Whistleblower

- One who reveals wrongdoing within an organization:
  - Reveal Within company
  - Reveal to outside authority (police, government agency)
  - Reveal to Media
- Often face severe personal, professional, and financial stress

An Enemy of the People

- “The right? Ah, what does it help to be in the right if you don't have any power?”
  - Henrik Ibsen: An Enemy of the People

Eighth Commandment

- The eighth commandment forbids misrepresenting the truth in our relations with others. This moral prescription flows from the vocation of the holy people to bear witness to their God who is the truth and wills the truth.

Offenses Against Truth

- False witness and perjury is when public statement contrary to the truth takes on a particular gravity
  - Such acts contribute to condemnation of the innocent, exoneration of the guilty, or the increased punishment of the accused.
- Respect for the reputation of persons forbids every attitude and word likely to cause them unjust injury:
  - Rash judgment: assume as true, without sufficient foundation, the moral fault of a neighbor
  - Detraction: without objectively valid reason, discloses another's faults and failings to persons who did not know them
  - Calumny (slander): by remarks contrary to the truth, harms the reputation of others and gives occasion for false judgments concerning them.

Respect For Truth

- The right to the communication of the truth is not unconditional.
  - Everyone must conform his life to the Gospel precept of fraternal love.
  - This requires us in concrete situations to judge whether or not it is appropriate to reveal the truth to someone who asks for it.
- The good and safety of others, respect for privacy, and the common good are sufficient reasons for being silent about what ought not be known or for making use of a discreet language.
  - The duty to avoid scandal often commands strict discretion.
  - No one is bound to reveal the truth to someone who does not have the right to know it.

Professional Secrets

- Professional secrets - for example, those of political office holders, soldiers, physicians, and lawyers - or confidential information given under the seal of secrecy must be kept, save in exceptional cases where keeping the secret is bound to cause very grave harm to the one who confided it, to the one who received it or to a third party, and where the very grave harm can be avoided only by divulging the truth.
- Even if not confided under the seal of secrecy, private information prejudicial to another is not to be divulged without a grave and proportionate reason.
A federal appeals court ruled that two Boeing auditors were legally fired after they exposed to the press internal documents suggesting the aerospace and military contractor lacked computer security safeguards.

The 9th Circuit Court of Appeals set aside the appeal of two former Boeing auditors who claimed their leaks to the media were protected by the Sarbanes-Oxley act of 2002.

Sarbanes-Oxley was adopted to protect shareholders against fraud.

A three judge panel ruled that a provision in the act only protects those who notify authorities, not the media, of wrongdoing.

Sarbanes-Oxley is a wide-ranging law aimed at preventing stockholder rip-offs such as the Enron scandal from happening again.

Among its requirements, it forced public companies such as Boeing to shine a light on their internal controls.

It must show it has checks and balances on people and computer systems to guarantee accuracy of financial statements.

The federal guidelines for computer controls are unclear, and where the law is murky, auditors and company officials are left to fill in the gaps – facing criminal penalties if they are wrong.

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The fired employee says he was trying to save the company but was treated badly after he raised ethical concerns internally about how the company was conducting security audits of its systems.

He then spoke with a reporter as well as the SEC about his concerns. Now he says the company is retaliating against him, instead of trying to fix its problems.

An anonymous e-mail sent to the Seattle P-I also disclosed that Boeing is spying on other employees to ferret out whistleblowers by videotaping workers and reading their e-mail.

Sarbanes-Oxley's whistleblower provision protects employees of publicly traded companies from being fired if they report conduct that they reasonably believe constitute fraud or securities violations.

The law protects employees from discrimination if they deliver the information to a federal regulatory or law enforcement agency, a member or committee of Congress or a work supervisor.

The Whistleblower Protection Act, prohibits employer firings for leaks to the media in the case of “gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety”.

Were the Boeing security employees right in talking to the press?

Was Boeing justified in firing the employees?

Was the court right in its decision? Should the workers have been protected?

How would you handle this type of situation?
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<th>Chelsea Manning</th>
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<td>- Chelsea Elizabeth Manning (born Bradley Edward Manning) is an American activist and whistleblower.</td>
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<td>- She is a former United States Army soldier who was convicted by court-martial in July 2013 of violations of the Espionage Act and other offenses, after disclosing to WikiLeaks nearly 750,000 classified, or unclassified but sensitive, military and diplomatic documents.</td>
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<td>- She was imprisoned from 2010 until 2017 when her sentence was commuted.</td>
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<td>- A trans woman, Manning stated in 2013 that she had a female gender identity since childhood and wanted to be known as Chelsea Manning. She also expressed a desire to begin hormone replacement therapy.</td>
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<td><strong>Assigned in 2009 to an Army unit in Iraq as an intelligence analyst, Manning had access to classified databases.</strong></td>
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<td>- In early 2010, she leaked classified information to WikiLeaks and confided this to Adrian Lamo, an online acquaintance.</td>
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<td>- Lamo indirectly informed the Army's Criminal Investigation Command, and Manning was arrested in May that same year.</td>
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<td>- The material included videos of the July 12, 2007, Baghdad airstrike and the 2009 Granai airstrike in Afghanistan; 251,287 U.S. diplomatic cables; and 482,832 Army reports that came to be known as the &quot;Iraq War Logs&quot; and &quot;Afghan War Diary&quot;.</td>
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<td>- The material was published by WikiLeaks and its media partners between April 2010 and April 2011.</td>
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<td>- Manning was charged with 22 offenses, including aiding the enemy, which was the most serious charge and could have resulted in a death sentence.</td>
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<td><strong>David Moulton, a Navy forensic psychiatrist who saw Manning after the arrest, said Manning had narcissistic traits, and showed signs of both fetal alcohol syndrome and Asperger syndrome.</strong></td>
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<td>- He said that, in leaking the material, Manning had been &quot;acting out [a] grandiose ideation&quot;</td>
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<td>- A defense psychiatrist, testifying to Manning's motives, suggested a different agenda:</td>
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<td>- &quot;Well, Pfc Manning was under the impression that his leaked information was going to really change how the world views the wars in Afghanistan and Iraq, and future war, actually. This was an attempt to crowdsource analysis of the war, and it was his opinion that if ... through crowdsourcing, enough analysis was done on these documents, which he felt to be very important, that it would lead to a greater good ... that society as a whole would come to the conclusion that the war wasn't worth it ... that really no wars are worth it.&quot;</td>
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<td><strong>The Enron scandal, publicized in October 2001, eventually led to the bankruptcy of the Enron Corporation, an American energy company based in Houston, Texas, and the de facto dissolution of Arthur Andersen, which was one of the five largest audit and accountancy partnerships in the world.</strong></td>
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<td>- Enron was formed in 1985 by Kenneth Lay after merging Houston Natural Gas and InterNorth.</td>
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<td>- Several years later, when Jeffrey Skilling was hired, he developed a staff of executives that – by the use of accounting loopholes, special purpose entities, and poor financial reporting – were able to hide billions of dollars in debt from failed deals and projects.</td>
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<td>- Chief Financial Officer Andrew Fastow and other executives not only misled Enron's board of directors and audit committee on high-risk accounting practices, but also pressured Arthur Andersen to ignore the issues.</td>
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Time 2002 Persons of the Year

Cynthia Cooper, WorldCom; Coleen Rowley, the FBI; Sherron Watkins, Enron

Enron Scandal

- Many executives at Enron were indicted for a variety of charges and some were later sent to prison.
- Arthur Anderson was found guilty of illegally destroying documents relevant to the SEC investigation, which voided its license to audit public companies and effectively closed the firm.
- By the time the ruling was overturned at the U.S. Supreme Court, the company had lost the majority of its customers and had ceased operating.
- Enron employees and shareholders received limited returns in lawsuits, despite losing billions in pensions and stock prices.
- As a consequence of the scandal, new regulations and legislation were enacted to expand the accuracy of financial reporting for public companies.
  - One piece of legislation, the Sarbanes–Oxley Act, increased penalties for destroying, altering, or fabricating records in federal investigations or for attempting to defraud shareholders.
  - The act also increased the accountability of auditing firms to remain unbiased and independent of their clients.

Sherron Watkins

- Enron vice president
- Wrote a letter to chairman Kenneth Lay warning him that the company's methods of accounting were improper.
- Congressional subcommittee investigating Enron's collapse released that letter

Coleen Rowley

- FBI staff attorney
- Wrote a memo to FBI Director Robert Mueller about how the bureau brushed off pleas from her Minneapolis, Minn., field office that Zacarias Moussaoui, who was indicted as a Sept. 11 co-conspirator, was a man who must be investigated.

FBI & Entrepreneur Case

- Coleen Rowley is an American former FBI special agent and whistleblower.
- After the September 11, 2001 attacks, Rowley wrote a paper for FBI Director Robert Mueller documenting how FBI HQ personnel in Washington, D.C., had mishandled and failed to take action on information provided by the Minneapolis, Minnesota Field Office regarding its investigation of suspected terrorist Zacarias Moussaoui.
  - Moussaoui had been suspected of being involved in preparations for a suicide-hijacking similar to the December 1994 "Eiffel Tower" hijacking of Air France 8969. Failures identified by Rowley may have left the U.S. vulnerable to the September 11, 2001 attacks. Rowley was one of many agents frustrated by the events that led up to the attacks, writing:
    - During the early aftermath of September 11th, when I happened to be recounting the pre-September 11th events concerning the Moussaoui investigation to other FBI personnel in other divisions or in FBI HQ, almost everyone's first question was "Why?—Why would an FBI agent(s) deliberately sabotage a case?"

Cynthia Cooper

- Informed the board of WorldCom that the company had covered up $3.8 billion in losses through the prestidigitations of phony bookkeeping.
Worldcomm Scandal

- Cynthia Cooper is an American accountant who formerly served as the Vice President of Internal Audit at WorldCom.
- In 2002, Cooper and her team of auditors worked together and often at night and in secret to investigate and unearth a massive $3.8 billion accounting fraud at WorldCom.
- The U.S. Senate responded to revelations about massive accounting fraud at the telecom giant by adding Section 404, on the assessment of internal controls, to the Sarbanes-Oxley Act.

“...whistle-blowers don't have an easy time. Almost all say they would not do it again. If they aren't fired, they're cornered: isolated and made irrelevant. ... Some of their colleagues hate them, especially the ones who believe that their outfits would have quietly righted all wrongs if only they had been given time. 'There is a price to be paid,' says Cooper. “

- Time Magazine

Why They Blow The Whistle

- Whistle-blowers are often asked why they blow the whistle despite the grave risks to themselves.
- Their answers are often disarmingly matter-of-fact.
- They don't make complex moral arguments.
- They don't appeal to foundational principles.
- They don't cite legal statutes or verses from the Bible.
- They say things like, “I had to be able to look at myself in the mirror” or “That’s simply how I was raised.”
- When Butterfield was asked why he did it, he said, “I answered truthfully because I am a truthful person.”
- Alexander Butterfield - revealed the existence of the White House taping system on July 13, 1973, during the Watergate investigation.
- Which explains both nothing and everything.

Whistle-blower protection laws are intended to prevent decent people from being fired for doing the right thing, but no law can really mitigate the psychological devastation that comes from blowing the whistle.

Most whistle-blowers find themselves exiled from the communities that gave their lives meaning.
Whistle-blowers know this and they speak out anyway. This is why Alford calls the act of whistle-blowing a “choiceless choice.”

C. Fred Alford - Social Researcher

Time 2002 Persons of the Year

- Do you think this is a typical response to whistle blowing?

- Time Magazine

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- Time Magazine
Whistle Blowing

- How do you decide whether or not to pursue an issue?
- What are your options up to and including whistleblowing?

Stages of Whistle Blowing

1. Identifying a possible whistleblowing scenario
2. Seriousness test
3. Reality check
4. Becoming aware of the big picture
5. Forcing management recognition of the problem
6. Taking the problem to upper management
7. Going outside the organization
8. Living with the results

1. Identifying a possible whistleblowing scenario
- Your organization or someone in your organization is pursuing a course of action you believe is ethically wrong.
- You believe you know some relevant information that is not generally known.
- You believe that what you know is correct and if it became widely known and understood the course of action would be changed.

2. Seriousness test
- Is the issue serious enough to warrant your concern?
- What is the problem?
- Who would be affected?
- Coworker is playing video games at work
- May confront coworker but probably will work itself out.
- Company supplying software for real-time control of new airplane.
  You believe testing is insufficient and worry lives could be lost if you are right.
  Yes, this needs to be pursued.

3. Reality Check
- Re-evaluate your assessment
- Gather more information
- Discuss with others
- Can you clearly articulate your arguments?
- Do you understand the opposing viewpoint?
4. Becoming aware of the big picture
- From your perspective there is a problem that needs to be addressed.
- You may not understand all factors involved and decisions may depend on input from different technical, financial, and marketing experts.
- Maybe there is a final acceptance test or some other group is working on the problem.
- Try to acquire more information.

5. Forcing Management Recognition of the Problem
- Goal
  - Getting problem remedied from inside organization
  - Stepping on as few toes as possible
  - State the problem clearly and rationally, avoid blame, propose a solution (if you have one)
  - Use existing opportunities: progress report or meeting

5. Forcing management recognition of problem
- Ideal next step, try to have a group of several respected members of team express common opinion.
- Try to find out if your efforts will be considered or ignored.
- Eventually try to get management to “go on record” and document this problem.

5. Forcing management recognition of problem
- Keep documentation throughout.
- Consider how you might get support from professional societies
- Consider whom you might contact for legal assistance
- Be aware your career path may change abruptly in the near future.

ACM Code of Ethics
In the work environment the computing professional has the additional obligation to report any signs of systems dangers that might result in serious personal or social damage.
If one’s superiors do not act to curtail or mitigate such dangers, it may be necessary to “blow the whistle” to help correct the problem or reduce risk.

6. Taking the problem to upper management
- Danger in “going over your boss’s head”
- Choose person who
  - Has some interest and responsibility in the problem area
  - Will be likely to sympathize with engineer’s approach
  - Has enough clout to get something done
- Communicate effectively
- May pass information anonymously, but this is often taken less seriously
6. Taking the problem to upper management
- If this doesn’t work you must consider going outside the organization.
- Get advice from people who have been in similar situations
- Line up good legal representation
- Continue compiling documentation

7. Going outside the organization
- Possible forums (depending on situation)
  - Professional and governmental regulatory bodies
  - Law enforcement
  - Media
- Remember you are acting as an individual outside the organization
  - “… a whistle-blower should not make the disclosure on company letter head or in a manner calculated or likely to make the disclosure seem official… he should not make a public disclosure on company time or with company resources.”

8. Living with the results
- Organization transfers you to career dead end
- Ultimatum to quit or be fired
- Lawyer and/or professional organizations may be able to help with finances, moral support, and finding new position

Guidelines for Engineers Dissenting on Ethical Grounds
IEEE Ethics Committee 11/11/96
http://temp.onlineethics.org/codes/guidelines.html

1. Establish a clear technical foundation
2. Keep your arguments on a high professional plane
3. Try to catch problems early, and work with the lowest managerial level possible
4. Make sure that the issue is sufficiently important
5. Use organizational dispute resolution mechanisms
6. Keep records and collect evidence

Laws Protecting Whistleblowers
- Many different laws
  - Federal and state
  - Depending on issues
    - Accounting/fraud
    - Environment
    - Discrimination
    - ...
  - Best to consult an attorney

Sarbanes-Oxley Act (2002)
- Primarily addressed accounting/corporate fraud
- Whistleblower clause which applies to all employees in publicly traded corporations
- Procedures to file internal whistleblower complaints
- Procedures to protect the confidentiality
- Criminalized retaliation against whistleblowers who provide “truthful information” to a “law enforcement officer” about the “commission or possible commission of any Federal offense.”
Other Federal Laws
- Federal Whistle Blowers Protection Act ('89,'01)
  - Applies to federal employees and contractors
- False Claims Act
  - Applies to those who report their company has fraudulently collected money from the federal government
- Both provide whistleblowers the right to a legal remedy if they suffer retaliation such as job loss, demotion, intimidation, denial of benefits, etc

Laws Protecting Whistleblowers
- Regulatory commissions
- Clean Water Act
- Clean Air Act
- Solid Waste Disposal Act
- OSHA
- Equal Employment Opportunity Commission

Internal Whistleblowing
- Encouraging employees to bring unethical or illegal practices to the forefront and addressing them before they become fatal to an organization.
- Objectives
  - To encourage employees to bring ethical and legal violations they are aware of to an internal authority so that action can be taken immediately to resolve the problem
  - To minimize the organization's exposure to the damage that can occur when employees circumvent internal mechanisms
  - To let employees know the organization is serious about adherence to codes of conduct

Internal Whistleblowing
- Barriers
  - A lack of trust in the internal system
  - Unwillingness of employees to be "snitches"
  - Misguided union solidarity
  - Belief that management is not held to the same standard
  - Fear of retaliation
  - Fear of alienation from peers

Internal Whistleblowing
- Create a policy including
  - Formal mechanism for reporting violations
  - Clear communication about the process
  - Bans on retaliation
  - Get endorsement from top management
  - Publicize organization’s commitment
  - Investigate and follow-up
  - Assess system

Points to remember
- A whistle blowing incident is probably one of the most emotionally difficult things you can experience as a professional
- Rationalization: I can’t endure the emotional pressure involved.
- Ask yourself: Can you endure the emotional pressure if you don’t?