

1 DANIEL G. BOGDEN
United States Attorney
2 DAVID J. IGNALL
JEFFREY A. NEIMAN
3 Trial Attorneys
U.S. Department of Justice
4 Tax Division
DANIEL R. SCHIESS
5 Assistant United States Attorney
333 Las Vegas Boulevard South
6 Fifth Floor
Las Vegas, NV 89101
7 Telephone: (702) 388-6336

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

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

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19 COMES NOW, the United States of America, through DANIEL G. BOGEN, United
20 States Attorney, by DAVID J. IGNALL and JEFFREY A. NEIMAN, Trial Attorneys, United States
21 Department of Justice, Tax Division, and DANIEL R. SCHIESS, Assistant United States Attorney,
22 moves the Court to prevent the defendants from testifying or eliciting testimony in the form of legal
23 opinions and to exclude certain exhibits from evidence. The government anticipates that the
24 defendants, especially *pro se* defendant Irwin Schiff, may argue inaccurate and misleading legal
25 interpretations to the jury. Such arguments invade the province of the Court to instruct the jury on the
26 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;¹
13 (2) no statute makes them “liable” for income taxes;²
14 (3) income is only corporate profit;³
15

16
17 ¹ 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 (9th Cir. 1989) (imposing sanctions on defense attorney for
22 assertion of frivolous 16th Amendment argument); United States v. Stahl,
23 792 F.2d 1438, 1441 (9th Cir. 1986); United States v. Sibra, 624 F.2d 864,
24 869 (9th Cir. 1980) (calling defendant’s argument contesting the validity of
25 the federal income tax “legally frivolous”).

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

³ 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 (9th Cir. 1988).

- 1 (4) Congress did not give federal courts jurisdiction over violations of Title 26
2 of the United States Code;⁴
3 (5) the Internal Revenue Service lacks authority to investigate tax offenses;⁵ and
4 (6) the filing of income tax returns is voluntary and not mandatory.⁶

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,

19 ⁴ 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 (9th Cir. 1986); United States v. Przbyla, 737 F.2d 828, 829
(9th Cir. 1984).

23 ⁵ 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 ⁶ The filing of income tax returns is not voluntary. Wilcox v. Commissioner,
848 F.2d 1007, 1008 (9th Cir. 1988). Courts have excluded evidence that
the tax system is based upon voluntary compliance. United States v. Hurd,
549 F.2d 118, 120 (9th Cir. 1977).

1 1214 (9th 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 (10th Cir. 1991)
4 (quoting Cooley v. United States, 501 F.2d 1249, 1253-54 (9th 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 (10th 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 (9th 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

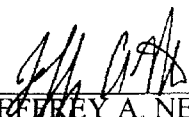
16 For the foregoing reasons, the government respectfully requests that this Court
17 preclude the defendants from presenting “evidence,” or argument relating to what the law should
18 be, the constitutionality and validity of the tax laws, and inaccurate statements of the law, unless
19 actually relied 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,

DANIEL G. BOGDEN
United States Attorney

by: 

JEFFREY A. NEIMAN
DAVID J. IGNALL
Trial Attorneys
U.S. Department of Justice
Tax Division
DANIEL R. SCHIESS
Assistant United States Attorney