

executed a release of claims against Continental or Underwriters.

[*603] II. Testimony of IRS Agent Cantzler

As its final witness, the government presented Internal Revenue Agent Gary Cantzler. Cantzler's purpose was to summarize the government's trial evidence and give his expert opinion as to why that evidence showed that Benson was required to file income tax returns in 1980 and 1981. Cantzler explained to the jury the filing requirements for 1980 and 1981. He also explained certain tax law concepts, such as gross income and taxable income. Cantzler calculated, based on the trial testimony, Benson's income for 1980 and 1981, and his income taxes due **[**8]** for 1980 and 1981.

During his testimony, Cantzler specifically opined that the payments from Underwriters and the Social Security Administration in 1980 and 1981 were gross income to Benson. To conclude that those payments constituted gross income, Cantzler first had to conclude that Benson received payments from Underwriters as fees for investigative services rather than as the result of a settlement, and that Benson was not entitled to the Social Security benefits he received. Based on the testimony and exhibits presented in the government's case, Cantzler identified specific factors supporting his conclusions that the payments from Underwriters were fees for investigative services, that the payments from Underwriters were not on account of a settlement, and that Benson was not entitled to receive Social Security disability benefits.

To fully understand any possible problem with Cantzler's testimony, it is necessary to set out some (though not all) of the factors Cantzler cited to support his conclusions. Among the factors Cantzler cited to support his conclusion that the payments from Underwriters were payments for investigative fees and not on account of a settlement were: invoices **[**9]** from Spiegel to Underwriters for "Investigative fees"; Spiegel's letter to Underwriters stating that he was employing Benson as an investigator; Spiegel's 1980 tax return, which listed the money Spiegel paid to Benson as a business expense for "investigator fees"; bills prepared by Benson for investigative fees; an affidavit Spiegel executed in April 1981 stating that he had paid Benson as an investigator; the fact that Benson had never sued Underwriters, and had no claim against it; Rhodes' denial that any settlement existed; an analysis of two depositions Benson gave in which he gave contradictory accounts of how he arrived at the per hour charge and number of hours charged on his bills for investigative fees, and about whose idea (Benson's or Rhodes') it was to prepare the bills; and Rhodes' denial that he told

Benson to prepare the bills. Among the factors Cantzler cited to support his conclusion that Benson was not entitled to Social Security benefits were: testimony by Marie Meinardi that Benson had worked for her as a bartender, and had worked as a bartender at a bowling alley; Benson's work for IDOR; testimony by Richard Dunn, an ex-IDOR employee, that Benson's employment **[**10]** contract with IDOR was a fraud on the Social Security Administration and that Benson had discussed his situation anonymously with the Social Security Administration and was told he would owe \$ 20,000 back to the Social Security Administration; Benson's failure to tell Social Security employee DeVries that he worked for Meinardi; Benson's telling Social Security investigator Klaprat that his work for IDOR was part of a rehabilitation program when he knew it was not; Benson's failure to inform Bethlehem Steel (his former employer from which he was receiving disability payments), Metropolitan Life Insurance Company (from which he received a waiver of life insurance premiums because of his disability), or his treating physician that he was working full-time; and Benson's deposition testimony stating that he did not know why he had not reported his jobs to the Social Security Administration and that if he was guilty of fraud, so were others.

Benson objected to much of Cantzler's testimony early and often during trial, on a number of different grounds. Benson now argues on appeal that the district court abused its discretion in allowing Cantzler to recapitulate the government's evidence **[**11]** (much of which was disputed) and opine as to whether the money Benson received from Underwriters was for investigative **[*604]** services rather than payment of a settlement and that Benson was not entitled to receive Social Security disability benefits. We agree that much of Cantzler's testimony was not properly admissible as expert testimony.

[HN1] Federal Rule of Evidence 702 states that "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." The touchstone of admissibility under Rule 702 is helpfulness to the jury. The crucial question is, "On *this subject* can a jury from *this person* receive appreciable help." 3 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Evidence* para. 702[1], at 702-7 to 702-8 (1990) (quoting Wigmore, *Evidence* § 1923, at 21 (3d ed. 1940)) (emphasis supplied by Wigmore). An expert's opinion is helpful only to the extent the expert draws on some special skill, knowledge, or experience to formulate that opinion; the **[**12]** opinion must be an *expert* opinion (that is, an opinion informed by the