Spurred by both internal and external pressures, many engineering and professional societies have developed rules of conduct and practices which address ethical aspects of their members' professional activities. These efforts are part of a larger set of institutional forces affecting the work environment and behavior of scientists and engineers. The first issue of PERSPECTIVES focuses upon this important topic.

At the January 1981 meeting of the American Association for the Advancement of Science in Toronto, the Center for the Study of Ethics in the Professions and the Society for the Study of Ethics in the Professions co-sponsored a symposium which posed the question "Do the Engineering and Scientific Societies have a Role in Promoting Ethical Conduct Among Their Members?" Co-arrangers Mark S. Frankel (CSEP) and Sheri L. Smith (SSEP) invited panelists representing five different perspectives to examine the role that professional societies might play in promoting ethical behaviour by their members and to identify factors which might affect the societies' response to ethical issues.

An edited version of the panelists' papers appears below. This first issue of PERSPECTIVES also includes two other papers related to the symposium topic. The first by Robert F. Ladenson, Associate Professor of Philosophy at IIT and CSEP Faculty Associate, raises some broad questions about professional codes of ethics from the standpoint of a social and political philosopher. The second by Martin H. Malin, Visiting Assistant Professor of Law at IIT-Chicago Kent College of Law, summarizes recent court decisions affecting professional organizations which attempt to enforce their ethical codes. This issue also contains a small select annotated bibliography of materials related to the symposium topic.
Association's current Bylaws and its Ethics Committee's Rules and Procedures do not permit the Association's Ethics Officer to tell a complainant—the person filing a complaint against a member—exactly what final action the Ethics Committee has taken on a case. The Association's Bylaws do permit the Board of Directors to give out such information, but final action on over 90% of all complaints is taken either by the Chair and Secretary of the Ethics Committee or by the Ethics Committee itself. This means that most complainants remain frustrated in their efforts to find out what final action is taken on their complaints. The matter of just what information should be communicated to complainants is currently under reconsideration by the APA.

Third, Sanders noted that in the final analysis, the APA Ethics Committee can do no more than expel members from the Association. This poses a substantial problem because psychologists can avoid the reach of the Committee simply by resigning from the APA. The Board of Directors may refuse to accept the resignation of a member against whom a charge is pending, but it cannot penalize such an individual if he or she refuses to pay dues. One suggestion put forward to mitigate the above problem has been to amend the by-laws of the APA so that the Board of Directors will be empowered to inform the membership when individuals resign while being investigated for possible violation of one or more principles of the Associations Ethical Standards of Psychologists.

Donald Wilson summarized recent activities by the various engineering professional societies in the area of ethics. Wilson is a member of the National Council of Engineering Examiners, an organization whose members represent the various licensing boards of those states that provide for licensing of engineers. At the outset Wilson pointed out that in the early years of their development professional organizations for engineers tended to be dominated by employers. For this historical reason the codes of ethics for these organizations have tended to emphasize avoiding conduct that might embarrass an industry or employer. The codes have also concentrated extensively on promoting courtesy and gentlemanly conduct among engineers.

Wilson went on to say that the engineering codes of ethics have tended by and large either to ignore the responsibilities of engineers to the public altogether or to treat them in an extremely vague way. All of this he noted, however, began to change significantly in the 1970's. In 1975 eight professional societies held a major conference on engineering ethics where the participants candidly discussed some of the more serious ethical issues for engineers. Another major change in the 1970's was the series of Supreme Court decisions which declared provisions of professional codes of ethics that forbid competitive bidding and advertising to contravene the Sherman Antitrust Act and the First Amendment to the U.S. Constitution.

Wilson then described a number of other interesting developments in the 1970's. One of these concerned the activities of the Institute of Electrical and Electronic Engineers (IEEE). The IEEE created a member conduct committee with authorization not only to investigate alleged infractions of the organization's code of ethics, but also to support members who take stands on behalf of the public interest. The IEEE policy statement was implemented in 1978 by way of a by-law which reads in part:

"IEEE may offer support to any member involved in a matter of ethical principle which stems in whole or in part from such member's adherence to the Code of Ethics and which jeopardizes that member's livelihood, compromises the discharge of such member's professional responsibilities, or which can be detrimental to the interests of IEEE or the engineering profession."

Wilson also discussed the work in late 1978 and early 1979 of a joint task force of engineering societies which convened in order to resolve differences in their codes of ethics and to recommend a common code.

At about the same time the organization of state licensing boards for engineers (NCEE) had a committee at work on developing a model code of ethics. The two groups, although working as separate entities, interacted frequently.

Wilson concluded by noting the emergence during the 1970's of renewed interest in professional ethics issues among educators. He cited in this regard the National Project on Philosophy and Engineering Ethics at Rensselaer Polytechnic Institute and the Workshops in Ethics in Engineering at the Illinois Institute of Technology. Both of
these projects, funded by the National Science Foundation and the National Endowment for the Humanities, brought together engineering and humanities faculty to explore a wide range of ethical issues affecting engineers.

Oliver R. Smoot, former Chairperson of the Association for Computing Machinery Professional Standards and Practices Committee, discussed problems connected with promulgating a code of ethics and associated set of enforcement provisions for an evolving profession. The Association for Computing Machinery (ACM) has 45,000 members, most of whom work with some aspect of computer software. Smoot noted that many computer professionals regard their industry as having unique problems which render the general approach underlying codes of ethics in more established areas of engineering and science inapplicable. Those who take this view often cite the comparatively large range of uncertainty with respect to design problems concerning computers and the attendant difficulties involved in framing precise specifications for particular projects. Other computer professionals, however, regard the ethical issues they face as basically similar in kind to those in other scientific and technical fields.

Smoot said that the issue of whether, or to what extent, the computer field presents special problems continually recurred throughout the deliberations of the ACM concerning the adoption of an ethical code over a twelve year period from 1966 to 1978. In 1966 the ACM drafted a set of ethical guidelines. These were general statements relating to ethics rather than a definite ethical code for members of the organization. In 1970, however, a constitutional amendment was adopted that created authority for ACM officers to impose disciplinary sanctions on members. At the same time the promulgation of an ethical code was mandated. As a result, after considerable discussion in 1974 the ACM adopted an ethical code with provisions much more precise and detailed than the ethical guidelines of 1966. Substantial controversy, however, surrounded the issue of enforcement provisions. Some members argued that in the case of almost all the disciplinary rules (i.e. those rules whose violation would make a member subject to disciplinary sanctions) determining infractions would involve difficult questions of intent. More fundamentally, it was also pointed out that AMC members comprise only a small portion of those working in the computer machinery field. Accordingly, even the ultimate threat of expulsion from the organization may not carry much force. Reflecting these concerns, the ACM did not formulate a set of enforcement procedures at the time it adopted its ethical code in 1974. Smoot said, however, that the above objections notwithstanding, such procedures were approved in 1978 thus moving the ACM in the direction of more traditional professional bodies.

In her paper Martha B. Montgomery, Head of the Humanities and Communication Department at Drexel University, cited several innovative activities by professional associations pertaining to ethical concerns. In this regard she began with the following account of a significant step which the Delaware Association of Professional Engineers took in updating its ethical code: "Most codes (of ethics of engineering societies) require the professional whose judgement is overruled under circumstances where the public safety is involved to `inform the proper authorities'.

"The phrase 'proper authority' is one of those too ambiguous to guide members. Consequently, the Delaware Association has constituted itself that authority in Delaware. This relieves the engineer who may wonder whether his own supervisor is 'proper authority', whether his obligation is met if he goes one more step in the hierarchy, whether he must persevere until someone answers him, whether in cases in which the public is the client, the 'proper authority' is no one but the public itself. By acting as the 'proper authority', the DAPS both relieves the ambiguity and puts the industry on notice that the informing engineer is acting as required to retain his license and under the protection of his professional society." Montgomery noted that action similar to that of the Delaware Association of Professional Engineers can only be undertaken if a professional association has regulatory power conferred by law. Otherwise only very limited sanctions such as reprimand, disclosure of investigation results, or expulsion are allowed by law. She pointed out, however, that professional organizations without legal regulatory power can pursue other meaningful activities. As an example, Montgomery related efforts of the American Bar Association in drafting a model procurement code as described in an ABA report prepared by F. Trowbridge Von Bear.
"Although sponsored by lawyers' groups, an Advisory Board drew members from civil engineering, state and local government and all interested organizations involved in procurement. Drafting was subdivided. Eight to ten articles were assigned a committee each. Membership of these drafting subcommittees was made up of 60% lawyers and 40% purchasing professionals. Besides the paid staff there were fifteen to twenty-five volunteer professionals working on each article. Two hundred people participated in the drafting process.

"A Pilot jurisdiction program was in place by January, 1975. Each pilot city or state made an intensive comparison of present law with the proposed Model Code and revised the model to meet each jurisdiction's unique circumstances.

"Involved at this stage were the cities of Baltimore, Detroit, San Diego, and Knoxville. Pilot jurisdictions of other sorts involved governments in Utah, Louisiana, New Mexico, Kentucky and California. Participating states and cities helped with the costs-a good investment for them, as each would achieve a proposed purchasing law incorporating a level of research and debate beyond what any local group could afford or achieve on its own, drafted with an eye to general principles. As you know, much legislation is the result of historical accident and local conditions. A federal agency, the Law Enforcement Assistance Agency contributed funds too.

Montgomery urged that large professional associations, and especially combinations of societies, follow the lead of the American Bar Association. She closed her remarks, however, with the following caveat: "Joint ventures between regulatory and the other professional associations must be wary of Federal Antitrust law which forbids agreements among parties which limit competition even if the purpose of the agreement is to promote high professional standards, as even state regulatory agencies have lost their traditional anti-trust immunity.

"The prime function of the regulatory boards, establishing uniform procedures and standards, must be protected even at the cost of state and national regulatory agencies failing to join in umbrella organizations or desirable actions on behalf of certain ethical goals of the profession. The public must not come to see professional standards as collusion between the regulators and the regulated profession."

University of Minnesota sociologist Paul Davidson Reynolds saw the lead question of the symposium, 'Do engineering and scientific societies have a role in promoting ethical conduct among their members?', as inherently complex. To articulate the complexity he identified five objectives the societies may have with respect to ethical matters, nine means of pursuing them, and ten possible constraints with respect to such pursuit. Reynolds then proposed the accompanying set of tables to depict the relationships between these objectives, means, and constraints.

Reynolds summarized the conclusions represented by the foregoing set of tables thus: "The moral/ethical objectives least likely to be affected by external factors include the provision of personal assistance and public representation of the members. Most of the activities related to the first, formal and informal discussions, development of codes of ethics, and counseling of the members are relatively free of constraint; acting as an intermediary between the members and society appears to be subjected to a minimum of restrictions, with the exception of the tax laws and the status of political lobbying. "Attempts to promote collegial advocacy, either domestic colleagues with a problem or foreign colleagues experiencing abuse, would appear to be slightly more complicated, subject to more external influence, such as the extent to which general social norms, legal standards for responsibility, specific government controls, employer influences, and legal restraints on association activities may affect efforts to assist a domestic colleague-to say nothing of the money and resources it may require. Advocating the interest of a foreign colleague will be successful only to the extent that the association has an impact upon the other countries-problematic in the best of cases. "But the two areas where the external constraints will be the greatest are in relation to attempts to have a systematic influence over the individual members, either through promoting moral homogeneity or attempting to ensure that all members meet minimal qualifications. This will be particularly complex when government mechanisms take precedence over association efforts (as when government licenses or approval of research involving human subjects is required). Further, if the association is not seen as critical
Despite their widespread adoption by various professional organizations absolutely basic questions about professional codes of ethics still require more examination. To begin, what are they for? This question is deceptively simple. To be sure, an important motivating impulse behind professional codes of ethics is the desire of professional people to conduct their professional lives honorably. But is it obvious that codes of ethics can really help here? How should we define professional ethics? According to one initially plausible suggestion the ethics of a profession consists of those rules its membership. Many of the topics commonly associated with the subject of professional ethics fall under this definition. Nonetheless, one who wants to hold that professional codes of ethics have moral force must look for another proposal. That most members of a group regard certain rules as binding provides no moral reason for any given member of the group to follow them. Were it otherwise then members of the mafia would have moral reasons for adhering to the norms for mafiosi. One might say that professional codes of ethics enunciate the moral norms for members of a profession. But if by this one means that they specify the minimum standards of conduct such that failure by a professional person to adhere to them makes him or her liable to moral condemnation, then a question arises as to why these standards should be thought of as different for members of a profession than for everyone else? Indeed, the question should be put as that of how could the moral standards for professional people differ from those applicable to everyone else? According to the most well entrenched theories of morality, moral rules such as 'Do not kill,' 'Do not cheat,' 'Keep your promises' etc. apply, by their very nature, to all rational people.

Putting the above issues aside, the enforcement of professional codes of ethics raises other independent problems which have not received adequate attention. The primary issue about enforcement of an ethical code as it affects specific professional organizations is whether such would be feasible or desirable for them. One can pose the broader question, however, of why should any professional organization ever enforce its ethical code? Even if every provision of a given code had a genuine basis in morality it still would not follow that the code should be enforced. Generally speaking, punishable moral transgressions constitute only a small subset or morally unjustifiable behavior. To be sure we have made virtually all morally unjustifiable killing punishable. But we don't appear to have any inclination whatsoever to do likewise with respect to other clearly immoral behavior such as causing pain, lying, cheating, or breaking promises. Nonetheless, someone grievously harmed at the hands of a person who does any of these kinds of things usually has grounds on which to bring a civil lawsuit to recover damages. Why not then dispense with enforcement of ethical codes altogether and simply leave aggrieved clients to pursue their various legal remedies when they suffer injury as a result of unethical conduct by professionals?

One might respond here that professional people possess expert knowledge which often enables them alone to identify unethical behavior by their peers. Accordingly, without enforcement of professional codes of ethics unscrupulous practitioners could very well remain undetected for considerable periods of time. This response, though certainly reasonable, raises further questions which make one wonder whether enforcement by a professional organization of its ethical code could ever be genuinely effective.

The above response strongly suggests not only that members of a given profession should have the responsibility of imposing sanctions upon violators of their ethical code, but also that they should be primarily responsible for identifying those violators. That is, if one takes the above line of thought seriously then the standard approach whereby professional ethics committees only respond to client complaints would not suffice. The professional would have to assume a more active role in identifying instances of unethical behavior. Could a professional organization effectively carry out this activist role? Any feasible approach for identifying unethical
conduct would have to rely primarily upon complaints by some practitioners against others. No matter what profession, however, most members will be reluctant to report unethical behavior by colleagues. Contrary to George Bernard Shaw I do not think this tendency stems from a conspiratorial mentality, but rather from its diametric opposite. The immense size of most professions and the typically individualistic mode of pursuing a career within them almost inevitably result in natural indifference on the part of many professional people to the behavior of their peers. In this respect the professons simply mirror the ubiquitous conditions of the broader mass society to which they belong.

The problem of encouraging members of a profession to ferret out violators of their ethical code thus requires counteracting perhaps the most deeply entrenched social tendency of our time. One is at a loss to imagine how this might be accomplished. Certainly a return to the frankpledge system of the middle ages, whereby a sense of responsibility for the acts of one's peers was engendered by holding everyone jointly liable for their transgressions, can be ruled out as a possibility.

Where then does this inquiry leave us? In short, I simply don't know. Undoubtedly, professional ethics is a serious business that ought to be addressed by professional organizations. On the other hand, it seems that without revolutionary restructuring of the professions, or perhaps of the entire social order, enforcement of professional codes of ethics will remain largely ineffective. In this regard it should be noted that attempts by professional organizations to enforce their ethical codes consistently give rise to widespread dissatisfaction with the results. This generalization even applies to the legal profession with its relatively extensive procedures and legally mandated authority to discipline unethical attorneys. I for one have no answer to this dilemma. Making a gesture toward closing on a weakly upbeat note, however, at least we can say that here as in so many other domains, knowing what one doesn't know constitutes the first step toward practical wisdom.

"Judicial Restraints on Professional Self-Regulation"
Martin H. Malin, Kent College of Law

A program of professional self-regulation cannot be developed in a vacuum. A professional association must be particularly wary of the degree to which courts will oversee the program and its potential resulting liability to a member who has been disciplined. What follows is an examination of some recent court decisions in two areas: The First Amendment to the Constitution and the Sherman Antitrust Act. Cases have been selected because they are landmark decisions or because they are recent illustrations of established principles.

First Amendment: The First Amendment among other things restrains the government from interfering with individual rights to freedom of speech and the press. It does not restrain private action. Thus a professional association's code of ethics will only be scrutinized under the First Amendment where the association's action can be considered to be "state action." This would be the case where the association has the power to suspend or prohibit individuals from practicing the profession. The court decisions deal primarily with rules prohibiting advertising promulgated by bar associations.

In 1942, in Valentine v. Christensen, the Supreme Court upheld the constitutionality of an ordinance which prohibited the distribution of commercial material in the street. The Court indicated that commercial speech was entitled to no First Amendment protection. Subsequent decisions, however, limited Christensen, holding that paid political advertisements and abortion advertisements were protected by the Constitution. Finally, in Virginia Pharmacy Board v. Virginia Citizens Commerce Council, the Court, emphasizing the consumer's interest in the free flow of commercial information, extended First Amendment protection to advertising. The Court indicated, however, that advertising could be subjected to reasonable regulations of time, place, and manner where justified by a significant governmental interest such as preventing fraud, and where ample alternative means of communication remain available.

In Bates v. Arizona State Bar, 433 U.S. 350 (1977) the Supreme Court held unconstitutional a bar association canon of ethics which prohibited attorneys from advertising the prices at which routine legal services would be performed. The Court rejected the proffered justification that
advertising would adversely affect the professional stature of attorneys. It noted that other professionals advertised without diminishing their reputations and that studies showed that lack of advertising had contributed to public mistrust of lawyers and to a failure to maximize the delivery of legal services. It also rejected arguments that advertising was inherently misleading, would lead to cutting corners and consequently poorer quality work, and would promote frivolous litigation. The Court concluded that these concerns could be addressed by regulation less restrictive than total prohibition. To what extent the Bates decision limits professional self-regulation remains unclear. In Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), however, the Court held that a bar association's rule prohibiting in person solicitation of prospective clients did not violate the First Amendment. The Court found the rule to be a reasonable regulation of time, place and manner of speech where applied to solicitation for pecuniary gain under circumstances likely to pose dangers of fraud, undue influence, intimidation or overreaching.

Antitrust: Section one of the Sherman Act prohibits contracts, combinations or conspiracies in restraint of trade. The statute has been interpreted to prohibit only unreasonable restraints of trade. To assess the reasonableness of a restraint, the Court must consider the nature of the restraint, its purpose scope, and effect on competition.” Certain restraints inherently have a pernicious effect on competition’ and are deemed per se unreasonable. These restraints include price fixing’, horizontal divisions of territories or customers, tying devices, whereby sale of one product is made conditional upon buying other products from the same seller, and group boycotts. Professional associations may violate the Sherman Act because provisions of their codes of ethics unreasonably restrain trade or because their enforcement of ethics codes results in a group boycott of the disciplined members.

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), was the first case which applied the Sherman Act directly to regulations set by a professional association. The Court held that a bar association's promulgation and enforcement of a minimum fee schedule fixed prices in violation of the Sherman Act. The Court rejected the argument that learned professions were exempt from the antitrust laws. Three years later in National Society of Professional Engineers v. U.S., 435 U.S. 1 (1978), the Court ruled a provision of the National Society of Professional Engineers’ Code of Ethics prohibiting competitive bidding to be in violation of the Sherman Act. The Court concluded that the ban inhibited the give and take of the marketplace and rejected the Society's defense that the ban was justified to prevent deceptively low bids resulting in corner cutting and inferior work.

In Mardirosian v. American Institute of Architects, 474 F. Supp. 628 (D.D.C. 1979) the United States District Court for the District of Columbia held that Standard 9 of the American Institute of Architects Code of Ethics violated the Sherman Act. The standard prohibited architects from seeking commissions for work for which they knew another architect had been selected without first ascertaining that the other architect's agreement had been terminated and giving the other architect written notice of intent to seek the commission. The Court found that Standard 9 suppressed competition by making it difficult for an owner negotiating with one architect to negotiate simultaneously with others. It also made it impossible for an owner under contract with one architect to explore possible deals with others unless the owner first terminated the existing contract.

Footnotes
5. See e.g. United States v. Trenton Potteries, 273 U.S. 392 (1927).

"Letter from Editor"
Mark S. Frenkel, CSEP Project Director, Illinois Institute of Technology

Dear Colleague:

IIT’s Center for the Study of Ethics in the Professions (CSEP) was founded in 1976 for the
purpose of promoting research and education on the professions, with special emphasis on the ethical and social responsibility issues associated with professional practice. CSEP pursues a variety of activities and programs and now, with this first issue of PERSPECTIVES, a new dimension is added to the work of the Center. We hope that this quarterly publication will provide useful information and analysis for the large number of people and organizations concerned with the study and practice of the professions.

PERSPECTIVES will attempt to promote serious discussion of important theoretical and practical issues common to a wide variety of professions. A comparative approach which relates ethical and policy issues in one profession to those in others will be emphasized. In addition, we intend to inform our readers about important upcoming events and resources of special interest such as bibliographies, course syllabi, and new books.

We are committed to reaching and expanding the diverse audience that has constituted the Center's constituency since its founding and we expect PERSPECTIVES to interest all those concerned with the role of the professions in contemporary society. We invite your participation in this new endeavor. Suggestions for topics and possible contributions are welcome, as are announcements and your comments about our new publication. We look forward to hearing from you.

Mark S. Frankel
CSEP Project Director

"News from the Center"

The Center has been awarded a two-year grant by the Exxon Education Foundation to develop a series of self-contained instructional modules on ethical dilemmas in engineering for use in engineering education and related fields. Proposals will be solicited nationally at a later date. More details will be forthcoming. Inquiries should be directed to either Mark S. Frankel, project director or Vivian Weil, series editor.

With the support of a grant from the National Science Foundation, the Center for the Study of Ethics in the Professions at Illinois Institute of Technology will host the Second National Conference on Ethics in Engineering to be held at the Palmer House in Chicago on March 5-6, 1982. The theme for the Conference will be "Beyond Whistle-Blowing: Defining Engineers' Responsibilities."

In sessions featuring formal papers and case studies, philosophers, academic engineers, and scholars in other fields will join with practicing engineers from industry and government. The Conference will focus on such topics as Responsibility in Organizations, Regulation of Technology, Designing for Safety, Technological Decision Making, Cost/Benefit Analysis, and the Role of Engineers in the Political Process. An important objective is to advance research which bridges the gap between theory and practice. An additional aim is to encourage collaboration of academics with practicing engineers who can help to identify problems and solutions and to implement changes in organizational structures and practices. We hope to make some headway in formulating approaches which can be applied to individual decision making and policy choices.

Those wishing to participate in the program should submit detailed abstracts by October 15. Papers should be planned for a reading time of twenty minutes, about 10.12 double-spaced typewritten pages. All abstracts, papers, and inquiries regarding the program or registration should be addressed to the Director of the Conference:

Dr. Vivian Weil
Center for the Study of Ethics in the Professions
Illinois Institute of Technology
IIT Center
Chicago, Illinois 60616

The Center recently concluded the initial year of its Professional Ethics Luncheon Seminar Series. The seminar series is a unique forum for discussion of important issues relating to professional education and practice among a group of informed persons who, while sharing a common concern for the role of the professions in contemporary society, tend to view matters from somewhat different perspectives. Seminar participants are drawn from government, academe, consumer groups, professional societies and practicing professionals throughout the Chicago area. Seminar topics cover a wide range of issues, reflecting the diverse group of professionals participating in the seminars and the complexity of the issues associated with their work.

The 1980-81 series included three seminars. The inaugural session in
November featured an address by Paul W. Turley, Director of the Federal Trade Commission's Regional Office in Chicago, describing the activities of the FTC relating to the professions. In April, Thomas Z. Hayward, Jr., a member of the American Bar Association's Standing Committee on Ethics and Professional Responsibility, previewed what the Association's proposed Model Rules of Professional Conduct are likely to include when presented to the ABA for approval. At the final seminar, convened in May, Professor Deena Weinstein, Professor of Sociology at DePaul University, examined the incidence of fraud in science, its causes and effects.

To request a copy of the seminar papers or additional information about the luncheon series, contact the Center's director, Mark S. Frankel.