

More difficult questions arise in connection with *applying* the guidepost principles to particular cases.

During the past five years the *wage* guideposts have been applied consciously and meaningfully in collective bargaining and by employers unilaterally in a substantial number of specific wage cases. The 1965 maritime settlement is illustrative. There have been others. Particularly in the last year or so, the guideposts have affected materially the policies of the Federal Government in the making of wage adjustments for its own employees. It is more than *just* a matter of averaging, that the over-all wage movement in hard goods manufacturing industries over most of the period between 1962 and 1965 came out very close—just a little below—the 3.2% productivity increase figure.

There is less basis for evaluating the extent to which the guideposts have had a comparable effect on particular *price* setting practices during the past few years. To the extent—largely overlooked in public discussion—that the guideposts require price *decreases* where productivity goes up more than is true in the economy generally, that they have been paid exceedingly little respect—virtually none.

The hard problems are about the propriety and the effectiveness of the use of the guideposts principle *as a standard for the Government's influencing, in one way or another, the price or wage decisions in particular cases*; and these are the hardest problems that would arise under H.R. 11916 in its present form.

So far as the experience to date is concerned, it shows a variety of results virtually defying generalization. On the wage side, the experience ranges from the 1965 steel case (where the guideposts were an extremely important and constructive factor) to the 1966 airlines case (where they weren't). So far as prices go, the Administration has been effective in preventing and even pushing back certain increases, which couldn't be justified on guidepost principles; in other areas (particularly where small unit industries are involved) there have been no effective methods available to achieve these results; and here again it has proved impracticable to attempt to get *any* price *reductions*—even where this is what the guideposts indicated.

Consideration of the statutory formalizations of a process of "review" of particular situations—as contemplated in H.R. 11916—warrants the clearest thinking through of the implications of the Government's assuming responsibility in matters of this kind without establishing a basis for the exercise of authority.

The idea of "bringing to bear an informed public opinion . . ." with respect to "individual price and wage behavior" is appealing. But it may exaggerate both the public's desire to be advised and its willingness (or ability) to do anything if it is. The searing experience of years of representation of the public interest, especially in labor disputes, is that the public is an inconstant client who wants most of all not to be bothered any more than is absolutely necessary.

There is another factor here: There is a strong strain in the practice of government of caution about expressing *official* views in the absence of authority to back them up. And for good reason—part of it that the effectiveness of government is weakened whenever its expressed views are disregarded.

The judiciary has stayed almost completely away from this kind of practice, for a combination of constitutional and practical reasons. Advisory opinions are not issued, declaratory judgments resorted to sparingly, and obiter dicta counted as probably causing as much trouble as they cure. There is proper recognition that "the law" should speak authoritatively or not at all—for fear of weakening its authority.

The tradition of executive pronouncement designed to guide voluntary private action along the lines of the public interest is, on the other hand, more clearly established. Indeed the ability to lead is as important an element in the executive function as is the power to command. In scores of situations, many of them now so common-place as to go unnoticed, executive persuasion is relied upon as a desirable alternative to legislation. Yet here, too, sharp issues sometimes arise regarding the extent to which persuasion is appropriate without the authority to back it up if it gets into trouble.

So far as legislative action is concerned, there is a less clearcut tradition of either abstaining entirely from or entering freely into situations in which no authoritative action is contemplated. The recognized difficulties are reflected in the general rule of restricting legislative inquiry to situations in which such action is envisaged, at least as a possibility. But there have clearly been applications of this principle which would provide at least tangential precedent for the procedures suggested in H.R. 11916.