

**FEDERAL OPEN MARKET COMMITTEE
CONFERENCE CALL
October 22, 1993**

PRESENT: Mr. Greenspan, Chairman
Mr. McDonough, Vice Chairman
Mr. Angell
Mr. Keehn
Mr. Kelley
Mr. LaWare
Mr. McTeer
Mr. Mullins
Ms. Phillips

Mr. Broaddus, Alternate Member of the Federal Open Market Committee

Messrs. Hoenig, Melzer, and Syron, Presidents of the Federal Reserve Banks of
Kansas City, St. Louis, and Boston respectively

Mr. Bernard, Deputy Secretary
Mr. Mattingly, General Counsel

Mr. Lindsey, Associate Economist

Attendance at this meeting was not recorded in the Committee's files. The above attendance, which is incomplete, lists those who spoke during this conference call.

Transcript of Federal Open Market Committee Conference Call
October 22, 1993

CHAIRMAN GREENSPAN. The purpose of this call is not to reach any final decision on the proposal outlined in Virgil Mattingly's memo. [See Appendix for a copy of the memo.] Rather, I want to hear views of the merits of the proposal and whether we should begin to explore the proposal with the Department of Justice. Even if the Department favors the proposal, there are other issues that will need to be reviewed such as legal records, retention requirements, and so forth. The Committee would need to be closely involved in this process, needless to say. I scheduled this call on short notice essentially because I believe it's necessary for us to stay ahead of the curve on this matter. Unless any of the members would like the proposal summarized by Virgil, I would now open up the issue for discussion.

MR. BROADDUS. Mr. Chairman, this is Al Broaddus in Richmond. I would just say that I like the proposal. I would support it. The only comment I would make is on page 3 of the memorandum we got. This statement is worded "the FOMC also could seek legislation." I would hope that we would seek legislation. But in general I think it's a reasonable proposal.

MR. SYRON. Mr. Chairman, Dick Syron. I would also support the proposal. I do have some questions. One is that I'm not sure I would seek legislation unless we really need it because of the concern about opening up the [Federal Reserve] Act, unless we could do it through legislation in the Freedom of Information Act sense. And the second thing is a minor, technical point. On page 2, item D, Confidential and Financial Information, it says "including central banks and foreign government information". I presume the "including" is meant to imply that information about individual banks or firms would be excluded or redacted?

MR. MATTINGLY. That's correct.

CHAIRMAN GREENSPAN. Yes.

MR. KEEHN. This is Si Keehn. I really wondered why we wouldn't specifically say that in that section.

CHAIRMAN GREENSPAN. I'm sorry, say that again.

MR. KEEHN. Dick was talking about "D" on page 2, and I had the same question. We say "confidential and financial information, including central bank and foreign government information." Why wouldn't we also be specific and say that we would exclude confidential corporate information and data relating to financial institutions?

CHAIRMAN GREENSPAN. Can we do that?

MR. MATTINGLY. Yes sir, that's not a problem.

CHAIRMAN GREENSPAN. In fact, why don't we make that change.

MR. KEEHN. Another I suppose procedural issue: Now that I see Mr. Gonzalez's most recent letter, I guess the horse is out of the barn. But would we necessarily go to the Justice Department and begin to negotiate before it is clear that we have a problem that we're going to have to deal with?

CHAIRMAN GREENSPAN. I think the answer is "yes," in the sense that we do have these transcripts and there is legally a question as to their availability. I think we have to make some decisions as to where we stand on this and come to a conclusion, rather than leaving it in limbo. So long as we presumed that all of these activities were protected under the Act and that it was strictly a procedure on the part of the Secretariat to facilitate the construction of minutes, I think it was strictly a staff issue. But it was elevated in recent conversations to a level where I think the Committee has to come to a judgment one way or the other. I don't see how we can basically avoid that fact.

VICE CHAIRMAN MCDONOUGH. Mr. Chairman, Bill McDonough. I share that view. We could get a FOIA request this afternoon. So, I think moving ahead is a good idea. On the issue that was mentioned just a moment ago [regarding] point 5, paragraph 5, on page 3, I think we should seek legislation. In the absence of legislation, we're completely victims or captives of whatever view the Attorney General of the day and of the future would feel on this issue. It seems to me that we're better off with legislative protection, even at the acknowledged expense of opening up [the Act].

CHAIRMAN GREENSPAN. I must say, Bill, that I've come to the same conclusion. I think the advantage of having legislation is that it clarifies this issue irrevocably, short of new legislation. And I think there's a useful issue involved here because the ambiguities that we would leave out in the open don't serve our particular purposes that I can see.

MR. HOENIG. Mr. Chairman, this is Tom Hoenig. I basically agree with the proposal. I have one question in my mind. The idea of transcripts is now out there; and they exist. In opening up the legislation, or even in the negotiations, I get the impression that the only thing that will be acceptable is in fact some form of transcripts, verbatim nearly. And the issue in terms of opening up the legislation will be whether we can negotiate for a long enough period to pass before those are released and how much editing can be done. I have the sense that the Memorandum of Discussion now would probably not be well received. Am I wrong on that?

CHAIRMAN GREENSPAN. Well, let's not fix ourselves wholly on how it will be received or not received. We ought to focus on what's the right thing to do. I think we've always argued that the Memorandum of Discussion--leaving aside the issues, which are not irrelevant, of its cost and the demand for such documents--is as good a record of what actually occurs in these meetings as you can get from the point of view of those who have a serious interest in monetary policy and the history of monetary policy. So, the point I think we ought to focus on is not so much [how] it is received or not received by somebody on the Hill. I think the question we should focus on is: Do we think that the Memoranda of Discussion are superior to edited transcripts for the purpose of getting across the central, major

discussions that are involved? And I tell you, my view--in fact, the view that I stated at the [hearings of the Banking] Committee, which I actually [unintelligible]--is that people underestimate how much material is in the existing minutes. People think reading raw transcripts is a way of learning things; I would suggest that if they spend six or eight months reading through some of the stuff, they won't like it.

MR. ANGELL. Alan, I really agree with both you and with Tom. And when I say that, I agree that going forward a Memorandum of Discussion is the preferable way to go. But that Memorandum of Discussion, going forward, will be subject to Committee approval. We do not have Committee approval on the previous transcripts, which are there. I agree with Tom Hoenig that once those are there, our attempt to substitute [Memoranda of Discussion] for them going backward will not work very well. It won't work very well internally. That is, how can we go backwards and pull these together? We don't have the procedures whereby the members who participated have an opportunity to sit down in a discussion and say "I don't agree with this" and someone else says "Well, I don't agree with you." And finally the Chairman says "But we're going to have to come to a consensus," and the majority vote rules in regard to going forward with the Memoranda of Discussion. But to try to put Memoranda of Discussion together for the past that have the unanimous consent of all current members plus all those who've left us seems to me--

CHAIRMAN GREENSPAN. The problem is that the Memoranda of Discussion require only the vote of the current Committee. It's a courtesy that we would extend to others to take a look at it if we chose. Look, the big difference here, and what I object to with the transcripts historically, is what I've indicated before: Namely that there are individuals [involved] who have not had a chance to check that those transcripts are accurate. There are those who are deceased. The original purpose of the transcripts was merely to facilitate the construction of minutes. They were not for the purpose of release. Were that the case, we would have gotten high-powered people to make certain that the people who took down the notes off the tapes were sufficiently knowledgeable that we wouldn't have any question as to whether the transcripts would be accurate. But since we had the Secretariat staff looking at that, they knew when the record was inaccurate; they were at the meeting. So, it's a different type of procedure. And it's really quite unfair to those who haven't had a chance to look at it to have somebody else's view of what they said made public. I just don't think we should publish that.

MR. ANGELL. But there again, I think the amount of time that it's going to take on our part to do previous Memoranda of Discussion is going to be far in excess of the time it would take someone to follow the instructions about redacting information that ought not be to be there by substituting "bank" for--

CHAIRMAN GREENSPAN. I don't disagree with you. It's an expensive proposition. And you're merely emphasizing one of the reasons why we haven't engaged in that activity previously. It's a very costly activity. The question is: Is it a good response to do that?

MR. ANGELL. Yes. I would like to see us take steps as soon as possible--as soon as we have a consensus to do so--to adopt a Memorandum of Discussion on a going-forward basis and to announce that we would have those available with a three-year lag or whatever the majority believe [is appropriate]. But I just believe that there's a separate question on the previous transcripts that are rough and unedited. And I think the time delay ought to be longer on that kind of material than it should be for the Memorandum of Discussion.

CHAIRMAN GREENSPAN. Well, obviously, if in fact we are legally required to make those raw transcripts available, even an edited version, there's no question that the harm that is done is less the longer back--

MR. ANGELL. But the biggest loss for us is not that someone is going to find something in there and say "See here!" That's because, by and large, they're going to show that we've been a very careful body in regard to going about our decisionmaking. The biggest harm for us is that someone will say: "See, there they go; they're trying to rewrite it." I just think it's a losing proposition for us on what is already there. But that's enough.

CHAIRMAN GREENSPAN. Hardly.

MS. PHILLIPS. Alan, this is Susan.

CHAIRMAN GREENSPAN. Yes, Susan.

MS. PHILLIPS. I would think that there would be a chance that the Justice Department would see these transcripts as essentially staff materials--as material supporting the staff's efforts to prepare the minutes. And I thought that Justice traditionally has taken a pretty hard line on trying to keep staff materials from being made public.

MR. MATTINGLY. They have, Governor Phillips. But the question [arises because] a few weeks ago the Department changed its position. Previously, those materials were, I think, pretty clearly exempt from public release. A few weeks ago the Justice Department changed the policy and indicated that there's a presumption in favor of release. They would only defend a lawsuit brought to get access to those documents if the agency could show harm to the agency. And what we're asking for in this proposal is to go to the Justice Department, explain the documents that we have, and see how [that] policy would be applied to those documents.

MS. PHILLIPS. That's a little different than going ahead with a proposal to go back and start making all these Memoranda of Discussion.

MR. MATTINGLY. We're not [asking for that], I don't think. What we're asking for today is just the Committee's preliminary views on this proposal, whether they think it has merit. If the Committee thinks it has merit, we will explore its feasibility with Justice.

MR. D. LINDSEY. This is Dave Lindsey. But part of the proposal is explaining to Justice that we plan to put in place an orderly process for releasing the substance of the material, in other

words, the Memoranda of Discussion idea. That's part of your proposal.

MR. MATTINGLY. Right. In my opinion, it would enhance our chances of obtaining a favorable view from the Justice Department if we were to have this process.

MS. PHILLIPS. I must say, I'm uncomfortable with going back and changing the procedures that we've had in the past because those folks aren't around and they attended those FOMC meetings under what they thought were certain ground rules. And I find it somewhat difficult to go back and do that. I don't object to doing it on a going-forward basis. But going back, I really see those [older] transcripts as staff material supporting the development of the minutes, which was what the FOMC thought they were approving.

MR. D. LINDSEY. Well, this is Dave Lindsey again. I guess part of Virgil's premise is that it may be difficult to protect those raw transcripts and, therefore, they may get out absent this fallback position of going forward with the process of an orderly release of Memoranda of Discussion.

MS. PHILLIPS. I do agree that as a fallback position the Memorandum of Discussion is definitely better than publishing the raw transcripts. But I would hope that we'd make a try not even to do that.

MR. LAWARE. Starting from the rationale that Governor Angell has proposed, does it make sense to try a combination and say we will release edited transcripts of all those meetings for which we have a transcript up until the time Governor Angell came on the Board of Governors? Everyone else who is currently on the Board of Governors [was appointed later]. From that point on, we will do Memoranda of Discussion for those meetings and release them three years after the meeting took place, or the fourth year after or whatever. And going forward, that is the [schedule] that we will release them on. And the rationale for doing that is that the people who are presently here then can participate in the approval of the Memorandum of Discussion, whereas we have no way of getting that kind of approval from many of the participants in the previous ones.

CHAIRMAN GREENSPAN. I'm sorry, I still feel uncomfortable about the fact that some individuals are alive and still around and will be exposed to statements which they may not have made. It's--

MR. LAWARE. Well, how are we going to edit and create a Memorandum of Discussion if we can't take what's in the transcript and try to put it into some kind of--?

CHAIRMAN GREENSPAN. Well, basically if we've got somebody who knows how the meetings are run and what's going on, there's an interpretative element involved in reading those transcripts, which I assume will [result in] trying to capture what the person was actually saying. Now, I grant you, that's not a perfect solution to this; there is no perfect solution to this.

VICE CHAIRMAN MCDONOUGH. This is Bill McDonough again. It seems to me that, with the attitude of the Justice Department, what

the Chairman has focused on is the real issue: That we're going to have a FOIA request as sure as God made little green apples. And our choice is whether we're going to be able to negotiate with the Justice Department the release of a probably not very fully edited transcript or whether we're going to be able to create an MOD and then destroy the transcript as part of the deal. We don't have a happy alternative here.

CHAIRMAN GREENSPAN. Why don't we just authorize Virgil to go speak to them and get their advice. After all, these people are sophisticated; they know what's going on in the world, and their judgment might be useful in this regard. It's not as though legal issues of this nature have never come up before. There is a protection of individual rights associated with this question and [we can ask] what is the nature of the exposure that they see. They may have as much awareness as to what the rights of people are in this context as we do, or conceivably a good deal more. Maybe we ought to ask their judgment as to how we resolve this quasi-legal dilemma.

VICE CHAIRMAN MCDONOUGH. That seems to me a very good approach because in effect it says to Virgil: If in the worst of cases you have to settle for the MOD, we have at least a view that he can explore that. We haven't made a decision, as you said right at the beginning. And if he can get Justice to take a better deal from our point of view, obviously that's preferable.

MS. PHILLIPS. This is Susan. I agree. I think it would be useful to have Virgil explore that and seek the advice of Justice.

MR. ANGELL. But in the meantime, we have an opportunity. At least since Bill McDonough joined the Committee, the Committee is now [at full strength]. And from that meeting on, why not begin immediately to put together a Memorandum of Discussion, starting with the August meeting or--what was it--the October or September meeting?

MR. BERNARD. September meeting.

MR. ANGELL. September meeting. Let's get on with that, because if there's a will to do Memoranda of Discussion, it seems to me we ought to get at that. We would thereby know a little about what it's like to put those Memoranda of Discussion together. And it would show that we are taking an immediate step to achieve this. And then, I agree, it would be nice to have Virgil find out more information in regard to where--

CHAIRMAN GREENSPAN. Well, he can actually do that immediately. Getting ready actually to do a Memorandum of Discussion is an idea which shouldn't be forestalled while he speaks to the Justice Department. Look, let's not forget something: This stuff costs money. It's not a free good. And I'm personally reluctant to argue in favor of just doing something until we have a very solid reason for going ahead. If we have to delay a short while, so be it. But we do have budgets, and it's our resources that we are dealing with.

MR. ANGELL. You don't think doing the August and September meetings would involve a heavy budget outlay?

CHAIRMAN GREENSPAN. I don't know what would--

MR. MATTINGLY. Mr. Chairman, before the Committee decides to institute the MOD, I think it would be very important to talk to the Justice Department and make sure they would protect the transcripts [associated with] those MODs at least for a three-year period.

MR. MELZER. I think Virgil's absolutely right on that, because that's why we stopped doing it in the first place.

MR. KELLEY. Well, there's no reason to rush ahead with August and September if they're not going to be released for three years anyway. We have time to get this settled over the course of the next several weeks and then get on with it. I basically agree with Wayne's suggestion, but I don't think waiting a brief period of time until this becomes clearer is going to in any way hurt or even slow up our ability to have those things in the files in a timely way.

SPEAKER(?). Mr. Chairman, I have to assume I'm--

MR. KELLEY. Before I lose the floor, may I say one other thing, please? Excuse me for hesitating there, but I'd like not to lose track of John LaWare's suggestion that we think in terms of two past time [periods], one being 1976 until the senior member presently sitting got here. The second--

MR. LAWARE. The whole Committee. I misspoke; it should have been [the longest tenure on] the whole Committee.

CHAIRMAN GREENSPAN. That goes back a long way.

MR. LAWARE. Does it?

MR. BERNARD. 1981.

MR. LAWARE. Okay, so 1981.

MR. KELLEY. We would go back to '81; I'm not sure I understand that point. But at any rate, the very deep history first of all is less interesting, except to the Anna Schwartzes of the world perhaps. But we can think in terms of trying to protect those far-distant past participants and be willing perhaps to be a bit more forthcoming with [meetings involving] those of us who have an opportunity to participate in clearing the release of these things.

MR. MCTEER. This is Bob McTeer. Isn't going back to Wayne forgetting about the Reserve Bank Presidents? That's just taking care of all the Governors.

MR. LAWARE. I just misspoke, Bob.

MR. KELLEY. No, that's right. It should take care of all of the presently active members of the Committee.

MR. ANGELL. But there have been people who served on the FOMC during that period who are gone and cannot participate. And there are rules of order in adopting the Memorandum of Discussion.

CHAIRMAN GREENSPAN. I would also like to raise the issue of redacting the comments of those who are deceased. In any event, does anyone else want to--

MR. MULLINS. Mr. Chairman, this is Governor Mullins. Obviously, I've been [away]. I have to assume I'm insufficiently informed on these issues, because it's not exactly clear to me, especially going forward, why we'd want to do Memoranda of Discussion. We've discussed that in the past. Why wouldn't we keep the transcripts until the minutes are written and then get rid of the transcripts and keep the minutes? I agree with Governor Phillips that these sorts of proposals ought to be fallback [positions]. But it does seem to me that we're moving pretty rapidly here to do some things which in all our previous discussions we've suggested we did not favor. Maybe there are no alternatives, but I think it's worthwhile exploring all our options before we turn ourselves in.

CHAIRMAN GREENSPAN. David, I think since you've been out of the country a number of legal things have occurred that--

MR. MULLINS. I'm aware of the Justice Department thing, but I have no idea what their attitude is now. I don't read this as deliberative material being totally opened. But anyway, we can explore these--

CHAIRMAN GREENSPAN. No, I think that's the very first step. And I think that all other steps--. The only purpose of this meeting basically is to see whether Virgil is authorized to go and speak to the Justice Department. And another question [relates] to a letter in response to a series of questions I got from Steve Neal on certain issues.

MR. MULLINS. Yes, sure.

CHAIRMAN GREENSPAN. But as far as the first issue is concerned, I would suggest that we ask Virgil to be our emissary, find out what the legal questions are, and report back. I don't think any further actions are required until we find out what the facts are.

MR. ANGELL. Except that every day that goes by increases the likelihood that the Congress may, in a sense, take it out of our control, and if we are thereby seen as being reluctant--

CHAIRMAN GREENSPAN. Well, I think we have to be careful about doing something which makes no sense. It may be that the Congress wants to take it out of our hands. If they do, that's their prerogative.

MR. MULLINS. Pardon me again, Mr. Chairman. This is Governor Mullins. Do you mean there's the possibility of legislative action to require us to do this? I wasn't aware of such a strong interest in these issues in Congress, except for a few people. I don't quite understand what has changed so dramatically in the situation in the past couple of days to make us--

CHAIRMAN GREENSPAN. Well, why don't we just let Virgil go up there--

MR. MULLINS. Okay, I think that's--

CHAIRMAN GREENSPAN. --and find out what the facts are. And then we can make a decision.

MR. MELZER. Alan, this is Tom Melzer. I definitely agree with you about exploring the options with the Justice Department. The way I'd see it is that [there's a question] of where we want to protect and where we want to be open. I'm one who happens to believe that the MOD really affects the quality of the deliberative process and I think things will change, when and if we decide to do that. And to some extent maybe we would rather be open with edited transcripts and not get locked into doing an MOD going forward, recognizing that we'd have to come up with some way of protecting people who don't have an opportunity to review those transcripts. But the proposal here is sort of giving them a half a loaf in both places. And it doesn't really address the accusations of secrecy because in the one case we have the transcripts but we're not giving them those, and in the other case we're giving them an MOD where the people we are battling here really want more than that. They want videotapes within 60 days. I'm certainly aware of the politics that we're dealing with in regard to the accusation that we're not being open. I don't know how well I've said it, but in sum we have a very key decision-point coming up here in the sense that once we approve the minutes for the next meeting, that will be the only opportunity we would have to change our practice in response to a different policy position on the part of the Justice Department on FOIA. That's because they've changed their posture since our last meeting and it would be justifiable. I'm saying in the logical sense now, maybe not in a political sense, that it would be totally justifiable to say that, in view of their decision and this new government policy--the fact that these notes and transcripts are no longer protected--we've made the decision going forward to destroy those materials once the minutes are approved.

So in some sense we have to make a key decision on the MOD going forward, I think, before the next minutes are approved, or we're in effect locked in. That may be smart, but the other aspect of it is--I agree with what Bill McDonough and others said earlier--that before we get into that, we really do need legislative protection. As I said before, that's why we stopped doing [the MOD] in the first place--because we didn't have [legislative protection]. And, as Bill pointed out, we don't want to be subject to the whims of the Attorney General at any point in time on the protection of that [document]. It's just too fundamental to the deliberative process to run the risk that [an MOD] could be coming out, say, 60 days after an FOMC meeting. I guess what I'm saying is that we could be viewed to be much more open about things if we let the transcripts out in edited form, redacting the comments--I think I heard you say this in the background, Mr. Chairman--of those who are no longer living. [We might] just put those out as full, edited transcripts. How much more open could we be?

CHAIRMAN GREENSPAN. Well, I'm a little concerned that we are reacting to the request from certain people on Capitol Hill regarding what they view as the desirable processes of the Federal Open Market Committee. Look, the Congress at any time can decide by legislation to change what it is we do. If Congress wishes to reduce the flexibility of the discussion processes in the FOMC in the name of

increased disclosure, that's a choice the Congress can make. And it's their choice to make. What we should not be doing is making judgments about what other people think is the right thing to do if our judgment is different. Basically, let's make the decision ourselves. Do we perceive that a specific policy is the right policy, independently of who specifically on the Hill thinks otherwise? Remember, we have to adjust essentially to a legal fact with respect to FOIA. That is a judgment we have to make independently of what positions people on the Hill are [taking]. But on a question of broad policy, I think it's essential that we make the decision ourselves as to what is the right thing to do. And if we don't prevail--if the Congress overrides us, that's a judgment they have a right to make, obviously.

MR. MELZER. That's why I'm saying that I don't think the existence of the transcripts should stampede us into automatically doing an MOD, which in some sense is what happens in this proposal.

CHAIRMAN GREENSPAN. No, no. I think it's the basic change in the FOIA issue that is raising this question. If how [a request under] FOIA is to be handled had not been altered, I would say we would be back to where we were in an earlier period where the judgment was different.

MR. MULLINS. I think I agree with Tom. We have had discussions of MODs and I thought we felt that they were harmful to the [deliberative] process. And it is not clear to me that that legal change would require us, going forward, to produce MODs.

CHAIRMAN GREENSPAN. Well, let's find that out.

MR. MULLINS. Yes. Supposedly we only [have] these transcripts [in order] to produce minutes. Why don't we produce the minutes and then have as a policy, going forward, to get rid of the transcripts? But anyway, we can--

CHAIRMAN GREENSPAN. Well, let's find out first.

VICE CHAIRMAN MCDONOUGH. It's Bill again. I think the real conclusion of the meeting should be not to have any conclusion but to do what the Chairman is seeking, and that is to send Virgil off to negotiate with some notion of getting the best deal he can and then report back and see if the rest of us want to buy that.

MR. MULLINS. I think we ought to assess what the true situation is at Justice and not jump to the conclusion that somehow FOIA has disappeared.

MS. PHILLIPS. I agree.

SPEAKER(?). I agree.

CHAIRMAN GREENSPAN. Finally, let me just read to you a paragraph, which is relevant to all of this, in a letter which is being drafted to respond to a question by Steve Neal. I'm going to respond giving the reasons, which I've expressed here, for my concerns about the transcripts and what the basic problems are. Let me just read this [unintelligible]: "One of the reasons I would be hesitant to expend the amount of effort required to edit the transcripts for

accuracy as best we can so long after the fact continues to be cost. It would, for example, cost approximately \$2 million for us to construct edited transcripts or Memoranda of Discussion from the raw transcripts we currently have in storage. A significant burden would be the hundreds of hours that policymakers and senior staff would have to devote to reviewing the documents." And I don't know where that [unintelligible], particularly in that vein. We will answer Mr. Gonzalez's letter very straightforwardly in a context which I think pretty much everyone will understand. Okay, everybody? We will report back as soon as Virgil has a chance to make some judgments with respect to his discussions with the Justice Department.

END OF SESSION