

adjuster. Benson also claimed that he relied on his attorney's advice that the investigative fees were not taxable **[**3]** (because they were really proceeds of a settlement), and therefore his failure to report them was not willful. The jury, however, convicted Benson on all counts.

On appeal, Benson raises a plethora of issues; one, however, is dispositive. Because we conclude the district court abused its discretion in admitting purported expert testimony from an IRS agent, we reverse Benson's conviction.

I. Factual Background

Taken in the light most favorable to the government, the evidence showed the following. In the late 1960's, Benson, while working for Bethlehem Steel Corporation, contracted encephalitis. The encephalitis caused Benson to develop a seizure disorder that rendered him unable to work. In 1968, Benson applied for and was granted Social Security disability benefits. Social Security regulations allow people to receive disability benefits only if they are physically unable to perform "substantial work" or "substantial gainful employment." A recipient is required to notify the Social Security Administration concerning any return to work or change in his physical condition that might enable him to work. Yet, despite the notification requirement, from the early 1970's through 1980 **[**4]** and 1981, Benson was employed in several jobs -- including bartending at a bowling alley and cocktail lounge, work as a criminal investigator for the Illinois Department of Revenue (IDOR), and investigative work **[*602]** for Spiegel -- without telling the Social Security Administration.

Benson's work as an investigator for Spiegel arose from Benson's employment with IDOR. In 1970, Benson began to work for IDOR as an informant. Eventually, Benson began to perform all (or at least most of) the tasks IDOR's regular investigators performed. In late 1974, Benson and IDOR entered into an employment contract. The original contract called for Benson to work between 120 and 300 hours per month (approximately 30 to 60 hours per week) and for IDOR to pay Benson \$ 750 per month, a sum that included reimbursement for Benson's expenses. In November 1975, Benson and IDOR signed a new contract that increased Benson's salary to \$ 840 per month for the same amount of work. IDOR fired Benson in June 1976.

In 1975 and 1976, a number of lawsuits were filed against IDOR agents, including Benson. Those suits alleged false arrests arising from an IDOR investigation of violations of Illinois' cigarette tax laws. At **[**5]** that time, IDOR was covered under a liability insurance policy issued by Continental Insurance Company. Continental's adjuster was Underwriters Adjusting

Company (Underwriters). IDOR did not tell Underwriters that Benson was an employee, so Underwriters did not consider Benson to be covered under the Continental policy. Eventually, however, Benson persuaded Underwriters that he was an employee entitled to coverage.

In July 1980, Benson told Charles Rhodes, Underwriters' Chicago branch manager, that he had done substantial investigative work on his own cases, and that Underwriters should pay him for that work. Rhodes told Benson to have Spiegel (who was representing Benson in the cigarette tax cases) verify that Benson's work was necessary to his defense. Spiegel wrote Rhodes a letter telling Rhodes that Spiegel had employed Benson as an investigator and that he was billing Benson's time at \$ 15 per hour. Rhodes agreed to pay the investigative fees, and Spiegel's periodic bills to Underwriters began to include regular charges for Benson's investigative work.

After being dismissed as a defendant in the cigarette tax cases in 1981, Benson told Rhodes that the insurance company should **[**6]** pay him for investigative work he had done on his cases in 1976, 1977, and 1978. Rhodes agreed, and Spiegel soon began sending bills that included charges for Benson's investigative work during this time, which Underwriters paid. All told, Underwriters paid Benson approximately \$ 10,000 in 1980 and \$ 101,000 in 1981.

According to Benson, IDOR's failure to tell Underwriters that he was an employee, a failure that resulted in Continental's denial of insurance coverage, was part of a campaign to harass and punish him for exposing corruption at IDOR. Benson claimed that the payments from Underwriters were part of an agreement he reached with Rhodes to settle any potential First Amendment claims against Underwriters for its alleged participation in IDOR's harassment. According to Benson, the settlement payments were disguised as investigative fees at Rhodes' suggestion because he wanted to keep the settlement secret so he would not jeopardize Continental's insurance business with the state (business that brought Continental all of \$ 1,741 in 1979 and nothing in 1980, 1981, 1982, and 1983). Benson and Spiegel testified that Benson told Spiegel about the settlement, and the proposed method **[**7]** of payment, and that Spiegel went along. Benson and Spiegel also testified that Spiegel told Benson that the payments were not gross income for tax purposes, since they were settlement proceeds. Rhodes, however, testified that no secret settlement ever existed, and that the payments were compensation for investigative services. Furthermore, Spiegel's letter to Rhodes stated that Benson had performed investigative services; Spiegel's bills contained charges for investigative fees; no written settlement agreement existed; and Benson never