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9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

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12 UNITED STATES OF AMERICA,	)	
13	)	
14 Plaintiff,	)	CR-S-04-0119-KJD-LRL
15 vs.	)	
16 IRWIN SCHIFF, CYNTHIA NEUN, and	)	GOVERNMENT'S MOTION IN
17 LAWRENCE N. COHEN,	)	LIMINE TO ORDER DEFENDANTS
18	)	TO REFRAIN FROM IMPROPER
19	)	LEGAL ARGUMENT
20	)	
21	)	
22	)	
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24	)	
25	)	
26	)	

20 COMES NOW, the United States of America, through DANIEL G. BOGEN, United  
21 States Attorney, by DAVID J. IGNALL and JEFFREY A. NEIMAN, Trial Attorneys, United States  
22 Department of Justice, Tax Division, and DANIEL R. SCHIESS, Assistant United States Attorney,  
23 moves the Court to prevent the defendants from testifying or eliciting testimony in the form of legal  
24 opinions and to exclude certain exhibits from evidence. The government anticipates that the  
25 defendants, especially *pro se* defendant Irwin Schiff, may argue inaccurate and misleading legal  
26 interpretations to the jury. Such arguments invade the province of the Court to instruct the jury on the  
law, are irrelevant to the case, create unnecessary delay, and serve only to confuse the jury on the real

1 issues before them. Consequently, the Court should prevent the jury from exposure to such arguments  
2 and evidence to the extent possible.

3 In support of this motion, the government submits the following:

4 FACTUAL BACKGROUND

5 Defendant Irwin Schiff has already filed numerous motions making frivolous and  
6 groundless statements of the law. Based on these pleadings and other documents submitted by the  
7 defendants, Irwin Schiff, Cynthia Neun, and Lawrence N. Cohen, the government anticipates the  
8 defendants will attempt to make a number frivolous and groundless legal arguments using  
9 documentary evidence, testimony, their opening statements, and voir dire. Those arguments  
10 include, but are not limited to, the following:

- 11 (1) The Constitution does not grant Congress the power to impose the federal  
12 income tax;<sup>1</sup>  
13 (2) no statute makes them “liable” for income taxes;<sup>2</sup>  
14 (3) income is only corporate profit;<sup>3</sup>  
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17 <sup>1</sup> Article I, Section 8, clause 1 of the Constitution plainly authorizes Congress  
18 to impose income taxes (“The Congress shall have power to lay and collect  
19 Taxes...”). Courts have held that any argument that the Sixteenth  
20 Amendment is invalid is absurd and frivolous. See, e.g., In re Becraft, 885  
21 F.2d 547, 548 (9<sup>th</sup> Cir. 1989) (imposing sanctions on defense attorney for  
22 assertion of frivolous 16<sup>th</sup> Amendment argument); United States v. Stahl,  
23 792 F.2d 1438, 1441 (9<sup>th</sup> Cir. 1986); United States v. Sibra, 624 F.2d 864,  
24 869 (9<sup>th</sup> Cir. 1980) (calling defendant’s argument contesting the validity of  
25 the federal income tax “legally frivolous”).

26 <sup>2</sup> Title 26 imposes tax on the taxable income of “every individual.” 26  
U.S.C. § 1(c).

<sup>3</sup> The Supreme Court has rejected the argument that the Code’s definition of  
income is limited to gain. See e.g., Commissioner v. Glenshaw Glass Co.,  
348 U.S. 426 (1955). Courts have routinely held that arguments that  
income is limited to corporate profit are frivolous. See, e.g., Wilcox v.  
Commissioner, 848 F.2d 1007, 1009 (9<sup>th</sup> Cir. 1988).

1 (4) Congress did not give federal courts jurisdiction over violations of Title 26  
2 of the United States Code;<sup>4</sup>

3 (5) the Internal Revenue Service lacks authority to investigate tax offenses;<sup>5</sup> and

4 (6) the filing of income tax returns is voluntary and not mandatory.<sup>6</sup>

5 All of these legal arguments are incorrect statements of law, irrelevant, would  
6 confuse the jury, and would invade the Court's province in instructing the jury on the law.

### 7 ARGUMENT

8 The primary issue in this case will be the defendants' willfulness. Willfulness is  
9 defined as the "voluntary, intentional violation of a known duty." Check v. United States, 498 U.S.  
10 192, 200 (1991). The admissibility of most evidence in this case will depend on how probative it  
11 is of the defendants' state of mind.

#### 12 **1. Defendants Should Be Precluded From Invading the Province of the Court By 13 Instructing the Jury Regarding the Law.**

14 The government anticipates that defendant Irwin Schiff will attempt to argue his  
15 inaccurate and misleading legal interpretations to the jury, as he has in filings to the court. The  
16 Court should specifically instruct the defendants before trial that legal arguments are improper.

17 The defendants should not be allowed to argue their legal interpretation to the jury.  
18 "[T]he court remains the jury's sole source of the law." United States v. Powell, 955 F.2d 1206,

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19 <sup>4</sup> United States District Courts have original jurisdiction over "all offenses  
20 against the laws of the United States," including those defined by the  
21 Internal Revenue Code. 18 U.S.C. § 3221; United States v. Studley, 783  
22 F.2d 934, 937 (9<sup>th</sup> Cir. 1986); United States v. Przbyla, 737 F.2d 828, 829  
(9<sup>th</sup> Cir. 1984).

23 <sup>5</sup> Congress gave the IRS a broad mandate to investigate all persons who may be liable  
24 for any internal revenue tax. 26 U.S.C. § 7601. Under 26 U.S.C. § 7608(b), Congress  
25 granted police powers to IRS criminal investigators.

26 <sup>6</sup> The filing of income tax returns is not voluntary. Wilcox v. Commissioner,  
848 F.2d 1007, 1008 (9<sup>th</sup> Cir. 1988). Courts have excluded evidence that  
the tax system is based upon voluntary compliance. United States v. Hurd,  
549 F.2d 118, 120 (9<sup>th</sup> Cir. 1977).

1 1214 (9<sup>th</sup> Cir. 1991). “The law is given to the jury by the court and not introduced as evidence and  
2 then argued as to what the law is or ought to be...Juries decide the facts, and apply the law given to  
3 them by the judge to those facts.” United States v. Willie, 941 F.2d 1384, 1396 (10<sup>th</sup> Cir. 1991)  
4 (quoting Cooley v. United States, 501 F.2d 1249, 1253-54 (9<sup>th</sup> Cir. 1974)). While defendants may  
5 be permitted to testify as to how they interpreted certain sections of the code sections or  
6 regulations, they should not be allowed to quote or display portions of the law to the jury, as doing  
7 so amounts to legal instruction. By granting this motion, the Court will prevent defendants from  
8 “transform[ing] legal argument from an intellectual process aimed at the derivation of the correct  
9 legal principle to a carnival of frivolity aimed at disseminating defendant’s political views.”  
10 United States v. Collins, 920 F.2d 619, 633 (10<sup>th</sup> Cir. 1990).

11 **2. Defendants Should Be Precluded From Offering Irrelevant Evidence.**

12 Under the Federal Rules of Evidence, the jury shall not be exposed to inadmissible  
13 evidence. Fed. R. Evid. 103(c). “[E]vidence which is not relevant is not admissible.” Fed. R.  
14 Evid. 402. Relevant evidence is that which has “any tendency to make the existence of any fact  
15 that is of consequence to the determination of the action more probable or less probable than it  
16 would be without the evidence.” Fed. R. Evid. 401. Evidence of what the defendants thinks or  
17 previously thought the law should be, as well as their current or prior views on the constitutionality  
18 and validity of the law, is irrelevant and must be excluded. United States v. Powell, 955 F.2d at  
19 1212 (upholding jury instruction: “Mere disagreement with the law...does not constitute good faith  
20 misunderstanding under the requirements of the law.”); Cheek v. United States, 498 U.S. 192, 206  
21 (1991) (“a defendant’s views about the validity [or constitutionality] of the tax statutes are  
22 irrelevant to the issue of wilfulness.”).

23 Relevant evidence of a good faith belief are only those materials upon which “the  
24 defendant claims to have *actually relied*.” United States v. Powell, 955 F.2d 1206 at 1214. That  
25 evidence is only admissible “if the defendant lays a proper foundation which demonstrates such  
26 reliance.” Id. The Court carefully should assess the adequacy of this foundation because

1 defendants may seek to introduce this evidence for a proper purpose (i.e. “to prove his  
2 understanding of the law...as he actually perceives it to be) or an improper purpose (i.e. “to prove  
3 his understanding of the law as it should be”). Willie, 941 F.2d at 1394. Before introducing  
4 evidence upon which defendants actually relied, they should be required make “a proffer of great  
5 specificity regarding the type of belief [they seek] to prove. A mere statement that the evidence is  
6 being offered to show sincerity of belief is not enough.” Id. at 1393 (emphasis added). “Legal  
7 materials upon which the defendant does not claim to have relied...can be excluded as irrelevant  
8 and unnecessarily confusing.” Powell, 955 F.2d at 1214. The Court should also preclude  
9 defendants from improperly cross-examining government witnesses as to their interpretation of the  
10 tax laws. See United States v. Poschwatta, 829 F.2d 1477, 1483 (9<sup>th</sup> Cir. 1987). The majority of  
11 courts that have addressed this issue have limited that presentation of the good faith defense to the  
12 testimony of the defendant, and the defendant’s limited quotation of materials upon which he or  
13 she allegedly relied. Willie, 941 F.2d at 1395 (affirming trial court’s decision that the evidence  
14 would be confusing and would “detract from the dignity of the proceedings.”)

#### 15 CONCLUSION

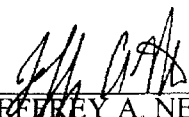
16 For the foregoing reasons, the government respectfully requests that this Court  
17 preclude the defendants from presenting “evidence,” or argument relating to what the law should  
18 be, the constitutionality and validity of the tax laws, and inaccurate statements of the law, unless  
19 actually relied upon by the defendant. The government respectfully requests that this Court 1)  
20 order the defendants at the outset of trial not to argue their legal interpretations to the jury, 2) not  
21 admit such argumentative materials into evidence, and 3) before the defendants mention or quote  
22 from materials upon which they allegedly relied, place the defendants on *voir dire*, outside the  
23 presence of the jury, in order to show actual reliance upon the material.

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Respectfully submitted,

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