COMMISSIONERS' POSITION

The Commissioners are opposed to the regulation of the business of debt adjusting, as provided by H.R. 8929, for the reasons stated in their letter of May 9, 1967, which I ask be included in the record. In that letter, the Commissioners stated that they believe that the business of debt adjusting can give rise to a relationship of trust in which the debt adjuster, in a situation of insolvency, and, I might note, this is probably the case in the majority of the transactions, may be engaged in marshalling assets in the manner of a proceeding in bankruptcy. As the Commissioners point out, under such circumstances the dept adjuster's client may need advice as to the legality of the various claims against him, the legal remedies governing debtor-credit relationships, and the applicability of the Bankruptcy Act. This means that in virtually every debt adjusting transaction, there is need for careful scrutiny of the underlying contracts which gave rise to the debts which have been accumulated by the debtor. It is quite possible that one or more of the underlying contracts are unconscionable within the meaning of section 28:2—302 of the Uniform Commercial Code, and, if subjected to a court test, would not be enforceable. If the debt is one owing a finance company, the finance company may not be a holder in due course. The debtor may have a real defense against the person with whom he contracted or any subsequent holder of a note which the debtor may have given, in that the note may lack legal efficacy in its inception, as, for example, where there was fraud in the execution, or where there was an illegality making the security void, as opposed to voidable.

Obviously, determinations as to the legal rights of the debtor with respect to the claims against him are within the province of the lawyer, and their determination by any other person, no matter how capable he may be, of necessity involves the unauthorized practice of law. It is, however, greatly to be questioned whether those in the debt-adjusting business even approach the necessary level of capability. I understand that the average employee in the business has two years of college education. It would hardly be conceivable that employees with this level of education are qualified to advise a debtor concerning his legal rights and any defenses he may have to the claims against him, and it could be said, in a situation where the debt adjuster fails to recognize that the debtor has a defense to a claim against him, that it is a case of the blind misleading the blind.

Moreover, the debt adjuster has a vested interest in *not* advising a debtor that the underlying contract giving rise to some portion of the debtor's total debt is not a valid one, or that the debtor has a defense to a claim against him. Obviously, since the fee of the debt adjuster is a percentage of the debtor's total debt, it is to the debt adjuster's advantage to maximize that debt, rather than minimize it, and there could be present in such a situation a tendency to find that all of the underlying contracts are valid and enforceable, and that the debtor has no defenses to the claims against him. This is, of course, the exact opposite of the situation which would obtain were the debtor to seek legal advice, since the duty and self-interest of the attorney would dictate that he make every effort to minimize the debtor's obligations, challenging those which give indication of being unenforceable or invalid, and compromising the others to the maximum extent possible. This means that there is involved in the business of debt adjusting a very high potential for deceit and actual fraud.

COURT ACTION

In this last connection, the Committee may take note of the fact that on July 1, 1966, seven persons who operated two debt consolidation services headquartered in Washington and Baltimore, with branch offices throughout the central and south Atlantic States, were convicted in the United States District Court for the District of Columbia on mail fraud charges. It is this high potential for deceit and fraud that would seem to indicate that regulation of the business is just not feasible.

If there is to be protection of the debtor from being taken advantage of by the debt adjuster, and if there is to be protection of the legal rights of each such debtor, then it is necessary that *every* transaction be carefully scrutinized by the regulatory agency. And I think it obvious that the regulatory personnel required to scrutinize these transactions would have to be qualified to determine, and be able to determine, whether the legal rights of the debtor had been given the fullest consideration. This means, of course, that those examining a debt-adjusting transaction would have to be given access to the underlying contracts