

from whatever the facts are in the case. For example, if in fact a betting slip or bettings records were found in an individual's wallet, there is an appropriate inference from that finding that those slips were placed in that man's wallet by that man knowing that they were there. Now if he came back and defended saying, you know, honest to goodness, my wife takes money in and out of my wallet and she puts things in and out of my wallet...I mean that would be a defense that he could raise, and in turn it would be a jury question probably as to whether or not he knowingly possessed those items.

SENATOR CHAMBERS: Alright, now if we go to Page 2 of the Committee amendments, in lines 13 through 16 or 17, about the middle of the page, Section 7, where it gives an affirmative defense...

SENATOR JOHNSON: Yes.

SENATOR CHAMBERS: ...the affirmative defense is that the person neither intended the article...it was neither used nor intended to be used in the advancement of an unlawful gambling activity.

SENATOR JOHNSON: Yes.

SENATOR CHAMBERS: Now, with this kind of language, the term possession being ambiguous, the word knowingly being a jury question if you could get enough evidence to even submit it to a jury, then allowing an affirmative defense which even though you knowingly possess it, you could argue and maybe it's a jury question too as to whether your intent was to use it for an unlawful gambling purpose, would you say this is a difficult provision of statute to enforce?

SENATOR JOHNSON: Yes, it probably is. When I read this bill myself a number of weeks ago, and I did read it, I took a look at that section and I...these kinds of questions came to my mind. Now, interestingly enough, the first question that came to my own mind, I misread the bill, but I can use this as a fairly good example of what could happen. A deck of playing cards obviously can constitute gambling paraphernalia. It depends on how that deck of playing cards is used, and if a person is in possession of a deck of playing cards, knowing he is possession of a deck of playing cards, then of course it becomes a question as to whether or not that person intended for that deck of playing cards to be used in gambling activities. Now,