

# REAL ETHICS: TIPS and **Trends** in Ethics Enforcement

Diana Veilleux

Associate General Counsel  
Office of Government Ethics

Justina Fugh

Senior Counsel for Ethics  
US EPA

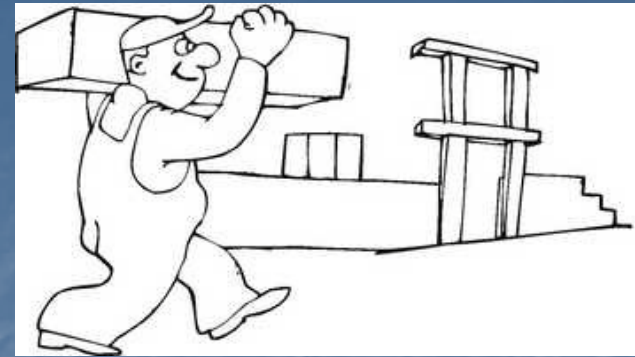


# OUR ROAD MAP



- The traditional ethics enforcement model
- Tips for dealing with *real life* ethics situations
- **Trends** in ethics enforcement

# ETHICS FRAMEWORK



All Federal employees are subject to:

- The Standards of Ethical Conduct
- Title 18 of the US Code
- Hatch Act
- Inspector General Act, 5 USC App, § 7a

# Deep Lawyer Thoughts



- Professional responsibility (see model rule 8.3)
- Who's your client?
  - The Agency? The employee?
- In ethics, there is no attorney-client privilege

# Managing Tension Between Employees and Your Duty



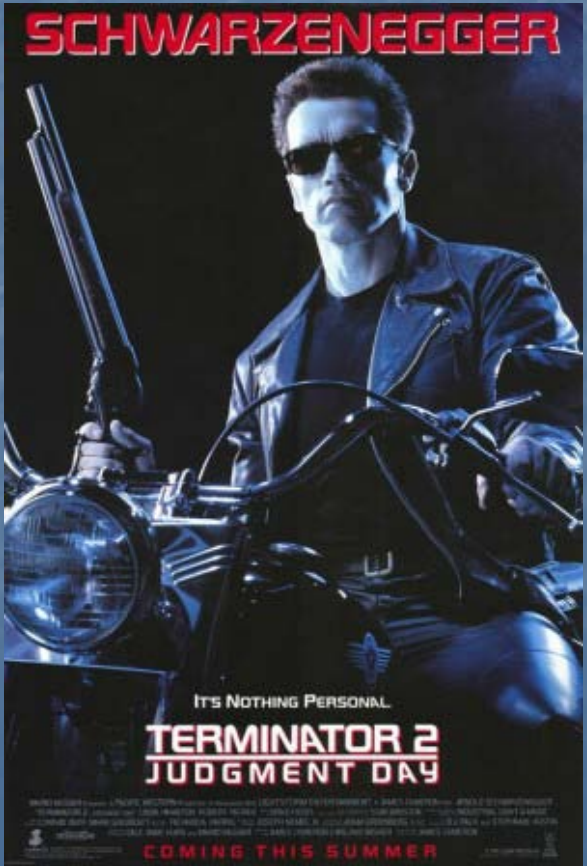
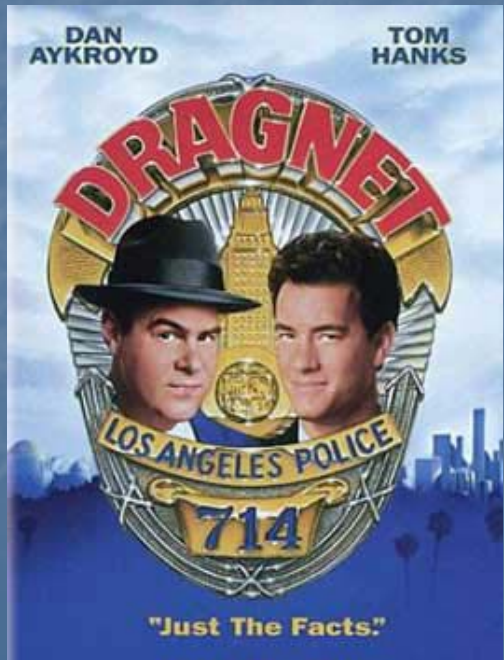
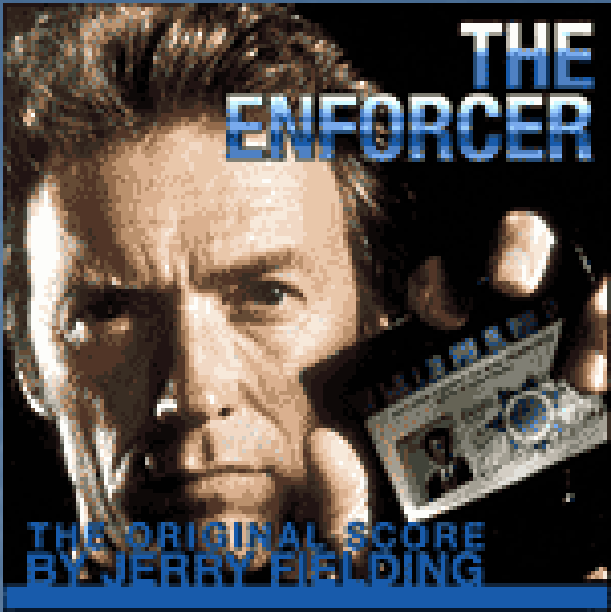
- Invite people to come to you with questions
- Elicit facts but don't investigate
- Deal appropriately with issues that arise (don't ignore them)

QUERY:



What is "ethics enforcement" ?

(Hmm, what do YOU think it means?)



# Traditional Role of Ethics Officials



- Administer the Agency's ethics program
  - Education
  - Counseling
  - Advice
- All are "enforcement" activities -- they assist in carrying out ethics laws and regulations

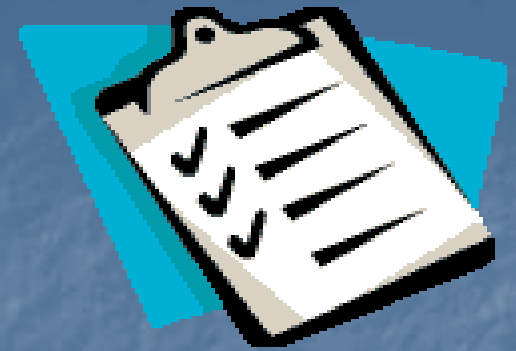


# Cast of Characters in Enforcement



- Ethics Officials
- Human Resources
- Office of General Counsel
- Office of Inspector General

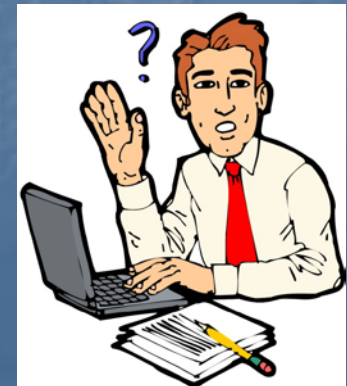
# TIP



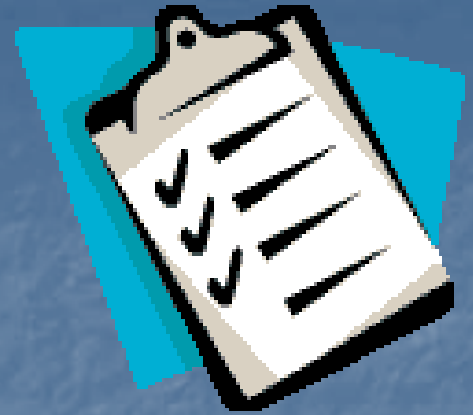
- Establish relationships with other offices that also deal with ethics issues
  - leads to information sharing and consistency
- Include ethics charges on your agency table of penalties
  - inclusion shows that agency takes ethics violations seriously

# Real Ethics

- Someone shares facts with you that suggest an ethics violation
  - Example: Snooki, a current employee, calls because she is leaving the Agency to work for a contractor
- Let's vote on what to do



# TIP: How and When To Contact the IG?



- Obligated to report fraud, waste, abuse or corruption
- Provide the facts you know
- Explain the ethics violation clearly
- Go ahead and give your opinion
- The IG is not the enemy

# Trends in Ethics



- Ethics enforcement generates ...
  - Referrals to DOJ
  - Disciplinary actions
  - Cases at the Merit Systems Protection Board (MSPB)

# Let's Do the Numbers: DISCIPLINARY ACTIONS

Year	Related to Conflicts of Interest	Related to Standards of Conduct
2007	98	2,854
2008	38	3,149
2009	79	3,695
2010	95	2,711

SOURCE: OGE annual survey -- includes removals, demotions, suspensions and written reprimands

# Let's Do the Numbers: COI REFERRALS

Year	By Ethics Officials to OIG	By Agencies to DOJ
2007	102	76
2008	126	50
2009	140	64
2010	139	65

SOURCE: OGE annual survey

# Who Reports COI Referrals to DOJ?



1. DAEO
2. Tie: General Counsel / Inspector General
3. Agency Head
4. Agency Head
5. Other



# Your scrutiny is useful!



- Determine on the merits what constitutes an ethics violation
- Provide information regarding ethics training that can mitigate or aggravate a penalty

# Trends at the MSPB

- Cases involving ethics issues may involve serious disciplinary actions
- Ethics charges are may be bundled with other charges
- Administrative discipline may flow from violations of conflict of interest laws



# Ethics Matters



- Even broad or general violations can lead to removal
  - Sanghi v. Principi (VA physician fired for violating § 2635.101(b)(5) [court case])
  - Suarez v. HUD (removal upheld for violating § 2635.101) [MSPB case]
  
- MSPB sustained removal based on finding of intent in case involving 18 U.S.C. § 209
  - Berman v. Dep't of Interior [MSPB case]

# We Know You Know

(or were supposed to know)



- MSPB frequently considers whether the employee received ethics training
- Knowledge of rules applies both to the merits of the charge and the penalty
- Examples: Sher v. VA, Callis v. DOJ

# Whistleblowing



- MSPB says: reporting an ethics violation is protected whistleblowing
- **Trend:** MSPB is hearing more whistleblowing cases on the merits

# Summing It All Up



- Enforce conflict of interest laws and ethics regulations
- Strive to continue to expand and refine your relationship with others in your Agency

# Questions?



Diana Veilleux  
Associate General Counsel  
US OGE  
(202) 482-9203  
[diana.veilleux@oge.gov](mailto:diana.veilleux@oge.gov)

Justina Fugh  
Senior Counsel for Ethics  
US EPA  
(202) 564-1786  
[fugh.justina@epa.gov](mailto:fugh.justina@epa.gov)