Senator TYDINGS. Should he not be able to do so?

Mr. GUTTMAN. Well, the reason why the buyer was unable to pay was his economic difficulties.

Senator TYDINGS. If he has other assets?

Mr. GUTTMAN. If he has other assets?

Senator TYDINGS. And he has an obligation—he has contracted to buy something.

Mr. GUTTMAN. We are not making a plea for that, but if there is a difficulty, is it not true that in a sale usually the seller looks to what he sells as his collateral?

Senator TYDINGS. What you are advocating is that, if a person has a contract and there is any collateral, the only way that the seller can collect is to take possession of the collateral.

Mr. GUTTMAN. Exactly, because that is what he considered of value when he sold it.

Senator TYDINGS. Would not that break down commerce if it were followed to its logical conclusion? You would break down the entire commerce involving the sale.

Mr. GUTTMAN. It may be possible to reach a compromise in the form that recourse against the item sold is primary, because it is against the collateral. In any case, I believe that the general business practice is to fix the price in such a way that the item still remains the prime collateral and that, primarily, recourse will be against the collateral rather than against all other assets.

Senator TYDINGS. Thank you. Please proceed.

Mr. GUTTMAN. 5. Holder in due course: S. 316 adopts a certification procedure whereby a third party taking a note cannot enforce it as a holder in due course unless the retail installment contract is accompanied by the buyer's certification that he has received the goods purchased and that they appear to conform to his contract. A note, accompanied by a properly signed certificate, is fully negotiable and the transferee may be able to enjoy the status of a holder in due course if he satisfied the requirements of the Uniform Commercial Code section 28: 3–302. S. 2589, for all practical purposes, eliminates the holder-in-due-course concept from paper taken in retail installment sales transactions.

We cannot support the certification procedure. It is unrealistic to assume that buyers, of any level of sophistication, will understand all of their defenses when they sign such certificate.

Senator TYDINGS. For all practical purposes, that note would be just one more note that the buyer signed at the time of the sale.

Mr. GUTTMAN. Exactly. That is why we cannot support this procedure, even if he is to sign a certificate 2 or 3 days later, because, in many instances, the default or the defect does not really arise until months later. The consumer we are trying to protect is at the mercy of the merchant asking him to sign something he probably does not understand. Accordingly, we support the approach of S. 2589.

It appears to us further, that legitimate financing companies should have no real objections to the abolition of the holder-in-due-course concept to paper arising from such retail installment transactions. It is our understanding that a recent Federal Trade Commission study has shown that approximately 60 percent of the volume of credit transactions carried on in one of the busiest shopping areas in the