EARL F. HILLIARD
7TH DISTRICT, ALABAMA

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS, NUTRITION, AND FOREIGN AGRICULTURE
SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE
SUBCOMMITTEE ON INTERNATIONAL HUMAN RIGHTS

Congress of the United States
House of Representatives
Washington, DC 20515–0107

1314 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225–2665

DISTRICT OFFICES:

THE PENICK BUILDING
319 17TH STREET, NORTH
SUITE 204
BIRMINGHAM, AL 35203
(205) 328-2841

1118 GREENSBORO AVENUE
SUITE 204
TUSCALOOSA, AL 35401
(205) 752-3578

88 WEST SOUTH BLVD., SUITE 100
MONTGOMERY, AL 36105
(334) 281-0013

109 FEDERAL BUILDING
900 AUBURN AVENUE
SELMA, AL 36701
(334) 872-2684

June 28, 1999

RECEIVED
99 JUN 28 PM 4:34
COMMITTEE ON STANDARDS

The Honorable Lamar Smith
Chairman
The Honorable Howard L. Berman
Ranking Minority Member
Committee on Standards of Official Conduct
HT-2 U. S. Capitol
Washington, D.C. 20515

Dear Chairman Smith and Ranking Minority Member Berman:

Please consider this letter a response to your correspondence of May 12, 1999, as amended by a later letter dated May 27, 1999. In those two items, you requested that I respond in writing to "additional questions regarding matters under review by the Committee." The subject questions were propounded "[p]ursuant to Committee Rule 19 of the Rules of the Committee on Standards of Official Conduct." Your letter of May 27, 1999 requested my response be submitted by June 28, 1999.

As you know, the subject Rule 19 activities began on December 29, 1997 when the then Chairman and Ranking Democratic Member of the Committee requested my reaction to articles published by *The Hill* on December 3 and December 10, 1997. In seeking clarification of just what type of information was sought, I received a letter dated January 13, 1998 raising numerous questions and seeking relevant documents. Notably, my attorney, Mr. Lotkin, was assured by the staff members present at the "meeting" during which the letter was given to him that Rule 19 contemplated an informal fact-finding effort by the Chairman and Ranking Democratic Member and that any responses by me to requests for information would be completely voluntary -- that Rule 19 fact-finding was <u>not</u> a formal Committee investigation with the usual mandatory participation/cooperation elements imposed on a Respondent Member. The Committee attorneys present at that meeting included David Laufman and Mmes. Johnson and Schwartz. Indeed, Mr. Lotkin specifically recalls that it was Ms. Schwartz who emphasized this point at the meeting.

Because of the sheer volume and breadth of the matters raised, I sought and received approval from the Federal Election Commission to utilize campaign funds to defray the legal costs involved in submitting responses to your letter. In a series of communications to the Committee, the last of which was dated April 2, 1998, answers were provided to all questions based upon records available to either

PRINTED ON RECYCLED PAPER

EXHIBIT
93

me or my campaign committee. Since the submission of April 2, 1998, and through the expiration of the 105th Congress, there was absolutely no further contact, communication, inquiry, reaction, or implied suggestion that my extensive submissions to the Committee were not sufficient to respond to the Rule 19 voluntary fact-finding exercise undertaken by the Chairman and Ranking Democratic Member.

Therefore, it came as a shock and surprise that, on May 12, 1999 – fully one Congress and over 13 months later – and pursuant to what were indisputably non-public rules of the Committee, I was effectively informed that your "voluntary, fact-finding" exercise had either been restarted, resurrected, or continued. Your recent correspondence provides not one scintilla of explanation as to the circumstances occasioning a 1-Congress/13-month hiatus. I can only assume there is no rational basis available to explain this fact. I should also point out that during this same 13-month period, the Committee refused to provide me with any assistance -- as it provides to all other Members and staff – with regard to the pre-screening of annual Financial Disclosure Statements. In this respect, it is evident the Committee consciously chose to provide me no guidance on my Statements, thereby giving rise to the reasonable inference that any filing would be at my intended peril because the Committee refused to treat me as it does other Members.

This old proceeding becomes increasingly stale and dated. When you first asked your 1998 questions, at least they related somewhat to 1997 matters, and at the time I prepared my answers, matters of 1997 were not that long before. But as 1997 became 1998, and 1998 became 1999, now we are dealing with matters that become increasingly hard for anyone to take an interest in, that increasingly fade from memories, and that become increasingly hard for me to discuss with you the way I can discuss recent matters. Justice delayed is justice denied. Every Member, including me, has filed financial disclosure forms since those of 1997, every Member, including me, desires to pay attention to the urgent new needs of his constituents, not be distracted by going back to old forms, old campaigns, old issues, old constituent service. The well-known doctrine of desuetude suggests reconsidering the need to press on and on, about matters that became dated, stale, and faded while you basically ignored them for over a year.

Most recently, and because of your May 12, 1999 inquiries, we asked specifically about the validity of your renewed "Rule 19" efforts because of the failure by the Committee to publish its rules in the *Congressional Record* as required by House Rule XI, clause 2(a)(2). In this regard, Mr. Lotkin requested "the legal rationale supporting any such determination." Your letter of May 27, 1999 simply "rejects as without merit" such concerns. Nowhere does your 8-sentence letter provide any indication of the basis for your cursory rejection. I am left to assume that you could not find a rational legal basis for your summary statement or decided that I am not entitled to any explanation at all. As a legislative peer and elected Member of Congress, I strongly believe in the concept that I am as entitled to a detailed legal opinion as any other Member. Your letter denies me that equality.

That this is apparent is evident by the mere facts that the published Rules of the House have included annotations indicating that Rule XI 2(a)(2) "derived from statute (2 U.S.C. 190a-2 * * *. A court interpreted that statute to be mandatory in a case where a Senate committee failed to publish in the Record a rule regarding a quorum for the purpose of taking sworn testimony." The simple fact that the House of Representatives formally gave notice to and recognized the Senate case in an explanation of the purposes and mandates of House Rule XI 2(a)(2) is unequivocal evidence that publication of Committee Rules in the *Congressional Record* is officially viewed by the House of Representatives as a prerequisite for the operational validity of committee rules. Further, it would take minimal effort by any one of your staff attorneys to ascertain the guidance in *United States v. Reinecke*, 524 F.2d 435 (DC Cir. 1975) in which the Court stated "a committee rule which has not been published pursuant to the statute cannot be considered valid." Again, your recent letter does not even attempt to explain to me why my reference to that opinion is "without merit." Such is not an indication of fairness or due process.

Even more alarming is the fact that virtually immediately after Mr. Lotkin raised this issue, the Committee Chairman submitted the rules for publication in the *Congressional Record* on May 18, 1999. Why? If our concern was "without merit," then Chairman Smith, or the Committee, should have felt no need to submit the Committee's rules for publication at all. Again, the total absence of any explanation in your sweeping rejection speaks for itself. Apparently, your letter suggests that House Rule XI 2(a)(2) imposes a non-substantive but cosmetic requirement regarding publication. Consequently, your "without merit" analysis is in direct conflict with the cited annotations in the official Rules of the House of Representatives. This conflict directly implicates the prohibition under House Rules that Committee rules cannot conflict with House Rules.

Third, to add insult to injury, it is more than interesting to note that the "Rule 19" adopted by the Committee and which governed your original December 29, 1997 letter is not the same "Rule 19" that was published on May 18, 1999. Indeed, the Committee's explanation for the difference states that the Committee, "Amended Rule 19 to make express the inherent authority of the Chairman and Ranking Minority Member to engage in informal, preliminary fact-gathering to determine whether to recommend a Committee-initiated inquiry." This explanation establishes that, prior to the amendment of the Rule, one was left to assume whether the Chairman and Ranking Minority Member had any authority – let alone "inherent" – to engage in a fact-finding exercise based solely on newspaper articles and the absence of a formal complaint.

In sum, the current situation can be detailed as follows:

- In 1997 the Chairman and Ranking Minority Member initiated an informal review in a prior Congress under a now-revised Rule seeking my voluntary response to unsupported innuendoes and allegations raised in 2 newspaper articles.

- The Committee has reacted with complete and total silence as to the adequacy or substance of my detailed and document-supported responses, the most recent which was April 2, 1998.

- The Committee has, for 2 years in a row, formally refused to provide any assistance to me in the review of my Financial Disclosure Statements.

- The Committee amended and did not publish, as required by House Rule XI 2(a)(2) and controlling case law, Rule 19 or any of its *Rules of Procedure* for the 106th Congress and, in all probability, would not have done so but for my inquiry concerning the validity of your May 12, 1999 letter.

- To this date, I have never been informed about the existence of a complaint as the basis for the so-called Rule 19 voluntary procedures but, rather, am left to assume that this entire matter was prompted by undocumented and uncorroborated allegations in a weekly newspaper.

- There are not now, and never have been, any rules of procedure or other guidance issued by the Committee with respect to the parameters, rights, protections, or limitations governing the "inherent" exercise of authority claimed by you under Rule 19. Thus, unlike other matters, the Chairman and Ranking Minority Member apparently do not have to justify, seek Committee approval of, or otherwise explain their informal fact-finding activities either as to scope or duration. (Not so in the case of a formal complaint.) In this regard, I request confirmation that the full Committee considered and adopted the position reflected in your May 27, 1999 letter with regard to the issue of required publication of the Committee's Rules in the *Congressional Record*. Clearly, Members are better off if a complaint is filed against them versus being the subject of critical or uncomplimentary news articles. The former implicates time and scope limitations under the Committee's rules, the latter a virtual and unwritten *carte blanche* under Rule 19 as to the same considerations.

- The only thing that has been assured since December 1997 is that my continued voluntary participation in a procedureless undertaking pursuant to Rule 19 will cost me more time and money.

- The approach reflected in all of your inquiries going back to the last Congress leaves no doubt that the burden of proof is on me (the Member) to establish innocence through the potentially perpetual submission of responses and documents which apparently can span Congresses and years.

- During the relevant period of your review, there have been numerous newspaper articles suggesting improper conduct by other named Members of Congress. To date, I am unaware that, with the exception of Representatives Shuster (whose "problems" pre-dated the newspaper articles about me) and Brown, that the Committee has pursued any actions – Rule 19 or otherwise -- against an equal number of non-minority Members. The inferences to be drawn from these facts are obvious and raise serious concern. Someone looking at these facts could reasonably conclude that the informal procedure that generated the May 12 letter, in which questions got asked without any involvement by the full Committee, lacks safeguards for the proper protection of African-American Members. Indeed, the inferences to be drawn from these facts raise the appearance that African-American Members may become the victims of adverse selection.

In light of the above, I conclude and agree that my initial responses during the last Congress were purely voluntary, as indicated not only by then Rule 19 but also Committee counsels' statements during a January 13, 1998 meeting emphasizing this fact. I further conclude that your May 12, 1999 letter seeks to continue my voluntary participation under a now revised Rule 19. However, such a requested voluntary response would be "doubly voluntary" because any response would be to a May 12, 1999 letter which, in my judgment, is invalid, owing to the fact that it was issued in the absence of any publication of the Committee's Rules in the *Congressional Record*. Nonetheless, and regardless of the supposed validity of your letter, I have also concluded that there are not now, and never have been, any procedures establishing the rights or liabilities of a Member or the limitations of the Chairman and Ranking Minority Member under Committee Rule 19. In short, I (and all similarly situated Members) am at your mercy without opportunity to appeal, or even appear before the full Committee.

In my judgment, I submitted -- well over a year ago – explanations and voluminous documents sufficient to put to rest any of the unfounded allegations published by *The Hill*. Your most recent questions represent a fishing expedition on actions not even raised in the news articles in order to obtain statements or documents which somehow justify a counterfactual hypothesis that I have engaged in improper conduct. (You have even asked about my 1997 disclosure statement that was amended in strict accordance with the Committee's April 29, 1998, advisory opinion and for which you formally refused to provide any pre-screening assistance to me.) Indeed, your questions, on their face, imply wrongdoing based upon the absence of records in your possession. Such rank speculation or surmise demeans a supposed fair process. I refer you to your own committee's report in 1987 in which the Committee stated, "speculation ... is not evidence ... it would be inappropriate to attribute improper

action to an individual based solely on inference and speculation..." HRpt. 100-46 at 43 (1987). It unfortunately appears evident that your May 12, 1999 letter represents an abandonment of this rational and long-standing Committee tenet.

If, in the judgment of the full Committee, I have done something wrong based upon the record that is now before you (and which has existed since April of last year), then the Committee should formally notify me precisely what it is that I am viewed as having done, including the documentary basis for such conclusion, and take action in accordance with its May 18, 1999 published *Rules of Procedure*.

In the light of all of the foregoing, and particularly (1), the inexplicable and unreasonable delay in now raising issues that could have been resolved over a year ago (when documents and memories were fresher without my having to incur inordinate additional expense to voluntarily research and respond to your most recent inquiries); and (2), the explicit assurance of Committee staff that a decision not to respond would not, *per se*, place me in jeopardy or raise any negative inferences under either House or Committee rules, I respectfully choose not to respond further, at this time, to matters that could have been put to rest well before the expiration of the last Congress.

Sincerely,

Earl F. Hilliard

Earl F. Hilliard
Member of Congress

cc: All Members of the Committee
on Standards of Official Conduct