

The Burger Court Opinion Writing Database

Federal Open Market Committee v. Merrill
443 U.S. 340 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1979

Dear Harry:

Re: 77-1387 Federal Open Market Committee v.
David R. Merrill

This confirms my "join" of your opinion for
the Court.

Regards,

WEB_m

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1979

PERSONAL

Re: 77-1387 - Federal Open Market Committee v. Merrill

Dear Harry:

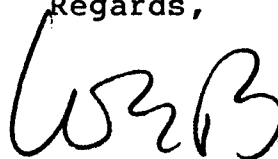
I am about ready to join your revised (Wang) circulation of June 18. Several things, however small, seem important to me.

I have participated in intra-agency discussions leading up to contracting, and at p. 23 (Wang) it seems to me it would strengthen the point if at

?
Line 12, Page 23, after "advice" insert "including analysis, reports and expression of opinion"

Line 4, Page 25, after "process" insert "leading up to" and strike "of."

Regards,



Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

PERSONAL

June 20, 1979

Re: 77-1387 - Federal Open Market Committee v. Merrill

Dear Harry:

My page 23 problem was on the third line from
bottom after "advice".

Sorry!

Regards,



Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

7 June 1979

Re: No. 77-1387, Federal Open Market Committee (FOMC) v. Merrill

Dear Harry,

As you know, my vote at conference was to the effect that the material at issue in this case is at least arguably shielded by the common law "commercial information" privilege and thus within the purview of exemption 5. Byron has written an opinion to this effect. Your opinion, however, has convinced me that a narrower approach, and one that reaches your judgment, is both possible and preferable.

We have held in Renegotiation Board v. Grumman Aircraft, 421 U.S. 168, 184 that "exemption 5 incorporates the privileges which the Government enjoys under the relevant statutory and case law in the pretrial discovery context." And, as Byron has concluded, FOMC's monetary policy directive is essentially "the Government's buy-sell order to its broker" and thus may well constitute the kind of commercial information that has been traditionally privileged at common law.

Nevertheless, I would prefer not to use this case to decide whether the entire common law "commercial information" privilege is incorporated into exemption 5. I am in accord with the concern, so evident in your opinion, with preserving the structure and integrity of FOIA. There are numerous privileges in the great Sargasso Sea of evidentiary privilege law, and if all of these were to be incorporated into exemption 5, FOIA could be seriously undermined.* Therefore, in the spirit of the observation in the Senate Report on FOIA that Congress "attempted to delimit [exemption 5] as narrowly as consistent with efficient government operation," S. Rep. No. 813, 89th

*Certain common law evidentiary privileges specifically overlap with enumerated exemptions of FOIA. For example, the "state secrets" privilege substantially duplicates exemption 1. Excluding those privileges which so overlap might ameliorate the damage to the structure of FOIA that would be caused by the wholesale incorporation of common law privileges into exemption 5, but it would not totally eliminate this damage.

Cong., 1st Sess. 9 (1965), I would conclude that evidentiary privileges be incorporated into exemption 5 only with great caution and circumspection. The only two privileges that this Court has heretofore recognized in exemption 5 are executive privilege and attorney's work-product privilege, and, as NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150-154, emphasized, both these privileges are explicitly mentioned in the House and Senate Reports which accompanied FOIA.

With these considerations in mind, I do not think it necessary to decide whether the entire common law "commercial information" privilege is incorporated into exemption 5, because the House Report on FOIA specifically mentions that the kind of "commercial information" arguably at issue in this case may be covered by exemption 5:

"Moreover, a Government agency cannot always operate effectively if it is required to disclose documents or information which it has received or generated before it completes the process of awarding a contract or issuing an order, decision or regulation. This clause is intended to exempt from disclosure this and other information and records wherever necessary without, at the same time, permitting indiscriminate secrecy." H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966).

I believe that FOMC's monetary policy directive is substantially analogous to "information ... generated [in] the process of awarding a contract."

You disagree with the applicability of this legislative history because, as I read your opinion, you interpret the reference to "the process of awarding a contract" to refer to the executive privilege ordinarily embodied by exemption 5, and conclude that the FOMC's policy directive is a final order. But I think that there is a good argument that the House Report refers not to executive privilege, but to the common law privilege applicable to commercial information. The purpose of an executive privilege is to insure that a decisionmaker receive the unimpeded advice of his associates. The theory is that if advice is revealed, associates may be reluctant to be candid and frank. The theory behind creating a privilege for government documents "generated before it completes the process of awarding a contract," however, is not that the free flow of

advice may be hampered, but that the consummation of the contract may be endangered. Moreover, documents shielded by executive privilege remain privileged even after the decision to which they may have been addressed has been effected. Documents shielded because they have been "generated ...[in] the process of awarding a contract," on the other hand, should be disclosed as soon as the contract has been finalized.

I would therefore conclude that the privilege specifically referred to by the House Report is relevant to this case. Following the language of the Report, I would inquire whether the disclosure of FOMC's monetary policy directive, which is "information ...generated [i]n the process of awarding a contract," would impair the Government's ability to "operate effectively." This would depend upon whether the exaggerated market reactions predicted by the Government would in fact occur. I do not think that we should take the Government's uncontradicted affidavits as conclusive, however, since respondent, understandably believing them to be legally irrelevant, never undertook to introduce contrary evidence. I would thus remand for a determination whether exemption 5 would permit the information to be withheld.

In summary, I could join an opinion which held (a) that FOMC's policy directives are the kind of material that comes within the scope of the commercial information privilege at common law; (b) that common law evidentiary privileges are to be incorporated into exemption 5 only with great caution; (c) that we need not decide whether the common law evidentiary privilege for commercial information need be incorporated wholesale into exemption 5, because the particular aspect of the privilege relevant to this case is specifically mentioned in the legislative history of FOIA; and (d) that a remand is appropriate to determine whether release of the policy directives would interfere with the Government's ability to execute FOMC's monetary policies.

Do you think an accommodation along these lines might be possible?

Sincerely,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 19, 1979

RE: No. 77-1387 Federal Open Market Committee v.
Merrill

Dear Harry:

I am happy to join your revised opinion in the
above.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1979

Re: 77-1387 - Federal Open Market v. Merrill

Dear Harry:

My views coincide with those expressed by
John Stevens in his letter to you of today.

Sincerely yours,

P.S.
/

Mr. Justice Blackmun

Copies to the Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1979

Re: 77-1387, Federal Open Market Committee of the
Federal Reserve System v. Merrill

Dear John,

Please add my name to your dissenting opinion,
with the following asterisk footnote:

*Mr. Justice Stewart joins this dissenting
opinion insofar as it expresses views concern-
ing the "legal question" presented.

It is not that I disagree with your views
about the "practical question," but simply that I
am too ignorant about the subject to have any opinion
either way.

Sincerely yours,

P.S.
✓

Mr. Justice Stevens

Copies to the Conference

No. 77-1387 — The Federal Open Market Committee of
the Federal Reserve System
v. David R. Merrill

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-4-77

Recirculated: _____

MR. JUSTICE WHITE, dissenting.

I agree with petitioner that it is entitled to a limited privilege of delayed disclosure of the information sought by respondent, but I am unable to agree with the Court that the source of the privilege is a limited form of "equitable discretion" to maintain confidentiality and permit non-disclosure in exceptional circumstances. As I see it, the explicit privilege granted to agencies by Congress to withhold from disclosure information that would be privileged from discovery in civil litigation, 5 U.S.C. § 552(b)(5), extends a limited privilege to the "confidential commercial information" that I think is at issue here. See Fed. R. Civ. P. 26(c)(7).

I

As explained in EPA v. Mink, 410 U.S. 73 (1973), FOIA was enacted to replace § 3, the public disclosure section, of

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 6 JUN 1979

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1387

Federal Open Market Committee
of the Federal Reserve System,
Petitioner,

v.

David R. Merrill.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[June —, 1979]

MR. JUSTICE WHITE, dissenting.

I agree with petitioner that it is entitled to a limited privilege of delayed disclosure of the information sought by respondent, but I am unable to agree with the Court that the source of the privilege is a limited form of "equitable discretion" to maintain confidentiality and permit nondisclosure in exceptional circumstances. As I see it, the explicit privilege granted to agencies by Congress to withhold from disclosure information that would be privileged from discovery in civil litigation, 5 U. S. C. § 552 (b)(5), extends a limited privilege to the "confidential commercial information" that I think is at issue here. See Fed. Rule Civ. Proc. 26 (c)(7).

I

As explained in *EPA v. Mink*, 410 U. S. 73 (1973), FOIA was enacted to replace § 3, the public disclosure section, of the Administrative Procedure Act. We articulated Congress' rationale as follows:

"Section 3 was generally recognized as falling far short of its disclosure goals and came to be looked upon more as a withholding statute than a disclosure statute. See S. Rep. No. 813, 89th Cong., 1st Sess., 5 (1965) (hereinafter S. Rep. No. 813); H. R. Rep. No. 1497, 89th Cong., 2d Sess., 5-6 (1966) (hereinafter H. R. Rep. No. 1497).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1979

Re: No. 77-1387 - Federal Open Market Committee
of the Federal Reserve System
v. Merrill

Dear Harry,

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1979

Re: No. 77-1387 - Federal Open Market Committee
v. Merrill

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1979

MEMORANDUM TO THE CONFERENCE

Re: No. 77-1387 - Federal Open Market Committee v. Merrill

As is so often the situation for me with respect to FOIA litigation, this case proved to be stickier than I had anticipated. The enclosure indicates where I came out. I think it is in accord with the statute and the legislative history. Others may well disagree.

Lewis advises me that he will let me know in due course whether he will stay out of the decision of the case.

It is my understanding that the stay granted by Judge Waddy has not been revoked and that the mandate of the Court of Appeals has not issued. I have made no reference to the stay or its continuation in the proposed opinion.

HLB.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 22 MAY 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1387

Federal Open Market Committee
of the Federal Reserve System,

Petitioner,

v.

David R. Merrill.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The Federal Open Market Committee has a ~~policy~~ ^{practic} authorized by regulation, 12 CFR § 271.5 (1978)¹ of withholding

¹ The regulation provides:

§ 271.5 Deferment of availability of certain information.

"(a) *Deferred availability of information.* In some instances, certain types of information of the Committee are not published in the Federal Register or made available for public inspection or copying until after such period of time as the Committee may determine to be reasonably necessary to avoid the effects described in paragraph (b) of this section or as may otherwise be necessary to prevent impairment of the effective discharge of the Committee's statutory responsibilities.

"(b) *Reasons for deferment of availability.* Publication of, or access to, certain information of the Committee may be deferred because earlier disclosure of such information would:

"(1) Interfere with the orderly execution of policies adopted by the Committee in the performance of its statutory functions;

"(2) Permit speculators and others to gain unfair advantages by speculative trading in securities, foreign exchange, or otherwise;

"(3) Result in unnecessary or unwarranted disturbances in the securities market;

"(4) Make open market operations more costly;

"(5) Interfere with the orderly execution of the objectives or policies of other Government agencies concerned with domestic or foreign economic or fiscal matters; or

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1979

MEMORANDUM TO THE CONFERENCE:

Re: No. 77-1387 - Federal Open Market Committee
v. Merrill

Within the next few days I shall propose a revision of
the proposed opinion I circulated on May 22.

HAB.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1979

Handwritten:
~~H.A. Blackmun~~
~~Ph...~~
~~RM~~

MEMORANDUM TO THE CONFERENCE:

Re: No. 77-1387 - Federal Open Market Committee
v. Merrill

I propose a revised opinion in this case in an attempt to accommodate views that have been expressed to me as well as those set forth by Byron in his dissent. The revision embraces part III and everything thereafter. The first 10 pages of the printed draft circulated May 22 will have no changes except typographicals, so the pages enclosed follow those printed pages through part II.

Handwritten:
HAB

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

No. 77-1387

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

- 11 -

From: Mr. Justice Blackmun

III

Circulated: _____

Recirculated: 1 JUN 1979

This Court has had frequent occasion to consider the FOIA, 13/ and it is not necessary to recount its history and background in detail. It suffices to say that the purpose of the FOIA is "to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965). The Act makes available to any person all agency records, which it divides into three categories: some must be currently published in the Federal Register, 5 U.S.C. § 552(a)(1); others must be "promptly publish[ed]" or made publicly available and indexed, § 552(a)(2); and all others must be promptly furnished on request, § 552(a)(3). It then defines nine specific categories of records to which the Act "does not apply." § 552 (b). The district court is given jurisdiction to enjoin an agency from withholding agency records, and to order the production of any agency records

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

June 20, 1979

Re: No. 77-1387 - Federal Open Market Committee
v. Merrill

Dear Chief:

I certainly can accept the two suggestions set forth in your letter of June 19, and shall do so.

I am confused, however, about the first one. The word "advice" does not appear on line 12 of page 23. It does appear in the 9th, 10th and 15th lines. I think your suggestion is directed to the 9th line. Would you let me know where you wish the insert made.

Sincerely,

HAB

The Chief Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1979

Re: 77-1387 - Federal Open Market Committee v. Merrill

Dear Chief:

Your two suggested changes are being made in the copy
that is at the printer.

Sincerely,



—

The Chief Justice

1
pp
d 20

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Tanquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 21 JUN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1387

Federal Open Market Committee
of the Federal Reserve System,
Petitioner,
v.
David R. Merrill.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The Federal Open Market Committee has a practice authorized by regulation, 12 CFR § 271.5 (1978)¹ of withholding

¹ The regulation provides:

§ 271.5 Deferment of availability of certain information.

"(a) *Deferred availability of information.* In some instances, certain types of information of the Committee are not published in the Federal Register or made available for public inspection or copying until after such period of time as the Committee may determine to be reasonably necessary to avoid the effects described in paragraph (b) of this section or as may otherwise be necessary to prevent impairment of the effective discharge of the Committee's statutory responsibilities.

"(b) *Reasons for deferment of availability.* Publication of, or access to, certain information of the Committee may be deferred because earlier disclosure of such information would:

"(1) Interfere with the orderly execution of policies adopted by the Committee in the performance of its statutory functions;

"(2) Permit speculators and others to gain unfair advantages by speculative trading in securities, foreign exchange, or otherwise;

"(3) Result in unnecessary or unwarranted disturbances in the securities market;

"(4) Make open market operations more costly;

"(5) Interfere with the orderly execution of the objectives or policies of other Government agencies concerned with domestic or foreign economic or fiscal matters; or

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1979

77-1387 Fed. Open Market Committee v. Merrill

Dear Harry:

I write to confirm our recent conversation.

For the reasons stated at Conference, I prefer to remain "out" of this case. If, however, my vote is necessary for a Court opinion, I will reexamine my position.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 21, 1979

⁸¹
77-1378 Federal Open Market Committee v. Merrill

Dear Harry:

As there no longer is any reason for me to remain out of this case, I write to join your opinion.

I would prefer, rather strongly, to dispose of the case here on the grounds you have stated. Although I suppose the results on remand are a foregone conclusion in favor of protection, there is something to be said in favor of ending the litigation.

In any event, you can count me as a join.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1979

Re: 77-1387 - Federal Open Market Committee of the
Federal Reserve System v. Merrill

Dear Harry:

Having wrestled with Chrysler earlier this Term, I could not agree more with the comment in your transmittal letter of May 22nd that FOIA cases often prove "stickier" than anticipated. This one has proved sufficiently sticky for me that I have not yet come to rest as between the views expressed in your proposed Court opinion and Byron's dissenting opinion -- both of which reach the result which I think ought to be reached under the statute, albeit on differing theories. Because John and Potter, in addition to you and Byron, have "gone public" on the matter, I am sending copies of this to the Conference. I do not agree with what I understand to be John and Potter's position, which presumably would give the requested access to the respondent law student. I will vote one way or the other within a couple of days.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 25, 1979

Re: No. 77-1387 - Federal Open Market Committee v.
Merrill

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1979

Re: 77-1387 - Federal Open Market
v. Merrill

Dear Harry:

Although I think the analysis in the first twenty-five pages of your proposed opinion is excellent--indeed unanswerable--as presently advised, I do not believe I can join the disposition you propose in the last two pages.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Revised: JAN 19 79

Revised: _____

77-1387 - Federal Open Market Committee of the Federal

Reserve System v. Merrill

MR. JUSTICE STEVENS, dissenting.

The practical question in this case is whether the Federal Reserve System's monthly changes in monetary policy should be made available immediately to the general public or should be filtered into the market through a handful of sophisticated representatives of large commercial banks and investment firms. The legal question is whether the statutory requirement that statements describing such policy changes be published "currently" means what it says.

On the practical level, it seems to me that the operation of an "open" market committee should be open to all--not just to a selected few.^{1/} On the legal level, I am satisfied that

^{1/}As Professor Milton Friedman of the University of Chicago wrote:

"May I say also that I have long been in favor of the immediate release of the records of policy actions of the FOMC. I have recommended repeatedly in testimony to Congress that the FOMC meetings be held on a Friday so that the record of policy actions can be written . . . and then released not later than Sunday night so that no business days pass without this record being available."

Hearings on H.R. 9465 & 9589. Before the Subcomm. on Domestic Monetary Policy of the House Comm. on Banking, Finance and Urban Affairs, 95th Cong., 1st Sess., 202 (1977).

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1, 3-4

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

1st PRINTED DRAFT Recirculated: JUN 22 '79

SUPREME COURT OF THE UNITED STATES

No. 77-1387

Federal Open Market Committee
of the Federal Reserve System,
Petitioner,

v.

David R. Merrill.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART* joins, dissenting.

The practical question in this case is whether the Federal Reserve System's monthly changes in monetary policy should be made available immediately to the general public or should be filtered into the market through a handful of sophisticated representatives of large commercial banks and investment firms. The legal question is whether the statutory requirement that statements describing such policy changes be published "currently" means what it says.

On the practical level, it seems to me that the operation of an "open" market committee should be open to all—not just to a selected few.¹ On the legal level, I am satisfied that the

*MR. JUSTICE STEWART joins this dissenting opinion insofar as it expresses views concerning the "legal question" presented.

¹As Professor Milton Friedman of the University of Chicago wrote: "May I say that I have long been in favor of the immediate release of the records of policy actions of the FOMC. I have recommended repeatedly in testimony to Congress that the FOMC meetings be held on a Friday so that the record of policy actions can be written . . . and then released not later than Sunday night so that no business days pass without this record being available."

Hearings on H. R. 9465 and 9589. Before the Subcomm. on Domestic Monetary Policy of the House Comm. on Banking, Finance and Urban Affairs, 95th Cong., 1st Sess., 202 (1977).

These views also reflect those of Sherman Maisel, a member of the