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**URGENT MATTER – PLEASE FORWARD IMMEDIATELY**

Via Facsimile (703) 697-9080

Hon. Donald H. Rumsfeld  
Secretary of Defense  
10th & Constitution Ave., N.W.  
Washington, D.C. 20302-1000

Subject: **Failure of the Office of the Secretary of the Army to Adhere to Prior Commitment Concerning Removal of Bunnatine Greenhouse in Violation of Whistleblower Protection Regulation**

Dear Secretary Rumsfeld:

My law firm represents Ms. Bunnatine H. Greenhouse concerning her mandatory duty to “disclose waste, fraud, abuse and corruption to appropriate authorities,” as required by Executive Order 12731, signed by President George H.W. Bush on October 19, 1990. *See*, 5 C.F.R. section 2635.101, *57 Federal Register* 35006. Since 1997, Ms. Greenhouse is serving this nation as the United States Army Corps of Engineers (“USACE”) Principal Assistant Responsible for Contracting (PARC),<sup>1</sup> as well as the USACE Competition Advocate.<sup>2</sup> However, she faces the

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<sup>1</sup> Army acquisition activity is governed by regulations including the Army Federal Acquisition Regulation Supplement (“AFARS”). The AFARS specifies that the PARC shall be “the senior staff official of the contracting function”. *See* AFARS 5101.601(4)(ii)(A). These regulations further specify that the contracting function “must be organizationally situated to minimize any potential for undue influence and protect contracting officers from intra-organizational pressure to perform improper acts.” *See* AFARS 5101.602-1(b).

<sup>2</sup> Pursuant to the Competition in Contracting Act of 1984, the USACE must establish a “competition advocate.” Ms. Greenhouse is the designated “competition advocate” for activity occurring at USACE Headquarters. The Competition Advocate is responsible for ensuring that fair and open competition exists on government contracting.

dishonor of being removed from the Senior Executive Service and her position as PARC effective August 27, 2005. As outlined below, her removal constitutes blatant discrimination and otherwise violates the prior written commitment issued on October 22, 2004 at the direction of the former acting Secretary of the Army, Mr. Les Brownlee. The failure to abide by prior commitments and the circumstances surrounding Ms. Greenhouse's removal are the hallmark of illegal retaliation. The "chilling effect" on other government employees will be immense. Her removal will send a message to all concerned that if they dare stand up to corrupting influences within the Army contracting world their careers will be destroyed.

## I. SUMMARY

The key points set forth in more detail below are as follows:

1) A commitment was made to not remove Ms. Greenhouse from her position until a sufficient record pertaining to the allegations contained in the October 21, 2004 letter is complete. Instead of completing such a record, Lt. General Strock has manufactured his own staff analysis that is false and misleading.

2) The assertion in the June 3, 2005 memorandum issued by Lt. General Strock that the Staff Analysis he prepared was coordinated with the Inspector General to ensure that all relevant information was taken into account is false. The clear intent of the memo was to give the appearance that the DOD IG had approved the forwarding of the June 3, 2004 memo to the Secretary of the Army. However, the DOD IG (to whom the former Acting Secretary of the Army had referred Ms. Greenhouse's allegations for investigation) was never contacted. The "Inspector General" Lt. General Strock actually relied upon is the Inspector General of the Army, who was not authorized by the Secretary of the Army to review Ms. Greenhouse's allegations. The Army IG has had no involvement with Ms. Greenhouse's allegations and, thus, he could not ensure that all relevant information was considered. The decision to include the Army IG on the routing of the document is nothing short of an effort to deceive and falsely present an air of legitimacy to a hopelessly flawed "analysis" prepared by the very individuals accused of wrongdoing.

3) The review performed by Lt. General Strock to justify removal of Ms. Greenhouse was conducted by the very subjects of Ms. Greenhouse's allegations, including Lt. General Strock himself. This is hardly an independent investigation. Lt. General Strock and his subordinates, if anything, should be recused from any involvement in this matter. The analysis is undated, unsigned, and lacks a single source citation. The failure to credential the analysis is the hallmark of unreliability.

4) The Department of the Army has actively prevented Ms. Greenhouse from creating the administrative record she was entitled to create in conjunction with the discrimination and whistleblower complaints she attempted to pursue before the Department of the Army. Ms. Greenhouse has so far been denied the opportunity to establish a meaningful administrative record necessary to prove that her proposed demotion and removal from the SES

is illegal. Therefore, the assertion in the Staff Analysis that the existing “administrative record” supports Ms. Greenhouse’s removal is a perversion of the truth because the Army has prevented Ms. Greenhouse from being able to establish the record she needs to demonstrate the clearly discriminatory basis for the adverse action taken against her.

5) That the Secretary of Defense should intercede in this matter and require that Ms. Greenhouse remain in her current status until such time as the DOD IG indicates that a sufficient record exists to justify her removal.

## II. BACKGROUND

On October 21, 2004, Ms. Greenhouse, through counsel, issued a letter to acting Secretary of the Army, Les Brownlee, alleging improper and/or illegal contracting practices by Department of Defense personnel in the awarding and administration of contracts to Halliburton subsidiary Kellogg Brown & Root (KBR) for reconstruction and other work in Iraq and Bosnia. The letter specifically requested the appointment of an “*independent*” executive agency to investigate the allegations and further asked the Secretary to “ensure that Ms. Greenhouse is not subject to any retaliation during the pendency of this investigation.”

Acting Secretary of the Army, Les Brownlee, responded to my letter the following day. As memorialized in a letter dated October 22, 2004, the Acting Secretary of the Army directed that all of Ms. Greenhouse’s allegations of contract abuse were to be referred to “the Department of Defense Inspector General for their review and action, as appropriate.”<sup>3</sup> He further directed that no adverse action be initiated against Ms. Greenhouse and that she remain in her current position “until a sufficient record is available to address the specific matters” raised in my letter of October 21, 2004. The Secretary’s commitment was widely reported to the American people and I made sure to publicly commend the Acting Secretary for his principled action. The DOD IG accepted the referral from the Army and has formally docketed an investigation. As the Acting Secretary had prohibited any adverse personnel action until “a sufficient record is available to address the specific matters” referred to the DOD IG, the DOD IG did not docket an adverse action investigation.

Without authorization to review Ms. Greenhouse’s substantive allegations, Lt. General Strock took it upon himself to direct his “staff” to conduct an “analysis” of the allegations identified in the October 21, 2004 letter that the Acting Secretary of the Army had referred to the DOD IG for review. Thereafter, on June 3, 2005, General Strock issued a memorandum to Secretary of the Army “thru The Inspector General” seeking permission to remove Ms. Greenhouse from the SES and as the USACE PARC. The basis for this request was the “analysis” General Strock’s “staff” prepared, which concluded that the “administrative record” supports the removal of Ms. Greenhouse. The June 3, 2005 memorandum and the enclosed “analysis” were forwarded through the “Inspector General” in order “to ensure that all relevant information is taken into account.” On June 27, 2005, the “Inspector General” forwarded the

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<sup>3</sup> A copy of the October 22, 2004 letter is appended hereto.

memo on to the Secretary of the Army for disposition. On July 14, 2005, the Secretary of the Army appears to have approved Lt. General Strock's request to remove Ms. Greenhouse from the SES and as the USACE PARC.

On August 24, 2005 Ms. Greenhouse's counsel contacted the DOD IG and confirmed that the allegations raised in the October 21, 2004 letter remain open and active and that the DOD IG had no idea that any decision had been made to commence the removal of Ms. Greenhouse from the SES and her position as PARC. The DOD IG indicated that an investigation concerning retaliation against Ms. Greenhouse had not previously been docketed when the Acting Secretary of the Army forwarded the October 21, 2004 letter because the Acting Secretary had committed that no adverse action would be taken against Ms. Greenhouse until the investigation into Ms. Greenhouse's allegations was substantially complete. Upon learning that, with the approval of the Secretary of the Army, adverse action is about to be taken against Ms. Greenhouse, the DOD IG advised that a civilian reprisal investigation would commence.

### III. ANALYSIS

Based on the commitments made in the October 22, 2004 letter, it appeared that the DOD Inspector General, as the appropriate independent body, was given the opportunity to review the "analysis" prepared by Lt. General Strock's staff in order "to ensure that all relevant information is taken into account." I believe that the reason why the letter was sent through the "Inspector General" was to give the impression that this had, in fact occurred. However, this is not the case. It is my understanding that the DOD Inspector General was not asked to review the "analysis" prepared by Lt. General Strock's staff and that the "Inspector General" referred to in the June 3, 2005 memo is the Army Inspector General. Forwarding the document through the Army Inspector General is outright deceitful as the referral by the Acting Secretary of the Army was made to the DOD IG, not the Army IG. The Army Inspector General was never authorized to investigate Ms. Greenhouse's removal or the substance of her allegations. Lt. General Strock's memorandum might as well have been forwarded thru "Daffy Duck". However, the charade behind the forwarding of the memo through the "Inspector General" was to attempt to give it legitimacy and to make it appear as if some form of "independent" investigative body played some role in ensuring the reliability of Lt. General Strock's "Staff Analysis." The need to establish a false sense of legitimacy and the failure to forward the analysis to the actual independent investigative body responsible for reviewing Ms. Greenhouse's concerns, i.e., the DOD IG, was, per se, improper.

The pretext for her removal, a nine-page "analysis" attached to a memorandum from Lt. General Strock to the Secretary of the Army dated June 3, 2005, is replete with misleading, inaccurate and false assertions and is otherwise false by omission. This "analysis" is undated, unsigned, unverified, and lacks a single source citation. The failure to credential the analysis is the hallmark of unreliability. A few examples of the fraudulent nature of General Stock's staff analysis are presented below.

1) Waiver of KBR Cost and Pricing Data.

On December 19, 2003 Lt. General Flowers granted KBR a waiver after the Defense Contract Audit Agency issued a draft report concluding that KBR had overcharged the government \$61 million for fuel. KBR was unable to provide cost and pricing data to justify its excessive charge and only the Army Corps could waive the requirement to provide the requisite cost and pricing data that was required under the contract before KBR could receive payment. By granting the waiver, the Army would have to certify that the charges were fair and reasonable. Based on the data that was available on December 19, 2003, Ms. Greenhouse would not have concurred with the waiver request. However, the Waiver request was secreted from Ms. Greenhouse because the Command did not want Ms. Greenhouse to interfere with the Command's desire to help Halliburton weather adverse consequences after the Defense Contract Audit Agency issued a report indicating that KBR had overcharged the government by \$61 million.<sup>4</sup>

General Strock's Staff Analysis on this issue amounts to the assertion that the processing of the waiver was appropriate because Ms. Greenhouse was out on sick leave and it was only natural that her deputy approve the waiver in her absence. This "analysis" used by Lt. General Strock constitutes a continuation of a cover-up of the truth. The simple truth is that Ms. Greenhouse was working at home the day the waiver request was processed and had been reviewing and signing out official documents that entire day from home. Her executive assistant had standing orders to alert Ms. Greenhouse to any significant matters that came into her office and to forward them to Ms. Greenhouse.<sup>5</sup> The assertion that Ms. Greenhouse was unavailable to review and sign the waiver document is patently false. However, this is just the beginning of the deception.

Scrutinizing the Staff Action Summary for the waiver request reveals that the decision to exclude Ms. Greenhouse from the review and approval process was made before the document while the waiver documents were being drafted back in the Southwestern Division located in Dallas, Texas. The Command's intention to circumvent Ms. Greenhouse is demonstrated by the fact that the waiver document was altered to remove Ms. Greenhouse's name from the signature block and replacing it with the name of Lt. Col. Castaldo. However, it was well known to all concerned that Ms. Greenhouse never authorized Lt. Col. Castaldo to sign off on such documents in place of Ms. Greenhouse.<sup>6</sup> The act of deleting Ms. Greenhouse's name from the signature

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<sup>4</sup> Halliburton was being hammered in the press for having been caught overcharging the government for fuel. The granting of the waiver by the USACE curtailed that adverse press coverage.

<sup>5</sup> Numerous examples of official documents being sent to Ms. Greenhouse at her home on December 19, 2003 and signed out by her that same day can be found in the PARC Office files and are available upon request.

<sup>6</sup> It should be noted that Lt. Col. Castaldo was hand-selected by the Command and to function as Ms. Greenhouse's "deputy". Ms. Greenhouse was not permitted to play any role in the selection of her deputy. The Command

block and inserting Lt. Col. Castaldo's name before the document left Dallas establishes that the plan all along was to process the waiver without Ms. Greenhouse's approval.

Moreover, the waiver request was rushed thru in a single day.<sup>7</sup> The documents were prepared in the Southwestern Division office and signed off by the Division Commander (BG Robert Crear) on December 19, 2003.<sup>8</sup> They were then transported to Washington, D.C. for signature by Lt. Col. Castaldo and were ultimately signed off by the USACE Commander, Lt. General Flowers that same day. However, there was a requirement imposed by Ms. Greenhouse that when documents such as the waiver were delivered to the office of the PARC they had to be logged into the PARC tracking system. Any significant procurement action logged into the tracking system were immediately brought to Ms. Greenhouse's attention by her administrative officer via phone notification and fax if Ms. Greenhouse was away from the office. Thus, in order to keep the waiver request from Ms. Greenhouse and circumvent her authority, a conscience decision was made not to log the waiver request into the PARC tracking system as that would have assured review of the request by Ms. Greenhouse.

That Ms. Greenhouse's name was intentionally deleted from the signature block; that the waiver request was intentionally not logged into the PARC tracking system; that no one told Ms. Greenhouse of the existence of the waiver request when she was available by phone all day; that everyone knew that Lt. Col. Castaldo was not permitted to sign off on the document as if he were the PARC; and that the waiver documents were prepared and signed off in a single day when the request did not reflect a time sensitive procurement action, establishes beyond doubt that a conscious decision was made to circumvent Ms. Greenhouse's authority so the waiver request could go through without objection from the PARC.

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inserted Lt. Col. Castaldo into the position of Deputy PARC. At the conclusion of his tour of duty as Deputy PARC, Lt. Col. Castaldo wrote a memo for Lt. General Strock acknowledging that:

"it was discussed, well known and even expected by the USACE Command Group that I would have to take adverse positions against Ms. Greenhouse's desires in order to protect the command and accomplish certain actions for the best of the command mission. It was fully understood that I would have to exercise the 'Just Do It' card to accomplish my mission for the command."

It was alleged in the October 21, 2004 letter to Acting Secretary Brownlee that this statement by Lt. Col. Castaldo constitutes evidence of collusion. Lt. General Strock's Staff Analysis fails to address or consider the meaning of Lt. Col. Castaldo's memo.

<sup>7</sup> Even if it Ms. Greenhouse was not going to physically return to the office for a few days, the waiver sought special dispensation by the government. It was not a time sensitive request that had to be completed in a single day. Even if it was believed that Ms. Greenhouse would not be returning to the office for a few days, there was no reason why the processing of the wavier request could not wait for her return.

<sup>8</sup> It is unusual in and of itself that a division Commander would insert himself into the staffing process.

## 2) Inclusion of Five Year Term in the No-Compete RIO Contract

A substantial part of Ms. Greenhouse's protected activity concerned the issuance of a no-compete five year term in the Restore Iraqi Oil (RIO) contract that was included in a no-bid contract awarded to KBR over the vocal objection of Ms. Greenhouse. Ms. Greenhouse voiced strong opposition to representatives of the USACE, the Office of the Secretary of the Army and representatives with the Office of the Secretary of Defense. The contract was secretly being awarded to KBR prior to the commencement of the Iraq war under a compelling emergency justification of one and only one source. Ms. Greenhouse explained that there is no basis to conclude that the compelling emergency will last even six months, which meant that the contract term should have been limited to the expected duration before a competitively bid contract could be awarded. The inclusion of a five year term as part of a no-bid cost-plus contract was simply intolerable. She was later advised that her strenuous objection was overridden by General Strock (at that time he was serving as Director, Military Programs and Project Manager for the Iraqi Campaign) and the final Justification and Approval document was presented to her for signature. Ms. Greenhouse then included a hand-written notation on the document noting her objection to the inclusion of the five year duration. The fact that the objection was hand-written on an otherwise typed document gave it prominence such that it could not be overlooked. Ms. Greenhouse was thereafter counseled by Major General Griffin that her placing handwritten comments on documents was intolerable and had to stop.

General Strock's Staff Analysis at page 4 quotes to the October 21, 2004 letter noting that Ms. Greenhouse's inclusion of the hand-written note by her signature on the RIO Justification and Approval document "caused trouble for the USACE and that given public scrutiny the USACE was under, her continued insistence on writing on contracting documents was intolerable." In response to this allegation, General Strock's Staff Evaluation claims that "MG Griffin has never said that the reason for his instruction was that her comments, when made public, caused problems for the Command." However, MG Griffin testified under oath as follows:

. . . Time magazine in a FOIA request got some kind of comment from Ms. Greenhouse about a contract, you know that was written down at the bottom and so now they wanted to talk to Ms. Greenhouse about an interview. And so the Department of Army now is . . . in the process of deciding right now you know, who's going to testify and when and who's going to be present. And it all happened because she [Ms. Greenhouse] wrote this informal note at the bottom of this document, which actually makes my case, which is, you shouldn't write on official documents because they get taken out of context, somebody reads them and there you go. . . That's why I ask her, you know you shouldn't write all over official documents . . .

See October 15, 2004 Hearing Transcript pp. 1782-83, Dept. of Defense / Factfinding Conference in the Complaint of: Bunnatine Greenhouse (Testimony of MG Griffin).

Contrary to Lt. General Strock's staff analysis, the real reason Ms. Greenhouse was instructed to stop writing on documents was because when her comments reached the light of day they proved embarrassing to the Command. It is the *content* (not the handwriting) of the statements Ms. Greenhouse incorporated into procurement documents that posed a concern to the Command.

### 3) Extension of the Balkans Support Contract to KBR

As a result of remaining as the USACE PARC, Ms. Greenhouse was again troubled by the inordinate proposed extension of the Balkans contract to Halliburton subsidiary KBR. Ms. Greenhouse was so upset over the decision to extend a no-bid contract to KBR that, on February 18, 2005 she was forced to send a memorandum to Assistant Secretary of the Army Claude M. Bolton, outlining her concerns. A copy of that memorandum is attached.

The Balkans Support contract has an estimated worth of \$2 billion. It is one of the largest service contracts ever to be awarded by the Army. KBR won a competitive bid and was awarded the Balkans Support contract for a five year duration, which was set to expire no later than May 27, 2004. The USACE had five years to obtain a new competitively bid Balkans Support contract that would run following the expiration of the then pending contract held by KBR. Ms. Greenhouse was astounded to learn that the USACE was claiming it was unable to obtain a competitively bid contract before the expiration of the then existing contract. The USACE determined that they were just going to extend the KBR contract without competitive bidding and that a Justification and Approval (J&A) document would be prepared. Ms. Greenhouse observed that the Justification and Approval process for the extension of the Balkans contract was proceeding outside of the normal channels. When the Justification and Approval document was eventually presented to her for review, Ms. Greenhouse was compelled to write to LTG Strock explaining that the USACE had failed to explain "the complete facts as to why the award could not be made."

Lt. General Strock's Staff Analysis at page 6 acknowledges that "Ms. Greenhouse claims that the explanation of the need for the extension that was contained in the August 20, 2004 J&A was materially incomplete with respect to the reason that caused the compelling emergency." However, the Staff Analysis does not explain what material information was excluded from the J&A and only defends the failure to include the real reason why the extension had to be granted based on the fact that Ms. Greenhouse eventually allowed the J&A to be released. This analysis is fundamentally flawed. Ms. Greenhouse exposed the fact that the American people, especially the potential competitors, were not being told the full story and that the J&A was false by omission. Ms. Greenhouse would like to explain the truth but the USACE has prevented her from doing so. The USACE has asserted that a document containing the actual reason(s) why the Balkan Support Contract was extended without competitive bidding to KBR exists



but cannot be released to the public. The "Analysis" prepared by Lt. General Strock's staff is false by omission because the USACE still refuses to allow the truth to be told.

#### 4) Denial of Due Process

The Staff Analysis under the heading "Summary" asserts that "[t]he administrative record supports the conclusion that Ms. Greenhouse's removal from the SES is based on her performance and not in retaliation for any disclosures of impropriety she may have made." Ms. Greenhouse should have been entitled to create an administrative record concerning the assertion that her performance was the real reason why she was to be removed from the SES and as the USACE PARC. She formally initiated legal proceedings before the Department of the Army's Equal Employment Opportunity Office. Ms. Greenhouse immediately initiated a formal request for hearing to challenge the hostile work environment and false claims of poor performance back on October 22, 2003. That complaint languished for over six (6) months before the Department of the Army's EEO Office would even acknowledge that it would hear Ms. Greenhouse's complaint and it took another six months before a factfinding conference was convened. The factfinding conference ran sporadically between September 7, 2004 and October 15, 2004 and was subsequently postponed by the Department of the Army in February of 2005. The hearing was postponed when, on February 16, 2005, a formal conflict of interest complaint was filed with the Secretary of the Army based on patent conflict of interest improprieties that were occurring during the course of the EEO proceedings.<sup>9</sup> In response to the filing of the conflict of interest complaint (which was never docketed as required by law) the Department of the Army issued notice to Ms. Greenhouse's counsel on February 23, 2005 that the factfinding conference was cancelled. To date, there has been no action taken on the conflict of interest complaint and Ms. Greenhouse's right to a factfinding conference has been denied since that time.

For Lt. General Strock to assert that the "administrative record" supports his decision to remove Ms. Greenhouse is simply another way of saying that Ms. Greenhouse does not deserve an opportunity to create an administrative record that could expose the extreme discriminatory conduct she has been forced to endure for several years.

#### 5) Retribution for Appearing before a Congressional Panel

We are troubled by the fact that the release of Lt. General Strock's June 3 memo to the Secretary of the Army coincides with Ms. Greenhouse's appearance before a Congressional panel as part of an oversight process concerning waste, fraud, and abuse in U.S. Government contracting in Iraq. Two days before Ms. Greenhouse voluntarily appeared before this panel, she was visited by the acting General Counsel of the USACE. At that it was conveyed to Ms. Greenhouse that her voluntary appearance before the panel would not be in her best interest. However, when Ms. Greenhouse did appear, Lt. Gen. Strock's request to remove Ms. Greenhouse was forwarded to the Secretary of the Army that same day and the Secretary approved her removal mere seventeen (17) days after her appearance. Such timing constitutes

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<sup>9</sup> A copy of the formal complaint is attached.

prima facie evidence of retaliation. Indeed, the USACE had representatives attend the hearing and had obtained a copy of Ms. Greenhouse's testimony at that time. Her testimony before the panel provided additional information that was not included in the October 21, 2004 letter to then Acting Secretary Brownlee. No effort was made to address the additional information contained in Ms. Greenhouse's June 27, 2005 statement. It is unconscionable that the additional information provided by Ms. Greenhouse in her June 27 statement was ignored by Lt. General Strock and that the Secretary of the Army was not apprised of such.

We are particularly troubled by the apparent willingness of the Secretary of the Army to allow Lt. General Strock to utilize his staff to prepare his analysis of Ms. Greenhouse's allegations. This is particularly so because General Strock is investigating some of his own wrongdoing. The commitment made by Acting Secretary Brownlee was that an *independent* investigation would proceed before the DOD Inspector General and that Ms. Greenhouse would remain in her position, free from retaliation, until a sufficient record was made to justify her removal. The Staff Analysis document does not constitute a sufficient record to justify Ms. Greenhouse's removal by any stretch of the imagination. It is a self-serving document, unsigned, undated, unverified that contains no supporting documentation or citations. Lt. General Strock's "Staff Analysis" does not satisfy the commitment made by the Acting Secretary of the Army that no adverse personnel action would befall Ms. Greenhouse until a sufficient record is made.

#### IV. CHILLING EFFECT

Under the circumstances presented here, the removal of Ms. Greenhouse will have an immense chilling effect on the willingness of others to report waste, fraud or abuse and it will otherwise erode confidence in our government and will otherwise erode public confidence in our government.

#### V. CONCLUSION

Mr. Secretary, Ms. Greenhouse and the American people were promised by the Acting Secretary of the Army that an independent investigation of Ms. Greenhouse's allegations would occur and that Ms. Greenhouse would not be retaliated against until such as a meaningful investigation of her allegations was substantially complete. The facts demonstrate that this commitment has been broken. I urge you to immediately intercede in order to prevent the removal of Ms. Greenhouse from the SES and as the USASCE PARC until such time as the DOD IG indicates that a sufficient record exists to justify her removal.

Sincerely,



Michael D. Kohn  
Counsel to Bunnatine H. Greenhouse

cc: Dr. Francis Harvey, Secretary of the Army (Via Facsimile 703-588-0140)