



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

TO: Federal Open Market Committee DATE: October 28, 1992
FROM: Normand Bernard *NB*.

The attached memorandum provides background information on the Committee's decision in 1976 to discontinue the "memorandum of discussion" (detailed minutes), and the System's position on this issue in response to subsequent Congressional efforts to require the preparation of such a document.

Attachment

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF MONETARY AFFAIRS

Date: October 28, 1992
To: Federal Open Market Committee
From: Normand Bernard *N.B.*
Subject: Reasons for Discontinuing Memorandum of Discussion in 1976 and Later Congressional Efforts to Reinstate It

At its meeting on May 18, 1976, the Federal Open Market Committee voted to discontinue the preparation of detailed minutes for its meetings. Such minutes, which were then called the "memorandum of discussion" to distinguish them from the formal minutes, had been prepared for every meeting since 1936.¹ The Committee gave the following reason for its action in the policy record for the May 1976 meeting:²

"The decision to discontinue these memoranda reflected the Committee's judgment that the benefits derived from them did not justify their relatively high costs, particularly in light of the changes made in the policy record."

1. The formal minutes were identical to those that are currently prepared. Those minutes (and the policy record) were released to the public after a lag of 45 days prior to May 1976, while the memoranda of discussion were released after five years (subject also to the deletion of sensitive materials mainly relating to foreign developments).

2. At its meeting on February 17, 1976, the FOMC discussed the implications of an adverse U.S. District Court ruling earlier in the year in a suit brought under the Freedom of Information Act. After that discussion, the Committee agreed with a suggestion by Chairman Burns to appoint a subcommittee to consider ways to deal with this issue. The subcommittee was comprised of Governors Goldwell (Chairman) and Partee, and Presidents Mayo and Winn. Their report, dated March 15, 1976, is available in FOMC files. The Committee discussed the desirability of continuing the memorandum of discussion at a special meeting on March 29, at the regular meeting on April 20, and finally at the meeting on May 18, 1976.

No memorandum of discussion was prepared for meetings after March 16, 1976.

The changes in the policy record approved at the meeting involved shortening the publication lag from 45 days to "shortly after the next regularly scheduled meeting." In 1976 the Committee was meeting on a monthly schedule and the new rule had the effect of shortening the publication lag to about 30 days or occasionally to around 35 days, depending on whether the intermeeting interval was 4 weeks or 5 weeks. At this meeting, the FOMC also decided that "policy records would be expanded to include more information concerning members' views on longer-run and current policy." As a result, the length of the typical policy record was more than doubled.

In taking this action, the FOMC agreed with a recommendation by Chairman Burns in a memorandum to the Committee dated April 19, 1976 (copy attached). In that memorandum, Chairman Burns stated in part: "My conclusion reflects our experience in connection with the recent Court³ order that we make 'segregable facts'⁴ from the memorandum available to a plaintiff. The premature disclosure of 'segregable facts' could, in some cases, do damage to the work of the Committee--particularly if the present Court or some later one rules that we acted inappropriately in withholding certain facts about foreign currency operations and procedural matters. Moreover, the effort

3. Attached is a brief note by Mr. Siciliano concerning the eventual disposition of this case (Merrill v. FOMC), including a decision by the Supreme Court in 1979 regarding the related issue of the immediate release of the directive.

4. "Segregable facts" in this context are nonconfidential facts that can reasonably be segregated from confidential information. Such information includes opinions, recommendations, and deliberations of FOMC members and staff. Nonconfidential facts are deemed to be reasonably segregable if, standing alone, they are intelligible to the reader. Most sentence fragments are not deemed to be "segregable facts."

to comply with the Court order in an appropriate manner required the expenditure of a tremendous amount of time by our senior staff and a considerable amount of my own time." The memorandum went on to recommend alternative procedures including an expansion of the policy record and a reduction in the lag for releasing the policy record. Chairman Burns concluded that "the public would be better informed about the Committee's actions under the proposed procedures than it is at present, and the Committee's needs would be served more efficiently."

Subsequent Developments

On June 30, 1976, Chairman Burns commented on the reasons for the Committee's decision in the course of testimony before the Joint Economic Committee. During the hearing (which was focused on general policy and economic issues), both Senator Proxmire (Chairman of the Senate Banking Committee) and Congressman Reuss (Chairman of the House Banking Committee) expressed strong reservations about the decision to discontinue the memorandum of discussion. They urged Chairman Burns to bring the issue back to the FOMC for a review, and he agreed to do so. The Committee reconsidered the matter at its meeting of July 19-20, 1976 and reaffirmed its earlier decision. As at the meeting on May 18, Governor Coldwell cast the lone dissenting vote. A letter to the chairmen of the two banking committees informed them of the FOMC's reconsideration and provided some elaboration of the reason given in the policy record for the May 1976 meeting. A copy of that letter, dated July 26, is attached.

Subsequently, bills were introduced in 1977, 1979, 1981, and 1983 that would have required the FOMC to prepare "detailed minutes" and that provided for deferred availability of

such minutes to the public. None of these bills made it through both houses, though one (in 1979) was passed by the House. The bill was approved by the Senate Banking Committee, but it was not passed by the full Senate before adjournment.

In its testimony on these legislative proposals, the Board gave its qualified endorsement to the reinstatement of detailed minutes.⁵ There follows a brief description of the various bills and/or excerpts from testimony presented by Chairman Burns (1977), Governor Coldwell (1979), Governor Schultz (1981), and Chairman Volcker (1983). It might be noted that the different bills provided for minimum periods of three years (1977 and 1979) or four years (1981 and 1983) before the detailed minutes could be released to the public. As reflected in the excerpts, Chairman Burns was strongly opposed to any release before five years; Governor Coldwell indicated the Board's acceptance of a three-year minimum (though some Board members preferred a longer delay); and both Governor Schultz and Chairman Volcker opposed any delay of less than four years. References to 3-1/2 or 4-1/2 year delays in some of the excerpts relate to provisions in the bills that would have required all of the detailed minutes for a given year to be released at the same time, thus implying maximum delays close to four or five years (for January meetings) and minimum delays of about three or four years (for December meetings).

5. In 1977, the House Subcommittee on Domestic Monetary Policy solicited the views of economists, historians, bankers, and former Board members on the value of detailed FOMC minutes. It received 81 written opinions, including views from former Governors Daane, Maisel, and Robertson. See attachment 4 reproduced from a 1979 House Banking Committee report.

1977

H.R. 9465: A bill to require the FOMC to maintain detailed minutes of its meetings and to release those minutes to the public 3 years after each meeting.

Chairman Burns: "We are sympathetic to the concerns that underlie this proposal, and we are reluctant to oppose it. However, we believe there are three shortcomings in the bill as it is presently drafted. First, no provision is made for exclusion of material that may be embarrassing to foreign governments or institutions. Second, three years is not a sufficiently long period to avoid the inhibiting effects that may derive from the anticipated release of the views expressed at FOMC meetings. If this proposal were to be adopted, we would strongly prefer a return to the prior practice of releasing the memorandum with a five-year lag. Third, and most important, the bill does not address the possibility that the FOMC might be compelled under the Freedom of Information Act to make public all or significant portions of the memoranda more promptly than the specified period, whether it be three or five years. In the absence of expressed statutory protection against premature disclosure of the memoranda, we would feel compelled to object to a proposal to return to the practice of keeping extensively detailed minutes of FOMC meetings."

1979

H.R. 4998: The minutes are to include a transcript of the proceedings of each meeting which may be edited for style but without changes in substance. The Board may delete from the minutes information regarding foreign countries and central banks and international institutions....Such deletions must be noted, and the legislation requires that the information eventually be published. The minutes themselves would be published by the Board on, but not before, the first business day of February of the fourth calendar year following the one in which the meeting involved occurs. (Senate summary)

Governor Coldwell: "The Board sympathizes with the concerns that underlie these proposals and has no objection to publication of such minutes provided it is made clear in legislation that no portion of the minutes may legally be released prior to a specified minimum period of at least 3 years and provided that references to sensitive international developments can be screened by the FOMC and withheld for additional periods..."

1981

H.R. 4478: This bill reestablishes the practice of the FOMC to maintain detailed minutes and provides for their public release yearly on an average 4-1/2-year deferred basis... The minutes of each such meeting

shall contain a detailed record of the proceedings of such meeting and shall be prepared in accordance with publicly available guidelines prescribed by the Board. Such guideline may authorize the inclusion of staff reports. Views expressed by any member of the Committee shall be attributed to such member... Before the publication of any such minutes...the Board may delete from such minutes any information regarding any foreign country, central bank of a foreign country, or any international institution... (Subcommittee Chairman Walter Fauntroy's summary).

Governor Schultz: "The Board sympathizes with the concerns that underlie this proposal and has no objection to publication of such minutes in accordance with the provisions of H.R. 4478." In response to a question during the hearing as to whether he "would take kindly to a benign little amendment to (reduce the lag) to three-and-a-half years," Governor Schultz replied: "It is my judgment and the judgment of the other members of the FOMC that four-and-a-half years is a preferable time period, but I can't sit here and pound the desk and tell you it would certainly not be in the best interests of the country if the time period were somewhat shorter because it is a judgmental question."

1983

H.R. 4009, The Federal Reserve Modernization Act. (See Attachment 5 for the text of this bill as it relates to detailed minutes.)

Chairman Volcker: "The Board understands the desire to establish a more detailed record that might be of future interest to historians, economists, and other close students of monetary policy. Accordingly, the Board has no objection to the preparation and eventual release of such minutes provided a suitable period of time has elapsed. We believe such a time period is essential to preserve the confidentiality and spontaneity of the deliberations. The provisions of H.R. 4009 make clear that no portion of the minutes may legally be released before a specified minimum period of approximately four years after the calendar year in which the meeting occurred, and provides for the withholding of references to sensitive international financial developments for additional periods. A minimum period of that length is necessary to avoid inhibiting the frank exchange of views during policy discussions and the risk of politicizing the decision-making process."

Attachments

1. Memo to FOMC from Chairman Burns, dated April 19, 1976, recommending that the memorandum of discussion be discontinued.
2. Letter to Chairman Proxmire from Chairman Burns, dated July 26, 1976, informing him that the FOMC had reaffirmed its decision to discontinue the memorandum of discussion.
3. Note from Mr. Siciliano regarding court decisions in the Merrill case.
4. Excerpt from the Report of the Committee on Banking, Finance, and Urban Affairs, dated September 7, 1979, providing certain background information including a report of the views of 81 "experts."
5. Text of H.R. 4009 (portion relating to "detailed minutes.")



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

April 19, 1976

STRICTLY CONFIDENTIAL (FR)
CLASS I FOMC

TO: Federal Open Market Committee SUBJECT: The FOMC memorandum
of discussion and
policy record

FROM: Chairman Burns

During the special FOMC meeting held on March 29, 1976, I indicated that I was giving serious thought to recommending to the Committee that the memorandum of discussion be discontinued. After further consideration, I have decided to make that recommendation.

My conclusion reflects our experience in connection with the recent Court order that we make "segregable facts" from the memorandum available to a plaintiff. The premature disclosure of "segregable facts" could, in some cases, do damage to the work of the Committee-- particularly if the present Court or some later one rules that we acted inappropriately in withholding certain facts about foreign currency operations and procedural matters. Moreover, the effort to comply with the Court order in an appropriate manner required the expenditure of a tremendous amount of time by our senior staff and a considerable amount of my own time. The expenditure of time on this single suit apparently is not yet at an end; just within the past

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week the Committee's General Counsel and Secretary found it necessary to devote additional hours to the case, as a result of a new memorandum from the plaintiff to the Court charging that we have not fully complied with the order.

In the attached document the staff has set forth a proposal for meeting the needs now served by the memorandum of discussion in other ways--essentially, by providing more information in the record of policy actions and the minutes, and by preparing memoranda for files regarding certain types of developments at meetings of the Committee. I share the staff's view that the public would be better informed about the Committee's actions under the proposed procedures than it is at present, and that the Committee's needs would be served more efficiently. Accordingly, I recommend that the staff's proposal be adopted.

If the Committee concurs in this recommendation, I will appoint a Subcommittee to review suggestions made by the Secretary after each meeting regarding the specific developments at the meeting, if any, for which memoranda to files should be prepared.

On a related matter, I believe the Committee should give serious consideration to reducing further the lag in the release of the policy records. Instead of the present 45-day lag, I would suggest that the record be released about 30 days after the FOMC meeting.

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For example, it might be released on the Friday afternoon following the next regular meeting of the Committee, which would mean a lag of 31 or 38 days, depending on whether the inter-meeting interval was 4 or 5 weeks.

Attachment



CHAIRMAN OF THE BOARD OF GOVERNORS
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

July 26, 1976

The Honorable William Proxmire
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In my letter of July 8, 1976, I noted that I had agreed, in response to a request by Congressman Reuss at the June 30 hearings before the Joint Economic Committee, to put on the agenda for the next FOMC meeting the question of whether the Committee should rescind its recent decision to discontinue the "memorandum of discussion" that formerly had been prepared on its meetings. In your letter of June 22 you expressed concern about this decision and a related alteration in the "policy record" prepared for each meeting, and asked that the FOMC reconsider the manner in which its policy discussions are presented in the record; and you have offered some further observations in your letter of July 15.

After reviewing the matter at its meeting last week, the Federal Open Market Committee remains of the opinion that the benefits derived from the memoranda of discussion did not justify their relatively high cost, particularly in light of the fact that the public has made very little use of this document over the years. The lack of public interest in the memoranda of discussion is confirmed by the fact that, since the date we announced their discontinuance, we have heard no criticism of that decision from anyone other than Congressman Reuss and yourself. Indeed, we have received no communications at all on the subject, directly or indirectly, from other persons. We may, of course, receive some such communications in the future, but the fact that no one has written or called in the two months since our announcement is highly significant.

The Honorable William Proxmire

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The advantages of our new procedure are two-fold. First, there is an obvious gain in providing information regarding the Committee's deliberations on a current basis, in an expanded policy record that is published with a lag of about a month, rather than on an historical basis in a memorandum of discussion that is published five years later. Second, there is a less obvious but no less important gain in providing information in analytic form. The memoranda of discussion were accounts of lengthy meetings typically concerned with a variety of procedural as well as policy questions. Moreover, these documents were chronological accounts of the meetings--recording in the order of occurrence remarks by Committee members on a variety of subjects, questions by members and responses by staff, formal and informal reports of various sorts, and other oral exchanges--material that frequently is of only technical or transitory interest. Anyone who has worked with such documents is aware of the difficulties faced by a reader who wants to understand the substantive issues considered, the positions taken, and the conclusions reached. To extract such information, the reader must work through long pages of material to identify relevant passages, analyze the ideas expressed in these passages, and organize his findings. Our objective in the expanded policy record is to perform that task for the reader, particularly with respect to the Committee's deliberations on domestic monetary policy.

You said in your letter that you found "totally inadequate" the new form of the policy record, as exemplified in that for the FOMC meeting of April 20, 1976. Congressman Reuss also expressed criticism of the April 20 policy record at the JEC hearings. That particular record was our initial effort at providing a fuller account of the views expressed by members during the Committee's deliberations, and should not be used to assess the merits of our new procedure. As I indicated at the hearings, I expect the records to improve as the Committee's staff gains experience in drafting them in the new form. In particular, they should become more precise and informative with respect to the nuances of the debate as well as the main lines of argument advanced.

You state in your letter of July 15 that "public and Congressional understanding of monetary management requires that there should eventually be a published account of the substance of these meetings and not just their outcome." I and my colleagues on the Committee agree fully. Such an account is precisely what we are

The Honorable William Proxmire
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endeavoring to provide in the policy records, but with a lag of roughly a month rather than 5 years. I am sure that as the new policy record evolves over coming months it will be much more to your liking than our initial effort, and much more useful to the Congress and the public than was the old memorandum of discussion.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Arthur F. Burns".

Arthur F. Burns

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

October 27, 1992

To: Normand Bernard Subject: Merrill v. Federal Open
Market Committee, 443 U.S. 340
(1979), on remand 516 F. Supp.
1028 (D.D.C. 1981).

From: Stephen L. Siciliano 

Two issues were raised in this Freedom of Information Act lawsuit: (1) whether the Memorandums of Discussion of the Committee's meetings for January and February, 1975, must be disclosed immediately upon request; (2) whether the Committee must publish the domestic policy directive immediately following the meeting at which it is adopted. The first issue was settled after initial proceedings in the District Court. The second issue was resolved in the Committee's favor only after a decision by the Supreme Court and consideration of the facts by the District Court on remand.

The Committee argued that the Memorandums of Discussion were exempt from disclosure as deliberative materials which would reveal the Committee's internal consultative processes. Then, as now, such materials may be withheld from the public; but reasonably segregable non-deliberative materials (facts) must be disclosed. The Committee took the position that the memorandums were entirely deliberative, except for occasional non-segregable segments and for actions which were disclosed by the Committee in other formats. The District Court ruled that the Committee must disclose segregable facts. The Committee subsequently settled this issue by disclosing a small portion of the Memorandums of Discussion to the plaintiff. The Committee used a methodology for segregation and disclosure that had been agreed upon with plaintiff based upon a joint analysis of an old Memorandum that had been released to the public consistent with the Committee's policy. The policy at the time was to release the Memorandums of Discussion, subject to minor editing, after five years.

The Supreme Court held that the Committee may continue to enforce its policy of deferring release of the domestic policy directive until the meeting next succeeding the one at which the directive was adopted -- provided the Committee could establish that some harm would result from immediate disclosure. This harm could consist of either (1) an impairment to the monetary policy process; or (2) financial costs to the Government. On remand, Judge Oliver Gasch ruled in the Committee's favor.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96-421

FEDERAL OPEN MARKET COMMITTEE MINUTES

SEPTEMBER 7, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REUSS, from the Committee on Banking, Finance, and Urban Affairs, submitted the following

REPORT

[To accompany H.R. 4998]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking, Finance, and Urban Affairs, to whom was referred the bill (H.R. 4998) to amend the Federal Reserve Act to require that detailed minutes of Federal Open Market Committee meetings shall be published on a deferred basis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE AND HISTORY

This bill would require that detailed minutes of all Federal Open Market Committee meetings be published "on, but not before, the first business day of February of the fourth calendar year following the calendar year in which the meeting involved occurs." This means that the minutes will be published with a lag of 3 years and 2 months for December and 4 years and 1 month for January meetings.

The FOMC started keeping detailed minutes of its meetings in 1936. In 1964, the minutes were released for all meetings before 1959, and the policy of publishing them with a 5-year time lag was adopted. Then, in May 1976, the FOMC voted to stop keeping minutes.

In 1977, the Subcommittee on Domestic Monetary Policy held hearings on legislation to reinstate the minutes and published written opinions on the value of the minutes which it received from 81 economists, historians, bankers, and former top-level Federal Reserve officials. Overwhelmingly, from Milton Friedman to John Kenneth Galbraith, these experts opposed the FOMC's decision to discontinue keeping minutes and favored reinstatement. Former Federal Reserve Board members Robertson, Maisel, and Daane highlighted the purposes that will be served by requiring the Board to reinstate the minutes and release them on a deferred basis.

Former Federal Reserve Board Vice-Chairman J. Louis Robertson pointed out that qualified men prefer not to remain anonymous and that as competent individuals, the members of the FOMC "should be willing and anxious to stand on their records and be held responsible for the way in which they play their respective roles." Former Federal Reserve Board Governor Sherman Maisel provided another reason for attribution and disclosure of individual views. He stated :

From my experience, I believe each member of the FOMC prepares more carefully and makes more considered statements based on his recognition that he and the others are on the record and will be judged in the future on their individual contributions to the debate.

Former Reserve Board Governor Dewey Daane stressed the importance of the minutes for research in monetary policy, both by academicians and Federal Reserve officials and staff. He stated that he often had occasion to refer back to the minutes both as a Governor and when he had been Director of Research at the Federal Reserve Bank of Richmond.

This year the Subcommittee on Domestic Monetary Policy held hearings on H.R. 2307, forerunner of H.R. 4998, on April 4, 1979. The subcommittee received testimony from Federal Reserve Board Governor Philip E. Coldwell on behalf of the entire Board in support of the principle of reinstatement of the minutes. Subsequently, agreement was worked out with the Federal Reserve Board on all details and language of the legislation. H.R. 2307 was marked up by the subcommittee on July 19, 1979. Mr. Mitchell of Maryland introduced an amendment in the nature of a substitute which was adopted unanimously and the bill was favorably reported as amended by a vote of 7 ayes to no nays. A clean bill (H.R. 4998) was introduced by Mr. Mitchell for himself, Mr. Neal, Mr. D'Amours, Mr. Barnard, Mr. Mattox, Mr. Cavanaugh, Mr. Hansen, and Mr. Paul on July 27, 1979.

The full Committee on Banking, Finance and Urban Affairs marked up H.R. 4998 on July 31, 1979. The bill was favorably reported by a unanimous voice vote.

1

DETAILED MINUTES

2

SEC. 2. (a) Section 12A of the Federal Reserve Act (12 U.S.C. 263) is amended by adding at the end thereof the following:

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“(d)(1) The Board of Governors of the Federal Reserve System shall take and maintain detailed minutes of all meetings of the Committee.

8

“(2) Subject to paragraph (3), the minutes of each such meeting shall contain a detailed record of the proceedings of such meeting and shall be prepared in accordance with publicly available guidelines prescribed by the Board. Such guidelines may authorize the inclusion of staff reports. Views expressed by any member of the Committee shall be attributed to such member in such minutes.

15

“(3)(A) Before the publication of any minutes in accordance with the provisions of paragraph (4), the Board may delete from such minutes any information regarding any foreign country, central bank of a foreign country, or any international institution which has a majority of members who are foreign countries or central banks of foreign countries. Any such deletion shall be indicated in such minutes.

23

“(B) Not later than fifteen years after the date of each meeting with respect to which information is deleted under

1 *subparagraph (A), the Board shall review such information*
2 *to determine whether such information should be published.*

3 *“(C) Not later than thirty years after the date of each*
4 *meeting with respect to which information is deleted under*
5 *subparagraph (A) and withheld from publication under sub-*
6 *paragraph (B), the Board shall publish such information.*

7 *“(4) The minutes of each meeting of the Committee, pre-*
8 *pared pursuant to paragraphs (1) through (3), shall be pub-*
9 *lished and be made publicly available by the Board on, but*
10 *not before, the last business day of December of the fourth*
11 *calendar year following the calendar year in which the meet-*
12 *ing involved occurs.”.*

13 *“(5) Nothing in this subsection shall limit the authority*
14 *of the Committee or the Board to publish information (other*
15 *than detailed minutes maintained pursuant to this subsec-*
16 *tion) concerning the Committee’s meetings prior to the end of*
17 *the fourth calendar year following the calendar year in which*
18 *the meeting involved occurs.”.*

19 *(b) The amendments made by subsection (a) shall apply*
20 *only to meetings of the Federal Open Market Committee*
21 *which are held after the date of the enactment of this Act.*