Since the late 1970's, GMSA has faced no legal obstacles to the hiring of employees of any race for any position in the work force. However, the availability of trained nonwhite applicants with required skills continues to be a serious problem.

As of June 30, 1981, GMSA's hourly work force was 20% white, 54% colored, and 26% black and included 143 nonwhite supervisors. Further, the total work force was 35% white, 44% colored, and 21% black. There were 63 colored and 24 black salaried employees.

The improved economy in South Africa and increased demand for GM products in 1980 and 1981 enabled GMSA to provide 1,952 new job opportunities. As a result, our total work force increased from 3,460 at the end of 1979 to 5,412 as of June 30, 1981. Of these new employees, 123 are white, 1,078 colored and 751 black.

Colored and black employees continue to advance into semiskilled and skilled positions. In 1972, 21% of the colored and 4% of the black employees held semiskilled or skilled jobs. At present, 49% of the colored and 34% of the black employees are assigned to semiskilled or skilled positions.

Employee Benefits

GMSA's current entry level wage exceeds by 87% the University of Port Elizabeth's index for the local Household Subsistence Level

for a black family of five. The average wage for GMSA's white employes is comparable with the average South African manufacturing pay rate for whites. For blacks, the GMSA average pay is 76% higher and 67% higher for coloreds than the average South African manufacturing pay for these respective groups.

However, wages and salaries are only a part of GMSA's compensation program. There is also a range of additional employe benefits, which are among the best in South Africa.

Regardless of race, every GMSA employe is covered by the same comprehensive employe benefit programs. These programs include group life insurance; medical, sickness and accident coverage; retirement plans; overtime and premium payments; annual vacation; and an annual year-end gratuity which for several years has averaged more than 6% of the individual's annual base earnings.

GMSA was one of the first employers in South Africa to extend its medical benefits, which include dental care and routine eye examinations, to cover the dependents of employes and retirees. Currently, more than 6,100 dependents of colored and black employes are covered by this plan.

The Workplace

With respect to the workplace itself, GMSA's facilities are completely desegregated.

In mid-1980, GMSA completed a \$4.5 million project to upgrade and consolidate facilities and to improve economic opportunities for nonwhite employes.

New, fully integrated comfort facilities and a substantial reconstruction of the fully integrated existing dining and locker facilities were a major part of this program.

Union Representation

Another area which many consider significant in moving toward equal opportunity is the establishment of union representation for black employes in South Africa.

As elsewhere in its operations, GM acknowledges the right of its employes -- regardless of race -- to engage in union activities, including the formation of a union. A statement to this effect is included in the employe handbook and published in English, Xhosa and Afrikans. The statement reads:

"A fundamental principle of General Motors South African is that it respects the principle of 'Freedom of Association' in matters of employe membership of trade unions. The company regards the free choice of employes to organize and participate in trade union activities as a personal decision, over which, it has no jurisdiction, nor does it seek to influence employe opinion. This statement of policy is intended to clarify the position and remove any doubts that employes may have on this company's viewpoint of the matter."

Currently, almost 19% of the black labor force at GMSA are considered to be union members. They are represented by the National Union of Motor Assembly and Rubber Workers of South Africa.

Education and Training

One of the primary obstacles to promoting nonwhite employes is the prevailing low level of education. To overcome these obstacles, GMSA has developed a system of educational programs ranging from elementary school to college.

One GMSA plan encourages children of black employes to complete their education. The plan pays for prescribed books and school fees for all children of black employes attending elementary

and secondary schools. GMSA also contributes money to eight elementary schools in South Africa for black children, with combined enrollments of more than 2,900 students.

Another plan provides refunds for tuition, books, and equipment for employes successfully completing approved part-time courses, with advance funding for tuition available to blacks upon request.

General Motors Foundation also has made contributions to provide additional education opportunities for nonwhites. For example, the Foundation was one of the major financial contributors to the building of the New Brighton Technical Institute, now known as Eghayiya Technical College, in Port Elizabeth.

GMSA and the General Motors Foundation have contributed financial support to organizations providing scholarships for high school and college students. These scholarships, awarded to both employes and non-employes, included a large contribution this year to the Insititute of International Education program for U.S. universities. This program provides scholarships to nonwhite South African college students at U.S. universities.

We have been a major contributor to the Urban Foundation, which is a multi-racial South African organization. It sets aside a considerable part of its funds to provide educational opportunities for blacks. In 1980, the General Motors Foundation paid the second installment of a five-year, \$575,000 contribution to this organization.

As part of the \$4.5 million project previously mentioned, GMSA has almost tripled its in-plant training capacity. In 1980, the first full year of operation of its new Training Center, GMSA

PREPARED STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEW YORK

Chairman Bingham, Chairman Wolpe, members of the Subcommittees, today I would like to discuss with you H.R. 3008, a bill which I introduced earlier this year. This legislation, which has now been cosponsored by 22 members of the House, would bring critical aspects of our policy toward South Africa in line with our frequently expressed condemnation of the legally sanctioned system of racism which exists in that nation.

This bill, which is the product of two years of hearings and research I conducted as Chairman of the Subcommittee on Africa, has four parts: First, establishment of a set of legally enforceable fair employment standards for American firms operating in South Africa with more than 20 employees; second, a ban on loans by U.S. banks to the South African Government or its parastatal entities, except for loans made for educational, housing, or health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups; third, public disclosure of U.S. bank loans to any South African corporation; and fourth, a ban on the importation into the United States of the South African krugerrand or any other gold coin minted or offered for sale by the South African Government.

REASONS FOR THE BILL

South Africa offers the world a unique example of systematic, legally enshrined discrimination on the basis of race. Of the 24 million people who live in South Africa, only the 4 million whites enjoy full political, legal, and economic rights. Millions of

succeeded in obtaining full status for black apprenticeship programs. Additionally, the highly-rated technician training program, from which young specialized technicians are drawn, now includes several black trainees in the first year of a four-year training program. Since opening in late 1979, more than 600 nonwhite employes have received training in this center in a variety of skills.

To supplement in-plant training programs, both colored and black employes attend technical and non-technical classes paid for by GMSA's tuition-refund plan. GMSA's Language Instruction Program -- designed to provide basic reading, writing, and arithmetic skills -- has been in operation since 1971. It has also been expanded to train teachers for the benefit of the local black communities.

The GMSA Service Division operates training centers and a mobile training unit to instruct dealer sales and service personnel. This unit has trained more than 1,300 nonwhites throughout South Africa and neighboring countries since 1971.

Development of Minority Business

GMSA has recently sought out, trained and appointed two black dealers and is presently developing a third, in addition to three other nonwhite dealers already well established. One of the black dealers, who was already an owner of one of the largest service stations in South Africa, recently opened a GM dealership in Soweto. GMSA assisted him in the construction of a showroom, offices and a used car display area. In addition, some existing facilities were improved.

GMSA has also been actively pursuing a policy aimed at expanding the number of its nonwhite suppliers, which presently number sixteen. The annual purchases from these nonwhite suppliers currently exceed \$1.1 million. Further, GMSA is very supportive of the initiatives of the National African Federated Chamber of Commerce. Better known as NAFCOC, this black organization is committed to promoting the entrepreneurial activities of nonwhite businessmen. In this respect, GMSA hosted NAFCOC's 1981 annual meeting. GMSA also works with several other organizations which strive to develop minority businesses.

Housing Assistance

Improvements in the quality of life of coloreds and blacks are effected through several housing assistance programs.

General Motors South African participates in several housing assistance programs which have accelerated home construction, home ownership and home improvements. These programs benefit the entire nonwhite community -- not just the nonwhite GMSA employees.

These programs have facilitated purchase of more than 550 homes to date, and an additional 1,300 loans have been made to employees for home improvements.

GMSA has also helped a local administration board -- responsible for black residential areas -- to obtain a \$1.2 million loan for the construction of 230 new houses and a new school in an urban black township. GMSA is subsidizing the interest rate of the loan up to 5.5%, approximately one-half the prevailing interest rate in South Africa.

Efforts to Eliminate Racial Restrictions

General Motors South African has been a leader in developing and implementing programs to improve conditions for nonwhites in

South Africa, and has aggressively pursued the objectives of equal opportunity for all its employees in that country. In keeping with this firm belief in equal opportunity, GMSA has introduced progressive employment practices designed to eliminate discrimination.

A major example of this effort is GM's early endorsement of Dr. Sullivan's "Statement of Principles of U.S. Firms with Affiliates in the Republic of South Africa." Recognition of GMSA's substantial progress toward the implementation of the Sullivan Principles was cited in the recently released Fifth Statement of Principles Progress Report as assessed by Arthur D. Little, Inc. In this report, GMSA received the highest possible rating -- Category 1. Attached is a copy of the section of our 1981 Public Interest Report, which details how we are implementing the Sullivan Principles.

These Principles have been distributed in multilingual versions to all GMSA employees, have been posted on plant bulletin boards and are part of the employe handbook.

Legislation

Before turning to the two bills being considered by the Subcommittees, we want to emphasize our firm and long-standing commitment to the principle of equal employment opportunity in South Africa and in every country where we operate.

With respect to H.R. 300B, our actions in South Africa, our wholehearted embracing of the Sullivan Principles -- as evidenced by receiving Dr. Sullivan's highest rating for the second year in succession -- are ample evidence of our dedication to equal employment. But we firmly believe that mandating these Principles would act as a negative -- not a positive force. The

Sullivan Principles are all the more impressive because of their voluntary nature. We also believe the South African government would consider mandated principles an extraterritorial application of U.S. law.

H.R. 3597 prohibits any investment in South Africa. Such a prohibition would make it impossible for us to remain competitive. If we can't be competitive, we would not be able to provide new jobs, as we did this year and last. In addition, we could not provide assistance in the areas of education, training and housing. We could not invest in new dealerships and assist minority suppliers.

Without investment, none of our accomplishments in South Africa would have been possible.

These two bills, if enacted, would present extremely serious problems for U.S. companies operating in South Africa. We believe the long run effect would be disastrous in terms of the progress already made. In view of our experience, we can not support either H.R. 3008 or H.R. 3597.

The voluntary approach has gone a long way toward illustrating to South Africa that the races can work in harmony. We firmly believe the voluntary approach should continue.

Thank you.

General Motors in South Africa

General Motors has operated continuously in the Republic of South Africa since 1926. Today, General Motors South African (Pty.) Limited (GMSA)—a wholly owned subsidiary—produces passenger cars and commercial vehicles, a variety of automotive parts and components, and locomotives. GMSA operates two facilities in South Africa, one in Port Elizabeth (the original site) and a second plant, built in 1964, in neighboring Alocs. These two facilities occupy about two million square feet.

The following is a comprehensive discussion of several aspects of General Motors activities as they relate to South Africa, including those issues which are currently of concern to GM stockholders, employees, customers, and other interested parties.

SOUTH AFRICAN POLICY

Apartheid

Any discussion of a foreign investor's operations in South Africa must include that country's most controversial and difficult condition—the government's policy of apartheid—a policy that is reflected in a number of South African laws and one which General Motors is critical of and opposed to. Because of opposition to discriminatory laws by employers and others, two government commissions were appointed in 1978 to investigate many aspects of South African legislation. In this regard, one commission focused its efforts primarily on labor legislation (Wiehahn Commission) and the other addressed matters related to the mobility and utilization of blacks in the work force (Riekert Commission).

A number of the recommendations of these Commissions have already been made law, resulting in a lessening of the restrictions of discriminatory legislation. At the present time, the only essential factor impacting GMSA's ability to fully implement equal employment policies is

the recognized limited educational attainment of the nonwhite population. To the extent of its ability, GMSA has initiated a number of programs to improve this situation.

Local Content

The government of South Africa requires a minimum level of locally manufactured content for passenger cars and commercial vehicles produced in that country, a policy similar to that of many countries. In South Africa, this required local content has progressively increased since 1962. Today, 66% of the content of GMSA passenger cars, by weight, must be manufactured locally. Light commercial vehicles require 50% local content, by weight, and in the near future there will be a requirement to fit locally produced engines, transmissions, and axles to medium and heavy trucks.

The South African Railway Administration, which buys on a competitive-bid basis almost all of GMSA's locomotives, gives a bidding advantage to a supplier of locomotives on the basis of local content. Because GMSA now has local content in its locomotives approximating 43% by dollar value, it is able to compete more effectively for this business.

With respect to local content requirements, GMSA has been actively pursuing a policy aimed at expanding its nonwhite suppliers, which numbered twelve as of February 28, 1981. Further, GMSA is very supportive of the initiatives of the National African Federated Chamber of Commerce. Better known as NAFCCO, this black organization is committed to promoting the entrepreneurial activities of nonwhite businessmen.

National Key Points Act

In July 1980, the South African Government passed legislation which appears to have been promulgated to increase security related to the country's energy producing operations and other facilities vital to South Africa's

national security interests. This legislation, entitled the National Key Points Act, appears to have been adopted primarily in response to incidents in South Africa, such as the bombing of two of that country's synthetic petroleum plants (commonly known as SASOL), which occurred in June 1980.

In response to the objective to increase security of those facilities considered to be important to the country's national interests, the South African Government has not, to date, made public the measures which would be required for compliance under the National Key Points Act. In fact, General Motors has not been notified by the South African Government of its status under this new legislation—particularly whether its subsidiary has been designated as a "National Key Point." The substance and probable final implications of this law are presently undefined and continue to be studied by the Corporation's legal counsel both in the U.S. and South Africa. Furthermore, General Motors opposes the Act because of its underlying potential for coerced implementation of measures which are not already included in the "Plant Emergency Control Plan" for GMSA. These latter procedures, which are similar to those prepared for GM facilities throughout the world, are believed to be adequate to protect the interests of the Corporation, employees, and stockholders in such emergency situations as fire, flood, or civil disturbances.

In the absence of further clarification, GM believes that the production of motor vehicles would be important to the security interests of any country. In this regard, many countries around the world, including the U.S., have security plans which could be invoked in time of national emergency. It should be made clear, however, that GM is a producer of commercial vehicles and should the South African Government, through the National Key Points Act or any

other legislation, attempt to take over GMSA plants, GM would oppose this action with every legal measure at its disposal. Additionally, the Corporation has encouraged and supports continued clarification and investigation of this matter by the U.S. State Department.

Commercial Relations

GMSA has about 200 franchised car and truck dealers which distribute vehicles in South Africa, Southwest Africa, Swaziland, and Botswana. Each provides sales and service facilities for the South African public and operates under a Dealer Sales and Service Agreement similar to GM's U.S. agreement. GMSA has recently opened two black dealerships and is presently developing a third, in addition to three other nonwhite dealerships already well established. Financing services are available to the dealers through a local finance company in which a subsidiary of General Motors Acceptance Corporation has a minority interest. Detroit Diesel Allison Division also has arrangements with local firms to distribute its products in South Africa.

Bulletin No. 175

As is customary with governments in nearly every country where General Motors operates, the Government of South Africa purchases products marketed by the Corporation's local subsidiary. GMSA's current practices in this regard are designed to assure compliance with U.S. Department of Commerce Bulletin No. 175. These regulations, issued February 16, 1978, imposed an embargo on exports and reexports of U.S.-origin commodities and technical data (except data generally available to the public) to South Africa and Namibia (Southwest Africa), where the exporter or re-exporter knows, or has reason to know, that the commodities or technical data (or a product of the technical data) are intended for delivery,

directly or indirectly, to or for use by military or police entities in those two states. These regulations are part of certain export controls maintained for foreign policy purposes which the Secretary of Commerce recently determined should continue beyond December 31, 1980.

Compliance Measures

Concurrent with the promulgation of the Commerce Department regulations in 1978, the Corporation initiated measures necessary to assure compliance with those regulations. The Corporation's refusal to allow distribution in South Africa of products containing either General Motors-U.S. content or technology to South African police and military entities has contributed substantially, both directly and indirectly, to the sharp decline in GMSA's total sales to the South African government in recent years.

GMSA also initiated measures ranging from the comprehensive review of all GMSA vehicles and parts containing content or technology of U.S. origin to the complete exclusion of any vehicles with U.S. content or technology from all quotations and tenders to military or police entities. Further, GM continually monitors its marketing practices in South Africa to assure adherence to Commerce Department regulations.

Public Reaction to GM's Policies

Certain stockholders have expressed their concern regarding the ethical and social implications of General Motors continuing such sales and have proposed that the Corporation go beyond compliance with U.S. regulations and discontinue all sales to the police and military entities of South Africa. General Motors, however, believes that cessation of these sales, which are nominal and provide no special capabilities to the military or police, could seriously threaten the capability of the Corporation to

continue operations in South Africa, and thereby eliminate the opportunity for General Motors South African to contribute to and promote needed change in that country.

Furthermore, the State Department has indicated that sales by a U.S. subsidiary of *non-U.S.*-origin commodities and technical data to the South African police and military are not affected by U.S. law and that the United States has *not* made it a policy objective to keep such commodities and technical data from reaching the South African military and police.

While interested parties differ in their approach to this complex issue, the Corporation believes that all parties share a common goal—a peaceful end to apartheid.

Rationale for Continued Sales

The refusal of GMSA to sell vehicles without U.S. content or technology to the South African military or police would not affect the operations of those agencies. In this regard, all of the vehicles distributed by GMSA are *strictly general purpose*, commercial offerings, similar to those available at new vehicle dealerships, and equivalent products are readily available from other manufacturers in South Africa which are not subsidiaries of or affiliated with U.S.-based companies. Furthermore, no U.S.-origin technical data has been sold to the South African military or police.

In addition, GMSA's police and military sales are nominal (outside counsel has advised that the publication of more precise information on these sales is not permitted by South African law), but because of the anticipated adverse impact cessation of these sales would have on that subsidiary's other government business and consumer sales generally, total withdrawal from this competitive area could have a negative effect on the overall viability of GMSA. Accordingly, it is GM's position that discontinuation of such sales would merely affect GMSA's ability

to operate as a viable entity and eliminate the opportunity for the Corporation to provide employment opportunities to all races both in that country and other countries supplying components to GMSA.

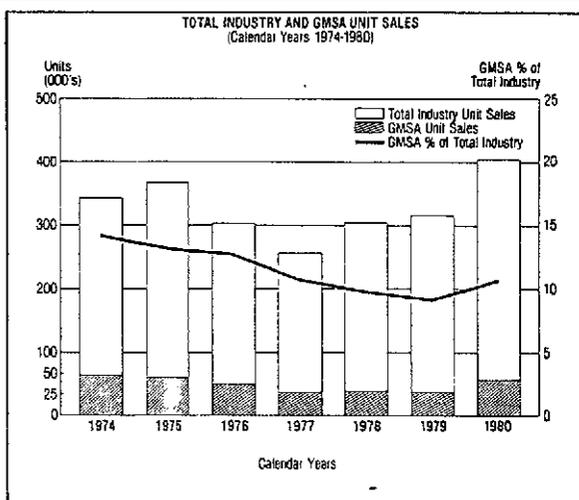
Market Penetration and Competitive Sales

As noted in the accompanying chart, GMSA's sales position experienced a substantial deterioration through 1979. This trend reflects the intense competition between vehicle manufacturers and distributors in that country, particularly the increasing presence of Japan-sourced vehicles, which continued in 1980 and currently accounts for over 46% of all vehicle sales in South Africa. By comparison, U.S.-owned or affiliated auto companies which manufacture in South Africa now account for about 25% of vehicle sales. Further, GMSA's sales to the government have also deteriorated in recent years. In the most recent calendar year period, although GMSA's total sales showed an appreciable improvement in 1980, sales to the government remained at a low level.

GMSA, with sales of approximately 43,200 units, or 10.7% of total industry sales in 1980, ranked sixth among all manufacturers in South Africa. GMSA sales consisted of approximately 27,200 passenger cars and 16,000 commercial vehicles. GMSA's total sales in 1980, at prevailing exchange rates, amounted to approximately \$358 million, with \$345 million attributable to vehicle sales and the balance to other products such as locomotives, earthmoving equipment, and diesel engines. At year-end 1980, the total GM investment in South Africa was approximately \$162 million and GMSA's purchase of goods from the United States was estimated at \$9 million for 1980.

Equal Opportunity Policies and Programs

General Motors South African has



Memo:	1974	1975	1976	1977	1978	1979	1980
GMSA Sales to South Africa Gov't. (Units)*	3,839	5,155	4,203	3,177	1,807	1,722	2,333
As % of Total GMSA Sales	7.9	10.8	11.1	11.5	6.1	6.0	5.4

*Includes post embargo nominal sales to police and military.

been a leader in developing and implementing programs to improve conditions for nonwhites in South Africa, and has aggressively pursued the objectives of equal employment opportunity for all its employees in that country. In keeping with this firm belief in equal employment opportunity, GMSA has introduced progressive employment practices designed to eliminate discrimination.

A major example is GM's endorsement of Dr. Leon H. Sullivan's "Statement of Principles of U.S. Firms with Affiliates in the Republic of South Africa." These Principles, which have been distributed to all GMSA employees in multilingual versions, are supported by over 140 firms (including General Motors, one of the first twelve companies to endorse them). The Principles are backed by the U.S. State Department for their

underlying commitment to aggressively pursue peaceful resolution of South Africa's pressing social problems.

In addition, recognition of GMSA's substantial progress towards the implementation of the Sullivan Principles was cited in the recently completed Fourth Statement of Principles Progress Report as assessed by Arthur D. Little, Inc. In this report, GMSA received the highest possible rating—Category 1, "Making Good Progress."

Statement of Principles and General Motors Progress

Nonsegregation of the Races in all Eating, Comfort, and Work Facilities

All signs restricting access to GMSA plant and office facilities on

the basis of race have been removed and for several years there have been no racially designated signs for cafeteria or comfort facilities.

In mid-1980, GMSA completed work on a \$4.5 million project to upgrade and consolidate facilities and improve economic opportunities for black and other nonwhite employees. As part of this project, GMSA constructed the following facilities: a new training center, modern dining and locker facilities—as well as new comfort areas in each plant—all of which are fully integrated.

Equal and Fair Employment Practices for all Employees

GMSA follows a program of equal opportunity for all employees, regardless of race—from initial hiring, through training and advancement, to wage increases, retirement, and, when necessary, separations resulting from business downturns.

As of February 28, 1981, GMSA's hourly work force was 20% white, 55% colored, and 25% black, and included 127 nonwhite supervisors. Further, the total work force was 36% white, 44% colored, and 20% black. There were 59 colored and 22 black salaried employees.

Additionally, the improved economic conditions and increased demand for GM products in 1980 enabled GMSA to provide over 1,400 new job opportunities, nearly all for nonwhites, when the total work force increased from 3,460 to 4,880 as of February 28, 1981.

Labor Relations

GMSA communicates with all its employees, individually and collectively, about their expressed concerns. Many of the concerns of black employees are expressed to management directly through the elected members of a Liaison Committee, composed of 15 elected black employee representatives and 5 representatives of management.

Auto-industry wages and working conditions, negotiated by the Industrial Council in the Port Elizabeth area, are extended by law to all employees of all automobile-related industries in the district, except for component manufacturers. Presently, the Council consists of union representatives from the South African Iron, Steel and Allied Industries Union (white employees) and the mixed National Union of Motor Assembly and Rubber Workers of

South Africa (NUMARWOSA).

GMSA initiated multiracial meetings with shop stewards—the union representatives of its white and colored employees and black representatives from the Liaison Committee—to exchange viewpoints and concerns on matters which affect all shop stewards and their constituents. In addition, all shop stewards, regardless of race (including those from the Liaison Committee), function under the same administrative procedures.

Organizing Efforts at GMSA

The unregistered black trade union that formerly operated in the industry and for which payroll check-off facilities were made available by GMSA, recently ceased to exist. The majority of the former members of this union at GMSA have now become members of the mixed union which now represents both colored and black employees in the industry. Currently, 11% of the black labor force at GMSA are considered to be union members and are represented by NUMARWOSA.

GMSA has made clear to black employees that they have complete freedom of choice regarding union membership.

General Motors is confident that it has given the Corporation's black employees in South Africa every opportunity to form or join a union, and that employees' rights have not been abridged in any manner. It should be noted, however, that consistent with its principles of non-segregation, General Motors would prefer the establishment of a single, multiracial union that is representative of employees from all racial groups.

	February 28, 1981				February 28, 1981 Over/(Under) December 31, 1979			
	White	Colored	Black	Total	White	Colored	Black	Total
	HOURLY	787	2,099	944	3,830	8	634	579
SALARIED	969	59	22	1,050	(26)	11	14	(1)
TOTAL	1,756	2,158	966	4,880	(18)	845	593	1,420
MEMO: PERCENT OF TOTAL	36.0	44.2	19.8	100.0	(15.3)	6.3	9.0	-

GENERAL MOTORS SOUTH AFRICAN EMPLOYMENT. Colored and black employees continue to advance into such semiskilled positions as welders, repairmen, and quality control inspectors as job openings occur. In October 1972, 21% of the colored and 4% of the black employees held semiskilled or skilled jobs; in February 1981, 40% of the colored and 17% of the black employees were assigned semiskilled or skilled positions. While GMSA has progressed significantly toward the goal of identifying, developing, and promoting nonwhites into the higher work grades, a continued strong economy and favorable business conditions are critical components to GMSA's initiatives to effect substantial further improvements.

Equal Pay for all Employees Doing Equal or Comparable Work for the Same Period of Time

GMSA's compensation policies call for equal pay, regardless of race, for

all employees doing equal or comparable work for the same period of time.

Although there are differentials between pay rates for employees working in the same grade due to differences in seniority, the margin of difference among races has been reduced in recent years.

GMSA's current entry level wages exceed the local economic living level, as developed by the University of Port Elizabeth, for blacks by 69% and for coloreds by 64%. The average wage for GMSA's white employees is comparable with the average South African manufacturing pay rate for whites, while for blacks the GMSA average is 76% higher and for coloreds the GMSA average is 67% higher than comparable average manufacturing rates.

In addition, all employees at GMSA, regardless of race, are covered under the same comprehensive employee-benefit program, including group life insurance, medical, retirement, sickness, and accident plans.

GMSA also was one of the first employers in South Africa to extend its medical benefits, which include dental care and routine physical and eye examinations, to cover the registered dependents of employees and retirees. Currently, over 4,000 dependents of colored and black employees are covered by this plan.

Initiation of and Development of Training Programs

A primary obstacle to promoting nonwhite employees is the prevailing low level of education. To improve these education levels, a GMSA program encourages children of black employees to remain in school as long as possible. The program pays for prescribed books and school fees for all children of black employees attending primary and secondary schools.

To improve employee skills, GMSA conducts a number of in-plant programs to train new employees and to prepare employees for advancement.

A number of colored and black employees who have completed a Pre-Supervisory Training Program have already been assigned supervisory responsibilities. In addition, both colored and black employees have attended technical and nontechnical classes paid for by GMSA's tuition refund plan. Under GMSA's Technical Training Plan, colored employees attend free classes conducted by personnel from the local technical college. GMSA's Language Instruction Program, designed to provide basic reading, writing, and mathematical skills, has been operating since 1971 and has now been expanded to include the training of teachers for the benefit of the local black communities.

As part of the \$4.5 million project previously mentioned, GMSA has almost tripled its in-plant training capacity. In 1980, the first full year of operation of its new Training Center, GMSA succeeded in obtaining full indentured status for black apprenticeship programs. Additionally, the highly rated pupil technician training scheme, from which young specialized technicians are drawn, now includes five black trainees in the first year of its four-year training program. In 1980, 144 black and 86 colored unskilled operators benefited from formal training in welding, metal finishing, and other skills. To supplement in-plant training programs, GMSA makes use of outside organizations such as the University of Port Elizabeth, New Brighton Technical Institute, Port Elizabeth Technikon, Technical Colleges, the Institute of Personnel Management, the National Development and Management Foundation, various technical colleges, and other facilities offering specialized training.

The GMSA Service Division operates a fully equipped mobile training unit which instructs dealer service personnel in sheet-metal repair, spray painting, and general mechan-

ical maintenance. This unit has trained 1,265 nonwhites throughout South Africa and neighboring countries.

Increasing the Number of Blacks and Other Nonwhites in Management and Supervisory Positions

Blacks and other nonwhites have held salaried positions at GMSA since 1971. In March 1976, 4.9% of GMSA's salaried work force were nonwhite. In 1979, GMSA introduced a College Graduate-In-Training Program, designed to orient and train blacks and other nonwhites in company operating techniques and practices. This program also identifies individuals having the potential to progress toward positions of greater responsibility and ultimately supervisory and management status. To date, GMSA has recruited 13 blacks to participate in this program. Nine have been placed in various staff positions, such as financial and marketing analysts, computer operator, etc., and the remaining four are still being trained.

Currently, nonwhite salaried personnel total 7.7% of the salaried work force. Continuing improvement in economic conditions, along with GMSA's expanded training capacity, will widen supervisory opportunities for nonwhite employees.

Improving the Quality of Employees' Lives Outside the Work Environment

In 1973, GMSA funded a \$575,000 home-ownership program for the colored community of Port Elizabeth. Of 94 new homes built under the program, 55 were purchased by GMSA employees. Colored employees also were offered loans at subsidized interest rates for the initial cost of home purchases. Subsequent subsidized housing-loan programs have enabled nonwhites, both GMSA employees and non-employees, to buy homes. The down-payment loan plan

was extended to black employees in 1977 when the South African government first introduced the 99-year lease/home purchase opportunity for blacks in South Africa.

An earlier program, established in 1972, provided \$284,000 for subsidized home-improvement loans to employees of all races. To date, these loans have improved the living standards of more than 1,000 employees.

GMSA has also helped a local administration board, which is responsible for black residential areas, to obtain a \$1.2 million loan for the construction of 230 new houses and a new school in an urban black township. GMSA is subsidizing the interest rate of the loan to 5.5%, approximately one-half the prevailing interest rate in South Africa.

GMSA has awarded 3,769 high school scholarships to children of colored and black employees since 1964. In the 1980 school year, 733 sets of school books were provided, making a total of 8,171 sets of books since 1972, in a program which also provides materials and school fees for the children of black employees. GMSA also donates financial support to three primary schools for black children, with combined enrollments of more than 800 students, and is expanding in this area through its "Adopt-a-School" program. Other programs address undergraduate curriculums.

GMSA actively sponsors many recreational projects in the Port Elizabeth area and employs a full-time coordinator of recreation and community programs. Furthermore, GMSA funded a \$475,000 program to improve and expand recreational facilities in colored and black residential areas, which are available for the free use of all area residents.

Additionally, in 1980 the General Motors Foundation paid the second installment of a five-year, \$575,000 contribution to the Urban Foundation, a multiracial South African organiza-

tion working to improve housing and education opportunities for non-whites.

Other contributions made by the GM Foundation to provide additional educational opportunities for non-whites include: a donation of approximately \$360,000 toward the construction of the New Brighton Technical Institute (a technical high school for black students in Port Elizabeth); a \$40,000 contribution to the Institute of International Education (IIE) for its South African Fellowship Program designed to develop professionally trained blacks for management, engineering, university teaching, and other positions in South Africa; as well as about \$18,000 as the first of a three-part donation to the University of Port Elizabeth's nonwhite teacher training program. An additional donation of \$24,750 was made toward a project to establish the first Commercial High School and Community Center in Soweto. This project is being sponsored by the American business community in South Africa.

GMSA operates a family-guidance clinic and conducts general health-education programs for all employees. Since 1972, a professionally trained nurse has handled about 600 cases per year among families of colored and black employees.

The Question of Withdrawal

It has long been GM's belief that the Corporation cannot effectively promote the necessary social and economic changes in South Africa if it withdraws from the country. GM believes it has played a part in improving the economic and living conditions for its nonwhite employees and their families, and that GMSA's methods of doing business continue to be a constructive force that has brought social equality closer to reality.

Moreover, GM believes that an environment of economic and social progress in South Africa must be

backed by government policies working toward racial equality. The future of South Africa can only be built upon the willingness of *all* South Africans to resolve their differences.

Expansion Considerations

General Motors continues to believe that the single most important factor in the creation of a more promising investment climate in South Africa is a resolution of the country's pressing social problems, which have their origin in the apartheid system. General Motors remains hopeful that these problems will be resolved on a basis which is just and equitable to all segments of South Africa's population. Should conditions in South Africa improve substantially, the Corporation may consider an expansion of its activities in that country. Any investment decisions regarding that nation will, of course, necessarily include an assessment of the economic, social, and political environment, not only in South Africa, but in neighboring countries as well.

Commitment to Change

The decision of General Motors to continue operations in the Republic of South Africa is based on the belief that the Corporation's presence in that country remains a prudent investment for its stockholders. The Corporation believes that, in conjunction with the Opel Kadett front-wheel drive "T" car (lower-medium-sized vehicle) introduced into the South African market last spring, the products GMSA will introduce in the coming years will enhance GM's competitive position and facilitate its continued involvement as a force for further social and economic progress. Further, General Motors believes its continued operation in South Africa promotes constructive change and demonstrates GM's current confidence in South Africa's long-term economic stability and future.

blacks have been stripped of their citizenship and arbitrarily assigned to ethnically based homelands which have remained in a state of perpetual underdevelopment. Blacks are consigned to an inferior educational system in which per pupil spending is roughly one-tenth of the spending in white schools. Blacks and other nonwhite South Africans have been uprooted from their homes in order to allow white citizens to move in.

To keep the country locked into a policy of white supremacy, the Government refuses to allow political participation by nonwhites in parliamentary elections. The Government has shown no desire to discuss the possibility of political power-sharing arrangements which would include Asians, coloreds, and blacks, as well as whites. Nor has the Government recognized that by pursuing its present policies it greatly increases the chances of serious and sustained violence in South Africa. While supporters of the present South African regime call it a bastion against the advance of communism, the truth is that it is the very existence of the apartheid policies of the South African Government which constitutes the greatest incentive for communist expansion in Southern Africa.

In the final analysis, a political resolution of South Africa's problems will come from within South Africa, not from the United States or any other outside nation. Yet given the large amount of economic interaction between our two countries, there are a number of steps we could take which would have a significant symbolic and substantive impact upon events in South Africa.

We should take those steps for humanitarian, as well as strategic reasons. In the first place, the apartheid system in South Africa is repugnant to our own democratic principles. Second, South Africa's racial policies are assailable on strategic grounds. It is inconceivable that a small minority in South Africa will be able to continue indefinitely the denial of political rights to the majority of its people solely on the basis

APPENDIX 4

STATEMENT SUBMITTED BY RAY DENISON, DIRECTOR, DEPARTMENT OF LEGISLATION AT THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, OCTOBER 30, 1981

The AFL-CIO reiterates its long standing opposition to the system of Apartheid in South Africa. Apartheid negates the fundamental principles on which our society is based. It denies basic rights to tens of millions of people purely on the basis of their color. It seeks to deprive the worker of the rewards of his labor. It perpetuates the unmitigated tyranny of a minority over a majority. It has posed a long standing challenge to free societies everywhere and the time has come for us to say: "no more".

It is fitting that the labor movement, long in the forefront in the battle against any form of discrimination based on race, sex or religion, should play a leading role in helping to bring about the defeat of Apartheid.

Since our last appearance before this Subcommittee, the AFL-CIO has adopted a Program of Action in Support of Black Trade Unions in South Africa (attached) and at its most recent Executive Council meeting in August strongly protested the further repression of black workers and their trade unions.

The AFL-CIO sees the development of a viable black labor movement as practically the only chance remaining to effect peaceful change in South Africa. The alternative is increasing confrontation between black and white leading ultimately to a bloody race war. In its declaration in support of black trade unions, the AFL-CIO urged South Africa not only to permit the peaceful process

towards black trade union development now under way, but to actively encourage it. Recognizing that it will require imagination and constructive accommodation on the part of white South Africa to erase the legacy of bitterness, humiliation and anger suffered by the blacks in South Africa, the AFL-CIO indicated that it stands ready, even at this eleventh hour, to assist towards this goal, both inside and outside South Africa, in concert with all who are still committed to peaceful change before it is too late. Yet contrary to all rational thinking, South Africa has chosen the path of confrontation. It has embarked on a massive campaign of intimidation, detention and arrest of hundreds of black trade union leaders in an attempt to cripple the embryonic black labor movement by depriving it of its essential leadership.

It has undertaken a massive campaign of police infiltration and disruption of black trade unions. Many of the leading unions have been a target of police harassment and disruption: the Municipal Workers Union, the South African Allied Workers Union, and the Media Workers Association of South Africa MACWUSA, all of whose presidents and/or general secretaries have been detained or arrested. In many instances the South African authorities do not even make a pretense of levelling charges against those arrested. They are simply detained indefinitely without access to a lawyer. The families are kept in complete ignorance of the fate of the detainees.

Taking advantage of the high unemployment, said to be over 22% among the blacks, management, with encouragement from the government, is dealing harshly with striking black workers. Thousands of black workers have been banned to the so-called homelands for agitating for a living wage. Those banned to the homelands

are doomed to slow starvation as there is no possibility of earning a living there. The homelands are overcrowded, poverty stricken and completely without any viable infrastructure.

Reacting to these harsh measures by the authorities and trying to cope with an ever-increasing cost of living, black workers have resorted increasingly to strike action. There has been a sharp increase recently in the so-called illegal strikes. This has led to labor unrest covering all the major cities of South Africa. Given the climate which exists in South Africa, these strikes could lead to total industrial anarchy.

The AFL-CIO has protested repeatedly to the South African government against these disruptive attacks on the black workers. President Lane Kirkland has sent telegrams of protest to Prime Minister P.W. Botha condemning the arrests including the recent arrest of 205 trade unionists returning from a meeting in East London, (South Africa). In this connection Kirkland also wrote a letter to Secretary of State Alexander M. Haig drawing attention to the South African government's intensified attacks on black trade unions. The letter urged that a formal protest be lodged with the South African government on these violations of human rights.

There have been endless debates as to whether South Africa is moving towards change or not. The heart of the matter is that white South Africa has failed to respond adequately to the expectations of the black masses.

With time running out, all the government of South Africa has shown is that it sees the black people of South Africa as the enemy, to whom social justice does not apply. White South Africa refuses to face the fact that blacks are no longer prepared to be mere pawns in a game only whites can play. The blacks make South Africa work and they are beginning to know it. Every white household, every farm, every factory, every gold or coal mine - the list is endless - depends on black labor.

On the whole, there has been a tragic failure by U.S. companies operating in South Africa to identify with the forces of progress and do justice to their black workers. The continued failure of most U.S. companies to give even token recognition to the Sullivan Code underscores the need for effective enforcement and monitoring mechanisms.

It is for this reason that the AFL-CIO in its last appearance before this sub-committee urged the enactment of legislation that would have the effect of regulating the conduct of any American company operating in South Africa.

The AFL-CIO urged that the law should require American corporations to develop programs that would enable blacks to assume professional positions on an equal basis with all other employees. Further that the law should guarantee equal pay for equal work.

The AFL-CIO, therefore, supports the intent of the Solarz bill and the Gray bill.

In our previous testimony we urged that should South Africa fail to respond to the proposed measures, the U.S. should undertake more severe action beginning with a progressively selective ban on the importation of South African products and continuing, if necessary, with measures such as a full boycott, barring of new investment, complete disinvestment, and severance of all social, cultural and diplomatic ties.

We added a caveat then and we repeat the caveat now: Experience has shown that a boycott can only be effective if taken in concert with our allies.

The AFL-CIO believes there is still a chance for a peaceful change in South Africa; hence our commitment to a Program of Action in Support of Black Unions. We believe that a massive infusion of skills, training to black workers and the introduction of a more hopeful view of the quality of life in store for them, will avert the final bloody confrontation which most right thinking people wish to avert. To implement this program, however, will require the cooperation of all who wish to give peaceful change a chance.

Statement by the AFL-CIO Executive Council

on

Suppression of Black Trade Unions in South AfricaAugust 4, 1981
Chicago, Ill.

The Executive Council, in its February 1981 statement, AFL-CIO Program of Action in Support of Black Trade Unions in South Africa, noted that after decades of brutal suppression of its black workers, the South African government claimed to be moving toward recognition of black trade unions.

The events of the past few months indicate that the South African government is continuing its suppression of unions of black workers by depriving the unions of their key leaders. Endeavoring to avoid a charge of cracking down on the emerging black labor movement, the South African government is arresting not only black labor leaders, but student leaders, political leaders and alleged saboteurs as well, thereby hoping to obscure its attack on unions of black workers.

However, there is no disguising the fact that black trade unions are a major target of the government's reprisals. We have been informed that 57 trade unionists have been arrested in the Ciskei Homeland. The Media Workers Association of South Africa (MWASA) is under heavy attack, and its President and General Secretary have been arrested. The Motor Assemblies and Component Workers Union of South Africa (MACWUSA) is also being suppressed, and four of its top leaders are under detention. How many other black trade unionists are under government pressure and intimidation is not known to us.

We strongly protest these continued violations of trade union rights, and urge other groups which support free trade union principles to do likewise. We further call upon our government to protest these latest attacks on unions of black workers, and to urge the South African government to recognize and accept at long last the basic, unqualified trade union right of freedom of association for every worker in South Africa irrespective of race.

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AFL-CIO Program of Action in Support of Black
Trade Unions in South Africa

P R E A M B L E

After decades of brutal suppression of its black workers, marked by police attacks on unarmed workers, mass arrests, and banishment of black labor leaders, the South African government now claims it is moving toward recognition of black trade unions. The AFL-CIO reiterates its position that recognition per se is not enough. Integral to this recognition must be the acceptance by the South African government of the basic, unqualified trade union rights of every worker in South Africa irrespective of race. Any attempt to tamper with these rights, either by diluting or qualifying them, would be a negation of fundamental trade union standards and would be unacceptable.

Our approach is aimed at supporting basic changes which eliminate the repressive and inhuman system of apartheid and hasten majority rule. We expect to work with other trade union centers which seek a non-violent solution to the problems of South Africa and which emphasize implementation of programs in conjunction with black unions in South Africa. We see this as the most practical meaningful way of helping the people living under this system.

Trade union rights are an integral part of the basic freedoms which have been denied to blacks in South Africa.

We stand ready to do more than condemn apartheid. We are prepared to implement a program of trade union involvement that we feel can change the condition of the black workers and enhance their ability to organize in South Africa.

The AFL-CIO urges the South African government not only to permit the peaceful process toward black trade union development now under way, but to actively encourage it. To erase the legacy of bitterness, humiliation, and anger will require imagination and constructive accommodation on the part of white South Africa. The AFL-CIO stands ready, even at this eleventh hour, to assist toward this goal in concert with all who are still committed to peaceful change before it is too late. In order to accelerate this process and to help close the wide gap that now exists between black and white workers, the AFL-CIO undertakes to implement a program of assistance to black workers as part of its longstanding commitment to social change.

We have decided to focus our energies on the black workers of South Africa because of the tremendous disparity that exists between white and black workers. Before we can work with the South African labor movement as an entity, we must help the black workers achieve a measure of organization, trained leadership, and a solid foundation on which to build. Until that point is reached, we will work toward the development of a strong, united black labor movement that can fully represent its members and bargain freely for them.

It is our hope that our program will be seen as a positive force aimed at openly seeking change. As trade unionists, we cannot ignore the plight of our brothers and sisters. At the present moment in history, we have mapped out a path. It is our commitment to see that this approach succeeds. In many ways it is a last chance for us all.

P R O G R A M

- 1) Expansion of AFL-CIO activities to assist black unions in South Africa and promote basic changes in the lives of the workers.
- 2) Establish within the African-American Labor Center a unit to coordinate all U.S. labor activities in support of trade union development in South Africa. This unit would serve as a focal point for liaison with various labor groups in South Africa to ensure that channels of communication are established and maintained so that we can adequately respond to developments as they occur. It would also act to ensure coordination with other international labor bodies, e.g., the ICFTU, OATUU, and the international trade secretariats.
- 3) Creation of a special labor fund to finance trade union activities. A legal defense fund drawn from this special fund will be created to support legal defense activities in support of trade unionists in South Africa.

of race. It is therefore in the enlightened self-interest of the United States, in terms of our future relations with South Africa as well as many other African and Third World countries, to distance ourselves from the South African regime and demonstrate in meaningful and concrete terms our affinity with the legitimate aspirations of nonwhite South Africans.

I believe we can achieve that goal through the legislation I have introduced.

THE ECONOMIC RELATIONSHIP

The United States maintains extensive economic ties with South Africa. The 350 American companies in South Africa employ nearly 100,000 workers, of whom about 70 percent are black. The book value of the direct American corporate investment as of the end of 1980 was about \$2.3 billion. In addition, U.S. trade with South Africa in 1980, according to the Department of Commerce, was about \$5.8 billion. The United States is South Africa's largest trading partner.

While some American firms have been in the forefront of progressive reforms at the workplace, many others are paying lip service to fair employment principles. The Sullivan Code, a statement of fair employment principles drawn up by the Reverend Leon Sullivan of Philadelphia and signed by over 140 companies in South Africa, has provided some momentum for equal employment opportunity. But the Sullivan Code is voluntary, and as Reverend Sullivan himself has testified, many of its signatories have honored the code more in the breach than in the observance. Indeed, that is one of the reasons Reverend Sullivan has spoken out in favor of a mandatory code.

On a study mission to South Africa last summer, I found that the overwhelming majority of blacks with whom I spoke felt that the United States should withdraw all investment, or at least prohibit new investment, in South Africa. Significantly, they also

4) Develop, coordinate, and maintain U.S. public response in reaction to developments which take place in the labor field in South Africa.

5) Develop other specific programs in both South Africa and the United States for assistance in organizing unions, collective bargaining, leadership and cadre training which could include the following:

- a) Work/study programs in the United States
- b) Union-to-union training in the United States
- c) Seminars and training programs in South Africa
- d) Providing data to South African unions which will assist them in their organizing and collective bargaining activities
- e) Assignment of U.S. trade unionists to short-term programs in special fields
- f) Assignment of an AALC representative to work in South Africa
- g) Educational activities with selected educational institutions in South Africa

6) Support the expansion and use of existing skill-training facilities including selective scholarship aid to open up the restricted upward mobility for black workers.

APPENDIX 5

LETTER DATED NOVEMBER 9, 1981, SUBMITTED BY NICHOLAS L. DEAK, CHAIRMAN OF THE BOARD OF DEAK-PERERA

November 9, 1981

The Honorable Howard Wolpe
Chairman
Africa Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Wolpe:

On behalf of my firm, Deak & Company, Inc. of New York City, which is the holding company of the Deak-Perera Group of firms (80 offices) engaged in the foreign exchange and precious metals business with over 1,000 employees, I am writing to make known our strong opposition to a bill currently under joint consideration by the Subcommittee on Africa and International Economic Policy and Trade, H.R. 3008.

If enacted, this bill would, inter alia, prohibit the importation into the United States of Krugerrands or any other gold coin minted in the Republic of South Africa or offered for sale by the Government of that country. We oppose this bill for four reasons.

First, we oppose H.R. 3008 on the basis that its enactment would have a substantial and adverse effect on our business. As you know, our firm, like many others throughout the United States, trades Krugerrands. While the precise total of such sales is proprietary information, it is fair to say that our annual Krugerrand volume is significant.

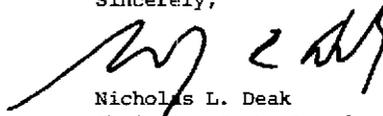
The second reason we oppose H.R. 3008 is purely practical. Aside from Soviet gold coins (annual United States trading in which is relatively small) virtually all gold coins of foreign nations traded in the United States (e.g., Mexican Pesos, and the Canadian Mapleleaf) contain South African gold. Banning the importation of Krugerrands would merely force American consumers to switch their African gold purchases to coins of other nations composed of South African gold. No net effect on South African gold sales would result. Since no decrease in such sales would be accomplished, the burdens imposed by the legislation outweigh any benefit and we, therefore, must oppose it.

Our third objection to H.R. 3008 is that its Krugerrand prohibition is in conflict with our country's obligations as a signatory to the General Agreement on Tariffs and Trade. In this regard we would call your attention to Article XI of the General Agreement on Tariffs and Trade which states that "no prohibition or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party..."

Fourth, Americans wishing to buy Krugerrands can do so in Canada or in Europe and keep the acquired coins there.

Thank you very much for considering the views of Deak & Company, Inc. on this very important legislation. We would ask that they be shared with your colleagues on the Subcommittees and made part of the Record of the hearings.

Sincerely,



Nicholas L. Deak
Chairman of the Board

NLD:ech

cc: The Honorable Jonathan Bingham
Chairman
International Economic Policy and
Trade Subcommittee

The Honorable Stephen J. Solarz

APPENDIX 6

LETTER DATED NOVEMBER 25, 1981, SUBMITTED BY J. R. FLUOR, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER AND D. S. TAPPAN, VICE CHAIR- MAN OF THE FLUOR CORPORATION

November 25, 1981

The Honorable Howard Wolpe
Chairman, House African Subcommittee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Wolpe:

We are writing this letter to express our opposition to both the concept and specifics of two bills which have been introduced in the Congress of the United States. The first is HR 3008, introduced by Representative Stephen Solarz; the second is HR 3597, introduced by Representative William Gray. Although we must presume the intent of these two legislative proposals is to ultimately benefit non-whites in the sovereign nation of South Africa, we respectfully contend that these bills would have the opposite effect if they become law.

The proposed legislation would cut off from South Africa and all of its residents the financial, educational and culturally benefiting channels that have been established through American investment and participation in that country. At the present time American based firms doing business in South Africa, South Africa subsidiaries of American firms and American based foundations and charitable trusts are providing a variety of programs and activities which benefit all South Africans including that country's non-white population by strengthening the nation's overall cultural, educational and economic viability. For example, the approximately 300 U. S. based and American subsidiary companies in South Africa, along with American based foundations, are making significant contributions in the areas of health care and housing, overall education levels and job training skills for South Africa's workforce with special emphasis on non-white workers.

American corporations doing business in South Africa have formed task forces which focus financial resources and manpower in the development of specific programs to assist South Africa's non-white population. These programs focus on health education, nutritional programs, the establishment of clinics and the training of medical staff. Special emphasis has been given to the improvement of living conditions with particular emphasis on sanitation and hygiene. There is also a special task force dedicated to the sole issue of housing.

This same type of American corporate commitment of both financial and manpower resources is focused on upgrading the educational levels of South Africa's workforces; again with special emphasis on non-white workers. Included in the educational programs is an "Adopt-A-School" program. Conservative estimates show that both American subsidiaries

and South African based companies participating in this program will have adopted in excess of 120 schools, positively affecting approximately 72,000 primary and secondary school students of all races and ethnic background in South Africa.

Another area of concentration by American companies doing business in South Africa is the educational scholarships program. From 1979 through June 30, 1980 nearly 3,000 scholarships were provided non-white South African students by American subsidiaries. These scholarships were for attendance at South African universities.

An additional 36 students--all non-white--will be placed in American universities during this 1981-82 academic year. Greater numbers will be placed in American universities as additional financial commitments come in from American foundations and corporations.

Literacy training financed by American companies doing business in South Africa continues to receive major emphasis. Through June of last year nearly 2,000 additional black, colored or Asian students have been assisted, with the majority of students coming from the community-at-large; not just from employees of the participating companies.

Industry training centers in South Africa continue to provide new work skills with particular emphasis on upgrading the skills of non-white citizens of South Africa to enable them to become gainfully employed and then to improve their economic status by their own efforts. Additional details on the activities of American companies doing business in South Africa are available from the individual companies who, it is estimated, employ between 200,000 and 315,000 non-white workers in that country; jobs which would not be available if the legislation under discussion should be passed by Congress and signed by the President.

From Fluor's own perspective, we would like to point out that in connection with the SASOL Two and Three projects alone, Fluor has established a training center to teach welding, pipe fitting and related skills. The center also provides instruction in rigging, scaffold building, stress relieving and instrument fitting. Between May of 1977 and May of 1980, in excess of 5,000 non-whites were trained in these schools and then given gainful employment in the construction of SASOL Two and Three. In addition Fluor has provided equipment, materials and instructors to black training centers throughout South Africa in teaching welding and other job related skills.

As of June 30, 1981 our employment records show the following:

Fluor Genrec South Africa (Pty) Ltd. employs 476 workers of whom 184 are black. Of this workforce, from July 1, 1980 to June 30, 1981, black employees received an average pay increase of 23 percent, while whites received an average pay increase of 19 percent.

Fluor South Africa (Pty) Ltd. employs 14,683 of whom 9,662 are black and 2,268 are colored. Between July 1, 1980 and June 30, 1981 salaried blacks received an average pay increase of 22 percent, hourly paid blacks 23.75 percent. Salaried whites received an average pay increase of 20 percent, hourly paid whites 15 percent.

Through the Fluor Corporation and The Fluor Foundation (whose revenues come solely from Fluor Corporation profits), the following contributions have been made:

To St. Anthony's Education and Training Center (also known as the Easter Project), Fluor has contributed approximately \$25,000 (on June 26, 1981). This organization provides adult education and training for blacks in South Africa.

To the United States South Africa Leader Exchange Program (USSALEP), Fluor contributed \$2,500 in 1980 and \$13,600 in 1981 for a total of \$16,100 over a two-year period in support of the Black Businessman of the Year Award Program.

In 1980 Fluor made the first \$10,000 installment payment on a \$50,000 five-year pledge to the Campus Crusade for Christ in South Africa.

In addition, Fluor has contributed a total of more than \$100,000 to PACE Commercial College, a private co-educational high school in Soweto. Fluor has pledged to provide two five-year scholarships (bursaries) to PACE Commercial College for the school year which began in July 1981. For the past two years Fluor Corporation has also had an executive of the company as a member of the Board of Councillors of the American Chamber of Commerce in South Africa. This is the organizational and fundraising organization behind PACE Commercial College.

These are but a few examples of the kind of involvement and investment the Fluor Corporation and other U. S. based transnational companies and South African based subsidiaries have contributed to the economic well being of all of South Africa, with particular emphasis on non-whites.

To summarize: All citizens of South Africa benefit from American and other transnational companies trading, investing and, generally, doing business in and with South Africa. From the economic impact of such international commerce and through the added participation of American companies and/or their charitable foundations, thousands more non-whites in South Africa benefit from a variety of added programs and activities. As we have summarized in this letter alone, these programs range from health care and housing to the teaching of meaningful job skills to the strengthening and expansion of academic training including but certainly not limited to the awarding of scholarships to non-white South African students in schools here in the United States as well as in their own country.

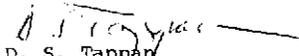
The imposition by the Congress of the United States of any barriers to this type of investment and mutual benefit would work to the detriment of all parties, including the non-white citizens of South Africa on whose behalf the legislation under discussion is presumed to assist. The facts are, it would have the opposite effect.

We respectfully request the committees considering this legislation, and ultimately the full House and/or Senate of the United States, to reject these two bills and any other legislation of a similar nature for the reasons outlined briefly in this letter.

Sincerely,



J. R. Fluor
Chairman, President and Chief
Executive Officer



D. S. Tappan
Vice Chairman of the Board

JRF/DST:daj

cc: The Honorable Robert K. Dornan

APPENDIX 7

LETTER DATED NOVEMBER 19, 1981 FROM MR. WOLPE TO DEPARTMENT OF TREASURY AND RESPONSE LETTER DATED DECEMBER 30, 1981

November 19, 1981

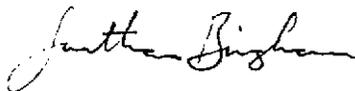
The Honorable Donald Regan
Secretary of the Treasury
Department of Treasury
Washington, D.C.

Dear Mr. Secretary:

As you are aware, the Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade of the Foreign Affairs Committee of the United States House of Representatives are currently holding a series of hearings on two bills concerning American business activities in South Africa. One of these pieces of proposed legislation (HR 3008) contains a provision barring the import into the United States of South African krugerrands.

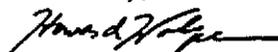
Among the arguments advanced by opponents of this particular aspect of the legislation is that if the United States prohibited the import of Krugerrands into this country, it would have no impact on curtailing the flow of South African gold into this country because the Mexican Peso and the Canadian Mapleleaf contain South African gold.

In order to determine the accuracy of this argument and to arrive at a considered judgement on this issue, we would like to know what percentage of the Mexican Peso and the Canadian Mapleleaf are composed of gold imported from South Africa. We would also like to know how much gold Mexico and Canada produce locally and how much they import from South Africa or other countries. We would like to thank you in advance for providing the above information. It will be extremely useful to us and the other Members of our subcommittees as we continue our deliberations on this important topic.



Jonathan B. Bingham
Chairman
International Economic Policy
and Trade

Sincerely,



Howard Wolpe
Chairman
Subcommittee on Africa

HW/jch



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

December 30, 1981

Dear Mr. Chairman:

This is in response to your letter of November 19 to Secretary Regan requesting additional information about the sources of gold used in the production of the Canadian Maple Leaf and Mexican Peso gold coins.

We understand that it is Canadian government policy that only gold mined in Canada is to be used in the production of Maple Leaf coins. The Royal Canadian Mint purchases the requisite gold either directly from Canadian mines or from the Bank of Canada's Exchange Fund Account(EFA). The EFA currently holds about 20 million fine troy ounces of gold, the bulk of which was bought from Canadian mines in earlier years.

In 1980 Canadian gold production was 1.6 million ounces. In the same year Canada imported 1.6 million ounces of refined gold, the bulk of which was purchased in markets in the United States and Switzerland. No data are released by Canada on direct Canadian gold imports from South Africa. Thus it is impossible to make a quantitative estimate of how much of the gold Canada imports comes from South Africa, either directly or commingled with gold mined in other countries and imported from U.S. or other markets. While a quantitative forecast is not possible, expanded production of gold coins using more Canadian gold, for example to meet U.S. demand diverted from krugerrands, would likely lead to additional Canadian gold imports from world markets to replace Canadian gold in non-coinage uses.

The Mexican government does not publish information on gold imports, or on the country origin of the gold used in the gold Peso coin. However, the Mexican authorities do say that virtually all of their gold Pesos are produced with imported gold. Mexican gold mining production in 1980 was 0.2 million ounces, and 0.7 million ounces of gold was used in gold coin fabrication in that year. If coin production were to increase, presumably additional gold would be imported from world markets supplied by South Africa and other gold producers.

Our more general point, as expressed in Deputy Assistant Secretary Leddy's October 15 testimony, remains that a prohibition on krugerrand imports into the United States could alter the flow of gold between particular national markets but would not be likely to reduce South Africa's role as the dominant gold exporter. This is because South Africa's exports would merely be redirected into coins manufactured by other countries or into markets some of whose current supplies would be diverted to coin production.

I hope this information will be useful in your Subcommittee's deliberations.

Sincerely,

(signed)

Richard Prendergast

for

W. Dennis Thomas
Assistant Secretary
(Legislative Affairs)

The Honorable
Howard Wolpe
Chairman
Subcommittee on Africa
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

said that if those measures could not be achieved and U.S. firms were to remain in their country, those companies should abide by a fair employment code which eliminates racial bias and provides equal opportunity in the workplace.

Whatever the advantages of disinvestment by American firms may be, disinvestment is clearly not politically feasible at this time. There are, however, a number of other actions Congress could take which would have a constructive impact on the prospects for peaceful change in South Africa and which would be well received by the majority of the people in that country.

FAIR LABOR CODE

The bill I have introduced sets out seven fair employment principles which American companies with more than 20 employees must adhere to: No segregation at the workplace; equal employment; equal pay; establishment of minimum wage and salary structure; increased representation of nonwhites in managerial, supervisory, and administrative jobs; improvement of the quality of employees' lives outside the workplace; and labor union recognition and fair labor practices.

The bill empowers the Secretary of State, with help from corporations, labor unions, and other interested parties in South Africa and the United States, to monitor compliance with these principles. Failure to comply would result in the following penalties: loss of the right to enter into any contract with the U.S. Government; loss of the right to export any goods or technology directly or indirectly to South Africa; loss of the right to receive any tax credit or deduction for any income, war profits, or excess profits taxes paid or accrued to South Africa; and loss of the use of any services of the Export-Import Bank.

The adoption of this enforceable code of fair employment for American firms in South Africa should not be viewed as legitimizing our corporate presence there. Nor

APPENDIX 8

RESPONSES TO QUESTIONS SUBMITTED TO THE DEPARTMENT OF LABOR BY THE
SUBCOMMITTEES

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

NOV 19 1981

Honorable Howard Wolpe
Chairman
Subcommittee on Africa
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to our letter to you dated October 6, 1981, from Deputy Under Secretary Donald E. Shasteen, I am pleased to submit the Department of Labor's written responses to your questions relating to H.R. 3008 and H.R. 3597.

Should you or your staff need further information, please do not hesitate to call upon me or my staff.

Sincerely,


Raymond J. Donovan

Enclosure

QUESTIONS AND ANSWERS

1. Does the Department of Labor support or oppose one or both of these bills? Please state in detail the reasons why the Department supports or opposes these bills.

The Department of Labor does not support enactment of these bills, but welcomes the Congressional initiative on these issues. We believe all avenues must be explored to seek a peaceful, progressive transformation of the South African society away from its present system.

We are not in accord with the mandatory requirements of the Solarz bill which seeks to apply to American corporations operating in South Africa equal employment opportunity legislation. We are also not in favor of the Gray bill which seeks to ban any new investment in South Africa. We believe that banning new investment in the American companies doing business in South Africa would seriously threaten the jobs of the 100,000 employees of these firms, well over 50% of whom are Black.

2. Has the Department taken any previous position with respect to adoption of a fair employment practices code?

The Department of Labor has not formulated its own international fair employment practices code. However, it has been involved in the ILO's work on formulation and supervision of international labor standards. These standards, which take the form of Conventions or Recommendations, cover a wide variety of subjects: labor-related human rights such as freedom of association, prohibition of forced labor, and elimination of discrimination at work; vocational training; labor-management relations; conditions of work, including wages, hours, and occupational safety and health; labor administration; and social security.

3. Are any of the provisions concerning labor unions contained in the proposed fair employment practices bill against U.S. law? Are any of the provisions against South African law?

We do not believe that enactment of the bill introduced by Congressman Solarz would conflict with existing laws. As to whether any provisions of the bill are against South African law, we defer to the Legal Adviser of the State Department. We note that in the testimony of Mr. Princeton Lyman, Deputy Assistant Secretary of State for Africa,

reference is made to the fact that the South African Government has invoked its Protection of Businesses Act to prohibit furnishing of information to the Secretary of State without prior case-by-case approval and potential censorship. Also, Mr. Lyman's testimony notes that the South African Government has not, to date, permitted on-site inspections by U.S. Government personnel.

4. Has the U.S. adopted any previous legislation, guidelines, regulations, or procedures regarding labor relations that American businessmen or companies should pursue outside of the United States? When and where?

In 1973-74, the State Department issued guidelines on employment practices to American companies in South Africa. This document indicated some of the areas of activity in which American firms operating in South Africa could usefully improve their labor practices.

The United States has supported the multilateral development of appropriate principles of behaviour for multinational corporations, including guidelines with respect to employment and labor policies. The most significant international developments relating to multinational corporations in the field of labor and social policy have been in the Organization for Economic Cooperation and Development (OECD), the International Labor Organization (ILO), and the United Nations Economic and Social Council (ECOSOC).

In 1976, the OECD Ministers signed a Declaration of International Investment and Multinational Enterprises, which includes voluntary guidelines (including guidelines on employment and industrial relations), defining standards which the member countries collectively recommend to multinational corporations operating in their territories. In 1979, the OECD formally reviewed the guidelines but made no major revisions.

In 1977, the ILO governing body approved a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

The declaration--a voluntary constructive document which the U.S. supports--strongly advocates such principles as freedom of association and equality of treatment in employment. It embodies a number of principles on employment and industrial relations contained in the OECD guidelines. In November 1980, the ILO governing body approved

followup provisions relating to the declaration. These include reporting by governments on their experience with the declaration and procedures for interpreting the meaning of certain aspects of the instrument.

United Nations activity on multinational corporations is focused within the Commission on Transnational Corporations (TNCs) and its secretariat, the Centre on TNCs. The Commission, a subsidiary body of ECOSOC, agreed in March 1976 to give priority to formulating a code of conduct relating to multinational corporations. Because of basic differences between developed and developing countries over the proposed code, progress in negotiations has been slow. A working group began drafting provisions in 1980. The principles of the ILO Tripartite Declaration, referred to above, are expected to be incorporated by reference into the United Nations Code.

There is attached (1) the 1976 OECD Declaration on International Investment and Multinational Enterprises, including the Guidelines for Multinational Enterprises (note especially the section on Employment and Industrial Relations); (2) the 1979 Review of the OECD Declaration and Decisions; and (3) the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

5. How would you assess the activities of American businesses in South Africa, particularly in the labor field? Have they played a constructive role in breaking down racial barriers on and off the shop floors of American companies in South Africa? Could they do more in both areas?

We believe that U.S. business in South Africa, for the most part, is a force for positive change in two ways: first, by improving opportunities for their Black employees; and, second, by demonstrating to others the advantages of equal employment policies. It has had a fair amount of success in this role. Some employment practices being emphasized by American firms include fair and adequate wages, equal pay for equal work, improved opportunities for training and advancement, uniform fringe benefits, and recognition of representative trade unions for all employees, regardless of race. A number of major American companies participate in development projects in the Black community. They view as significant the long term benefits to be derived from the establishment of good relations with leaders of the majority population group who generally come from the trade union movement. Helping to build democratic and representative institutions among Black workers is one of the more important

contributions that American companies can make. Raising the standard of living of the Black worker is an equally urgent task.

6. How effectively have American companies adhered to the Sullivan Code? Have they actively implemented the Code or have they hidden behind it to reduce U.S. criticism of their activities in South Africa?

Accurate assessments of compliance by American companies with the Sullivan Code are not easy as disclosure and reporting policies vary among the signatory companies. The majority of the major American firms operating in South Africa are signatories to the Sullivan Code. They appear to be in general compliance. However, for a number of other signatory companies, compliance is negligible or uneven and further progress can be made in such areas as training and Black job advancement. The aims of these employment principles are important for racial progress but they cannot go far enough in themselves to remove all the burdens the apartheid system have placed on the Black workers of American firms.

The question of whether a company becomes a signatory of the Sullivan Code to appease its stockholders or for some other reason we find to be irrelevant. What is at issue, as we see it, is the implementation of a signatory company's management policies which clearly reflect good faith efforts toward the achievement of full compliance.

7. Do you think the labor guidelines in the Solarz Bill are constructive and feasible?

The labor guidelines in the Solarz bill are well intentioned, but they are neither constructive nor feasible. We note the problems identified by the State Department in the enforcement of such a law, and we feel that any guidelines should be voluntary and derived from multilateral codes such as those of the OECD or ILO.

8. Do you think black workers employed by American firms in South Africa should be given the same labor rights as white workers? The same rights as American workers in this country?

We do not believe that any South African worker should be discriminated against on the basis of race or color and we support the principle of equal pay for equal work for all employees of American companies operating in South Africa.

Other employment and fringe benefits should be applied without respect to race or color. These principles are part of the Sullivan Code.

We do not believe that South African workers should necessarily have the same rights as American workers in this country. The American system of labor relations and collective bargaining is the result of political, economic and historical factors and there is no reason why we should seek to impose it on South Africa or any other country.

9. Does the Labor Department have or advocate a universal code of conduct for all American companies employing workers abroad?

The Labor Department supports the OECD guidelines for multinational corporations and the ILO Tripartite Declaration described in the answer to question 4 above.

10. What has the Labor Department done through its international bureau to improve the conditions of black workers employed in American companies in South Africa? Has it consulted with American companies to improve the conditions of black workers in their South African subsidiaries?

It is not the function of the Labor Department to "improve conditions" of any foreign workers in any foreign country, whether or not they are employed by American companies. However, the International Bureau of the Department of Labor does have several activities which relate to South Africa. It is, for example, involved in the technical training of the foreign service officer who is assigned to the Labor Attache position with the American Embassy in South Africa. On an on-going and regular basis, the Bureau provides technical labor materials and other assistance to the incumbent. Additionally, one of the Country Labor Profiles published by the Bureau, is on South Africa. This document has had wide distribution through the Government Printing Office and has been used by such organizations as investor groups of companies operating in South Africa. The Bureau staff is in frequent contact with visiting Black South African trade unionists and officials of South African multinationals and the Ministry of Labor.

A number of Black trade union leaders have been to the U.S. on exchange programs and have become aware of labor practices in the U.S. Most of these programs arranged by the Bureau were in the field of labor/management relations. The Bureau is willing and able to participate in any similar training program for South Africans. The funding is usually provided by U.S. government agencies or other international donor organizations. We believe that so long as South Africa's education remains rigidly separated, the demand for training abroad will grow.

APPENDIX 9

ARTICLE BY THE ECONOMIST, SEPTEMBER 19, 1981, "AMERICA AND SOUTH AFRICA: TRADE FOLLOWS THE FLAG"

AMERICA AND SOUTH AFRICA

TRADE FOLLOWS THE FLAG

While warming political relations between South Africa and the United States have made the headlines, the two countries' burgeoning commercial links have gone unnoticed. Helped first by an economic surge in South Africa, and now by a friendly administration in America, business is booming.

President Carter's efforts to discourage commercial contacts—chiefly by barring exports of American goods to sensitive bodies like the defence force and atomic energy board—are wearing thin at the edges. Export restrictions have already been eased to allow sales of medical equipment, pharmaceuticals and low-powered computers to the military, and metal detectors (supposedly to prevent civilian aircraft hijacks) to the police. Although the restrictions are unlikely to be scrapped altogether, rumours abound that they will be eased still more when they come up for review in Washington later this year.

Mr. Carter's curbs anyway had a much smaller impact than he intended. The South Africans have managed to get their supplies elsewhere, while American computer companies—which were expected to take the hardest knock—have never had it so good. Burrough's sales in South Africa shot up by 35 percent in 1980 and by 31 percent so far this year. The company has named its South African subsidiary its top performer worldwide.

Closer political ties since President Reagan took office seem to have encouraged South African government agencies to take a new interest in American suppliers. The Electricity Supply Commission (Escom) last month awarded Combustion Engineering of Connecticut a R700m (\$735m) contract to supply boilers for a large new power station. American companies did not even bother to tender for big Escom contracts during the 1970's. General Electric and Westinghouse are now hoping to get a slice of two large turbine contracts.

The United States became South Africa's biggest trading partner for the first time last year, with two-way trading reaching \$4.7 billion, 49 percent higher than in 1979. South Africa's imports have continued their surge this year. In the first five months they were about 40 percent up on January-May, 1980. But South Africa's exports to America have begun falling, mainly because of lower sales of diamonds, platinum and Krugerrands.

American investment in South Africa, apart from gold and platinum share portfolios, is estimated at just over \$2 billion. About 350 American companies have substantial interests in South Africa and several others have expressed interest in setting up there for the first time. Among existing investors, General Motors, Pepsi Cola and Masonite have recently brought in millions of dollars to modernise or expand production facilities. Others are ploughing back an increasing proportion of local earnings.

The two countries are also expanding their transport links. Despite its route-paring in other parts of the world, Pan Am recently started a weekly Johannesburg-New York cargo flight. It expects soon to reinstate its passenger service, suspended two years ago. During that time South African Airways more than doubled its flight frequencies between Johannesburg and New York. South Africa's national shipping line, Safmarine, had 59 sailings from north America in the year to June, 1981, compared with only 34 in the previous 12 months.

APPENDIX 10

ARTICLE BY JOSEPH LELYVELD, PUBLISHED IN THE NEW YORK TIMES,
AUG. 10, 1981, "SOUTH AFRICAN DISCLOSES BID TO 'BREAK' BLACK
UNION"

SOUTH AFRICAN DISCLOSES BID TO "BREAK" BLACK UNION ¹

(By Joseph Lelyveld)

CAPE TOWN.—Only days after legislation was introduced in Parliament to legitimize further the status of black trade unions, South Africa's Minister of Police has acknowledged that a security officer circulated a memorandum on union-busting tactics among corporations in East London, where a militant black trade union has succeeded in organizing a mass membership.

The minister, Louis Le Grange, who made the disclosure in Parliament, gave no indication in responding to a legislator's question that he saw any irregularity in the security police's efforts to shape the development of the black trade union movement. His brief statement followed by only a few days the introduction of the latest installment in legislation changing the labor laws, a bill that was remarkable for South Africa in that it makes no reference to race in seeking to define the legal role of trade unions in the industrial system.

But while the legislation was giving black unions legitimate status, the security police memorandum to employers in East London, an industrial port on the Indian Ocean, made a series of proposals designed "to break the power" of unions that are determined to be outspoken on political issues. The employers, for instance, were counseled to keep a register of unemployed people "who could start work at very short notice" in the event of a strike.

Until two years ago, black trade unions had no legal status, and employers were under no obligation to deal with them. Few of them, in fact, did.

Now black unions can operate under the industrial conciliation system, which was originally designed for white workers who seldom threatened to strike since their privileges were defined on a racial basis and entrenched in the law. The new black unions have split on the question of whether that system can meet the needs of the mass of low-paid, unskilled or semiskilled black laborers who fill about 60 percent of all manufacturing jobs.

Unions that have refused to register under the existing industrial conciliation system have been the ones most closely monitored by the security police. These include the African Food and Canning Workers Union in Cape Town, whose national organizer, Oscar Mpheta, is now the main figure in an elaborately-staged murder and terrorism trial here; the Motor Assemblies and Components Workers Union, a new group that has taken root at the Ford Motor Company in Port Elizabeth and spread from there to neighboring factories, and the South African Allied Workers Union of East London.

UNION SAYS IT IS SUCCEEDING

The leaders of the East London union have been repeatedly arrested and detained without charge in the last year, but despite the arrests it says it has signed up a membership of 16,000 black workers in that time. About 2,000 of those have since been dismissed as a result of strikes and other confrontations with East London companies, only one of which has entered into a formal collective-bargaining agreement with the union.

Others, including two American-owned companies, Johnson & Johnson and Hoover Appliances, have acknowledged that the union has won the allegiance of a majority of their black workers, and they have negotiated with its leaders on the question of formal recognition without reaching an agreement. The publication of the security police memorandum confirmed earlier reports that the companies have been under official pressure to withhold recognition.

The memorandum declared that the leaders of various business organizations in East London had been attending meetings, presumably with representatives of the security police, "where the aims of S.A.A.W.U. are explained to them as well as the necessity of uniform action by industry in East London against S.A.A.W.U." The S.A.A.W.U. is the South African Allied Workers Union.

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The memorandum suggested that the lists of unemployed people in the area be kept at a "central point" so that "firms with labor differences or problems can be informed about these lists and the number of unemployed persons looking for work and therefore do not have to fear a strike."

The text of the memorandum was printed in *The South African Labor Bulletin*, a journal for social scientists and union activists, but it said the document was jointly drafted by the security police, the Ministry of Manpower Utilization and the Ministry of Cooperation and Development. The memorandum blames much of the ferment among black workers in recent years on "white agitators," and asserts that workers were being "indoctrinated."

"One can expect that in the near future East London will be plagued by a wave of strikes," the memorandum warns. A police raid on the union's office, it says, revealed that it had potential organizers "in practically every big business or industry in East London."

The memorandum concedes that black workers have real grievances, such as low wages and separation from their families under the South African migrant labor system. But when it speaks of "long-term solutions" for the problem of labor, militancy it mentions only the possibility of legislation to force black unions to limit their activities to specific industries. Such a law, the document suggests, would inhibit the growth of a labor movement capable of calling a general strike on a local or national basis.

It also suggests that employers should seek to "activate and motivate" the Trade Union Congress of South Africa, a white-led movement that has been signing black workers in competition with the unions that are led by blacks.

The memorandum is reported to have been circulated late last year. Since then, companies in East London that have faced strikes by the South African Allied Workers Union have tended to discharge the strikers, hire unemployed workers and negotiate agreements with white-led unions.

APPENDIX 11

ARTICLE BY JOSEPH LELYVELD PUBLISHED IN THE NEW YORK TIMES,
NOVEMBER 28, 1981, "14 UNIONISTS SEIZED BY SOUTH AFRICANS"

FOURTEEN UNIONISTS SEIZED BY SOUTH AFRICANS¹

HEADS OF POLITICALLY OUTSPOKEN BLACK TRADE GROUPS HELD BY THE SECURITY POLICE

(By Joseph Lelyveld)

JOHANNESBURG.—In coordinated predawn raids today in several cities, the security police arrested the leaders of some of the most politically outspoken black trade unions under a law that allows detention without charge.

Also arrested were students, researchers and political activists in what appeared to be part of a continuing drive to uncover links between organizations operating legally in South Africa and the banned African National Congress, the main movement of resistance to white minority rule. By this evening, 14 arrests had been confirmed, but the list was said to be incomplete.

The trade union leaders included Sam Kikane, general secretary of the South African Allied Workers Union, which has refused to register under the country's new labor laws; Emma Mashinini, general secretary of the Commercial, Catering and Allied Workers Union, and Samson Ndou, president of the General and Allied Workers Union.

The new labor laws, which have removed formal racial restrictions from virtually all the regulations governing trade union activities, have stimulated the growth of black unions. Some of these are prepared to work within the existing industrial conciliation system; others reject it entirely or in part. The security police have been especially active in monitoring the activities of black unions that couple their objections to the labor system with demands for political change.

Those arrested today were held under a law permitting detention without charge for 14 days. Frequently when the 14 days are up, the authorities simply extend the period of detention, which they are permitted to do indefinitely under the Terrorism Act. That law appears to have been used against nearly 20 people, many of them students at Witwatersrand University here, in the last two months.

A description of one of this morning's raids was provided by Peter Mayson, whose own apartment was searched after security policemen had ransacked the residence of his father, Cedric Mayson. Cedric Mayson, an officer of a religious organization that concerns itself mainly with political issues, was taken into custody by 10 security officers who came to his home at 5 a.m., his son said. The apartment of another son, in nearby Benoni, was also searched, Peter Mayson said.

The homes of several religious figures who have been politically active were searched at the same time, including officers of the South African Council of Churches, the Anglican Church's Department of Mission and a Roman Catholic lay order. While these searches were going on, police officers in camouflage battle dress reportedly stood guard outside the houses.

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should it be seen as a catalyst for wholesale, immediate change in South Africa. An effective fair employment code can, however, make a meaningful difference in the lives of the men and women who work for American firms and can send an unmistakable signal that our country does not countenance South Africa's system of racial discrimination.

BANK LOANS

Another component of my legislation is a ban on American bank loans to the South African Government or its parastatal institutions, except for any loans made for educational, housing, and health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups. Some American banks have had the foresight to suspend all loans to the South African Government. Other American banks have taken a different approach and have thereby helped to provide financial and psychological sustenance for the apartheid regime.

The South African Government has hailed the loans it has received from American banks as evidence of its international creditworthiness and respectability. South Africa says these loans are used to support black development — but always in the context of separate development, rather than for facilities accessible to and benefiting all population groups. It is simply unacceptable for American banks to directly promote a policy of racial separation through these loans.

My bill does not bar loans from U.S. banks to private entities in South Africa. It does, however, mandate disclosure of the amount, purpose, and recipient of these loans. The American people have a right to know the full extent of our economic cooperation with South Africa.

KRUGERRAND SALES

Finally, my legislation would bar the importation into the United States of the krugerrand or any other gold coin minted or offered for sale by South Africa. Current holders of these coins would be allowed to keep or sell them.

Since the U.S. Government removed the restrictions on the purchase of gold by American citizens in 1975, South Africa has flooded the U.S. market with krugerrands. In 1978 and 1979, Americans purchased nearly half of all the krugerrands sold by South Africa. In 1978 this amounted to nearly \$600 million and in 1979 the figure totaled over \$800 million. In 1980, U.S. citizens bought \$941 million worth of krugerrands, thereby accounting for more than half of South Africa's worldwide sales of this item. This \$941 million is higher than our 1980 trade deficit with South Africa — \$860 million.

South Africa has used the sale of krugerrands to help push the cost of gold to abnormally high levels. While the resulting upsurge in gold prices has been the principal stimulus in the resurgence of the South African economy, South Africa has not used its increased wealth to promote genuine social change.

As gold prices have risen, the South African Government has not undertaken any steps to dismantle apartheid, institute nondiscriminatory franchise, end residential segregation, terminate its homelands policy, or put large sums of money into black education and social services. The majority of the Government's increased earnings has gone into defense expenditures and major industrial and commercial projects run by the Government, and to expand social services for whites — not blacks.

By barring the importation of the krugerrand, Congress will prevent South Africa from draining away precious foreign exchange from our country in a manner which supports apartheid. A prohibition on krugerrand sales will symbolize to black South Africans that the United States is increasingly allied with their struggle for human rights, social justice, and complete political equality.

WAIVER PROVISIONS

The legislation allows for termination or waiver of various provisions to meet changing circumstances. The President may waive fair employment provisions of the bill upon a presidential determination that enforcement would harm the national security interest of the United States. Congress would then have 30 days to overturn that decision by a joint resolution of disapproval. In addition, the fair employment guarantees in the bill would no longer apply if the President determined that the Government of South Africa has terminated its system of racial discrimination.

Provisions of the bill governing bank loans and krugerrand sales would be waived for up to one year if the President determines that the Government of South Africa has made substantial progress toward the full participation of all the people of South Africa in the social, political, and economic life of that country, and toward an end to discrimination based on race or ethnic origin. This waiver could also be overturned by joint action of the House and Senate within 30 days.

The multifaceted, measured approach I have outlined here will not work miracles in South Africa. It can, however, demonstrate to the majority of the people of that country that the United States is willing to act, as well as speak out, against the day-to-day horrors of the apartheid system. It can demonstrate to many of our friends on the African Continent — including such strategically important nations as Nigeria, Kenya, and Zimbabwe — that the United States shares their view that South Africa's racial policies are unacceptable.

Passage of the bill would have a beneficial effect within South Africa and would help us shore up our relationships throughout the continent. Not incidentally, it would undermine efforts of the Soviet Union to portray us as defenders of the apartheid system while itself posing as an advocate of human dignity and freedom.

Some opponents of this type of legislation make the claim that quiet diplomacy will prove more effective than mandated restrictions on commercial activity. But those who advocate a course of gentle persuasion and voluntarism toward South Africa carry a particularly heavy burden of proof. For 32 years, since the Nationalist Party came to power in South Africa, the United States has pursued quiet diplomacy — and the situation inside South Africa has not significantly improved. When change does come to South Africa — as it inevitably will — the United States may wind up paying a heavy price for leaving the impression, our public pronouncements notwithstanding, that we would not offer meaningful opposition to the apartheid system.

Another critique of bills regulating our commerce with South Africa comes from those who claim it is wrong to single out South Africa when many other African nations, not to mention other countries elsewhere, have engaged in a systematic denial of human rights and escaped any punitive action by the United States. In fact, over the past several years, Congress has passed legislation directed against the Central African Empire, Uganda, Zaire, Cuba, Chile, Argentina, Vietnam, Cambodia, and other nations — in an effort to improve human rights or simply to express American abhorrence over the way people in these nations have been treated. Having imposed on these countries sanctions ranging from reduction in military assistance to elimination of economic aid and trade, Congress would certainly be justified now in placing modest restrictions upon our commerce with South Africa.

I hope that the two Subcommittees meeting today will support this legislation. I believe H.R. 3008 would serve both our sense of national purpose and our national interest:

Mr. WOLPE. Thank you very much, Mr. Solarz.

Mr. ERDAHL. I would ask unanimous consent that the statements of all three witnesses be made a part of the official record.

Mr. WOLPE. That was my oversight and I thank you for that.

At this point I would like to invite Congressman Bill Gray to present his testimony.

**STATEMENT OF HON. WILLIAM H. GRAY III, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. GRAY. Mr. Chairman, I have been alarmed by the increasing use of violence by the South African Government to repress the legitimate rights and freedoms of the black majority. In fact, rather than the situation "improving," as some would have you believe, an increasing crescendo of violence and counterviolence continues to plague South Africa.

The response of our Government, the policy of "constructive engagement," is in my judgment a dangerous course for America. Growing U.S. economic investments encourage the appearance of our support for and involvement in the violence, racism, and inhumanity of apartheid.

Therefore, I appear here today in support of H.R. 3597, which would cut off all new U.S. investment in South Africa.

I would like to point out the increase in U.S. investments and their interaction with apartheid, review the main provisions of H.R. 3597, and answer some of the major critiques voiced against this measure. American investment in South Africa is about 17 percent of total direct foreign investment in that country, and is concentrated in mainly such areas as manufacturing, chemicals, and machinery. U.S. investments, which had grown by 11 percent between 1977 and 1978, grew by only 1 percent between 1978 and 1979. However, the rate of U.S. investments in South Africa increased dramatically to 18 percent between 1979 and 1980.

Despite this picture of growing U.S. investments, there are two other contradictory trends. First, the largest proportion of the increase in U.S. investment in South Africa is composed of reinvested earnings. Second, the number of involved firms has dropped from an estimated 350 in 1976 to just over 300 today. This reflects divestment by a number of firms.

One important example is the giant International Telephone & Telegraph Corp., which sought to divest its remaining 33 percent share in its affiliate, Allied Technologies, Ltd., amounting to \$50.5 million. Business Week in October 1980 also reported that since January 1979, U.S. direct foreign investment had amounted to 53 million rands, but divestment by U.S. firms was 43.4 million rands in the same period.

Nevertheless, U.S. investment in South Africa continues to be vital to their economy. For example, South African Minister of Finance Owen Horwood has recently said:

The story of the economic development of this country is intimately bound up with foreign capital, technology and expertise. Significant investments usually bring all three. It allows us to do what we want to rather more quickly. It allows us to do some things better than we would otherwise do.

Taking Mr. Horwood at his word, we should remember that among those things we help South Africa do better, more quickly, and in greater degree, is the application of the racist system of apartheid. By permitting investment in South Africa, we help to see to it that:

Police may more efficiently arrest blacks for pass law violations, and shoot down unarmed youths and other protesters against apartheid;

The influx control system works to keep ready a pool of unskilled black labor for the mines, industry, the white homes, and agriculture;

Whites hold 87 percent of the best land while they complete the bankrupt homelands scheme for blacks;

The disparities in wages, and in spending for social services, result in a grossly inequitable standard of living for blacks;

Militant black labor unions continue to be suppressed and their leadership silenced;

When Bishop Desmond Tutu, Dr. Motlana, or others of the courageous black leaders speak out against American investments they are arrested, detained, and banned.

That is why I have introduced H.R. 3597, the South African Investment Prohibition Act, which provides that upon the effective date the President shall prohibit any person from the United States from making any new investments in South Africa. This act includes a prohibition on any reinvestment of earnings or profits by persons currently investing in South Africa. Violation of these prohibitions may result in civil penalties of not more than \$10,000 and criminal penalties of not more than \$50,000 or 10 years in jail, or both. Firms may be subject to a maximum fine of \$1 million.

Finally, the act allows the President to waive its provisions, upon his determination that South Africa has made substantial progress in the elimination of apartheid. Such a determination requires the consent of Congress.

While demanding a prohibition on all new investments, I am fully conscious of the fact that H.R. 3597 might jeopardize the total market share of American firms, which currently stands at 17 percent. However, the underlying rationale of this act is that further U.S. investment only improves the ability of the South African regime to perfect its vicious and racist apartheid system. Therefore, it is the clear intention of H.R. 3597 to limit the economic expansion of U.S. firms in South Africa.

Such an expansion of investments by U.S. firms is made possible by the reality that high rates of return are possible in South Africa, even during periods of political uncertainty. Estimated pay-back on investment for some companies now runs as short as 5 years.

I also do not believe that new investments should be permitted through the escape hatch of investing to improve the condition of blacks. First, given the statements which continue to emanate from the black leadership in South Africa, it is highly doubtful that they would approve of the use of this subterfuge for continued investment. But of course, you know that it is unlawful for any South African to speak against foreign investment in the country. So any black opinion favorable to such investment is difficult to evaluate.

Second, the raising of wages and improvement in the status of blacks has been enunciated as South African Government policy. But Government commitment has not been reflected in concrete action. Black wages have improved faster than white wages in the past decade, although admittedly black wages started from a much lower base ratio of 4 to 1 and remain relatively low. For despite the tremendous earnings from gold, the national budget for 1980 did not reflect a commitment to significantly higher wages for blacks, a fact even some South African businessmen characterize as disappointing.

In any case, the problem is growing with the magnitude of black unemployment. The South African Government put the official rate of black unemployment at 9 percent for what it calls the economically active black population, but the actual is estimated at 20 to 25 percent when the so-called homelands are included. Because the South African Government has failed miserably in this regard, corporate actions have become both instruments of Government incrementalism and shields for Government inaction.

I believe that H.R. 3597 is a workable policy in that it is possible to monitor the results. There are already established monitoring devices resulting from other related legislation. The Department of the Treasury employs a series of controls governing the economic activity of U.S. corporations and individuals abroad, covering such problems as taxation on foreign assets, earnings, and profits. The Treasury Department also employs current controls and participates in the regulation of certain exports.

The Department of Commerce regularly monitors business investments in South Africa, and in cooperation with the State Department administers arms embargo program. Moreover, the President would be authorized to institute other monitoring measures in an effort to obtain compliance with H.R. 3597.

We have often heard that if the investment activity of American business is curtailed others would fill the resulting vacuum. Indeed, this may be true, but it may also cause a crisis of confidence so severe that it may take a considerable period for it to be filled. But more importantly, this argument implies that American business should be allowed—as an extension of our country and way of life—to operate under the most odious circumstances anywhere in the world. I strongly reject this notion.

In conclusion, let me reemphasize the fact that change in South Africa has not occurred without pressure. Internal and external pressures have been responsible for even the most modest movement inside South Africa relative to change. What we do by permitting the expansion of American investments is to take the pressures off of the South African regime for serious change.

Also, a halt in new investment could favorably affect our trade and investment picture in the rest of Africa, where investment is expanding faster than in South Africa. Our investment in the rest of Africa is now two-thirds that in South Africa. So we continue to irrationally jeopardize better commercial relations with the rest of Africa's 300 million inhabitants by investing in 3 million.

It is difficult to believe that we are now embarked upon a foreign policy toward South Africa which holds hostage the very lives and fortunes of 20 million people in both South Africa and Namibia for

the safety of our access to minerals. And it is impossible to respect a foreign policy which puts opposition to communism as an oppressive doctrine on a higher moral and practical plane than opposition to apartheid.

H.R. 3597 is an instrument which will help us move from rhetoric to action. And in doing so, it will help us to move toward the existing world consensus on South Africa and away from the isolation of neutrality.

[The annex to Mr. Gray's statement follows:]

ACTS OF VIOLENCE IN SOUTH AFRICA SINCE 1978

1. The hanging of Solomon Mahlangu precipitated a riot by 200 students who stoned buses in protest. (April 1978)
2. Explosives are discovered near Soweto. (April 1978)
3. ANC Guerillas storm police station, set building afire in Soweto. Black officer killed. (May 1978)
4. SAG sentences representatives of the Students Representative Council to terms of 5-8 years for 1976-1977 rebellions. (May 1978)
5. Courts sentence Sephronia Macropeng and Ganya for conspiring to overthrow the South African Government, and convicted some men of reviving the PAC for the purpose of sending people out of the country for military training. (June 1978)
6. Rebellions in Cape Town (August 12) for two days, police shoot and kill black teenagers they say are throwing firebombs at their patrol cars. (August 1978)
7. Black guerillas attack the Soweto police station, killing a black constable in retaliation for the hanging by the Government of Solomon Mahlangu. (May 1979)
8. Soweto Police station is again attacked by guerillas of the ANC. (November 1979)
9. 12 ANC guerillas were convicted of treason by the South African courts for participation in the Soweto uprisings of 1976. They had left the country to be militarily trained by the ANC. (November 1979).
10. Jacqueline Bosman and Llona Kleinschmidt were prosecuted for banning violations when they visited their friend, Winnie Mandela, wife of Nelson Mandela who is banned. (December 1979)
11. A wave of bus boycotts and worker strikes hit South Africa. (December 1979)
12. January 1980 three ANC guerillas struck against a suburban Pretoria Bank demanding the release of Nelson Mandela.
13. Pass laws are tightened and arrests rose 100,000 between 1979 and 1980. (Halberstam, "The Fire To Come in South Africa," The Atlantic, May 1980.
14. Police disperse black demonstrators in the Eastern Cape townships the weekend of August 23. (August 1980)
15. Students boycott against Apartheid in the schools of the Eastern Cape province was met by the closing of schools by the South African Government and forcing students to re-enroll. The result was rebellious demonstrations challenged by the Cape Town police which opened fire, killing some students. (September 1980)
16. Pieter Koornhof, Minister of Plural Relations is named honorary citizen of Soweto, provoking a clash between police and an estimated 3,000 students from Soweto. (October 1980)
17. The ANC launched a bombing attack against SASOL II, the South African coal gasification plant. (June 1980)
18. The Black Sash reports that although the Government has promised to improve the Pass Laws, it has done the opposite. People coming to them for whom they could do nothing rose from 2,811 in 1979 to 7,582 in 1980. Fully one-third of the South African prisoners are Pass Law arrest. (Post, June 21, 1981)
19. Guerillas near Durban blew up two transformers at a power plant forcing hundreds of businesses to close in the largest disruption yet. Also, police reported seizing sophisticated weapons near Johannesburg. (Wall St. Journal, April 22, 1981)
20. Police opened fire yesterday on 200 black university students who stoned the police station near the northern city of Pieterburg and suspected white radicals fire-bombed the suburban offices of the liberal opposition party.
21. Angola reports invasion by South African troops. Later the South African Government reports that the operation resulted in 1,000 casualties. (July 1981)

Mr. GRAY. Let me just conclude by simply saying I also support the legislation which has been introduced by my colleague, Mr.

Solarz, from the State of New York. I do not find it in any way contradictory with the action I have taken in introducing this legislation.

I believe, basically, that this legislation will apply greater pressure for change and states clearly where the American Government stands with regard to it.

The legislation of Mr. Solarz, I believe, will improve the quality of life for many of the blacks who currently reside in South Africa and who are forced to live under apartheid, but I am concerned with not only improving their lot who are living under slavery now in terms of giving them better tools, better living quarters, but to change the system of slavery and apartheid altogether, and that is what my legislation is directed to.

Thank you, Mr. Chairman and members of the subcommittees.

Mr. WOLPE. Thank you very much.

Let me ask, first, a couple of specific questions with respect to the detail of the legislation.

First of all, since your legislation exempts American firms with less than 20 employees, do you have any idea of the number of firms that would be exempt from the provisions of the legislation that are operating now in South Africa?

Mr. SOLARZ. I think it is somewhere in the vicinity of 60 to 70.

Mr. WOLPE. Are there any provisions of the fair employment practices code within the legislation that would be inconsistent with American law?

Mr. SOLARZ. To my knowledge, there are no such provisions in the legislation and indeed, so far as I can determine based on the hearings we held before the subcommittee in the past, there would be nothing in the fair employment provisions of my legislation which is inherently, certainly explicitly, inconsistent with South African canon law. All of these firms which testified about the Sullivan Principles said there was nothing in the Sullivan Principles which constituted violation of South African law. We asked, "Would you be in violation of South African law if you accepted the Sullivan Principles?" They said, "No," if they lived up to the Principles they would not be violating South African law.

Basically, while my fair employment code is somewhat different in one respect or another from Reverend Sullivan's, it is essentially the same. I don't think there is anything in here that would require a violation. There is a new South African law which gives the Government the right to prohibit companies from opening their books or divulging information to people who attempt to determine whether they are complying with these codes; but that is a determination for the South African Government to make.

If the South African Government imposed such a restriction and refused to permit the books or the activity of these firms to be monitored—my legislation does provide for a monitoring mechanism—we are not just going to permit the corporation to self-certify they have complied. If South Africa says monitoring will be prohibited, then the firms would be unable to demonstrate that they are in compliance and they would have no alternative but to close up shop or to suffer the penalties.

I think given the extent to which any action on the part of the South African Government precluding monitoring of these firms in

terms of compliance with fair employment principles would presumably force the firms out of business, the South African Government would not attempt to interpose such objections, particularly since they have made it clear they have no objection in principle to these fair employment codes.

The South African Government says if a firm wants to pay the blacks as much as the whites, that is up to them. So, I am not overly concerned that this legislation will put American firms on a collision course with the South African Government.

Mr. WOLPE. I want to come back to the issue of a monitoring mechanism in a moment.

You indicated the ban on the loans that has been proposed here to the South African Government would presumably be an all-encompassing ban. Recently, Citibank provided \$50 million of a \$200 million loan to a South African foundation, and justified this loan on the basis of helping black South Africans to improve their standard of living.

How would you react to this? Should the loans to the South African Government or the South African foundations, or loans guaranteed by the South African Government be denied by U.S. law?

Mr. SOLARZ. Under the terms of my legislation, all loans to the South African Government or any organization controlled by the South African Government would be prohibited except for loans for the purposes of health, education, or housing for projects or programs that were available to all the people of South Africa on a nondiscriminatory basis.

If you had a project that was designed to help blacks but only blacks, and whites were prohibited from enjoying the benefits by virtue of the fact they were white, the loan would not be able to go forward.

Mr. WOLPE. Let me yield to the gentlewoman from New Jersey.

Mrs. FENWICK. What happens to the cadet schools that are deliberately set up for black employees who want to go on to a course that is not offered in the black university, that is, offered only in the white university, and the school is set up for them because they have to pass an exam or they can't get into the higher courses?

Mr. SOLARZ. You get into a very tough but critical point. As I tried to think this problem through and as I consulted with a variety of people, many of whom felt, by the way, that any loans to the South African Government for any purpose serves to strengthen the Government—

Mrs. FENWICK. I am not talking about the Government; I am talking about the foundation.

Mr. SOLARZ. Some people are against any loans for any purpose whatsoever. My feeling was that if you had a program which was genuinely designed to help the black people of the country in a way which would not also work to maintain the very system of apartheid to which we are opposed, the loan ought to be permissible.

But the key here is that the purpose of the loan has to be for a project or program which is open to everybody.

Mrs. FENWICK. To get them into a white university, that is the purpose of the school.

Mr. SOLARZ. But the school would have to be a school which whites were eligible to participate in as well because otherwise, you see, you are then objectively supporting the apartheid system. You are saying to the South African Government, "We will provide funds to you to administer programs"——

Mrs. FENWICK. No, it would not be the Government. I agree with you on the Government.

Mr. SOLARZ. My prohibition on loans only applies to the Government or to agencies controlled by the Government. If you have a private foundation in South Africa which wants to have a program to teach blacks some skills that will enable them to better themselves, the loan could go forward, but it would have to be reported. There is a reporting provision on all loans to the private sector in South Africa.

But if you want to make a loan to the Government, the loan is only permissible if it is for a program or project which is available to all on a nondiscriminatory basis.

Mrs. FENWICK. As a fundraiser for the United Negro College Fund for the past 15 years, you are making me nervous.

Mr. SOLARZ. That is a very fine point. But the United Negro College Fund in a country where you don't have legally enforced segregation is different from a loan to an all-black school in a country where the black school can't be a multiracial school even if it wants to.

Mr. WOLPE. If I may interject, cadet schools are in fact private, established by Anglo-Americans.

Mr. SOLARZ. Yes. It would be permitted if it were private.

Mr. WOLPE. I would like to ask Congressman Gray—the Rockefeller Study Commission suggested a voluntary suspension of new investment by American corporations except for programs related to black education, housing, and social dimension—why do you conclude the voluntary approach to investment is unsatisfactory and, second, would you, as you contemplate the prohibition on any new investments, encompass investments that were at least nominally targeted for social purposes?

Mr. GRAY. The reason why I don't believe that the voluntary method suggested by the Rockefeller report will work is, one, the clearcut example of the Sullivan Principles themselves. That is why Dr. Sullivan was here today asking for legislative assistance, statutory assistance, because even a very modest step such as the Sullivan Principles, American companies have not voluntarily participated in and complied with fully. Therefore, I don't believe that to get the American corporate sector to prevent new investment will happen voluntarily.

The second thing is, because of the kind of letters that were cited by Dr. Sullivan, which you have a copy of and I was one of those who signed that letter, there has been no response at all to all of the entreaties to try to pull together people from the private sector to talk just simply about the Sullivan Principles, let alone anything like new investment. So, I don't believe the voluntary approach that was stated by the Rockefeller Commission report will work. I don't think it will ever happen. In fact, in the conversation with Mr. Franklin Thomas not too long ago, he stated that if after a suf-

ficient period of time there wasn't any reaction to the voluntary approach, that they might reconsider their position.

In fact, I think it was also stated before this subcommittee back in the summer. That does not mean he is supporting a mandated approach, but he feels very strongly that if the voluntary approach does not work, that ought to be considered.

The second part of your question, Congressman Wolpe, what about those American corporations that are doing charitable things for the black folks? I have two feelings about that: One, you are talking about improving the equipment, the living quarters and the tools of slavery, not about changing slavery. You are just talking about whether the slave is going to live in a one-room shack or two-room shack, but slavery still exists.

I, therefore, support the fact that some actions ought to be taken, such as the kinds of modest actions that are being suggested by Congressman Solarz in his approach, which will provide future leadership and training, but I really don't think you are beginning to apply significant pressure for a real change in the apartheid system, for us to disassociate ourselves with its economic underpinnings.

What I have tried to say is that by our investment we are tremendously involved in the apartheid system.

Mr. WOLPE. The last question I have, and then I will yield to my colleagues, on the definition of "no new investment," so that we understand clearly what is being proposed here, I heard Dr. Sullivan talking about no new investment except for retooling, and so forth.

Would you contemplate a flat ban on new investment, or would you contemplate for retooling or any other criteria you would apply it?

Mr. GRAY. My bill calls for no new investment as well as really reinvestment; however, I would agree to an amendment that would perhaps very carefully provide for minimum retooling. I am afraid that retooling can often become a window for reinvestment which continues the same problem, as stated by the facts that I pointed out in my testimony.

Mr. WOLPE. Thank you very much.

Mr. CROCKETT. Will you yield?

Mr. WOLPE. I yield.

Mr. CROCKETT. I have just one question: Is your bill limited to new investment, because the language in section 302 would authorize the President to issue regulations prohibiting any U.S. person "from making any investment in South Africa"?

Mr. GRAY. It is new investment.

Mr. CROCKETT. You would need to insert the word "new" in that; is that right?

Mr. GRAY. Anyone who would be investing after the passage of this act would be new investment. In other words, Congressman Crockett, those who already have investments there—

Mr. CROCKETT. The bill does not affect it?

Mr. GRAY. It just simply says they cannot increase their investment; however, if Congressman Crockett retired and became the head of a new corporation that wanted to open up a plant in South

Africa and you are not already there, it would prevent that. That is why the wording is that way.

Mr. WOLPE. Mrs. Fenwick?

Mrs. FENWICK. I take it that section 404(a) is where the monitoring takes place; is that right?

Mr. SOLARZ. Let me see, 4(a).

Mrs. FENWICK. That is it, 4(a). That sets up a council?

Mr. SOLARZ. It sets up two advisory councils, one in South Africa and one in the United States. The one in South Africa, which is appointed by the Secretary of State, is composed of 10 members; and I think this is important, it includes representatives of South African trade unions, the U.S. Chamber of Commerce in South Africa, the South African academic community, church leaders, and the U.S. Ambassador's designated representative. So you have a combination of indigenous American economic interests and indigenous South African—

Mrs. FENWICK. I am wondering if it would be a good idea to get Barlow-Rand, which is a big mining company, that has 750,000 workers, to get some people in South Africa who seem to be cooperating to get into the act and encourage others to do the same?

Mr. SOLARZ. If you look on page 8 of the bill, advisory councils, section 3(a), from lines 10 to 18, it says:

The advisory council shall be composed of 11 members appointed by the Secretary from among persons representing trade unions committed to nondiscriminatory policies, the U.S. Chamber of Commerce, the South African academic community, and from among South African community and church leaders who have demonstrated a concern for equal rights.

The United States Ambassador to South Africa shall also be a member of the advisory council.

Mrs. FENWICK. That would preclude any South African businessman?

Mr. SOLARZ. Except insofar as the businessman also—

Mrs. FENWICK. Is a community leader?

Mr. SOLARZ. Right.

Mrs. FENWICK. I think that is a sound provision.

Mr. SOLARZ. Also to give the black people in South Africa some confidence that this was going to be fairly and sensitively interpreted and enforced.

Mrs. FENWICK. The bishop?

Mr. SOLARZ. He would be qualified if he has not been banned by then.

Mrs. FENWICK. Yes, if he can get out of his house.

Mr. SOLARZ. I think there is a remote possibility that something like this might fly around here. I certainly think if you and Congressman Erdahl were prepared to support it, its chances would be considerably enhanced. Frankly, without some Republican support, this legislation obviously has no prospect whatsoever. But it seems to me this is the very least we can do.

I remember very vividly the hearing we had and your colloquy with Reverend Sullivan a year or so ago, when you asked whether a greater effort could not be made to get the American firms voluntarily to comply. We had a bit of a running debate about whether voluntary compliance was really the best way to go. My own feel-

ing is that if the firms would voluntarily comply, that is the best way to go, no doubt about it.

Since that time, unfortunately, we have not made much progress. We have, I think, taken a creative initiative as a subcommittee; all of us have sent a letter to the President asking him to convene a top-level meeting of the chief executive officers of all of these companies doing business in South Africa, to urge them to voluntarily comply with the Sullivan Code.

We sent this letter on August 4. So far we have not received a response. I know the President likes to focus on one issue at a time and he has been otherwise occupied. In the absence of some initiative like that, and I have to say candidly I am not overly optimistic that there will be a meeting in the East Room next week with the President presiding over such a gathering, I don't see any realistic chance any longer of substantially increasing the level of voluntary compliance. I think we have reached the point, apparently Reverend Sullivan, the inaugurator of this approach, has reached the point, of saying, if we are going to make any further progress, we need some action here to put some teeth in it.

Mr. WOLPE. Congressman Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman.

I want first of all to express my sincere appreciation to my two colleagues for their presentation here today.

Recently, the chairman of our subcommittee and I made a visit to South Africa—about a month ago—and we met with the American Chamber of Commerce in Johannesburg. We also met with some South African leaders. I remarked at the meeting at the American Chamber of Commerce that in my judgment American industry there was between a rock and a hard place insofar as the Sullivan Principles were concerned, and I think that will be true in the event Mr. Solarz is able to persuade the Congress to pass his bill.

Mr. Solarz referred to a more or less recent bit of South African legislation. I think it was the 1978 Protection of Business Act. That act was passed by the South African Parliament without any opposition. It is already in effect and it makes it a crime for a firm operating in South Africa to give out information about its activities without the permission of the Minister of Economic Affairs. It has been interpreted to even apply with respect to whether or not those firms can abide by a foreign court order.

So, the question is that since all firms, including foreign firms, in South Africa, are hostage to the South African Government, how can American firms there comply with the provisions of the Solarz bill—in the event we enact it—without offending South African law?

Mr. SOLARZ. The answer to that, Mr. Crockett, is that under the terms of the South African legislation the decision as to whether or not the firms are permitted to comply in terms of providing the information and the data which will be necessary to monitor compliance with the fair employment code is up to the South African Government.

They may very well decide to give the permission. In fact, they have given permission to European firms to supply data in order to establish compliance with the EEC code.

I further understand they have given permission to South African firms to provide data to comply with the Evans amendment which we adopted on the Eximbank legislation requiring any South African firm as a condition for the Eximbank loan to demonstrate that it follows fair employment principles.

So, based on past practice and precedent, even though the South African Government has a theoretical right to prohibit American firms doing business there from complying with the law, they have in fact permitted both their own and foreign firms to disclose this information.

In the event they should decide not to permit them to disclose the information, under those circumstances the American firms would either have to accept the penalties in the law or cease doing business. I suspect, given the character of the penalties, they would cease doing business. Precisely because they would cease doing business, I don't believe for a moment the South African Government would prohibit them from providing the necessary data, because the South Africa Government does not want to drive these firms away from South Africa. They would like more investment, not less.

I think it would clearly be adverse to their own interests were they to act in that fashion. If they did act in that fashion, so be it; that is their decision to make. It is certainly within our legal right to establish as a matter of law that American firms doing business have to comply with certain fundamental American principles.

Some people question the extraterritoriality of this approach, but the answer here is that once again there is ample precedent. We did this in the anti-Arab boycott legislation of which the very distinguished gentleman from New York, Mr. Bingham, was one of the fathers. You know the old Chinese slogan, defeat is an only child but victory has a thousand fathers. We can't say that Congressman Bingham is the only one who can claim paternity, but certainly he was among the leaders of that effort.

There were a few others involved. We have done that already. We did it with the Foreign Corrupt Practices Act, whereby we prohibited American citizens doing business overseas from paying bribes to foreign governments. There is nothing unusual here. I think it is within our constitutional right.

Mr. CROCKETT. My next question is to Congressman Gray: On the same trip to South Africa, we had occasion to talk with a black former schoolteacher who is under a ban and, for that reason, obviously, we can't disclose his name or give any more details, but the question came up about the effectiveness of banning, not just future American investments but also all American investments.

His response was that that would impose very, very little pressure on the South African Government, first because the bulk of the investments, at least the largest proportion, comes from Great Britain and Europe. The amount of American investment is the second largest; but if all American investments were pulled out of South Africa, there would still be enough money available for capital investment coming out of Great Britain and Europe to fill the void. He gave, interestingly enough, as a second reason: If you have confidence in the ultimate revolution and that a majority government headed by blacks is going to take over, then it is to their ad-

vantage to have as much investment already on hand in South Africa as possible, because of the difficulty they will incur afterward in getting what they need. More or less like Zimbabwe is having now.

What is your reaction?

Mr. GRAY. First, Congressman Crockett, to the first part of your question, and that is, would cutting off new investment have a severe economic impact on the South African economy, I think the answer is clearly that it will not in the long term. I think in the short term it will have an impact.

We represent about 17 percent of all foreign investment. I am not sure that the Western powers or even some of the other countries like Japan have the ability to step right in and fill that void rather quickly. So, I think there will be an economic impact, but I don't think we are talking simply about economic impact. I think we are also talking about applying pressure to a system that is invidious, that is absolutely outrageous, and that perhaps by taking this step we would also encourage other nations to examine their policies with regard to expanding investment in South Africa.

In fact, at a recent conference that I attended on the South African issues, I talked with several high dignitaries of the Foreign Bureau of the British Government and that was one of the questions that came up: If we removed ourselves or several nations removed themselves, what would happen to Britain? Would they be able to step in and fill the gap? One of them said, quite honestly, "We don't have the ability to expand. Certainly if we lose what we have there, we would have a difficult time."

They were sort of opposed to disinvestment or abandoning of new investment because of the size of it.

So, I don't think in the long term it will have a severe economic effect. I think it will have an effect in the short term, a crisis of confidence. It will clearly say to the world community of nations where we stand on apartheid.

With regard to the second point you make, after the revolution, well, after the revolution I wonder whether or not those factories are going to be there, if there is a revolution, a violent change of government. I hope that does not happen. That is one of the reasons why I agree with Dr. Sullivan's position, I agree with Congressman Solarz' position—anything that moves us in terms of putting pressure so that we can avoid a holocaust in South Africa.

You mentioned Zimbabwe. One of the reasons they are having that problem is because of the professional drain they had that wrecked many of their economic systems that they now have to rebuild. Certainly, I share the same concern that Dr. Sullivan shares when I think of what potential violence there is for a revolution in South Africa. I think it will be much more violent, much more significant, than any of the other kinds of conflict that we have seen in southern Africa, much more destructive.

So, the argument about, well, we want to leave everything intact, well, my bill does not remove those factories. It just simply says we are not going to expand.

When you look at the number of African workers, black Africans who are working in American plants, the latest figure I have is somewhere in the neighborhood of 17,000 to 18,000, that is all, a

very small number. Even if it has increased to 100,000, it is a very small number considering the total workforce of that nation, and it is not going to be vital if we stop new investment and reinvestment.

Mr. CROCKETT. Thank you, Mr. Chairman.

Mr. WOLPE. Thank you.

Mr. Erdahl?

Mr. ERDAHL. Thank you, Mr. Chairman.

The hour is late and I will try to be very brief and just touch on two points which come to me from our colleagues on the committee, as well as our colleagues who are witnesses today.

It seems to me a fundamental question here is, should we as a government, as a Congress, be trying to instigate improvements that might result in changes or that seem to have reluctance at least, that if we advance these improvements we forstall more abrupt changes that might be necessary?

Just to touch on that, it seems to me we should be working toward the improvements that result in change rather than to be so concerned about the change that might be very abrupt and potentially very violent.

Then, another question would come, and that is, we look at the companies that are involved in South Africa today and I think—and the Reverend mentioned before—they have been on the cutting edge as far as working for improvement, working for better conditions, more involvement by the black majority which has been excluded from the stream of life there, and don't we by prohibiting legislatively, and admittedly we can't have any impact at least directly on South African companies or European or Asian or other African companies doing business in South Africa, we are dealing only with American companies, but by retarding their growth or maybe prohibiting new companies from coming into South Africa, if I could use the biblical phrase, aren't we in a sense trying to remove the leaven from the lump that could really result in good, and maybe gradually the improvement ultimately resulting in fundamental change?

Mr. SOLARZ. Let me, if I might, respond first, because I have to get back for an important appointment.

You do raise two very thoughtful questions. Insofar as the second one is concerned, I would point out that my legislation is not at all incompatible with the point of view that you have expressed. So, I will let Congressman Gray respond to the desirability of prohibiting all new investment.

My own feeling is that on balance the argument he will offer you makes sense, but I can understand why someone would be uncomfortable with it.

Assuming on the merits you think it would be a mistake to prohibit all new investment, I would hope you could still support legislation which mandates fair employment codes of conduct to those American firms doing business there, and which prohibit not new investment but loans to the South African Government in the same sense that the Evans amendment prohibits the Eximbank from extending credit unless there is substantial progress in the elimination of apartheid.

Insofar as the first question is concerned, I think what both of us in somewhat different ways are trying to do here is to constructively contribute toward peaceful change in South Africa, which we believe will only come, among other things, from increasing domestic and international pressure on South Africa.

If over the course of the last 30 years when none of these methods were tried there had been constant visible demonstrable progress, I think the argument that this kind of pressure would be counterproductive would perhaps make more sense; but the record in the last 30 years is that precious little progress has been made, and certainly none of the fundamental problems has been addressed or resolved.

In the meantime, people of that country are growing more and more impatient.

Finally, I would say it would be in my judgment a mistake to look at this legislation exclusively in terms of the degree to which it advances or doesn't advance the prospect for change in South Africa.

The truth of the matter is that neither Congressman Gray's bill nor my bill nor a bill that would require instantaneous disinvestment, if it were adopted, is going to make that much of a difference. Congressman Gray pointed out the United States has 17 percent of all foreign investment. It is a much smaller percentage of the total investment. Even if we could take out all our investments tomorrow, it would not bring South Africa to its economic knees. They would continue.

In my view, the real purpose of this legislation, Congressman Gray's as well as mine, is to demonstrate in deeds, not just in words, where we stand. Anybody who has traveled throughout Africa knows how hollow our rhetoric has begun to sound, not only to the black leaders outside of South Africa but maybe even more importantly to the black people within South Africa. They want to see our rhetorical opposition to apartheid matched by some deeds.

I have tried to find a formula which would enable us to express our opposition in a tangible way, but in a way which is compatible with the prevailing political realities in the Congress and around the country. There is no magic in my particular proposal. I could give you a dozen other possibilities that in those terms would serve the same purpose. I think Congressman Gray's legislation would serve it admirably; however, if his legislation ultimately does not have enough votes and mine does, I think this would be better. If mine did not have enough votes and there could be another approach that could, then that would be better.

I am approaching this as someone who is profoundly opposed to apartheid but is also by instinct and inclination an incrementalist.

I would like to move the process along as far as I possibly can in the direction I want it to go. The only real objection to that approach that makes any sense to me is the one that was articulated by Congressman Crockett, who raised the possibility that this kind of approach ultimately only buys time for the existing regime that by permitting investment or appearing to legitimize it, we reinforce the government, or whatever.

The answer to that, I think, is that the people in the trenches, the people who suffer the most from this system in South Africa,

are the very ones who would be most overjoyed if this legislation were enacted. All of the black leaders to whom I spoke would rejoice if this legislation were enacted, not because they think this would bring them salvation tomorrow, but because it would be a meaningful demonstration that the greatest, most powerful nation in all the world, one that professes to believe in the ideals of freedom, democracy, and liberty, to which they themselves are so profoundly committed, is finally taking an action which demonstrates in concrete terms that it is on their side.

In my view, if the Soviet-United States relationship does not get completely unstuck and we don't end up with a Third World War, the situation in South Africa is more and more going to emerge as the dominant issue for the rest of our century. It is going to engage the attention of the entire world.

I think it is profoundly in the interest of this country for us to be perceived on the right side of that issue.

The question is not, as Assistant Secretary Crocker put it, whether we choose between black or white; that is not the issue. The issue is whether we choose between justice and injustice, right and wrong.

Unfortunately, in spite of the fact that most people in our country are opposed to apartheid, and, I am sure, the President is opposed to it, the Secretary of State and Mr. Crocker are opposed to it, the problem is that people don't really believe them because they don't see deeds to match the words. This is a very small step, a very small step. It seems to me it is the least we can do, but perhaps also the most we can do, given the prevailing political realities. I think it would be a tremendous initiative on the part of this committee if we could somehow take the lead in trying to persuade our colleagues on the full committee and then in the House as a whole that this kind of an approach, with whatever changes you deem appropriate and wise, would be profoundly in the interest of our country at this time.

Mr. WOLPE. Do you want to respond?

Mr. GRAY. I think that Congressman Solarz has summed up my opinion as well. I would just simply add to Congressman Erdahl's question, and that is, actually conditions in southern Africa have gotten worse in the last 20 years, not better. Yet we continue to walk around and talk about, well, things are going to be improved, we are hoping for a change, hoping that it is going to happen.

We see a few changes on the surface, veneer kinds of things, the invitation of performers and athletes, those kinds of things, and we say, "Hey, change is really taking place." It is not taking place. In fact, I argue that things have actually gotten worse in the last 20 years in terms of arrests, in terms of banning, the homelands policy and as one who was in South Africa last year and talking with many of the black leaders there, yes, they would welcome what Congressman Solarz proposes, but they also said they would welcome a banning of new investment or even disinvestment as a possibility. Why? Because they feel that our words say one thing, we are against apartheid, but yet we will not take any action to reinforce those words.

Of course, I suppose one must be judged eventually in life not on their rhetoric, not on their sermons, but upon how they live and their actions.

My legislation is an attempt to take us a little bit further than the modest step of Congressman Solarz. We are not going to change anything in South Africa. Eventually that is going to happen because the South Africans will change South Africa, black and white. I am hoping that change will not be violent but I am becoming increasingly cynical and pessimistic about those opportunities.

I simply say that this legislation that I am offering provides a little longer step, larger step, for us to add some action to the rhetoric that we have heard so much in this Congress, in these United States: Yes, we oppose apartheid. Here is an opportunity by saying no new investments to demonstrate to the world that we mean what we say.

Mr. ERDAHL. Thank you very much.

Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Erdahl.

As we close the hearing today, I want to make some particular observations for the record:

One of them is that while we were in South Africa during the visit that Congressman Crockett and I participated in, we received very concrete evidence of a major move backward that had taken place within the last 12-month period in which the original reforms that had been held out by the Prime Minister were essentially repudiated. In a speech before Parliament, while we were there, there was a whole reconsideration of the initial reforms and initiatives that had been advertised only 1 year ago and viewed by every element of society as a move away from the direction indicated by Mr. Botha 1 year ago.

Second, there was some discussion about companies that had signed on to the Sullivan Code that were implementing the Sullivan Code. I think it is important to note one of the largest, most important industries in South Africa is the mining industry, and most of the mining companies and companies which manufacture mining equipment have not signed the Sullivan Code—Newmont Mining Co., with 2,000 employees, and Dresser Industries.

We are going to be taking testimony in this committee from corporations, American corporations, that are doing business in South Africa. It is the intention of this subcommittee to invite among such companies the mining industries themselves.

I want to state publicly at this point I hope that those companies will participate in those hearings on a voluntary basis, but if not, I think the committee is pretty determined to have those companies appear before this committee, because I think their testimony will be critical in the evaluation of legislation before us.

I hope we will have the cooperation of the mining industry as well as the other companies involved in South Africa.

I believe that the two bills that have been introduced by you, Mr. Gray, and you, Mr. Solarz, have launched a very important new debate within this committee and within this Congress and in our country, that needs to take place.

I want to commend both you and Congressman Solarz for your leadership on this critical issue and for the very persuasive statements that the two of you have made today.

[Whereupon, at 4:50 p.m., the subcommittees were adjourned, subject to call of their respective Chairs.]

U.S. CORPORATE ACTIVITIES IN SOUTH AFRICA

THURSDAY, OCTOBER 15, 1981

HOUSE OF REPRESENTATIVES, COMMITTEE ON FOREIGN
AFFAIRS, SUBCOMMITTEES ON INTERNATIONAL ECONOMIC
POLICY AND TRADE AND ON AFRICA,

Washington, D.C.

The subcommittees met at 2:20 p.m., in room 2171, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. The joint committee hearing will come to order at this point.

Today, the Subcommittees on Africa and on International Economic Policy and Trade are holding the second of four hearings on two bills that have been introduced that relate to American business involvement in South Africa.

The first bill, introduced by Congressman Steve Solarz of New York, calls for American companies operating in South Africa to adopt and implement a mandatory fair employment code. It also prohibits the importation into this country of South Africa Krugers and bars American lending institutions from making any loans to the South African Government or to companies owned by the South African Government.

The second, sponsored by Congressman William Gray, calls for the United States to prohibit any new American investment in South Africa.

At today's hearing, we will hear testimony on these two bills from three administration witnesses whose departments are directly concerned with the impact and implementation of this legislation. In their testimony, I hope witnesses will outline in detail the positions of their departments on these bills, as well as their assessment of the role of American companies in South Africa.

In addition, I hope they will tell us what the administration is doing to get American companies to improve the working and living conditions of their black workers in South Africa, and what the U.S. Government is doing to insure that American companies are not actively contributing to the perpetuation of South Africa's system of apartheid.

Our first witness today will be Mr. Joseph Dennin, Deputy Assistant Secretary for Finance, Investment, and Services at the Department of Commerce. We will then hear, if he has arrived by that point, from Mr. Princeton Lyman, Deputy Assistant Secretary

of State for African Affairs. Finally, our third witness will be Mr. Thomas B. Leddy, the Deputy Assistant Secretary for International Trade, Department of the Treasury.

I would invite, at this point, Mr. Dennin to make his opening statement. The full text of the written statements that have been submitted by all three of our witnesses will, of course, be incorporated in the committee's record, and we would invite you to summarize your presentations at this point.

STATEMENT OF JOSEPH F. DENNIN, DEPUTY ASSISTANT SECRETARY FOR FINANCE, INVESTMENT, AND SERVICES, U.S. DEPARTMENT OF COMMERCE

Mr. DENNIN. Thank you, Mr. Chairman.

I appreciate the opportunity to testify today at these joint hearings of the House Subcommittees on Africa and International Economic Policy and Trade concerning H.R. 3597 and H.R. 3008, which pertain to U.S. investment in South Africa.

H.R. 3597 would require the President to exercise authority under the International Emergency Economic Powers Act to prohibit U.S. investments in South Africa. H.R. 3008 would require U.S. enterprises in South Africa to comply with certain fair employment principles.

It would prohibit new loans by U.S. financial institutions to the South African Government or to enterprises it controls. The bill would also prohibit importation of South African gold coins to the United States. Both bills prescribe a range of civil and criminal penalties for noncompliance.

The U.S. Government has supported the principle of equal and fair treatment of all workers and has encouraged U.S. companies operating in South Africa to adhere to the Sullivan principles, a private initiative which calls for equal and fair treatment as well as advancement of black workers. Since their implementation in 1977, 137 companies have signed the Sullivan principles, and these firms have about 80 percent of the employees of U.S. firms in South Africa.

These principles are an important force for social change in South Africa and are having a positive impact. As a result of the Sullivan principles, other countries such as Canada and the United Kingdom have developed codes of conduct concerning employment practices of their firms operating in South Africa.

However, the Department of Commerce must oppose enactment of these bills, for they would undermine the U.S. policy of constructive engagement with the Government of South Africa, and they run counter to established U.S. policy on international investment and trade. In our view, they would not succeed in their objective of bringing about greater social justice in South Africa, and they would damage our worldwide commercial interests.

During the last 20 years the U.S. Government has repeatedly demonstrated its disapproval of South Africa's apartheid system. We have imposed an embargo on arms and ammunitions to South Africa and on equipment for their manufacture and maintenance. We have gone beyond the U.N. arms embargo by prohibiting U.S. exports to the South African military and police.

Apart from export regulations, we have maintained normal diplomatic and commercial relations with South Africa. The Reagan administration is endeavoring to carry on a constructive dialog with the South African Government in an effort to bring about meaningful improvements in the social conditions and greater political participation by the nonwhite population. If these bills cause South Africa to refuse to cooperate with us in areas of mutual concern, they will be counterproductive.

H.R. 3597 would prohibit any new U.S. investment in South Africa, including those made from retained earnings of U.S.-owned affiliates, and it would ban new extensions of credit. That would levy far greater restrictions on U.S. firms in South Africa than are in force on the enterprises of any other country. Yet there is no indication that such action would change South African policies.

The United States is the second leading supplier of direct investment capital to South Africa, with a direct investment position of \$2.3 billion at yearend 1980. In recent years the growth of our direct investment in South Africa has been almost wholly attributable to reinvested earnings by the South African affiliates of U.S. firms. Little direct investment capital has been flowing to South Africa from the United States.

Therefore, action to stem the flow of new investment would be of little consequence and such new U.S. investment as might occur could readily be replaced by investment from non-U.S. sources. Meanwhile, prohibiting reinvestment of earnings would adversely affect the competitive positions of U.S. enterprises already in South Africa.

In so doing, it would unfairly discriminate against U.S. firms. It would also create a further impediment to additional employment by many U.S. firms which now support the Sullivan principles, and set a positive example for other employers.

It is unlikely that a prohibition on new U.S. investment would change South African policies. In fact, the South African Government might well retaliate against unilateral U.S. action. If reinvested earnings are prohibited, the Government of South Africa could counter the U.S. law by prohibiting U.S. affiliates operating in South Africa from repatriating their profits.

Under the 1978 Protection of Business Act, firms in South Africa, including U.S. affiliates, are already forbidden from complying with foreign orders to provide information about their operations without first obtaining permission from the Government of South Africa. U.S. sanctions such as envisaged in H.R. 3597 could harden the South African Government's attitudes and promote further isolation.

To further our balance-of-payments goals it is essential that the U.S. Government support the willingness of U.S. companies to explore new opportunities abroad. Our ability to do so is impaired when restrictions are introduced on investment. The U.S. Government has traditionally neither encouraged nor discouraged investment in any country, including South Africa.

Restrictions on investment or reinvestment in South Africa, or in any specified country, could lead U.S. companies to conclude that investment by them elsewhere in the world carries with it greater risks of potential U.S. restrictions and, therefore, it would act as a

disincentive to foreign investment. In turn, foreign buyers and investment partners might regard the United States as an unreliable partner.

The Reagan administration has pledged to remove burdensome regulations from U.S. business and to dismantle expensive and unproductive Government bureaucracy. H.R. 3008 would establish detailed new regulations for U.S. firms, involving both compliance and reporting requirements.

These requirements would far exceed any imposed upon the European competitors of U.S. firms in South Africa, placing the U.S. affiliates at a distinct disadvantage. To monitor and enforce compliance, the United States would be forced to create yet another Government bureaucracy.

American enterprise maintains approximately 350 affiliates in South Africa, of which more than 200 are large enough to be affected by the proposed legislation. We have long maintained that U.S. firms in South Africa can be a force for positive social change. By imposing an additional regulatory and reporting burden on them, H.R. 3008 could cause many U.S. firms to disinvest and thereby abandon their constructive role.

The bill's prohibition on the importation of gold coins from South Africa could arguably constitute a violation of our obligations under the GATT. GATT article 1 requires that exports from any signator nation be granted most-favored-nation treatment by their signatories. Article 11 of the GATT proscribes the use of import restrictions other than duties or taxes. South Africa is a signatory and adheres to its GATT obligation, and so should we.

H.R. 3008 would represent an attempted extraterritorial extension of jurisdiction into areas it has never before reached. As an attempt to assert jurisdiction over foreign conduct on the basis of nationality alone, treating foreign corporations as U.S. nationals on the basis of U.S. ownership, such legislation could easily be viewed by the international community as a symbol of U.S. insensitivity on the question of extraterritoriality.

H.R. 3008 would have adverse practical consequences as well. It would subject the South African affiliates of U.S. firms to reporting requirements exceeding those imposed on U.S. firms at home. It would also invite foreign governments to monitor their operations of companies in the United States owned by their nationals, and to force the companies to disobey U.S. laws of which they disapprove.

The proposed legislation also conflicts with our policy on codes of conduct for multinational enterprises. We have long maintained that, with certain narrow exceptions, such codes should be voluntary in nature, balanced in the obligations they impose on enterprises and government, and equally applicable to all firms, regardless of the nationality of ownership. By departing from these principles, H.R. 3008 would undermine our position and weaken our efforts to achieve multilateral discipline over international investment.

To conclude, the Department of Commerce believes that the legislation under consideration would be ineffective in causing South Africa to alter its apartheid policies, and would adversely affect U.S. economic and commercial interests. Therefore, the Department must oppose both bills.

The Department of Commerce clearly supports a policy of fair employment practices in South Africa but only through subscription to the Sullivan principles.

Answers to specific questions addressed to Secretary Baldrige by the subcommittees are attached. I would be happy to answer such additional questions as the subcommittees may wish to pursue.

[Responses to questions submitted to Secretary Baldrige by this subcommittee follow:]

RESPONSES TO QUESTIONS SUBMITTED TO MR. BALDRIGE BY THE SUBCOMMITTEES ON
AFRICA AND ON INTERNATIONAL ECONOMIC POLICY AND TRADE

Question: Has the Department taken any previous position with respect to the adoption of no new American investment in South Africa?

Answer: The United States neither encourages nor discourages investment in South Africa. This stance has been a tenet of USG policy regarding South Africa at least since 1964. The U.S. Government encourages all American firms operating in South Africa to establish employment conditions in their South African plants consistent with standards in their U.S. plants. If South African law renders impossible the implementation of American standards in their entirety, compensatory programs, such as increased training opportunities or general education grants, should be considered. The Department of Commerce provides to corporations interested in investing in South Africa examples of "enlightened employment practices", drawn from U.S. firms' practices. Even before the Sullivan Principles were announced, we urged U.S. firms to work with non-white trade unions in South Africa.

These views are expressed to the U.S. business community in such Commerce publications as the Overseas Business Report and the Foreign Economic Trends report. The U.S. Departments of Commerce and State and the U.S. Embassy and Consulates in South Africa will, upon request, provide a complete briefing on the problems and prospects of doing business in South Africa.

Firms are informed of the economics, and socio-political aspects of such an investment and of the domestic reaction amongst the firm's stockholders which could be anticipated from such a venture. The final decision on investing in South Africa rests with the firm whose capital is being ventured.

Question: Are any of the provisions in the proposed fair employment practices bill against U.S. law? Are any of the provisions against South African law?

Answer: While not violative of U.S. law, H.R. 3008 would extend the principle of extraterritorial jurisdiction into new areas. It would subject South African affiliates of U.S. firms to reporting requirements exceeding those imposed on U.S. firms at home. It could force the firms to violate South African laws such as the Protection of Businesses Act and place them in an untenable legal position from which we would be unable to protect them.

Question: Has the United States adopted any previous legislation regulating the activities of American businessmen or companies outside of the United States? When and where?

Answer: The United States has adopted regulations, particularly with regard to Justice (anti-trust and corrupt practices), Treasury (foreign assets control), and Commerce (export controls and anti-boycott regulations) to control various aspects of U.S. corporate activity overseas. Certain of these are country specific, such as foreign assets and export control. Others are non-country specific, such as anti-trust, foreign corrupt practices, and other elements of export control. Commerce can only speak with respect to the controls and regulations it enforces. Selected elements of these controls and regulations impinge upon the operation of U.S. subsidiaries in third countries. Host governments have repeatedly advised the USG of their opposition to these controls, which they view as an unjustified extension of U.S. control beyond our borders. Even in these cases, however, U.S. law does not require U.S. affiliates abroad to violate host country law. To do so could invite selective disobedience of U.S. laws by the affiliates of foreign firms here.

Question: What impact will the adoption of either of these bills have on U.S. business relations in South Africa?

Answer: The adoption of these bills will have a negative impact on U.S. business relations in South Africa. This legislation is designed to force companies operating in South Africa to conform to U.S. standards. It would not only be viewed by the South African Government as hostile, but it would also contain compliance requirements that may violate South African law. We would have to be prepared to expect retaliatory measures by the South African Government against U.S. firms in South Africa. These might be directed at dividends and interest or the transfer of property. We would also open up the possibility of having other foreign governments instruct their firms on how they should hire, fire, and treat their U.S. employees.

If U.S. investment in South Africa were to be prohibited, it would have the effect of undermining our reliability as suppliers of capital both in South Africa and elsewhere. There are very few instances where the U.S. has either a monopoly or significant edge over foreign competitors in the international marketplace. The politicizing of trade and investment by the U.S. often generates pressure on other countries to politicize their trade and investment decisions.

The scope of investment to be addressed by these bills could be defined very widely. Would U.S. citizens be precluded from investing in European companies which have investments in South Africa? Would a company in France, 25% of whose stock is owned by a U.S. company, be barred from buying a share of stock in a South African company? Would a training program conducted by a U.S. company for its South African employees constitute an investment? Would U.S. citizens residing in South Africa as employees of U.S. companies be barred from purchasing real estate? The regulatory apparatus needed to determine these "investments" and to monitor the practices run sharply counter to our strenuous efforts to reduce the cost and burden of federal regulations upon our business community.

Question: What administrative and personnel adjustments would have to be made at the American Embassy in South Africa in order to implement the fair employment practices code outlined in Congressman Solarz's bill?

Answer: The Commerce Department has no staff in either the U.S. Embassy or Consulates and will defer to the State Department on this question.

Question: If the Commerce Department supports a fair employment code for American companies operating in South Africa, what has it done to ensure the full implementation of such a code?

Answer: The Commerce Department supports voluntary employment efforts such as the Sullivan Principles. To that end we have encouraged all American firms with operations in South Africa, and those firms considering the establishment of South African operations, to adopt employment conditions in their South African plants which conform as closely as possible to their U.S. labor practices. We have followed the Sullivan monitoring efforts and participated in various discussions with Sullivan signatories on the issue of code implementation. When requested by our Embassy or Consulates in South Africa, the Department of Commerce has talked with U.S. firms on particular labor matters to urge thorough, thoughtful consideration of the issues at stake.

Question: Is the role envisioned for the Commerce Department in the Solarz bill appropriate and within the law?

Answer: For the reasons given both in the prepared statement and the answers to the other questions, the Department of Commerce does not feel that the monitoring of U.S. companies is appropriate. In addition, the bills' prohibition of the importation of gold coins from South Africa could arguably constitute a violation of our obligations under the GATT.

Mr. WOLPE. Thank you very much.

I should indicate to the committees that it is my intention to pursue the 5-minute rule today, and hopefully I will abide by that myself.

Mr. Dennin, under what conditions would you feel it appropriate for the United States to take economic measures of any sort; are you saying, under no conditions?

Are you suggesting that some economic measures taken with respect to South Africa would be in violation of construction engagement? Are you saying, then, that the policy of constructive engagement assumes that there will never be any circumstance under which this Government would contemplate taking economic measures?

Mr. DENNIN. No, sir, I am not. What I am saying is that we believe that the policy which is now in effect is having a beneficial effect. We do not think the legislation under consideration by itself would bring about the results it desires, and it would have adverse consequences.

Speaking specifically to this legislation, it is our position that since it wouldn't do what it seeks to do, and would at the same time cause problems, we would oppose these particular pieces of legislation.

Mr. WOLPE. I would like to pursue that, but rather than start questioning individually, I think now that Mr. Lyman is here, let's hear from all three panelists, and then we will open it up for the full round of questioning.

Welcome.

Mr. LYMAN. Mr. Chairman, I apologize greatly for being late. I was sure I was going to be here on time, but I was not.

STATEMENT OF PRINCETON LYMAN, DEPUTY ASSISTANT SECRETARY OF STATE FOR AFRICA

Mr. LYMAN. I appreciate the opportunity for being able to testify before the committee on the two pieces of legislation.

As you know, I have sent to the committee a written statement. On the assumption that that will be placed in the record, I would just summarize briefly, so there will be time for questions.

I think the legislation in these hearings does offer us an opportunity to discuss how the goal of peaceful evolutionary change in South Africa may best be supported by the U.S. Government, and by the U.S. private sector.

I think it is important to establish a common ground that all of us share, and that is that we all are interested in an end to apartheid in South Africa, both as a social system of racial discrimination and as a political system of racial differentiation and disenfranchisement.

That goal, nevertheless, has engendered a debate, sometimes an emotional and divisive debate, but a very important debate over the appropriate tactics that we should pursue as a government to help end apartheid, and failing that, in the interim, to clearly disassociate ourselves, as a country, from that system.

You held hearings not too long ago on our policy in South Africa, and the Assistant Secretary for South Africa, Chester Crocker, testified on our general policy in southern Africa.

In that testimony, he described what were the risks, but also the necessity of our not walking away from this problem, the necessity for the United States to be involved, and engaged in the solution to this problem. I would just like to quote a key paragraph of that. There is more of it in the written testimony, but let me just quote one particular paragraph.

Mr. Crocker said:

We seek through our policies neither to destabilize South Africa nor align ourselves with apartheid policies that are repugnant to us. The time has surely come for us Americans to be humble enough to recognize that our influence over events there is limited, realistic enough to grasp the awesome task facing South Africans of all races who seek to dismantle apartheid, and honest enough to recognize that a measure of change is already underway there. We seek a more constructive relationship with South Africa based on these principles, on our shared interests, and on a reciprocal willingness to act in good faith where, as in Namibia, our policies intersect.

On the basis of that, our view is that the proposed legislation will not contribute to the common objectives we have.

We feel that the legislation as proposed would be regarded in South Africa as deliberately provocative, and would produce a confrontational atmosphere, and in that atmosphere our ability to encourage and support change would be hampered rather than enhanced.

That is our principal objection to the legislation. It would not serve the very purposes for which it is intended. If we are seeking to bring about change in South Africa, we need to involve ourselves in ways that encourage and reinforce positive movement in South African society.

If you look at the specifics of the legislation, it just reinforces that view, namely, that it creates a large and complicated bureaucratic mechanism that would involve more interaction between the companies and ourselves in bureaucratic and legal disputes, et cetera, rather than what has been achieved by the Sullivan principles, which is to focus the attention of some of the top business executives of the United States on how they can play a constructive role in bringing about positive change in South Africa.

That, I think, is the key issue here, how we can best promote change, and our feeling is that this legislation would not do that.

Mr. Chairman, I will stop there because I know you have questions, and you have the full statement for the record.

[Mr. Lyman's prepared statement follows:]

PREPARED STATEMENT OF PRINCETON LYMAN, DEPUTY ASSISTANT SECRETARY OF STATE
FOR AFRICA

I APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE CONCERNING THE LEGISLATION PROPOSED BY REPRESENTATIVES GRAY AND SOLARZ CONCERNING SOUTH AFRICA.

THE PROPOSED LEGISLATION OFFERS US AN OPPORTUNITY TO DISCUSS HOW THE GOAL OF PEACEFUL EVOLUTIONARY CHANGE IN SOUTH AFRICA MAY BE BEST SUPPORTED BY THE UNITED STATES GOVERNMENT AND THE U.S. PRIVATE SECTOR.

AT THE OUTSET LET ME FIRST ESTABLISH THE COMMON GROUND WHICH WE ALL SHARE -- AN END TO APARTHEID IN SOUTH AFRICA, BOTH AS A SOCIAL SYSTEM OF RACIAL DISCRIMINATION AND AS A POLITICAL SYSTEM OF RACIAL DIFFERENTIATION AND DISENFRANCHISEMENT.

THIS COMMON GOAL HAS ENGENDERED AN EMOTIONAL AND SOMETIMES DIVISIVE DEBATE OVER THE APPROPRIATE TACTICS WE SHOULD PURSUE AS A GOVERNMENT TO HELP END APARTHEID AND FAILING THAT, IN THE INTERIM, TO CLEARLY DISASSOCIATE OURSELVES FROM THAT SYSTEM.

ASSISTANT SECRETARY CHESTER CROCKER TESTIFIED BEFORE THIS SUBCOMMITTEE ON SEPTEMBER 16 ON THIS ADMINISTRATION'S POLICIES IN SOUTHERN AFRICA. HE DESCRIBED THE RISKS BUT ALSO THE NECESSITY OF OUR NOT WALKING AWAY FROM THE PROBLEM:

"THIS ADMINISTRATION IS WELL AWARE THAT IN SEEKING TO SUSTAIN THE CHANCES FOR NEGOTIATED SOLUTIONS

- 2 -

AND BOLSTER THOSE COMMITTED TO EVOLUTIONARY CHANGE, IT IS WALKING IN A MINEFIELD OF CONTENDING FEARS, EMOTIONS, AND IDEOLOGIES -- IN AFRICA AND BEYOND. BUT OUR ANALYSIS LEADS US TO CONCLUDE THAT ANY OTHER COURSE WOULD BE COWARDLY AND IRRESPONSIBLE."

TURNING SPECIFICALLY TO SOUTH AFRICA, MR. CROCKER SAID:

"WE SEEK THROUGH OUR POLICIES NEITHER TO DESTABILIZE SOUTH AFRICA NOR ALIGN OURSELVES WITH APARTHEID POLICIES THAT ARE REPUGNANT TO US. THE TIME HAS SURELY COME FOR US AMERICANS TO BE HUMBLE ENOUGH TO RECOGNIZE THAT OUR INFLUENCE OVER EVENTS THERE IS LIMITED, REALISTIC ENOUGH TO GRASP THE AWESOME TASK FACING SOUTH AFRICANS OF ALL RACES WHO SEEK TO DISMANTLE APARTHEID, AND HONEST ENOUGH TO RECOGNIZE THAT A MEASURE OF CHANGE IS ALREADY UNDER WAY THERE. WE SEEK A MORE CONSTRUCTIVE RELATIONSHIP WITH SOUTH AFRICA BASED ON THESE PRINCIPLES, ON OUR SHARED INTERESTS, AND ON A RECIPROCAL WILLINGNESS TO ACT IN GOOD FAITH WHERE, AS IN NAMIBIA, OUR POLICIES INTERSECT."

IN THE CONTEXT OF THIS APPROACH, LET ME ADDRESS THE TWO BILLS UNDER DISCUSSION TODAY. THE DEPARTMENT OF STATE HAS A NUMBER OF OBJECTIONS TO THE PROPOSED BILLS. THESE

- 3 -

OBJECTIONS ARE BOTH GENERAL AND SPECIFIC. AS A GENERAL PRINCIPLE, WE DO NOT BELIEVE THAT THE ACTIONS IN THESE BILLS WILL ENABLE US TO BUILD THE KIND OF CONSTRUCTIVE RELATIONSHIP MR. CROCKER DESCRIBED -- A RELATIONSHIP NECESSARY BOTH TO BRING ABOUT EARLY INDEPENDENCE FOR NAMIBIA AND TO ENCOURAGE POSITIVE CHANGES WITHIN SOUTH AFRICA.

THE LEGISLATION WOULD BE REGARDED IN SOUTH AFRICA AS DELIBERATELY PROVOCATIVE AND WOULD PRODUCE A CONFRONTATIONAL ATMOSPHERE. IN THIS ATMOSPHERE, OUR ABILITY TO ENCOURAGE AND SUPPORT CHANGE WOULD BE HAMPERED, NOT ENHANCED. THIS IS THE PRINCIPAL OBJECTION TO THE LEGISLATION. IT WOULD NOT WORK TO SERVE THE INTENDED PURPOSES. IF CHANGE IS OUR OBJECTIVE, WE NEED TO INVOLVE OURSELVES IN WAYS THAT ENCOURAGE AND REENFORCE POSITIVE MOVEMENT IN SOUTH AFRICAN SOCIETY.

OUR SPECIFIC OBJECTIONS REENFORCE THIS GENERAL VIEW. FOR OUR ANALYSIS LEADS US TO BELIEVE THAT THE NET EFFECT OF THE LEGISLATION -- THOUGH NOT THE INTENT -- WOULD BE TO CREATE A LARGE, COMPLICATED AND PROBABLY NOT VERY EFFECTIVE BUREAUCRATIC ENFORCEMENT MACHINE IN THE STATE DEPARTMENT, AND TURN MUCH OF THE TIME AND EFFORTS OF BOTH THE DEPARTMENT AND THE BUSINESS COMMUNITY AWAY FROM THE ISSUES OF SOUTH AFRICA AND MORE TO ARGUMENTS BETWEEN THEM OVER REGULATION AND ENFORCEMENT. SOUTH AFRICA, MOREOVER, COULD FRUSTRATE MUCH OF THE ENFORCEMENT EFFORT, LEADING EITHER

- 4 -

TO LACK OF REAL ENFORCEMENT OR CONFRONTATION BETWEEN OUR GOVERNMENTS CENTERING NOT SO MUCH ON APARTHEID AS ON SOVEREIGNTY, LIMITS TO NATIONAL JURISDICTION, ETC.

LET ME ILLUSTRATE THIS IN REGARD TO THE BILL INTRODUCED BY MR. SOLARZ.

WE NOTE THAT, WITH THE EXCEPTION OF THE SECTION 7 PROHIBITION ON BANK LOANS AND KRUGERRAND PURCHASES, THE BILL IS AN ATTEMPT TO LEGISLATE MANDATORY COMPLIANCE WITH LABOR PRINCIPLES SIMILAR TO THE SULLIVAN PRINCIPLES. WHILE FIRMLY SUPPORTING THE SULLIVAN PRINCIPLES AND BELIEVING IN THEIR UTILITY AS A CATALYST FOR CHANGE IN SOUTH AFRICA, WE HAVE CONSISTENTLY MAINTAINED THAT THEIR STRENGTH LAY IN THE FACT THAT THEY WERE VOLUNTARY RATHER THAN MANDATORY. COMPANIES WHICH SIGNED THE PRINCIPLES MADE A VOLUNTARY COMMITMENT TO FAIR LABOR PRACTICES AND THUS FELT OBLIGED TO ATTEMPT TO IMPLEMENT THE PRINCIPLES IN GOOD CONSCIENCE. MANDATORY LEGISLATION, ON THE OTHER HAND, WOULD BE REGARDED BY CORPORATIONS AS JUST ANOTHER EXAMPLE OF GOVERNMENT INTERFERENCE IN THEIR AFFAIRS. BUSINESSES WOULD BECOME CONSUMED WITH THE ISSUES OF LEGAL DEFINITIONS AND PENALTIES, ENGAGED MORE WITH THE U.S. GOVERNMENT OVER THESE MATTERS THAN PERHAPS FOCUSED ON THE OPPORTUNITIES FOR IMPLEMENTING THE PRINCIPLES IN SOUTH AFRICA. IN THIS REGARD, IT IS INSTRUCTIVE TO NOTE THAT LABOR PRACTICES AT CORPORATIONS SIGNATORY TO

- 5 -

THE SULLIVAN PRINCIPLES ARE BY AND LARGE MORE PROGRESSIVE THAN THOSE AT EUROPEAN SUBSIDIARIES WHOSE GOVERNMENTS HAVE SOUGHT THEIR ADHERENCE TO THE GOVERNMENT DEVELOPED EEC (7) CODE.

WE HAVE GRAVE RESERVATIONS ALSO ABOUT THE FEASIBILITY OF IMPLEMENTING THIS BILL, AS WELL, PARTICULARLY WITH RESPECT TO THE ASSERTION OF EXTRA-TERRITORIAL JURISDICTION, AND THE REQUIREMENT THAT THE SECRETARY PERFORM REGULATORY FUNCTIONS.

BOTH OF THESE PROBLEMS ARE MOST APPARENT IN THE FIRST PORTION OF THE BILL, "ENDORSEMENT AND IMPLEMENTATION OF FAIR EMPLOYMENT PRINCIPLES" (SECTIONS 1-6). THIS SECTION RESEMBLES THE EVANS AMENDMENT TO THE EXPORT-IMPORT BANK ACT (SECTION 2 (B) (8) (C)), WHICH THE DEPARTMENT HAS HAD SERIOUS DIFFICULTY IMPLEMENTING. THE EVANS AMENDMENT PRECLUDES EX-IM ASSISTANCE TO FIRMS IN SOUTH AFRICA UNLESS THE SECRETARY OF STATE "CERTIFIES" THAT EACH FIRM "HAS ENDORSED AND HAS PROCEEDED TOWARD THE IMPLEMENTATION OF" FAIR EMPLOYMENT PRINCIPLES MODELED ON THE SULLIVAN CODE. AMONG THE PROBLEMS WE HAVE ENCOUNTERED WITH THE EVANS AMENDMENT ARE SEVERAL WHICH APPEAR EQUALLY APPLICABLE TO THE SOLARZ BILL:

- THE SECRETARY HAS NEITHER THE STAFF, EXPERTISE, NOR THE BUDGET TO EFFECTIVELY MONITOR FOREIGN BUSINESS PRACTICES. LIKE THE EVANS AMENDMENT, THIS BILL WOULD REQUIRE THE SECRETARY TO MAKE WHAT AMOUNTS TO A JUDICIAL

- 6 -

ASSESSMENT ON COMPLEX FACTUAL MATTERS CONCERNING INDIVIDUAL FIRMS. NEITHER AS A MATTER OF EXPERIENCE NOR RESOURCES IS THE SECRETARY WELL-SUITED TO MAKE SUCH ASSESSMENTS. THIS BILL, HOWEVER, WOULD EXPRESSLY SUBJECT THE SECRETARY'S DETERMINATIONS TO JUDICIAL REVIEW (SEC. 4(G)), THUS REQUIRING THE SECRETARY TO PERFORM FORMALLY AS WELL AS INFORMALLY AS A BUSINESS REGULATORY AGENCY.

- IN REACTION TO THE SECRETARY'S EFFORTS TO IMPLEMENT THE EVANS AMENDMENT, THE SOUTH AFRICAN GOVERNMENT HAS INVOKED ITS PROTECTION OF BUSINESSES ACT TO PROHIBIT FURNISHING OF INFORMATION TO THE SECRETARY WITHOUT PRIOR CASE-BY-CASE APPROVAL AND POTENTIAL CENSORSHIP. THE SOUTH AFRICAN GOVERNMENT ALSO HAS STATED THAT IT WILL NOT PERMIT ON-SITE INSPECTIONS BY USG PERSONNEL TO MEET THE TERMS OF THE EVANS AMENDMENT, CLAIMING SUCH ACTIONS WOULD VIOLATE SOUTH AFRICAN TERRITORIAL SOVEREIGNTY. BOTH ACTIONS EXEMPLIFY HOW THE EXTENSION OF U.S. JURISDICTION EXTRA-TERRITORIALLY OFTEN LEADS TO CONFLICTS WITH HOST STATES THAT INTERFERE WITH OUR PURSUIT OF NATIONAL INTERESTS. IN THE CASE OF THE SOLARZ BILL, AS WITH THE EVANS AMENDMENT, THE SOUTH AFRICAN GOVERNMENT RESPONSES WOULD, OTHER THINGS BEING EQUAL, TEND TO LIMIT THE BASIS FOR ANY DETERMINATIONS BY THE SECRETARY IN THIS SENSITIVE AREA TO INFORMATION FURNISHED BY A COMPANY OR ITS AUDITORS AND CLEARED BY

- 7 -

THE SOUTH AFRICAN GOVERNMENT. THIS WOULD EXPRESSLY CONFLICT WITH THE SOLARZ BILL'S CALL FOR ON-SITE MONITORING (SEC. 4(B)(1)), AND, MAKE RELIABLE DETERMINATIONS SUBJECT TO COURT REVIEW VIRTUALLY IMPOSSIBLE. IT ALSO WOULD SEEM TO CAST DOUBT ON THE SECRETARY'S ABILITY TO FORM AN ADVISORY COUNCIL IN SOUTH AFRICA TO GATHER INFORMATION, AS IS CALLED FOR IN THE BILL.

TWO OTHER TECHNICAL DIFFICULTIES RAISED SPECIFICALLY BY THIS SECTION OF THE SOLARZ PROPOSAL ALSO BEAR MENTIONING:

- THE DIFFICULTIES ASSOCIATED WITH THE BILL'S EXTRATERRITORIAL CHARACTER WILL BE EXACERBATED BY THE BREADTH OF ITS ASSERTION OF JURISDICTION TO PROSECUTE FALSE STATEMENTS MADE IN SOUTH AFRICA (SEC. 4(B)(3)), AND TO COMPEL TESTIMONY AND DOCUMENTS FROM SOUTH AFRICAN PERSONS (SEC. 4(B)(4));
- THE BILL'S APPARENT REQUIREMENT THAT THE SECRETARY MONITOR BUSINESS PRACTICES IN NAMIBIA (SEC. 9(A)(2)) RAISES SPECIAL CONCERNS. GIVEN THE SOUTH AFRICAN GOVERNMENT POLICY ON ENFORCEMENT OF THE EVANS AMENDMENT, THIS REQUIREMENT WOULD APPEAR TO NECESSITATE COOPERATION WITH SOUTH AFRICA IN ITS ILLEGAL ADMINISTRATION OF THAT TERRITORY. MOREOVER, THE MENTION IN THAT SAME SECTION OF THE HOMELANDS AS APART FROM THE REPUBLIC OF SOUTH AFRICA COULD BE TAKEN TO IMPLY RECOGNITION OF

- 8 -

THEIR "INDEPENDENT" STATUS, WHICH IS CONTRARY TO U.S. POLICY.

THE REMAINING SECTIONS OF THE BILL -- "PROHIBITION ON LOANS AND IMPORTATION OF GOLD COINS" -- ALSO RAISE PROBLEMS OF EXTRA-TERRITORIAL JURISDICTION AND INFEASIBLE BUSINESS REGULATION. SECTION 7 WOULD REQUIRE THE SECRETARY TO DETERMINE WHETHER LOAN RECIPIENTS MAKE FACILITIES AVAILABLE "ON A TOTALLY NONDISCRIMINATORY BASIS." THIS PRESUMABLY DEMANDS MONITORING OF THE SORT CONTEMPLATED BY THE EARLIER SECTIONS OF THE BILL, WITH THE ATTENDANT DIFFICULTIES PREVIOUSLY DESCRIBED.

FINALLY, WE NOTE THAT THE PROPOSED LEGISLATION WOULD, IF PASSED, GENERATE A TRULY AWESOME AMOUNT OF PAPERWORK. WE ESTIMATE THAT THERE ARE APPROXIMATELY 200 AMERICAN SUBSIDIARIES WITH MORE THAN 20 EMPLOYEES IN SOUTH AFRICA; THE AMOUNT OF TIME REQUIRED TO REVIEW LONG AND COMPLICATED QUESTIONNAIRES SUBMITTED ANNUALLY BY EACH OF THOSE COMPANIES WOULD BE GREAT. IN ADDITION, THE BILL WOULD REQUIRE THAT HALF OF THOSE COMPANIES BE VISITED ANNUALLY FOR AN ON-SITE INSPECTION. WE FAIL TO SEE HOW THE UNPAID ADVISORY COUNCIL IN SOUTH AFRICA CALLED FOR BY THE BILL COULD POSSIBLY HAVE THE TIME OR RESOURCES TO EVALUATE FAIRLY COMPLIANCE BY THE U.S. CORPORATIONS. SUCH EVALUATION WOULD SEEM TO BE A FULL-TIME JOB.

THE BILL INTRODUCED BY REPRESENTATIVE GRAY, H.R. 3597,

- 9 -

WOULD PROHIBIT ANY NEW U.S. INVESTMENT IN SOUTH AFRICA UNLESS THE PRESIDENT DETERMINES THAT THE GOVERNMENT OF SOUTH AFRICA HAS MADE SUBSTANTIAL PROGRESS TOWARD THE FULL PARTICIPATION OF ALL THE PEOPLE OF SOUTH AFRICA IN THE SOCIAL, POLITICAL AND ECONOMIC LIFE IN THAT COUNTRY. THIS BILL IN EFFECT SEEKS TO PRESSURE SOUTH AFRICA INTO CHANGE BY CUTTING OFF FURTHER U.S. INVESTMENT OR -- FAILING THAT -- TO DISASSOCIATE U.S. INVESTMENT FROM A SOUTH AFRICAN SOCIETY PRACTICING APARTHEID.

OUR PROBLEM WITH THIS BILL IS THAT WE DO NOT BELIEVE THAT SOUTH AFRICA WILL BE PRESSURED INTO CHANGE BY SUCH STEPS. INDEED, THE THREAT OF THIS BILL IS DIRECTLY CONTRARY TO THE KIND OF APPROACH EMBODIED IN THE SULLIVAN PRINCIPLES, WHICH IS AN EFFORT TO HAVE U.S. CORPORATIONS USE THEIR PRESENCE IN SOUTH AFRICA TO PROMOTE EQUALITY AND ECONOMIC JUSTICE. THE SULLIVAN PRINCIPLES HAVE HAD VERY POSITIVE EFFECTS, AS DESCRIBED IN HEARINGS BEFORE THIS SUBCOMMITTEE LAST YEAR. WE BELIEVE THEY ARE BUT ONE EXAMPLE OF THE VALUE OF CONTINUING TO HAVE AMERICAN PRESENCE IN SOUTH AFRICA. THE PACE SCHOOL IN SOWETO IS ANOTHER. WE KNOW THAT THIS QUESTION OF INVOLVEMENT OF AMERICA IN SOUTH AFRICA IS PAINFUL AND DIFFICULT, ESPECIALLY WHEN PROGRESS IS SLOW, WHEN THE SOCIAL OUTRAGES SEEM UNTENABLE. BUT WE SHOULD STAY, MUST STAY, AS LONG AS WE CAN CONTRIBUTE TO POSITIVE CHANGE. AND WE THINK THAT IS THE SITUATION. INDEED WE FEEL STRONGLY THAT THE WITHDRAWAL OF AMERICAN PRE-

- 10 -

SENCE WOULD HAVE A DISPIRITING EFFECT ON MANY OF THOSE VERY PEOPLE WHO ARE WORKING HARDEST FOR CHANGE.

WE NOTE TOO THAT THIS SUBCOMMITTEE HAS PROPOSED OTHER FORMS OF POSITIVE AMERICAN ENGAGEMENT. THE FOREIGN ASSISTANCE LEGISLATION FOR FY 82 NOW UNDER CONSIDERATION IN BOTH THE HOUSE AND SENATE CONTAINS AUTHORIZATION FOR UP TO \$5.7 MILLION TO FINANCE UNDERGRADUATE AND PROFESSIONAL EDUCATION IN THE UNITED STATES FOR SOUTH AFRICAN STUDENTS WHO ARE LEGALLY RESTRICTED FROM OBTAINING AN ADEQUATE EDUCATION AT THOSE LEVELS IN THEIR COUNTRY. THE ADMINISTRATION HAS INITIATED A PROGRAM OF THIS KIND ALREADY IN FY 81, IN RESPONSE TO CONGRESSIONAL SUPPORT, AND WE ARE PLANNING AN APPROACH TO THE BROADER PROGRAM ENVISAGED IN THE FY 82 LEGISLATION.

IN CONCLUSION, WE FEEL THAT THESE FORMS OF POSITIVE ENCOURAGEMENT -- FROM THE PRIVATE SECTOR AT ITS INITIATIVE AS WITH THE SULLIVAN PRINCIPLES, AND FROM THE U.S. GOVERNMENT THROUGH SUCH PROGRAMS AS EDUCATION AND TRAINING -- ARE MORE IN LINE WITH THE POTENTIAL OF AMERICAN INFLUENCE THAN THE MANDATORY AND/OR NEGATIVE APPROACHES CONTAINED IN THE PROPOSED BILLS. CLEARLY WE MUST MONITOR THE PROGRESS OF CHANGE IN SOUTH AFRICA, AND WEIGH CONTINUOUSLY AS THIS SUBCOMMITTEE HAS DONE, THE NATURE AND OUTCOME OF AMERICAN INVOLVEMENT THERE. BUT WE FEEL THE RECORD SO FAR INDICATES THAT, JUST AS WE SEE PROGRESS IN THE LAST FEW MONTHS' EFFORTS ON NAMIBIA, THROUGH A CAREFULLY CONSTRUCTED ENGAGEMENT WITH SOUTH AFRICA, SO TOO WE MAY SEE CONTINUING PROGRESS TOWARD FULL EQUALITY AND JUSTICE WITHIN SOUTH AFRICA THROUGH A CONSTRUCTIVE INVOLVEMENT OF BOTH THE PRIVATE AND PUBLIC SECTORS OF AMERICA. LET US CONCENTRATE OUR ATTENTION, OUR STAFFS, AND OUR RESOURCES ON THAT OBJECTIVE.

Mr. WOLPE. Thank you very much, Mr. Lyman. I indicated earlier that the full text of the written statements will be embodied in the committee record. I thank you for that summary.

Mr. Leddy.

STATEMENT OF THOMAS LEDDY, ACTING ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF THE TREASURY

Mr. LEDDY. Thank you, Mr. Chairman, and members of the subcommittee.

I appreciate the opportunity to provide Treasury views on these bills relating to U.S. lending to and investment in South Africa, and to U.S. imports of South African krugerrand. Your invitation to testify posed a number of specific questions, for which responses are appended to my brief statement.

While we have some specific objections to various sections of these bills, as our replies to the individual questions indicate, the Treasury opposes this proposed legislation for four general reasons.

First, the proposed legislation is contrary to the administration's policy of constructive engagement with the Government of South Africa, as Mr. Lyman has explained in some detail.

Second, we favor minimum Government interference with market decisions. The imposition of restrictions on bank lending and private investment decisions, or on the freedom of Americans to buy gold coins, would be inconsistent with this approach. Restrictions against krugerrand imports in particular also may be illegal under the GATT as Mr. Dennin mentioned.

Third, restrictions on U.S. investment in and bank lending to South Africa could be viewed both at home and abroad as evidence of U.S. readiness to use capital controls for political ends. This could erode confidence in the freedom to invest in the United States and in the security of foreign investment in this country, and thus impair the strength of the dollar and the credibility of our international monetary and financial policies.

Finally, the proposed measures would in all likelihood be ineffectual since South Africa could obtain bank loans and investment funds from other countries. Americans would still be able to purchase and hold Krugerrands abroad, and South African gold could be imported into the United States as part of the content of other foreign gold coins and foreign bullion.

Manufacturers of gold coins in other countries normally purchase the required gold in the world market. Since South Africa currently supplies about 65 percent of the new gold coming into that market, higher bullion demand from other gold coin producing countries could largely replace what South Africa would lose from Krugerrand sales to the United States.

So for these reasons, Mr. Chairman, we believe that the proposed legislation is unwise and urge that it not be adopted. I would welcome any questions the subcommittees may have.

[The information follows:]

QUESTIONS SUBMITTED TO MR. LEDDY BY THE SUBCOMMITTEES ON AFRICA AND ON
INTERNATIONAL ECONOMIC POLICY AND TRADE AND RESPONSES THERETO

Question 1: Does the sale of South African krugerrand in the United States compete with the sale of any United States Government minted gold coins? How does the sale of krugerrand affect the sale of American gold coins?

Answer: The United States has minted no gold coins since the legal authority to do so was abolished in 1934. Pre-1934 U.S. gold coins may be purchased and sold privately; because of their numismatic value they command a premium over krugerrands and do not compete with them directly.

The Treasury does produce and sell gold medallions, which are not legal tender and have no face value, in two sizes containing one and one-half fine ounces of gold, respectively. Krugerrands of comparable size and other foreign gold coins compete with these medallions and probably have had the effect of limiting medallion sales. Medallions have attracted demand mainly on the part of collectors, whereas the krugerrands have attracted demand on the part of gold investors and speculators.

One of the purposes of the U.S. gold medallion program is to provide the American public with an alternative to buying foreign coins, particularly the krugerrand. The markup over the value of the gold in the medallion is less than that on the krugerrand for purchases of small quantities. However, an extensive advertising program and an efficient dealer network have maintained krugerrand sales in the face of competition both from U.S. medallions and from other foreign gold coins.

In 1980, the U.S. imported 3.0 million ounces of gold in the form of coins, valued at \$1.8 billion; of this amount, imports of krugerrands are estimated at 1.6 million ounces, valued at \$0.9 billion. Imports of the one-ounce Maple Leaf coin from Canada were 0.8 million ounces, and imports of Mexican gold pesos in various sizes were 0.3 million ounces. Sales of U.S. Treasury gold medallions, which began in July 1980, totalled about 0.4 million ounces, valued at \$242 million, during 1980.

In 1981, U.S. gold coin imports have declined. During January-August, imports of krugerrands are estimated to have been 0.7 million ounces, out of total gold coin imports of 1.5 million ounces. The sales pace of U.S. Treasury gold medallions has declined even more sharply. In the five months that such medallions were offered for sale -- during January and February, and since July -- less than 0.1 million ounces, valued at \$43 million, were sold.

Question 2: How much foreign exchange did the U.S. spend on krugerrand purchases in 1978? In 1979? And in 1980?

Answer: Data are not collected on the importation of krugerrands, as such. U.S. customs data do, however, show gold coins imported from South Africa, all of which are presumed to be krugerrands. Based on these U.S. customs data, gold coins imported from South Africa were valued at approximately \$650 million in 1978, \$884 million in 1979 and \$941 million in 1980. The coins are paid for in dollars by dealers who purchase them from South Africa. These figures do not include imports of krugerrands from other countries, for which data do not exist.

Question 3. Would a termination of the sale of krugerrand in this country improve the U.S. balance of trade with South Africa? What was the total value of two way trade between the U.S. and South Africa in 1980? What was the total value of U.S. exports to South Africa in 1980? What was the total value of U.S. imports from South Africa? In what way has the sale of South African krugerrand in this country contributed to our balance of payments situation with South Africa?

Answer: If U.S. buyers switched from purchasing krugerrands from South Africa to buying gold coins or gold bullion from other countries, the U.S. trade deficit with South Africa would fall and the deficit with other countries would rise, leaving the overall U.S. trade balance unaffected. Since South Africa currently supplies about 65 percent of the new gold coming onto the world market, higher bullion demand from other coin producing countries would be likely largely to replace lost krugerrand sales in the South African balance of payments, leaving South Africa's trade balance also little changed. To the extent that U.S. buyers purchased krugerrands to be held abroad, the recorded U.S. bilateral and overall trade balances would improve, and an additional outflow would probably be recorded in the statistical discrepancy item in the balance of payments, since recorded U.S. capital outflows might not increase as recorded net trade account outflows declined. On the other hand, South Africa's overall export sales would not be affected. In 1980 the total value of two way trade between the United States and South Africa was \$5.8 billion, with U.S. exports of \$2.5 billion and U.S. imports of \$3.3 billion. U.S. krugerrand imports in 1980 are estimated at about \$.9 billion.

Question 4: Would the Treasury Department object to the termination of krugerrand imports to the U.S.? How many United States gold coins are sold in South Africa?

Answer: The Treasury would oppose the imposition of restrictions on krugerrand imports, on commercial policy grounds. The Treasury, in accordance with longstanding U.S. trade policy, generally opposes the imposition of quantitative restrictions on imports, particularly those that discriminate against individual countries. The imposition of a restriction on the importation of krugerrands may violate international obligations under the General Agreement on Tariffs and Trade (GATT), as the answer to question 9 notes.

U.S. legislation to terminate krugerrand imports would, moreover, modify legislation enacted in 1974, which repealed the prohibition on the holding of gold by private citizens by providing that no law or regulation in effect "may be construed to prohibit any person from purchasing, holding, selling or otherwise dealing in gold in the U.S. or abroad."

There are no new U.S. gold coins produced. Therefore, none are being sold in South Africa. However, pre-1934 gold coins may be imported into South Africa for collectors. Data are not available which would show U.S. exports of Treasury gold medallions to South Africa; such exports, if any, are believed to be negligible.

Question 5: Are krugerrands allowed into the United States duty free? Are they considered currency or medallions? Is there any consideration being given to classifying South African krugerrand as medallions? What effect would this have?

Answer: Krugerrands are allowed free entry into the United States under the classification of "metal coins" item 653.22, Tariff Schedules of the United States (TSUS). They are not considered either currency or medallions. In accordance with Customs administrative practice, classification as "metal coins" is based on two requirements, that the metal coins are of genuine issue and issued under the authority of the government concerned, and that the government concerned indicate by an official proclamation that the coin is acceptable as legal tender. The 1978 ruling by the Customs Service concerning the Tariff classification of krugerrands is attached.

No consideration is being given to classifying the krugerrand as a medallion. If the krugerrand were to be classified as a medallion, it would be classified as an "article of gold" under item 656.10 TSUS, with a duty rate of 17.1 percent ad valorem.

Attachment



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON



FEB 15 1978

REFER TO
CLA-2:R:CV:MA
055490 LXL

District Director of Customs
Seattle, Washington 98714

Director, Classification and Value Division

Classification of gold coins

This ruling concerns the tariff classification of Krugerrand gold pieces.

FACTS:

The Krugerrand has a gold content of one troy ounce of fine gold. The coin has an approximate weight of 33.9 grams, 31.1 grams of which is pure gold, 2.8 grams of which is a copper alloy. The obverse carries a likeness of President Kruger and "South Africa" in English and in the Boer language. The reverse side of the coin carries a year date, "Krugerrand," "Fyngoud, 1 oz, Fine Gold" and an image of the South African springbok. The edge of coin is reeded. The coin is bought and sold primarily for its gold content. It carries no indicia of face or transfer value other than the weight of fine gold marking.

The coin is an official issue of the South African government and was declared to be legal tender, for the payment of debts, by the South African Mint and Coinage Act of 1966. The Governor of the South African Reserve Bank has issued a statement that the bank will accept Krugerrands

from South African residents on the basis of the average of the last two fixing prices for gold established in the London gold market prior to the date of the purchase. This price is converted into South African rands.

The contention is made that Kruggerands are not classifiable as metal coins because the "rand" value is not stated on the coin and the coin does not circulate or have general acceptance as money and therefore is not currency.

ISSUE:

Are gold pieces on which a Government has issued a proclamation of legal tender but which are not in current circulation classifiable as metal coins in item 653.22, Tariff Schedules of the United States (TSUS).

LAW AND ANALYSIS:

Currency is coinage or paper money which freely circulates as the general and accepted medium of exchange in a country. Due to gold value speculation it is plain that the Kruggerrand and indeed most gold bullion coins do not meet the foregoing requirements. They are not currency. The issue here however is are the Krugerrands coinage and legal tender?

The Random House College Dictionary, defines "coinage" as, 1. the act, process, or right of making coins." The term "coin" is defined as "1. a piece of metal stamped and issued by the authority of the government for use as money".

The revised fourth edition of Blacks Law Dictionary, 1968, defines the term: "coin" and "coinage" as follows:

COIN, n. Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value.

COINAGE, The process or the function of coining metallic money; also the a great mass of metallic money in circulation.

As a footnote to the definition of "coin", Blacks states "Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, etc., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called "coinage."

At one time, it was readily ascertainable that a coin was put into circulation and was being used as a medium of exchange. With the advent of gold coins, the fact of circulation and use as a means of exchange became more difficult to ascertain. Indeed, with the prohibition in many countries forbidding citizens from holding gold, as in Mexico, for example, the standard that a coin must circulate as a coin of the realm became impossible of fulfillment. Other indicia of coinage were noted. In Mexico, it was noted, for example, that the 50 peso gold restrikes were used by the official banks for the settlement of international balance of payments. Generally, if a central bank offered

to purchase back the coinage at a determinable price, this factor was weighed in favor of the coin as a "metal coin" within the meaning of the term in the tariff schedules. The ultimate requirement was an official proclamation by the government concerned that the coins were legal tender and acceptable in the payment of debts. Normally, coins have a fixed exchange value backed by the government concerned. The Kruggerrand has a flexible value in "Rands" determined by the price of gold. Nevertheless, it has been proclaimed to be legal tender and must be accepted for the payment of debts in South Africa. The U. S. Customs Service does not see fit to question a separate and distinct sovereign state as to the propriety of what it considers "legal tender."

Item 653.22, TSUS, simply provides for "metal coins." Customs administrative practice has insisted only on two requirements. That the metal coins are of genuine issue and issued under the authority of the government concerned. Secondly, that the government concerned indicate by an official proclamation that the coin is acceptable as legal tender.

The "metal coins" under the provision in item 653.22, TSUS, are merchandise as imported. If they were imported as currency "in current circulation" and imported for monetary purposes, General Headnote 5(b) would be applicable.

Gold coins are imported for their gold value and speculative value and thus General Headnote 5(b) has no application to the Krugerrands under consideration.

The distinction between "currency" or "money" and "coins" is not a new one.

In the case of Ramon DeBiase, v. Commercial Union Insurance Company of New York, 278 N.Y.S. 2nd 145, (1967) The Civil Court of the City of New York, held that rare coins collected by a numismatist were not "coins" regarded as currency and were not "money" within an insurance theft policy which limited the insurer's liability to \$100. The court held that the coins were personal goods held for speculative purposes and covered under the category of "personal goods" by an insurance policy. The court nevertheless held that in a broad sense the coins could be considered "money". We quote: "Nonetheless, if some broad use of the word "money" is to be acknowledged, it is as any commodity having a means of exchange, as sheep, wampum, copper rings, quills of salt, shovel blades, tobacco or gold, etc. By itself then, money is but a device having a value between those who use it. Money is, in some countries, a mere commodity bought and sold in the market, and its value fluctuates in the market like that of other commodities." We quote further: "Economically, the essential and a natural function of "money" are recognized as being; (1) a commodity having a

value of its own; (2) a common measure of value; (3) as having a general exchangeability and (4) as having a general medium of exchange. " United States v. Gellaman, D.C. 44F. Supp. 360, 365. Likewise in the instant case, the coins which are not circulated in the conventional way are held to be articles of commerce known as "metal coins."

HOLDING:

Gold Krugerrands, even though not considered currency, do meet the broader understanding of the term "money" or "metal coin." The Krugerrand has a value of its own, has a general exchangeability, can serve as a general medium of exchange, and can serve as a common measure of value. Each Krugerrand contains exactly one Troy ounce of gold and is so marked. The value of gold is readily ascertainable. The Krugerrands are issued under the authority of the South African government which guarantees a determinable legal tender value for the coins. The coins are classifiable under the provision for metal coins in item 653.22, TSUS, and are free of duty.

Salvatore E. Caramagno
Salvatore E. Caramagno

Question 6: Because U.S. gold coins are considered or classified as medallions, are they allowed into other countries duty free?

Answer: The U.S. Government currently mints no gold coins; the only gold pieces produced are medallions.

Our latest information on the tariff and tax treatment in major foreign countries is summarized in the attached table.

In two of the major foreign markets for gold coins, Germany and Switzerland, there is virtually no difference in the tariff and tax treatment between coins and medallions. More favorable treatment is accorded gold coins by Austria, Japan, the U.K., and the Netherlands. The difference in the tax and tariff treatment by France and Italy is not applicable, because these countries do not permit imports of gold coins.

Attachment

**Tariff, Tax Treatment in Major Countries
Allowing Imports of Gold Coins and Medallions for Investment**

Country	Customs Tariff			Value Added Tax (or Equivalent)		
	Legal Tender Coins	Bullion	Medallions ^{1/}	Legal Tender Coins	Bullion	Medallions ^{2/}
Canada	Exempt	Exempt	Exempt	Subject to provincial sales taxes in most provinces ^{3/}		
United States	Exempt	Exempt	17.1t	Subject to sales taxes in most states.		
Germany	Exempt	Exempt	Exempt	13t	13t	13t
Japan	Exempt	Exempt	Medallions 20t Coins - exempt	15t	Exempt	15t
Switzerland ^{3/}	Exempt	Exempt	Less than 0.5t	5.6t	5.6t	5.6t
United Kingdom	Exempt	Exempt	7-1/2t	Exempt	15t	15t
Netherlands	n.a.	n.a.	n.a.	Exempt	4 t ^{4/}	18t

^{1/} Includes non-legal tender coin.

^{2/} Legal tender gold coins exempt in Quebec, Alberta, Prince Edward Island, and N.W. Territories.

^{3/} Gold purchased and held on deposit in banks is exempt from tax.

^{4/} Includes non-legal tender coins.

n.a. - not available.

Tariff, Tax Treatment in some Countries restricting Imports of Gold Coins and Medallions for Investment

<u>Country</u>	<u>Customs Tariff</u>		<u>Value Added Tax (or Equivalent)</u>			
	<u>Legal Tender Coins</u>	<u>Bullion</u>	<u>Medallions 1/</u>	<u>Legal Tender Coins</u>	<u>Bullion</u>	<u>Medallions</u>
Austria	Exempt	Exempt	Exempt	Exempt	18 % Coins 18 Medallions 30	
Denmark	Exempt	Exempt	Exempt	20-1/4%	20-1/4%	20-1/4%
France 2/	Exempt	Exempt	-Exempt from E.C. countries -4-1/2% others	6%	6%	33-1/3%
Italy 3/	Exempt	Exempt	-Exempt from E.C. countries -4.4% others	Exempt	Exempt	14%

1/ Includes non-legal tender coins.

2/ Gold less than 89.9% pure can be imported freely.

3/ Only the British Sovereign, the U.S. \$20 and \$10 gold coins are legal tender.

Question 7: Are there any restrictions on American banks making loans to other countries or governments in the world?

Question 12: Are there any laws which regulate or prohibit U.S. bank loans to other foreign countries?

Answer: The United States does not impose any general exchange controls or capital restrictions for balance of payments purposes, but there are some restrictions of a prudential and, for selected countries, of a policy nature. The prudential restrictions--imposed either by Federal or state regulatory agencies and applicable to domestic as well as foreign borrowers--limit the amount of lending that a bank can engage in with a single borrower. For example, a national bank would not be able to lend more than 10 percent of its capital to a single borrowing entity.

In furtherance of foreign policy objectives, regulations enforced by Treasury's Office of Foreign Assets Control pursuant to the Trading With the Enemy Act currently restrict banks (as well as other individuals and entities subject to U.S. jurisdiction) from engaging in financial transactions with Cuba, Cambodia (Kampuchea), North Korea and Viet Nam. Similar restrictions were in force under the International Emergency Economic Powers Act with respect to Iran from November 14, 1979 until the hostage crisis was resolved by the Agreement of January 19, 1981.

Question 8: What impact will the enactment of legislation barring bank loans to the South African Government and prohibiting the import of krugerrand into the United States have on U.S. financial policy toward South Africa?

Answer: The enactment of such legislation would give a decidedly discriminatory and restrictive cast to U.S. international financial policy, since otherwise U.S. financial policy toward South Africa is generally non-discriminatory, treating South Africa in the same way that it does other countries.

We favor minimum government interference with market decisions. Imposition of restrictions on bank lending and private investment decisions, or the freedom of Americans to buy gold coins if they so choose, would be inconsistent with this fundamental approach. These restrictions could also be viewed, both at home and abroad, as evidence of U.S. readiness to use trade or capital controls for political ends. This could erode confidence in the freedom to invest in the United States and in the security of foreign investments in this country, and thus impair the strength of the dollar and the credibility of our international monetary and financial policies.

Question 9: Would the enactment of either of these provisions outlined in the question above violate any international monetary or financial agreements in which the United States is a signatory?

Answer: Legislation to bar bank loans to the South African Government or to prohibit krugerrand imports would violate the spirit of the liberal and non-discriminatory trade and payments philosophy which the United States has been at the forefront in advocating in institutions such as the International Monetary Fund and the General Agreement on Tariffs and Trade (GATT). More specifically, the proposed restriction on krugerrand imports may violate our international obligations under the GATT. A prohibition of imports from an individual country such as South Africa would normally be considered a discriminatory trade measure under GATT. Article XX permits some discrimination in certain cases provided that the discrimination is not arbitrary or unjustifiable. Specifically, Article XX permits the adoption of measures "relating to the importation or exportation of gold or silver" if they are not applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail". Because the bill would apply only to imports from South Africa, the proposed restriction would appear to be an arbitrary or unjustifiable discrimination. However, there is no GATT case law explaining the meaning of this phrase, and it is possible that legal arguments could be found that would justify such discrimination. At the same time, South Africa would be permitted retaliation against imports from the United States under the GATT provisions even if U.S. discrimination were found to be justified.

Question 10: To what extent will the termination of bank loans to the South African Government hurt the American banking industry?

Answer: Claims on South Africa by U.S. banks and their foreign branches total \$1.9 billion (June 1981 data). U.S. banks do not generally lend long-term for investment purposes. We presume much of this lending is to finance U.S. exports, i.e., trade financing. There is no evidence that U.S. banks have been lending imprudently. Terminating such lending would cost U.S. banks (and their shareholders) some profits unless alternative loans to other borrowers of equivalent credit standing could be substituted. To the extent any "lost" loans finance U.S. exports, it could cost U.S. industry sales, profits, and perhaps jobs. At the same time, it is very likely that South Africa would be able to obtain substitute financing and exports from other sources.

Question 11: According to your analysis, how strong is the South African economy? Does the South African Government need any foreign loans to stabilize or strengthen its economy?

Answer: South African domestic product (GDP) is estimated at \$80.2 billion in 1980 or about \$2,700 per capita. Economic growth rates tend to be quite variable, depending on world gold prices and world demand for South Africa's industrial raw material exports. In 1980 real GDP rose 8 percent, reflecting higher gold prices and a domestic consumption boom. Growth is expected to be lower this year, since gold prices have fallen from 1980 peaks, and supply constraints have emerged. The 1980 current account surplus of \$3.7 billion will likely be replaced this year by a deficit, accompanied by net inflows of foreign funds. The South African Reserve Bank held foreign exchange reserves of \$673 million, and also held 12.24 million ounces of gold, at the end of August 1981. Historically South Africa relied on capital inflows for development, but the current account was in surplus from 1977 to 1980, and the economy therefore was not dependent on net capital inflows. The availability of foreign loans and other forms of foreign capital flows does, however, permit more rapid South African economic growth, thereby providing more jobs for its rapidly growing black population.

Mr. WOLPE. Thank you very much, Mr. Leddy.

A minute ago I put to Mr. Dennin the question, if there were any conditions under which this Government would feel it appropriate to apply economic measures directed toward South Africa of the sort that are contained within the legislation before this committee. Mr. Dennin responded that, yes, under some conditions, possibly. There was not a flat rejection of the possibility of the application of some economic measures.

I would like to pursue that a bit both with Mr. Lyman of State, and also Mr. Dennin.

First of all, Mr. Lyman, would you concur that there are some conditions under which economic measures would be appropriate?

Mr. LYMAN. I am sure there are. I could speculate on conditions under which they would be appropriate, but I would not want to speak to what those might be. Certainly we don't see that in the current situation.

Mr. WOLPE. What are the types of conditions under which such economic measures might be contemplated? Is there anything that the South African Government might do with respect to the population within the country that might lead this Government of ours to think it appropriate to place economic measures?

Mr. LYMAN. As I said, Mr. Chairman, one can think and bring oneself to imagine actions in any kind of a situation in which the United States would feel it essential and right to apply economic sanctions. I would not want to speculate on what those are, because I think to start to engage in that is to give misconceptions as to whether those are real or not.

Mr. WOLPE. I think it is important, though, to understand at least the conceptual basis from which the administration is operating. I take it, there is not a flat opposition to the concept of the application of economic measures. The issue is under what conditions they might be appropriate, and it is your feeling that that point is not yet reached; is that your testimony?

Mr. LYMAN. Our position is that we have an opportunity in the relationship with South Africa, in what Mr. Crocker has characterized as constructive engagement, to promote change, and that is what we are focused on.

Frankly, we are not focused on detailing and thinking of what kind of conditions would cause one to go in the opposite direction.

So, certainly, one can say in principle that there are things that one could speculate that would lead one in that direction, but that is not where our focus is. Our focus is on how do we promote change in the present situation.

Mr. WOLPE. Is that the only objective of American policy, the issue of promoting evolutionary change in South Africa?

Mr. LYMAN. We have a lot of interests in southern Africa. South Africa and southern Africa are of importance to the United States, political importance, economic importance, strategic importance. All those are factors in American policy.

Mr. WOLPE. Would it not be possible to conceive of a circumstance where we might well conclude that whether or not the American initiative is facilitating change or not is really a secondary issue.

The issue is whether American self-interests are being jeopardized by the continuation of economic relationships to South Africa, in terms of our interests throughout the rest of the continent.

Would that not be a valid question that we ought to throw into the calculation?

Mr. LYMAN. That is a valid concern. We are balancing our several interests both within South Africa and southern Africa, and in all of Africa.

Mr. WOLPE. So the issue is not solely the question of the extent to which a policy initiative would be successful in effecting change. The issue is also whether or not particular relationships that we have are serving American national interest both in the region, and throughout the continent; is that not correct?

Mr. LYMAN. It is in the broader sense, but in terms of how I understand the purposes of the legislation we are discussing here, they are focused on the intention of promoting change within South Africa. If that is not the intention of the legislation, I may have misread it. But I was focusing my remarks on what I assumed to be the intention of this specific legislation.

Mr. WOLPE. I guess your understanding of the legislation is certainly different from mine. Perhaps in a moment we will hear from one of the sponsors of the legislation.

But I would have thought there were several different objectives here. One of them is, attempting to create the possibility for expediting the process of change within South Africa, but certainly there are other objectives, aren't there?

One, for example, would be simply insuring that American companies doing business in South Africa are performing in a fashion that most Americans would feel comfortable with in terms of our expectations about the way American businesses do business in the United States. Is this not another objective?

Mr. LYMAN. It is an objective, but hopefully it is consistent with the first objective, and that is that in so doing, it will have a positive impact in South Africa.

Mr. WOLPE. I submit there is even a third objective, which is simply to try to develop a foreign policy that is consistent in terms of American national self-interest, independent of the question of the process of change within South Africa.

I say that because after looking through all the testimony that has been received is the assumption, and I am not sure why we jump to that assumption, that the sole and exclusive objective of our examination of our economic relation with South Africa is the issue of internal change. It seems to me that there are other questions as well.

Mr. Dennin, did you want to respond?

Mr. DENNIN. I would be happy to respond to that to the point of saying, my understanding of at least the principal of this legislation here, and I am directing myself particularly to H.R. 3008, was to bring about certain changes in employment practices in South Africa. It sought to accomplish that by exerting what leverage existed through controls on American companies or American controlled companies in South Africa. That was the primary purpose that we assumed.

Mr. WOLPE. I think you are reading something into the legislation, but let's not pursue that too much further at this point.

Mr. LEDDY. Mr. Chairman.

Mr. WOLPE. Yes, Mr. Leddy.

Mr. LEDDY. Extracting from the question of South Africa whatever the objective is with respect to South Africa, I think the United States, when contemplating the possibility of economic sanctions, has to take into account the question of whether the sanction, in the more general sense, violates the general U.S. international economic and financial policy objectives or interests.

Mr. WOLPE. I am glad you have raised that because that is exactly where I was going to move.

In all of your testimony there was the statement, I think consistently across the board, that somehow this kind of initiative toward South Africa would be in violation of everything our country stands for in terms of basic economic policy.

I take it, then, that you would be opposed, for example, to the present legislation that on the books with respect to firms that would cooperate with the Arab boycott of Israel?

Mr. LEDDY. I am not familiar in detail with what the sanctions involved are.

Mr. WOLPE. Perhaps Mr. Dennin or Mr. Lyman would care to respond to that.

Mr. DENNIN. I would not take issue with the existing law which is on the books.

Mr. WOLPE. Doesn't that again violate the notion of traditionally totally free flow of capital without any kind of limitations or inhibitions?

Mr. DENNIN. It certainly is a limitation on some activities, but it is not the same degree of limitation. It has as its principal target the protection of Americans, or it has a greater nexus with goods which are in the American flow of commerce, and is not, therefore, as extraterritorial in its approach as this legislation would be.

Mr. WOLPE. My time is exhausted, so I would like to pursue that a little bit later.

I will call upon the gentleman from California.

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

Mr. Lyman, we are talking about a country here, and the Arab boycott was just mentioned. I know that we don't have any, or at least I am not aware of any private U.S. investment, with the possible exception of the PRC, by American firms in Communist countries, but we certainly have banking relationships with many Communist countries, and Poland comes to mind.

Do we have any restrictions that would approach the restrictions proposed in this legislation with regard to those banking firms?

Mr. LYMAN. Mr. Lagomarsino, I am not knowledgeable, outside of Africa, of what specific restrictions are. I don't know.

Mr. LAGOMARSINO. Perhaps Mr. Dennin or Mr. Leddy could answer that.

Mr. LEDDY. I don't believe there are general restrictions at the moment, with the exception of the restrictions applied under the Trading with the Enemy Act. I think the four countries, Cuba, Cambodia, Vietnam, and one other country.

There were comprehensive restrictions applied against Iran under the International Emergency Economic Powers Act following the hostage takeover, and pursuant to that act the freeze was imposed on the Iranian assets here, and on all kinds of economic, banking, financial transactions vis-a-vis Iran.

Apart from the four currently applied under the Trading With the Enemy Act, there are no general banking restrictions applied by the United States.

Mr. LAGOMARSINO. Mr. Dennin, considering that financial markets are assumed to be, anyway, particularly sensitive to perceived shifts in policy, what effect would legislation have with regard to our financial relations with other countries of the world?

I don't believe you spoke about that particular aspect in your testimony.

Mr. DENNIN. No, and I would defer to the Treasury Department with respect to the limited question of financial reverberations. But it certainly would have effect on our trading relationships with the rest of the world. We think it would have an adverse, a seriously adverse effect in that it would do two things:

One, it would perhaps discourage U.S. firms, who we are now trying to encourage to get involved in investments abroad to help our balance of payments, from doing so because of the fear that at some future time, for reasons yet unknown, controls might be placed on them that would work to their serious disadvantage.

Second, it would raise questions around the world in the eyes of our trading partners as to how reliable a source of investment and supply we were.

So we think it would have an adverse effect on our trading patterns, and I think perhaps the Treasury Department could speak to the financial, banking aspects.

Mr. LAGOMARSINO. I would like to ask, I guess, any of you who might have information on this question, if this legislation were to be adopted, are we aware of any other major foreign investor in South Africa that would be prepared, or is even contemplating similar legislation?

Mr. DENNIN. For the Department of Commerce, we know of no country which is contemplating similar legislation.

Mr. LEDDY. I am not aware of any.

Mr. LYMAN. Mr. Lagomarsino, there is some legislation in Europe with regard to the employment practices. The EEC code is embodied to some extent in European legislation.

Mr. LAGOMARSINO. It is in effect now?

Mr. LYMAN. Yes, in some countries of Europe. I can compare it with there are penalties involved in this legislation, but to some extent it has been embodied in legislation.

Mr. LAGOMARSINO. With regard to the first question I asked, I guess I should ask you, Mr. Lyman. Can you think of any other legislation like this, which has succeeded in changing or affecting the internal policies of another country?

Mr. LYMAN. Offhand, I can't, but I would like to say that I think the initiation of the Sullivan principles as a voluntary action in the business community has had a very positive effect, and there is evidence to that. We think that this has been a very positive initiative, and has done a good deal of good.

Mr. LAGOMARSINO. Mr. Dennin, in your statement you say that the U.S. Government has encouraged private firms to follow the Sullivan principles. What have we done specifically to encourage countries to do that?

Mr. DENNIN. We have, through a variety of publications put out by the Department of Commerce, made clear to firms that are contemplating investment in South Africa that it is the position of this Government that we recommend to them that they subscribe to the Sullivan principles.

In the course of meetings the Department of Commerce has frequently met with companies who come to us and say they are thinking about investing in South Africa and what are the conditions there, at that time we have internal Department publications and procedures that we make available to them, a copy of the Sullivan principles, and a statement that the Government supports that.

Mr. LAGOMARSINO. In your statement you say that firms representing about 80 percent of the employees of U.S. firms in South Africa have endorsed the Sullivan principles.

Do you have any statistics on how many or what percentage of the firms to which you just referred, the ones that have come to you lately and asked for information, have gone ahead and done that, have complied with those principles?

Mr. DENNIN. My understanding is that there has been a very high magnitude of compliance, and that the firms that have not subscribed to the Sullivan principles have, by and large, been firms which had a very small presence, and which felt that they were below the threshold application of the Sullivan principles. But the larger firms that we are aware of, that have gone to South Africa, have subscribed to the Sullivan principles.

Mr. LAGOMARSINO. Just one followup question. When you say that firms representing 80 percent have endorsed the principles, I take it you mean they have taken some formal action in signing a document, or something.

Mr. DENNIN. Yes.

Mr. LAGOMARSINO. Do you have any idea of the remaining 20 percent are following the principles or most of the principles?

Mr. DENNIN. We don't, and we frankly don't have the mechanism for finding that out. The reason, we believe, the firms have not subscribed to the Sullivan principles—and there is a formal mechanism whereby they do that, and then there are formal reports required by firms who do subscribe to the Sullivan principles—is because they are small firms with less than 20 people, maybe 5 or 10 employees over there.

If I could take the chance to comment on one further question. There was a question put to us as to whether other countries have similar codes, and I said I believe the Commerce Department thought they did not have similar requirements. Then there was a mention made of the Canadian, and the UK, the Economic Community do have requirements of some sort.

I wanted to state our view, at least, that it is our understanding that those requirements are like the Sullivan principles, they are voluntary, and there are no sanctions involved. So as not to leave a suggestion that we believe that there is no other country that has a

sanction that would stop somebody from exporting or investing in South Africa.

Mr. LAGOMARSINO. Thank you.

Mr. WOLPE. Thank you very much.

Mr. Solarz.

Mr. SOLARZ. Thank you very much, Mr. Chairman.

Rather than attempting to frontally assault you, gentlemen, over the fatally flawed logic with which you defend these indefensible positions, let me rather ask you a number of technical questions about aspects of this legislation, because I know that under the protocol of these proceedings, even if midway through the hearing you were to be convinced of the error of your ways, you would be prohibited from publicly announcing it.

Is Cuba a member of GATT?

[Pause.]

Mr. SOLARZ. My time is ticking away.

Mr. DENNIN. I am sorry, Congressman Solarz, I don't know, but I don't believe so.

Mr. SOLARZ. I believe it is, at least that is what we heard here a few years ago.

Was Uganda a member of GATT?

Is the Soviet Union a member of GATT?

Mr. DENNIN. I don't believe the Soviet Union is. I don't know about Uganda.

Mr. SOLARZ. Is the arms embargo that we have on South Africa a violation of GATT?

Mr. DENNIN. It is our understanding that it is not. I am not sufficiently familiar with GATT to be able to tell you all the things it does. There is no particular section of GATT that I am aware of that prohibits that. I did mention a couple of provisions which talk about import restrictions, which would be only arguably related to the importation restriction on the gold Krugerrands.

Mr. SOLARZ. How would you feel if you found out that we had imposed import restrictions on other countries in violation of GATT, some of which are supported by this administration, would that have any bearing on your view that the provision in my legislation calling for a prohibition on the importation of Krugerrands should not be adopted because it violates GATT?

Would that have any consequences on your view on that issue?

Mr. DENNIN. Speaking for the Department of Commerce, I would like to note that in my testimony I said that it could arguably constitute. I never have been convinced, and we don't as a Department have a taken position that it would constitute a violation of the GATT. There is a difference of opinion on that.

Mr. SOLARZ. I would appreciate it, for the record, if you could submit a detailed statement of any existing import restrictions we have which are presumably in violation of GATT with respect to any other countries, and how you would distinguish those from our prohibition against the importation of Krugerrands, and why you think one is supportable but the other not.

You also indicate that through the Protection of Business Act, South Africa might refuse to prohibit American firms doing business there from complying with the terms of our legislation, particularly with respect to providing information called for.

Can you tell us, to the best of your knowledge, whether specifically under the terms of the Evans amendment the South African Government has specifically prohibited American subsidiaries in South Africa from disclosing that information?

Under the Protection of Business Act, they have that right on a case-by-case basis, but in practice have they prohibited American subsidiaries, as distinguished from indigenous South African companies, from providing that information?

Mr. LYMAN. If I can speak to that, Mr. Solarz. What the South African Government has said to us is two things. Any information provided by South African companies would have to have prior permission of the Minister concerned, and any method of verification would have to be arranged by the company within the provisions of applicable South African legislation.

The South African Government has also said that it is unable to agree that U.S. Embassy or consular personnel, or indeed any other persons, should verify compliance, or otherwise, by South African companies with the said United States—

Mr. SOLARZ. I am interested in what they have done, and not what they have said.

In practice, have they refused to permit American subsidiaries to provide this information?

Mr. LYMAN. Since they took this position, no companies have subsequently asked or applied, nor have we attempted to inspect. That is their latest position.

Mr. SOLARZ. They could also prohibit us from sending people out to determine whether they had complied, in which case under the terms of my legislation, the people would have to stop doing business there.

But you would admit that if South Africa took that tack, they might be cutting off their nose to spite their face, since the companies involved would presumably have to leave.

You have testified, I think, that the Sullivan code is the hottest thing to hit civilization since the Declaration of Independence, and it is a document we strongly support. Are you gentlemen aware of the fact that Reverend Sullivan, the author of the code, has called for the enactment of the legislation, which you have just opposed, on the grounds that he has not been able to achieve effective voluntary compliance with his code, and that it is necessary in his view to make it mandatory?

Mr. LYMAN. Mr. Solarz, I am aware of Reverend Sullivan's testimony. We respectfully differ with him on that because we frankly feel that we are not in a position to enforce in a way that would be positive.

Rather than describing the Sullivan code the way you have, if I could just make a reference to a quote about the Sullivan code in a book recently put out that called it "The greatest new boost to the job advancement of South African blacks in the last 3 years." I am not listing it as the greatest thing since sliced bread, but I think it has been a very positive instrument.

Mr. SOLARZ. But your basic position has been that the Sullivan code should be enforced voluntarily, and presumably you support the voluntary enforcement of the Sullivan code.

If that is the case, can you tell me why we have received absolutely no response whatsoever to the letter which was sent by every member of this subcommittee to the President, urging the President to call a conference of representatives of every American firm doing business in South Africa in order to use his demonstrated talents for persuasion in order to get these firms to comply with the code?

Mr. LYMAN. I am sorry that an answer has not been provided yet. I don't think we have determined what the answer might be on that. Clearly, that is one suggestion of how it can be done, and the gentleman from Commerce has suggested other ways by which we have tried to encourage compliance.

Mr. SOLARZ. Thank you.

Mr. WOLPE. Thank you, Mr. Solarz.

Let me just indicate that I hope you will carry back the desire on the part of this committee to, at some point, receive a response to that letter that was sent many months ago.

Mr. LYMAN. I will be happy to look into it, Mr. Chairman.

Mr. WOLPE. Thank you.

Mr. Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman.

I apologize for being late because I only heard two presentations, the one by Mr. Leddy, and the one by Mr. Lyman. When I heard both of them, I wondered if either one of you gentlemen had ever visited South Africa.

I am persuaded that much of the hypocrisy that characterizes some of the testimony that the State Department sends over here concerning South Africa is due to the fact that so many of those who come over have never actually visited South Africa and witnessed what was going on. And those who have visited, spent most of their time talking with the Foreign Minister.

I have listened very attentively to all of the presentations about our new policy of constructive engagement, and even to this day I don't know what constructive engagement means.

If it means that we are resuming conversations with South Africa, that is one thing. But in terms of what actually happens, we not only are talking, it seems that constructive engagement means giving South Africa everything that South Africa asks for, and not requesting anything in return.

I spoke about the hypocrisy, and Congressman Solarz just touched one indication of that when he asked you whether or not Cuba was a member of GATT.

Mr. Leddy, you state in your testimony that to enact this legislation would be an infringement, or would interfere with the freedom of Americans "to buy gold coins."

I am wondering, though, a few days ago I read in the New York Times that the Treasury Department, and I think that is your Department, in my judgment had interfered with American freedom by prohibiting us from buying Cuban publications unless we first register with the Treasury Department.

How do you distinguish between that infringement on American freedom, a freedom that is guaranteed specifically by the Constitution, and this so-called claimed infringement that results from nothing but imposing a tariff regulation?

Mr. LEDDY. I am not certain what the Treasury action was taken pursuant to. It could possibly be the Trading With the Enemy Act, and as I noted there are, I believe, comprehensive restrictions on trade and financing of various kinds with a number of countries pursuant to the Trading With the Enemy Act. We have also had restrictions pursuant to the International Emergency Economic Powers Act.

There are clearly circumstances in which the United States will impose restrictions of this sort, but I think the conditions under which they can be imposed are carefully circumscribed.

When you contemplate the imposition of restrictions, you have to weigh the question of whether they will be generally damaging to U.S. economic and financial interests, and whether they will have their intended effect, whatever it may be.

Mr. CROCKETT. Mr. Lyman, I noticed in your prepared statement, you indicate that you think the enactment into law of the Sullivan principles would, and I quote, "be deliberately provocative and would produce a confrontational atmosphere."

Yet, when our committee visited South Africa this past August, and met with the U.S. Chamber of Commerce, several members of that august body told us that they had incurred no opposition whatever from the South African Government in their efforts to implement the Sullivan principles. That, indeed, in most instances where those principles went contrary to the policy of the South African Government, the South African Government, rather than make an issue of it, simply turned its back.

That would seem to suggest to me that the enactment of the Solarz bill really doesn't present any confrontational atmosphere, as you suggest. But, again, it might very well be that you haven't had the benefit of talking with some of the American businessmen who head up the U.S. Chamber of Commerce in South Africa.

Mr. LYMAN. Mr. Crockett, what I meant in the testimony was that the legislation as proposed, which first of all would make this a mandatory piece of American legislation, and then would employ American Government representatives to verify compliance with an American law in South Africa, this would be looked upon as deliberately provocative, not that the Sullivan principles or their voluntary implementation were necessarily looked upon as deliberately provocative.

I meant that in the sense of extraterritoriality and enforcement of American law in South Africa, and the use of American personnel for that reason, it would be provocative.

In response to your earlier comment, I have personally visited South Africa. I know many of my colleagues have done so more than I. I certainly don't mean to imply, and I don't think any of us do, an insensitivity to the depth of the problem. I will not try to be rhetorical about it, but it is a terrible problem.

What we mean by constructive engagement, frankly, is a relationship in which we think we can engage with not only the government, but with the private sectors of South Africa, in a way that will promote both peaceful change and other interests, as the chairman has mentioned.

These include the negotiations underway in Namibia, in which we think have made some progress, and which have been discussed

in separate hearings here. It doesn't constitute simply giving South Africa everything it wants. It is an engagement in which we think our interests can be served, and including some positive change.

It is a difficult process, and dealing with a painful problem. I hope that we did not express, and certainly we didn't mean to imply either insensitivity to the problem, or hypocrisy. I think my colleagues, many of whom have been to South Africa many times, are deeply aware, as I am, of this issue and its importance.

Mr. CROCKETT. Mr. Chairman, may I have unanimous consent to have 5 more minutes?

Mr. ERDAHL. Mr. Chairman, I will be glad to yield part of my time to my colleague.

Mr. WOLFE. Please continue, Mr. Crockett.

Mr. CROCKETT. Thank you.

On this whole question of the extent to which South Africa is prepared to look the other way on American companies operating in accordance with the mandate of their government, I would like to call attention to an experience that our subcommittee had, Mr. Chairman, when we visited the Ford plant in Capetown.

South Africa has a law that prohibits blacks from living in urban areas. Ford Motor Co. wanted to do something about improving housing conditions for its black employees. It wanted to spend several million dollars in building new housing.

The South African Government said that would not be approved, but they were perfectly willing for the Ford Motor Co. to make those several million dollars available to the housing authority in Capetown, and the then housing authority proceeded to build that housing in close proximity to the Ford plant.

That is the way the South African Government operates, and it leads me to wonder why our State Department does not take advantage of that in pushing for some action against apartheid.

As I think back over the few months that the Reagan administration has been in power, I can't put my finger on a single act that they have taken in opposition to apartheid, yet every speech that is made by Assistant Secretary Crocker, every speech that is made by everyone else with respect to the situation in South Africa, always contains one sentence condemning apartheid, but nothing whatever is done about it.

This leads me to wonder again how much hypocrisy characterizes our attitude toward South Africa.

We were down to Williamsburg this past weekend attending the African-American Conference down there, and I think you had an Assistant Secretary, whose name is Abrams, who spoke there. He took credit for the fact that the reason why South Africa pulled its forces back from Angola was because—this is practically a literal quote—the American Secretary of State told them that we would not contenance leaving South African forces in Angola.

It occurs to me, if our Secretary of State has that much influence over South Africa, he and his Department, and those of you who work under him certainly could do more about attacking the system of apartheid in South Africa than is presently being done. But instead, we hear Assistant Secretary Crocker speaking out in Hawaii and saying that the State Department will not choose be-