

## **Tully Rinckey PLLC Partner Cheri Cannon talks about the government watchdog system with the Washington Examiner.**

Internal government watchdog system broken, experts say

By Susan Crabtree

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The executive branch's internal oversight system is broken and Congress needs to fix it as soon as possible, several ethics experts say. Attorneys who specialize in government ethics say the case of the Department of Homeland Security's former acting inspector general, Charles Edwards, shows the government's own watchdogs are too influenced by political considerations. Edwards is being investigated on multiple allegations of playing politics with his investigations and altering his reports to benefit senior executive branch officials. In addition, the Washington Examiner

has learned that earlier reports of possible misconduct were brushed aside. It took the release of a Senate Homeland Security and Government Affairs Committee report in late April corroborating many of the complaints about Edwards for the Homeland Security Department to place the 20-year career employee on administrative leave. Inspectors general are important because they function as a first line of defense against corruption and mismanagement within the government. Each executive branch department and military agency has an Office of Inspector General, an investigative arm whose mission is to root out ethical breaches or general dysfunction. There are 73 such offices, which were created by a 1978 law. The Senate subcommittee began its investigation into Edwards last year when it started looking into complaints that his investigation into the U.S. Secret Service's hiring of prostitutes during a presidential advance trip in Cartagena, Colombia, was tainted. The subcommittee uncovered numerous allegations against Edwards — some that pertained to his Secret Service probe and many others that were completely unrelated. The panel found strong evidence that Edwards was altering and delaying investigations and reports to please political appointees at DHS who were in a position to influence President Obama to permanently elevate him to the top post. At the time, Edwards was serving as the acting inspector general. According to the Senate report, Edwards put three of his staff on administrative leave after they balked when he directed them to delete parts of the office's investigation into Secret Service misconduct in Colombia -- evidence that would have cast the Secret Service in a more negative light, as well as implicate a White House staffer. A senior DHS inspector general office aide also said that Edwards ordered alterations to a March 2012 report looking into complaints that senior DHS officials intentionally misled Congress and the

public about an Immigration and Customs Enforcement program called Secure Communities aimed at identifying illegal immigrants. Throughout the Senate investigation last year, Edwards was allowed to remain as acting DHS inspector general. It was only when the Senate Homeland Security committee was set to hold a hearing on the Edwards matter in December that DHS transferred him to another division within the agency. The Washington Examiner

has learned that the Council of the Inspectors General on Integrity and Efficiency, a body that is charged with watching over the inspector generals, earlier dismissed at least two more minor complaints against Edwards and was slow to act on several others more serious allegations. Only after the Senate started investigating Edwards in June did the council set up an investigation of Edwards by the Transportation Department's inspector general to prevent any conflict of interest. Until that time, complaints against Edwards were either dismissed or languished at the council. In March last year the Office of Special Counsel, an independent agency that investigates allegations of ethics violations against federal officials, wrote a letter to the council, outlining complaints against Edwards, according to the Senate report. The Senate report indicates that at least one of the allegations in the OSC letter was potentially criminal -- that Edwards permanently deleted 51 days of his emails between February and March 2012 in connection with an "ongoing DOJ investigation of an [Office of Inspector General] field office." The nature of the DOJ investigation of the OIG office is unclear in the report. Deleting emails to conceal information from a DOJ probe could be considered obstruction of justice, which could carry criminal penalties and fines. The Justice Department was investigating DHS's inspector general's office in Texas for orders to falsify reports ahead of an office inspection in 2011. A federal grand jury in Washington was convened to hear testimony over whether agents in the DHS OIG's McAllen, Texas, field office fabricated "investigative activity" to show progress on misconduct cases involving Homeland Security employees, according to a report by the Center for Investigative Reporting. The council overseeing the inspectors general has an Integrity Committee within it that handles allegations against inspectors general. That committee is chaired by an FBI designee, and the council's policies and procedure manual dictates that any allegation of potential criminal conduct should be referred to the Public Integrity Section of the DOJ. A council spokesman referred questions to the Integrity Committee. Chris Allen, a spokesman for the Integrity Committee, who also works at the FBI, said the FBI designee is only required to refer an allegation that is criminal in nature. He did not respond to a follow-up question about whether Edwards' alleged deletion of emails would meet that threshold. A Justice Department spokesman said the department has a policy of neither confirming nor denying whether a matter is under investigation. Cheri Cannon, a partner at Tully Rinckey, a Washington, D.C., federal employment law firm who has worked with government ethics issues as a former senior Air Force executive civilian personnel lawyer, said the Integrity Committee should have referred the complaint that Edwards deleted months of emails related to a DOJ investigation, to DOJ's Public Integrity section. "This referral should have been done, but it's not clear that it was done," she said. The lack of accountability demonstrated in Edwards' case is extremely troubling, she said. As the top acting watchdog for DHS, "Edwards is a senior executive who is held to a higher standard than General Schedule employees, and his integrity and ethics should be beyond reproach," she said. "To simply reassign Edwards to another [career government] job, without proposing disciplinary action — a suspension or removal from federal service — for documented and substantiated federal ethics violations, is not what the American public deserves," she said. The allegations leveled against Edwards in the Senate report have given watchdog groups new evidence for their concern about President Obama's failure to fill inspector-general vacancies. Edwards was serving as an acting inspector general for three years because Obama did not nominate someone for the top Senate-confirmed position. There are currently nine inspector general vacancies throughout the executive branch, including at the Interior Department, the Agency for International Development and the Financial Deposit Insurance Corp. Stan Brand, a Democratic ethics attorney, says the

problems with the IG process far exceed the vacancies issue. Inspectors general are paid through the same department budget as senior officials within the same agency, he said. He also pointed out that the Council for Inspectors General on Integrity and Efficiency usually only meets four times a year and lacks the tools to investigate and hold inspectors general accountable for abuses. "There's too much layering — it's a structural problem," he said. "The IGs work within the framework of their individual agencies while they are supposed to be independent because they are, in effect, employees of those agencies." "They often respond to or are sensitive to the [department] secretary's office in a way that outside, independent investigators wouldn't be," he added. "It's a structural problem, and Congress needs to sort it out because it's a mess."