

Testimony of
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Formerly Inspector General of the U.S. Department of Transportation

**Before the
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform
United States House of Representatives**

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Mr. Chairman, Ranking Minority Member Bilbray, and Members of the Subcommittee:

I appreciate the opportunity to testify today on matters concerning the independence and accountability of Inspectors General, including H.R. 928, a bill entitled "Improving Government Accountability Act." I thank you for calling this hearing and for your support of the IG community.

I am Kenneth Mead, former Inspector General of the U.S. Department of Transportation (DOT), which has jurisdiction over transportation by air, automobiles, motor carriers, highways, mass transit, rail, the Maritime Administration, and pipelines. Until their transfer to the Department of Homeland Security, DOT had jurisdiction over transportation security and the Coast Guard as well. I was appointed to the Inspector General (IG) position by President Clinton in 1997 and confirmed by the Senate in May, 1997. I served as Inspector General for nearly nine years and resigned in February, 2006. I served with Secretaries Slater and Mineta, and Deputy Secretaries Downey, Jackson, Van Tine, and Cino. I have a high regard for all of these individuals, our working relationships and the absolute respect they demonstrated for the independence of the IG.

I joined the law firm of Baker Botts, LLP shortly after leaving DOT, and work primarily on transportation and government relations matters. I should point out that before becoming IG, I served as the Deputy Assistant Comptroller General for Policy and as Director of Transportation Issues for the Government Accountability Office (GAO). I make note of this not only as a point of biography, but because I believe the GAO is an exceptional training ground and a great source, among others, for IG candidates.

The Honorable Cal Scovel, III, my successor, and the entire DOT OIG staff continue to do an exceptional job and work in the best traditions of the Inspector General Act. I am very proud of them for their dedication to duty and accomplishments, particularly in the areas of transportation safety, promoting a more efficient transportation system, ensuring the cost-effective application of billions of dollars in Federal funds, and preventing and rooting out fraud, waste, and abuse.

I want this Committee to know that the IG position is a most difficult and sometimes lonely job, but, in my estimation, among the greatest honors of public trust that

Government has to offer, with simply extraordinary opportunities to improve Government and serve the taxpayers. The original IG Act has stood the test of time and has served the taxpayer well. An important amendment to the Act was made five years ago when Congress granted IG offices law enforcement authority in their own right, rather than being specially deputized by the Marshals Service on a case by case basis. While there are several improvements that can be made to the IG Act, it is not in need of wholesale change, and I think that is well recognized by H.R. 928.

As requested, I will offer some observations on H.R. 928, IG independence and accountability, IG budget submission and resources, IG pay and its implications, and the operations of the President's Council on Integrity and Efficiency (PCIE), of which IGs appointed by the President are members. The IG Act sets forth the authority, powers, responsibilities, and protections for the IG, and these can be improved upon, but, ultimately, the values, qualifications, and vision of the individuals selected for that job will be determinative. Add to this the fact that a two- or three-way street must be navigated, and this requires constructive working relationships with both the Congress and the Secretary. Let me give this some personal context and perspective.

IG Accountability, Effectiveness, and Independence

The essential design of the IG's job, as Paul Light told me when he worked for Senator John Glenn, is to speak "truth to power." Inspectors General who use this principle as their compass will best serve the Congress, the Secretary, and the taxpayer. Never forget it. The independence of IGs, and the special authorities Congress has given them, requires that the IG speak the unvarnished truth.

Not infrequently, this will come in the form of unwelcome audit or investigative findings and recommendations. They may be painful or unpopular to deal with and carry serious consequences as well. This also means that the IG's work must be credible, objective, methodologically defensible, and beyond reproach, as proactive as possible, and solution oriented. At DOT, whether we were dealing with planes, trains, trucks, ships, or pipelines, an equally important part of the job is to follow-up on findings and recommendations—to make sure that recommendations are implemented and, if not, that the Secretary and the Congress know about it.

IG Relationships with the Congress and the Secretary

The Inspector General Act requires the Inspector General to keep both the Secretary and the Congress "fully and currently informed." This is a mandatory not discretionary duty and, in effect, establishes a dual reporting obligation. This obligation should be underscored. I consider this single provision of law to be among the most important strengths of the IG Act and it is a duty for which all IGs should be held accountable.

But there is an important, powerfully reinforcing corollary to this that applies to both the Congress and the Secretary. For the Congress, that corollary is the regularity and depth of congressional oversight of agency programs and the attention paid to the IG's work. For

the Secretary, the corollary is the value that he or she attaches to IG oversight, the responsiveness to IG findings and recommendations, and the regularity of IG access to the top of the organization. This is probably not possible to legislate in any meaningful way, but it is a key to IG effectiveness and meeting IG Act expectations.

The regard in which the DOT Inspector General's office is held is due not only to the quality, relevance, and independence of their work. In my opinion, it also is due to the fact that congressional appropriation and authorizing committees make their expectations clear and frequently hold hearings at which the Inspector General testifies. Similarly, and just as important, the Secretary knew this, also had high expectations for oversight, was completely intolerant of fraud or abuse, and insisted that close attention be paid to IG findings. This was reinforced at senior staff meetings, which were attended by the heads of DOT's Operating Administrations. So, the Inspector General knew the Secretary's expectations and those of the Congress were high; the Operating Administrations, such as FAA, FTA, and FHWA, knew the IG's work was important, and that the Secretary and the Congress were watching.

A good working relationship between the IG and the head of the agency is essential. The relationship with the Secretary ought to be one built on mutual respect and trust. The IG must be independent, but should never blindside the Secretary and should work diligently to develop workable recommendations for corrective action. Simply restating the problem and recommending that it be corrected is neither helpful nor sufficient. The IG cannot take independence to an extreme, just drop the problem on the Secretary, and go away. The result will be that the IG's effectiveness will be marginalized, the IG will be left out of the recommendation loop, and the IG will not be viewed as a "value-added" player in problem solving.

It also is quite important for the IG to be as proactive as possible and prevent problems from occurring in the first place. This, of course, is not always possible to do, and there will be occasions where unambiguously bad news must be delivered. This does not mean that the Secretary should find out about a criminal prosecution affecting the agency in the Washington Post or about an IG finding affecting airline safety on network news. If that happens, the IG has probably dropped the ball and such an oversight may affect the working relationship the IG has with the Secretary.

Statutory Term of Office and Removal for Cause

Currently, IGs nominated by the President and confirmed by the Senate have no statutory term of office, and the only statutory condition for removal is that the President must notify the Congress in writing. There is no requirement that the congressional notification be made before removal or that any particular reason be given for the removal. Also, when there is a change in the Office of the President, there is understandable uncertainty among the Inspectors General about whether the incoming President will want them to stay on. However, during the Bush Administration's transition period, IGs were advised not to submit resignations along with the other appointees, but that decisions would be

made on a case by case basis. I believe this was the approach taken by President Clinton as well.

H.R. 928 would establish a renewable seven year term of office for IGs with removal only for specific causes. Standing alone, I do not think a term of office will enhance the independence of the IG or protect the IG from removal under the current process. This would not be the case though if the term of office provision were considered along with the conditions for removal, which is the case with the approach proposed by H.R. 928. I do not think a term of office, a removal for cause provision, or both would have enhanced my independence or effectiveness as IG. It would not have detracted from it either.

On balance though, and considering the specific situations and concerns of several other IGs with whom I have spoken, the best approach may be a requirement to notify the Congress in writing thirty days in advance of any removal action, along with an explanation of the reasons for the removal. This would provide time for dialogue and an opportunity for the executive and legislative branches to discuss the circumstances. I recommend the Committee consider a similar approach for IGs who are appointed not by the President, but by agency heads or boards of directors. An IG who is not appointed by the President and confirmed by the Senate is referred to as a Designated Federal Entity or DFE IG.

Inspector General Resources and Submission of Budget Requests.

The question of whether IGs have sufficient resources to fulfill their duties differs by agency and degree. The general practice at DOT was to submit the IG's initial budget request to OMB without reduction. That is not the practice at all agencies. Also, after submission of the initial budget request, OMB makes a budget recommendation—called the pass back; there were numerous occasions where we would appeal this recommendation and see if there were areas where we could tighten our belts. Negotiations would follow. In my experience, the Department was supportive and OMB generally was reasonable when all was said and done. However, there were some exceptions to this; in those instances, the Senate and House Appropriation committees would find a way to keep us whole.

Given the substantial return the taxpayer receives for every dollar invested in the IGs, the matter of resource adequacy deserves the Committee's consideration and greater transparency could be brought to the budget process. Without this, the value of resources devoted to oversight and the pernicious implications of inadequate funding will not get on the radar screen.

Therefore, I believe H.R. 928 has it about right and that the Inspector General's original request should be submitted along with the President's final recommended budget. For example, when budget outlays increase significantly for aviation or highways, the IG's audit and investigative activity should increase sharply in those areas as well. Resources must be made available for this to occur, particularly in areas at high risk for fraud, waste, and abuse. If additional audit and investigative coverage of at risk areas will not be

feasible under the President's budget, the Congress needs to know of this consequence. I believe a similar approach should be considered for the DFE IGs. The budget situation for DFE IGs is complicated by the fact that many of them do not have a specific budget line item in their agency budgets, but that could be changed by Act of Congress.

IG Candidate Pool and IG Pay

The IG Act establishes the qualifications for presidentially appointed IGs and I do not believe they are in need of change. It should be noted that the IG Act does not specify the qualifications for DFE IGs, and I see no persuasive reason why that should be the case. In the final analysis, the selection, vetting, nomination, and confirmation process will be the most important determinant in getting the best qualified presidentially appointed IGs.

I am concerned about the adequacy of IG pay, particularly if the expectation is for a tenure substantially greater than that of other presidentially appointed officials, and was pleased to see this is a subject the Committee intends to address. Under H.R. 928, that tenure would be 7 years. I know the Committee will be receiving other testimony on this subject, so I will not go into detail on the very significant pay disparities between career staff and Inspectors General who were career employees, substantial pay disparities even between the Inspectors General, and the complicated reasons for this. Suffice it to say that this area needs congressional attention and soon. The pay disparities are significantly affecting the willingness of exceptionally well qualified career staff to be considered for appointment as an Inspector General and the disparity is affecting retention as well.

Under fairly recent legislation, Inspectors General who were career SES employees are likely to experience significant pay penalties if they become an IG. Although I do not think this was an intended result of the legislation, it does occur and I experienced it first hand. IGs with prior SES status can no longer receive the base salary benefit increases now applicable to the SES. This is because the new system is performance-based. To avoid the appearance of a conflict of interest and preserve IG independence, no agency official subject to oversight by the IG can evaluate the IG's performance, so the IG simply gets no performance increase, and, of course, no bonuses. Thus, presidential IGs can and do receive significantly less pay than employees who report directly to them. Meanwhile, presidential IGs who were not previously career SES can receive even less than IGs who were career SES. They will be paid at Executive Schedule, Level IV, with no possibility of promotion; the only level below that is Executive Schedule, level V.

Codification of the Inspector General Councils and Integrity Committee Matters

Currently, Inspectors General appointed by the President are members of the President's Council on Integrity and Efficiency (PCIE). DFE Inspectors General, who are appointed by the head of an agency, are members of the Executive Council on Integrity and Efficiency (ECIE). The two Councils are creations of Presidential Executive Orders. The Councils meet separately, but periodically have a joint meeting. H.R. 928 provides for a single, combined IG Council and further provides that the Council Chairperson shall be elected to that position by the Council. The Deputy Director for Management of the

Office of Management and Budget is the Chair of the Council under the executive order and an Inspector General is requested to serve as Vice-Chair.

Though I have some concerns with the large size of a single council, I believe there is merit in the proposal advanced by H.R. 928. First, the IG Council proposed by the bill could strengthen IG relationships with the Congress and significantly enhance IG coordination and effectiveness on government-wide issues and projects. The bill enumerates specific duties of the Council. Second, if Congress proceeds down the road suggested by the bill, it should consider a small appropriation for a limited dedicated staff to support the Council in carrying out its mission. Neither the PCIE nor ECIE currently receive any appropriations and rely almost exclusively on individual IGs to provide funds and commit staff as their individual circumstances permit.

Finally, H.R. 928 provides for an Integrity Committee within the IG Council with functions and procedures very similar to the current Integrity Committee. In 1996, the Integrity Committee was formally recognized and specifically tasked by Executive Order 12993 to receive, review, and refer for investigation allegations of wrongdoing by an Inspector General and, in certain limited circumstances, allegations against IG staff members as well. The Integrity Committee (IC) also handles complaints against Inspectors General that allege abuse of authority, gross mismanagement, or gross waste of funds. The FBI may conduct or assist in an investigation or the investigation may be conducted by another IG.

As the Committee considers the bill, however, I would recommend that it also review the due process procedures established by the IC, the consistency of their application, and the timeliness of the investigative process. I think this would be in the best interests of accountability and objectivity in general, fairness to the Inspector General or staff being investigated, and bring greater transparency to the IC process.

IC investigations usually do not culminate in a public trial or administrative proceeding where the accused can confront and cross-examine witnesses against them or call witnesses of their own, question motivations, and see for themselves what witnesses are saying and what evidence they are advancing, but, as the experience of the past year has shown, the media somehow learns an investigation of an IG is underway, talks to various sources, and goes forward with a prominently placed article or articles, often well in advance of an investigation's conclusion. This may just come with the territory of being a senior Federal official, but it also can damage reputations and make it very difficult to continue running the Office of Inspector General effectively, particularly if the investigation is protracted in nature. I do not know if the Inspectors General, incumbent or otherwise, who have been the subject of an IC investigation during the past year or so would be open to discussing their experience or observations with subcommittee staff or Members, but this may be an invitation the Committee may wish to extend to them as well as the IC.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you or the Subcommittee may have.



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Education and Honors

J.D., University of South Carolina
School of Law, 1975

B.A., political science, Southern
Connecticut State University, 1970

Senate Resolution S382, in
recognition of service as Inspector
General, February 17, 2006

President's Council on Integrity and
Efficiency Career Achievement
Award

GAO Distinguished Service Award;
Meritorious Service Award

Listed in *Who's Who in America*,
2005 and 2006

Admissions and Affiliations

District of Columbia Bar

United States Court of Appeals for the
District of Columbia

United States Supreme Court

Federal Bar Association

Association of Government
Accountants

Concentration

Government relations, transportation, homeland security

Summary

Prior to joining Baker Botts, Ken Mead was inspector general of the Department of Transportation, following nomination by President Bill Clinton and confirmation by the U.S. Senate in 1997. As inspector general, Mr. Mead was a member of the President's Council on Integrity and Efficiency. Prior to becoming inspector general, he served for 22 years with the U.S. Government Accountability Office, Congress' investigative arm, where he held the positions of deputy assistant comptroller general for policy, director of transportation and telecommunications issues, and senior attorney. On February 17, 2006, the U.S. Senate passed a resolution recognizing Mr. Mead for his exemplary service as inspector general.

As inspector general, Mr. Mead was responsible for investigating, auditing, and reporting to the Secretary of Transportation and Congress on the effectiveness and efficiency of DOT programs and operations through audit reports and management advisories containing findings and recommendations. From the beginning of his tenure in 1997, OIG issued more than 1,000 reports, which identified more than \$7 billion that could have been more effectively used.

Mr. Mead also conducted investigations into fraud, waste, and abuse and had the authority to refer suspected criminal violations to the U.S. attorney general. Under his leadership, OIG investigations resulted in over 2,500 indictments and 2,000 convictions, and more than \$500 million in fines, restitutions, and recoveries.

Mr. Mead has frequently been invited to testify before committees of Congress. During his federal career, Mr. Mead testified on major transportation issues before committees of Congress on more than 230 occasions, 130 of them as inspector general. He also testified

before the 9/11 Commission on aviation security and corrective actions that should be taken.

From the start of his tenure as inspector general in 1997, Mr. Mead's reports and testimonies addressed a broad range of transportation matters, including aviation safety and security; railroad, motor carrier, and pipeline safety; FAA's multibillion-dollar air traffic control modernization program and efforts to mitigate flight delays and congestion; oversight of large highway, transit, and airport projects to protect taxpayer investments and maximize use of available funds; the future structure and funding of intercity passenger rail service; and strengthening controls over the Title XI shipbuilding loan guarantee program.

Mr. Mead's reports also recommended implementation of financial management and accountability measures to ensure DOT funds are spent efficiently. This included auditing and opining on DOT's financial statements, collectively covering the department's \$65 billion annual budget and the Aviation and Highway Trust Funds.

Mr. Mead received the GAO Distinguished Service Award, the Meritorious Service Award, and promotion to the rank of meritorious executive in the Senior Executive Service. He is a veteran of the U.S. Naval Submarine Service.