

# **IMPRIMIS**



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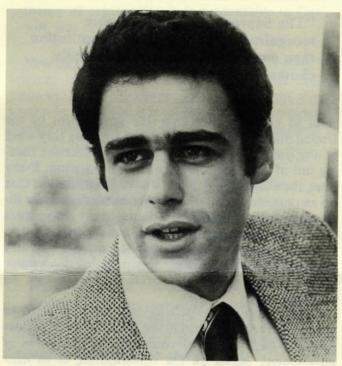
# The Layman's Perspective on the Constitution

By Avi Nelson

Editor's Preview: How much do Americans really know about their Constitution? As one would expect in this interesting survey by media commentator Avi Nelson, the basic indicators are discouraging. But Nelson remains optimistic that the average citizen still nourishes an instinctual and deep appreciation for the principles which the Constitution espouses. Despite the typical American's low marks on civic awareness, he knows that he would rather live in America than the Soviet Union and that, Nelson quips, is "an appreciation of the Constitution on the most fundamental level." He des one turn-of-the-century Harvard scholar: "The people may not have taken the Constitution to their heads, but they appear to have taken it to their hearts."

When I was putting together some ideas for this presentation on the Constitution, I asked a recent college graduate, a young professional, about the topic. Her immediate answer was "I don't know anything about it." That may well be a true reflection of the layman's perspective on one of the most important features of democracy.

Ironically, there is also a corresponding lack of knowledge about the layman's perspective itself. I thought that it would be relatively easy to find a few articles, check some poll data; in short, get a feel for public opinion, but no such information in any updated form exists. One researcher at a very prestigious survey firm said. "Quite frankly, there is nobody to hire us to do that because nobody cares." This is unfortunate because the Constitution is clearly written as a governing document and it is written for ordinary people. The wording of the Constitution is quite plain. Its authors did not use high-sounding phrases or technical terms. Thomas Jefferson once described the Constitution as a text of civil instruction, but it appears that we have



We can ask three questions: How well do most people understand the Constitution? How are they educated about the Constitution? And how important is it that they be educated or knowledgeable about the Constitution?

The most recent surveys which we may look to were taken in 1944 and 1946. One of these asked:

Question:

What do you know of the Bill of Rights?

Answer(s):

Never heard of it./I'm not sure I have — 31% Had heard of it, but could not identify — 36% Confused, unsatisfactory or incorrect — 12%

That leaves 21 percent of our citizenry who had a reasonably accurate idea of the content. It may be significant that the particular survey firm which used the question, the National Opinion Research Center, has not employed it on any of their subsequent surveys. Perhaps they were discouraged by the results.

There is a general belief in some quarters that the Bill of Rights could not be passed today in any popular referendum. This opinion gained great currency over ten years ago during an event called the People's Bicentennial. (That was the bicentennial of the Declaration of Independence, not the Constitution, of course.) One group of radicals wanted to protest the national celebration of our two hundredth anniversary. Its members frequented supermarkets and parking lots, asking questions such as "Do you think people who

"The Supreme Court, with more recognized authority on the Constitution than any other body, has, historically, chosen not to educate the public."

want to violently overthrow the government of the United States should be able to say anything they want at any time?" Well, you try accosting someone coming out of the supermarket with that question. Every time, the answer was "No." The radicals chalked that up as opposition to the First Amendment and, by inference, to the entire Bill of Rights. Many newspapers picked the story up, circulated it, and it persists today. But it is a myth. It is not that the people wouldn't approve of the Bill of Rights; they probably don't know enough about it one way or the other to cast an intelligent vote.

Let us return to the polling data for a moment. In another survey conducted in the 1940s the question was asked: Which represents your opinion: Our form of government, based on the Constitution, is as near perfect as can be and no important changes should be made. About two-thirds of the people, 67 percent, agreed with that. Or: The Constitution has served well but should be thoroughly revised to fit present-day needs. About 20 percent agreed with that. (Please be aware that throughout this essay, I have paraphrased the questions slightly, but without distorting the meaning or the implication of the results.)

## About the Author

For the past twelve years, Avi Nelson has been a prominent figure in the Boston media, an unusual circumstance considering the fact that he holds masters' degrees in business administration from Cornell and in physics from Harvard. Mr. Nelson is the president of WMFP Television in the Lawrence-Boston area, editorial director of a CBS affiliate, WEEI, and he serves as an on-air analyst for WCVB Channel 5 News as well as a panelist for the channel's weekly public affairs program, "Five on Five."

# A Historical Perspective

How else are we to get a feel for the layman's perspe tive? We must use collateral means, beginning with some general speculation about our past. During the 1780s, debate about the formulation and ratification of the Constitution was not limited to the floor of the Constitutional Convention. In every state, the provisions were passionately discussed. It is safe to say that people knew more about the Constitution at that point in our history than at any other time. And, of course, the disagreements among the nation's leaders and the convention delegates mirrored disagreements in the broad American community as well. Thomas Jefferson, who was in France at the time, objected to the Constitution's drafting because it did not have a Bill of Rights. Thomas Paine, also in France, objected because he was against a presidency. He was also concerned about the duration of the Senate terms. But both of them went along with the proposed document, interestingly enough, because they were encouraged by the prospect of amending it. Like many others, they thought they could iron out the imperfections later. They felt the need to have something to replace the Articles of Confederation as soon as possible. Paine phrased it this way: "Thirteen staves and nary a hoop will not a barrel make." And they pointed out that they would have voted for worse documents just to get something down on paper.

There were, however, deep misgivings about the Constitution. Gouverneur Morris from New York warned, "Give the votes to the people who have no property and they will sell them to the rich who will be able to buy them." Exactly the opposite point of view was expressed by a Massachusetts countryman, Amos Singletary, who said, "These lawyers and men of learning and moneyed men that speak so finely and gloss over matters so smoothly to make us poor illiterate people swallow down the pill expect to get in Congress themselves. They expect to be the managers of this Constitution and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great Leviathan." In the end, significantly, the strongest support for the Constitution came from the artisans. Half to two-thirds of the adult males in the cities were tradesmen. They correctly perceived that the Constitution was not only a document of government, but also a document of commerce. At the time, the British were dumping goods in America, commerce was stagnating, the economy was crippled, and there were numerous demands for tariff protection. These artisans saw the benefit of speedily adopting the new Constitution.

To put the public discourse on political affairs in context, one must remember that in the 1780s 1 printed discussions of issues were circulated. Paine's famous Common Sense pamphlet reached only a few

hundred thousand people and this was considered an extraordinary accomplishment. Ordinarily, newspapers the reach 5,000 people; pamphlets, 2,000. Mass communication was very limited. But Professor Alfred Young of the University of Northern Illinois has made the observation that by studying accounts of public celebrations, we may gauge public interest on many issues.

In celebrating the ratification of the Constitution in 1788, people turned out in unprecedented numbers for parades. In Boston more than 4,000 marchers participated. In New York, 5,000, in Philadelphia, over 5,000; and the artisans were once again in the majority. They marched alphabetically or by trade. They each had floats and they had slogans that went along with them. One group of bakers had a huge "Federal Loaf of Bread." The coopers had a float that depicted 13 staves on a barrel, a fulfillment of Paine's earlier metaphor. Blacksmiths and nailers used the slogan "While Industry Prevails, We Need No Foreign Nails." Chairmakers, who were naturally more interested in exports, responded with the "The Federal States and Union-Bound O'er All The World Our Chairs are Found." The shipbuilders added, "The Federal Ship Will Our Commerce Revive, and Merchants and Shipwrights and Joiners Shall Thrive." The tallow chandlers boasted "The Stars of America—A Light to the World."

After the ratification era, the poetry lapsed and so our knowledge of the public's view of the Constitution. There were periods, of course, when people would get agitated about a particular issue such as slavery, and when amendments were proposed, people naturally discussed them. But beyond these generalizations, public awareness of the Constitution is a phenomenon we know little about.

In the absence of direct methodology Professor Michael Kammen of Cornell University relies on another interesting technique—the study of language and rhetoric-to assess what the Constitution meant to past generations. Grand descriptions of the Constitution are not formulated by farmers in the fields or men in the street; they are produced by intellectual and political leaders, but in the absence of anything else, they may shed some light on the common view since they were likely to exert some degree of influence on it. In 1774 Thomas Jefferson referred to the yet unwritten document as "the great machine of government." John Quincy Adams used the same image in 1839, and James Russell Lowell revived it in 1888. Throughout the nineteenth century the Constitution was still depicted as a machine, a mechanical device. Over time, however, the image evolved into an organic or living document-those were Holmes's words in 1914. Cardoza said in 1925, "The Constitution has an organic

"And Frankfurter commented as late as 1951, "The Constitution is an organism." During his presidential campaign, Woodrow Wilson put it this way:

The makers of our Federal Constitution constructed a government as they would have constructed an orrery\* to display the laws of nature. Politics in their thought was a variety of mechanics. The Constitution was founded on the law of gravitation. The government was to exist and move by virtue of the efficacy of checks and balances.

The trouble with the theory is that government is not a machine, but a living thing. It falls not into the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton.

Now there is some significance in this statement. The original construction of the language, of course, predates Darwin. Since the theory of evolution was not known in the 1780s, it is logical that in the eighteenth century men would use the scientific terminology of

"Surveys frequently ask What is the most worrisome problem facing the nation, facing you, and facing your community? Never more than one or two percent of the respondents will identify anything having to do with civil liberties. These freedoms are taken for granted and are generally accepted with whatever restrictions accompany them in every era, whether it is during a world war, a cold war, or the present."

the day, born of the Industrial Revolution, machinery, and growth. Darwin, in the succeeding century, inspired the use of the biological terms. (My suspicion is that even today judges and politicians probably find themselves more comfortable justifying departures from constitutional interpretation when they feel they are advancing a life form, rather than tampering with a machine.)

Still, it is doubtful that the lay public on the farms or in the cities in either century actively debated as to whether the Constitution should be described as a machine or an organism. Their civic education came, as it does now, primarily from textbooks and school. That education may be superficial and even inaccurate. One text published in 1900 presented John Adams and Thomas Jefferson actively involved in the 1787 convention when they happened to be serving as our ministers

<sup>\*</sup>An orrery is an apparatus invented in 1731 showing the relative positions of heavenly bodies in the solar system by using balls moved by wheelwork.

to Britain and France, respectively, at the time. Admittedly, the Constitution can be a very dry and complicated subject. And the meaning and the intention behind many passages are disputed even by informed and articulate leaders. These disputes often are as old as the Constitution itself. One can hardly expect the public to be fully informed about "loose v. strict construction," "judicial review," "flexible versus unchanging interpretations" and so on.

The Supreme Court, with more recognized authority on the Constitution than any other body, has, historically, chosen not to educate the public. The justices keep their distance from the people almost allowing their roles to be shrouded in mystery. Even the procedures

"What we know of public opinion on constitutional issues is diverse at best, confusing and inconsistent at worst. It tells us something about public political philosophy, but it fails to capture an important spirit about the Constitution: the belief in it. Our knowledge about it may be lacking, but the devotion to and the faith in the Constitution is and appears to always have been widespread and deep."

and the internal workings of the Court are not well publicized. The media has also failed to educate the public about such basic features of our government. There is precious little broadcast or written about the Constitution. And I would venture to say from my own experience in the field that most journalists don't know any more about the Constitution than the lay public.

#### **Public Opinion and the Constitution**

Another way of assessing the public's attitude about the Constitution is to ask questions about issues which have constitutional ramifications. Do you believe in free speech? Ninety-five percent of the Americans polled answered "Yes" to this question on a recent survey. In 1982 the question was reworded to state: I believe in free speech no matter what views are being expressed. With that slight change of wording, approval dropped to 85 percent. Then the survey asked: Would you allow someone to make a speech against churches and religions in your community? Thirty-four percent answered that question "No," even though the questions were asked back-to-back. Would you allow someone who has views against churches and religion to teach? Fifty-one percent answered "No." Should an admitted communist be allowed to make a speech in your community? Forty-one percent said "No." Should somebody who wants to do away with elections and let the military run the country be allowed to malespeech? Forty-two percent said they would not allow him to make a speech. Should such a person be allowed to teach? Fifty-six percent would not allow him to teach. Should a homosexual be allowed to make a speech in the community? Thirty-one percent of the respondents said "No," and 41 percent said they would not allow him to teach. All these answers are from people who are self-avowed firm believers in freedom of speech.

There was another study done in 1975 which asked, Do you think the United States should allow speeches against democracy? Forty-two percent of the people said "No." Well, clearly at least one-third of the population cannot be accused of being confined by consistency! More likely, however, it is probably evidence of a belief in both the values of religion and free speech. When you ask about them independently, you get strong favorable opinions for both. But when you put them in contest and challenge one to the other, you force people to make a value judgment and some of them will choose to protect religion over freedom of speech and vice versa.

People believe just as strongly in the freedom of the press and still offer contradictory opinions. In a 1985 survey, 17 percent of the people polled said that the media should be regulated by government. In 1957 percent of the people said socialists should not be allowed to publish newspapers. In 1963, people were asked: Do you think that members of the Communist Party should be allowed to speak on radio? Sixty-seven percent of the people polled answered "No." And in 1953: Do you agree newspapers should not be allowed to criticize our form of government? Forty-two percent of the people agreed that newspapers should not be allowed to criticize our form of government. The layman's view of the First Amendment is multifaceted, to put it charitably. The flip side of this, by the way, is that civil liberties never seem to arouse much concern among the populace. Surveys frequently ask What is the most worrisome problem facing the nation, facing you, and facing your community? Never more than one or two percent of the respondents will identify anything having to do with civil liberties. These freedoms are taken for granted and are generally accepted with whatever restrictions accompany them in every era, whether it is during a world war, a cold war, or the present.

There are, however, issues which will rouse public indignation. Recently 81 percent of the populace disagreed with the Supreme Court on the school prayer decision. In 1967, only 47 percent agreed with the statement that the Court was impartial. That shows a amount of disenchantment with the Supreme Court of the United States among people who are not actively

involved in political issues. In 1969, 54 percent rated the Supreme Court fair or poor; only 33 percent event or good. Fifty percent trust the Congress more than they trust the highest court in the land.

Does the federal judiciary reflect your views? In 1981, 77 percent of the public said "No." Ten percent said "Yes." Should the court have its jurisdiction on busing withdrawn? "Yes," 81 percent; "No," 14 percent. Should there be a congressional override of the Supreme Court by two-thirds vote? (In other words, if two-thirds of the congressmen vote to override a Supreme Court decision, should that constitute an

much power over citizens), but there seems to be an adaptability quotient. People are willing to accept what goes on and to survive and thrive nonetheless. When one thinks about the difficult conditions under which some other nations' citizens have to endure—privation, corruption, repression, and the like—putting up with some questionable Supreme Court decisions becomes less than a monumental problem.

Concern about the government, the courts, and the Constitution is not new. In the 1920s, two every different senators, Edwin Ladd, a Republican from North Dakota, and Robert La Follette, a Progressive from



equivalent to a presidential veto?) Fifty-five percent said "Yes." Thirty percent said "No." Should there be a periodic reconfirmation of judges? Seventy-five percent were in favor of it. They are also in favor of electing federal judges. Here is an interesting note from a 1985 poll: Who is most responsible for high crime in Texas? Commanding 28 percent, the number one answer was "the judges!" The number two answer was "lawyers." So they got the spawn as well as the progenitor. (By the way, the third answer was the parole board.) And when asked the question Is there too much concern for the rights of criminals shown by the courts?, 70 percent answered "Yes." It is evident that the courts have earned very little sympathy and have engendered a fair amount of cynicism.

But here, too, there is no groundswell of support for draconian measures. People are not marching in the st demanding to overhaul the legal system. They may disagree with the courts and with an intrusive government (73 percent say the government has too

Wisconsin, agreed on one statement: "The Constitution is not what its plain terms declare, but what these nine men construe it to be." This sounds like a discussion right out of modern times. And in 1937, a musical by Kauffman and Hart entitled "I'd Rather Be Right" has the Supreme Court declare the Constitution of the United States unconstitutional. The humor is perhaps more fitting than it should be.

What we know of public opinion on constitutional issues is diverse at best, confusing and inconsistent at worst. It tells us something about public political philosophy, but it fails to capture an important spirit about the Constitution: the belief in it. Our knowledge about it may be lacking, but the devotion to and the faith in the Constitution is and appears to always have been widespread and deep. Don Devine, the former director of the U.S. Office of Personnel Management, has called the combination "ignorance and consensus," but veneration for the Constitution is genuine and longstanding. It is not faddish, and I don't think it is

at all self-destructive. Around the turn of the century, A. Lawrence Lowell of Harvard University put it this way:

For a long time the Constitution was regarded as something peculiarly sacred and received an unquestioned homage for reasons quite apart from any virtues of its own. The Constitution was to us what a king has often been to other nations. It was the symbol and pledge of our national existence. The people may not have taken the Constitution to their heads, but they appear to have taken it to their hearts.

A more jaundiced description of this mystical aspect of the Constitution and constitutional perspective comes from Thurmond Arnold, an administrator in the New Deal. And he writes rather cynically:

The Constitution became for them (meaning the people) a sort of abracadabra which would cure all disease. Copies of the Constitution, bound together with the Declaration of Independence and Lincoln's Gettysburg Address were distributed in cigar stores. Essays on the Constitution were written by high school students. Incomprehensible speeches on the Constitution were made from every public platform to reverent audiences which knew approximately as much about the history and dialectic of that document as the masses in the Middle Ages knew about the Bible in those days when people were not permitted to read the Bible. The American Liberty League was dedicated to Constitution worship. Like the Bible, the Constitution became the altar whenever our best people met together for tearful solemn purposes, regardless of the kind of organization. Teachers in many states were compelled to swear to support the Constitution. No attempt was made to attach a particular meaning to this phrase, yet people thought it had deep and mystical significance and that the saying of the oath constituted a charm against evil spirits. The opponents of such oaths became equally excited and equally theological about the great harm this ceremony might do.

I don't think that such cynicism is warranted. But there is something interesting about his allusion to the Bible. Most people's lives have a religious aspect, and they take this quite seriously. This transcends and is not at all diminished by the inability of people to pass a quiz on the Bible and the same applies to the Constitution.

How important is it that people really be educated and knowledgeable about the Constitution? Maybe it is less important than we might think. Of course, it would be nice if everybody were knowledgeable about the document. But knowledge is no cure for dissension. The debate on the role of the Constitution in our society will go on, regardless of the degree of civic awareness. The belief in the Constitution is like love of one's country. And just as with the love of country, the feeling is not acquired through a rational deduction through emotion. It is genuine, powerful, and compling, nonetheless. Here is a constitutional passage which may illustrate the point:

Citizens are equal before the law without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile or other status. The equal rights of citizens are guaranteed in all fields of economic, political, and social and cultural life. . .

Article: Citizens of different races and nationalities have equal rights. Any direct or indirect limitation of the rights of citizens or establishment of direct or indirect privileges on grounds of race or nationality, and the advocacy of racial or national exclusiveness, hostility, or contempt are punishable by law. . .

Article: Citizens are guaranteed freedom of conscience (that is the right to profess or not to profess any religion; the church is separated from the state and the school from the church). . .

Article: Citizens are guaranteed inviolability of the persons. No one may be arrested except by a court decision or on the warrant. . . . Citizens are guaranteed inviolability of the home. No one may without lawful grounds, enter a home against the will of those residing in it. . .

Article: The privacy of citizens and of their correspondence, telephone conversations, and telegraphic communications, is protected by law.

Article: Respect for the individual and protection of the rights and freedoms of citizens are the duty of all state bodies, public organizations, and officials. Citizens have the right to protection by the courts against encroachments on their honor and reputation, life and health, personal freedom and property.

Now, I venture to say that those words and concepts sound pretty good. If I put them forward to the average man-on-the-street, I would elicit his general support for them. But these passages are not from our Constitution. They are taken from the Constitution of the Union of Soviet Socialist Republics, the most recent and currently governing version adopted in October, 1977. If I read these passages or similar ones from our Constitution to ordinary citizens in the Soviet Union, they would perhaps recognize them as somehow connected with constitutional authority, but the meaning given to the words by Americans. People here do have an understanding of what it means to have prop-

Constitutional comparisons also give strength to the concern about the intentions of the Founders. I have omitted some of the other articles of the Soviet Union's constitution and the preamble which gives the official Russian perspective on what the Bolshevik founders meant, but that document should demonstrate the importance of not taking words out of context. It also offers a compelling reason why we should be concerned that nine lawyers on a committee called the Supreme Court, unelected and ensconced for life in their office, should be able to determine in broad measure social, economic, and constitutional policy for the United States. Giving too much power to any centralized authority leads to a compromise of individual liberty and ultimately a diminution of the democratic nature of our republic. As Professor Lino A. Graglia of the ersity of Texas Law School has put it, the Constitution "was not written in disappearing ink." He continues:

The Framers' solution to the problem of protecting human freedom and dignity was to preserve as much as possible . . . a system of decentralized democratic decision making, with the regulation of social conditions and personal relations left to the states. [Giving] virtually unlimited Supreme Court power to decide basic social issues for the nation as a whole, effectively disenfranchising the people of each state . . . is directly contrary to the constitutional scheme.

I think the American people would agree. I think they would sooner take their chances with the democratic process and a strict interpretation of the Constitution.

### Still the Law of the Land: Essays on Changing Interpretations of the Constitution

From the foreword by eminent constitutional scholar, Forrest McDonald:

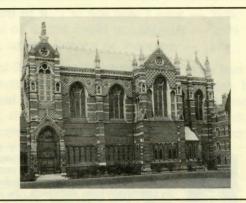
"The commemoration of the bicentennial of the United States Constitution should be an occasion of festivity tempered by solemn gratitude for the gift our Founding Fathers bequeathed to us. But if the Constitution is to survive as something more than an abstract symbol — a parchment counterpart of the Statue of Liberty — the celebration must also be the occasion for broadened public awareness of the principles of constitutional government. For the anniversary comes at a time of grave crisis in our constitutional history.

"The federal judiciary, originally designed as part of a carefully balanced mechanism in which it shared guardianship of the Constitution with the executive, the two houses of Congress, and the state governments, has gradually taken sole custody unto itself, proclaiming that its decisions and not the Constitution are the supreme law of the land. What is even more dangerous, the Supreme Court has, during the last two or three decades, become progressively more blatant in disregarding the Constitution and arriving at decisions on the basis of the justices' ideological predilections in regard to "social progress" and "human dignity." These usurpations are compatible neither with the idea of constitutional government nor with the ideal of a government of laws."

Available from the HILLSDALE COLLEGE PRESS, featuring essays by Edward J. Erler, Lino A. Graglia, Stephen J. Markman, Edwin Meese III, Avi Nelson, Charles E. Rice, Glen E. Thurow, and J. Clifford Wallace. \$5.00 paperback

# **ACADEMIC NEWS**

Hillsdale College has been selected as one of only five American colleges to participate in an academic exchange program with Great Britain's Oxford University. Fifty students from the five affiliated schools — Hillsdale College, Bates, Carleton, St. Olaf's and the University of Notre Dame — will study at Keble College, one of Oxford's most prestigious colleges. This affiliation will allow students, through Keble's Center for Medieval and Renaissance Studies, to participate fully in all of Oxford's academic as well as social/club programs.



May, 1987

#### Dear Friends:

Throughout the years in our Center for Constructive Alternatives and Shavano Institute seminar programs, many of the most interested and enthusiastic participants have been businessmen, particularly those who operate family-owned or closely-held firms. Why?

I think the reason is simple. Like Hillsdale College, a family business needs to preserve a strong sense of its own identity as well as a reason for succeeding which transcends profitability. This identity depends strongly on more than free enterprise and a democratic system. Such an identity involves individual responsibility and moral imagination ethically realized in the marketplace.

In the late twentieth century, the independent business, like the independent college, faces many challenges. In some important respects, their fate is intertwined. For this reason, Hillsdale College established the **THE FAMILY BUSINESS INSTITUTE**, designed to focus upon the unique problems affecting these organizations as well as all small businesses which, according to one source, constitute 98% of all businesses in America, employ 50% of the work force and produce 67% of the gross national product.

From January 15-20, the Institute hosted a special program for students (who may enroll for academic credit), businessmen from as far away as Seattle, and members of the National Federation of Independent Business. The audience heard more than twenty presentations by speakers like *Wall Street Journal* editor Sanford Jacobs and industrial psychologist Albert DeVoogd on a variety of issues ranging from the new tax laws and succession planning to forecasts about the U.S. economy.

Throughout the semester, **THE FAMILY BUSINESS INSTITUTE** has sponsored a number of individual lectures on similar topics. Their emphasis is on the practical side of running a family business, but always in the context of the larger role of moral responsibility in our culture.

We invite you to join us for any of these programs and to order audio tapes if you are unable to attend. For more information, and to receive advance notice of upcoming events, please write: **THE FAMILY BUSINESS INSTITUTE**, Hillsdale College, Hillsdale, Michigan 49242.

Sincerely,

Joe McNamara

Vice-President for External Affairs



