

The government, however, does not seriously contend that Donald's testimony was relevant and admissible in the context of the issues to be proved in its case in chief. It argues, rather, that DEA investigative methodology was properly at issue in this case [**7] because the defense had placed it at issue. Specifically, the government contends that the defense "opened the door" to this testimony and entitled the government to its "fair response" by arguing to the jury that the only procedure used by the DEA in making criminal narcotics cases was the controlled buy and seizure method, and by eliciting from government witness Debbie Ryan on cross-examination the fact that she had been arrested during the course of a controlled buy.

We find no merit in these contentions.

The defense did not place DEA investigative procedures in issue in this case. Pretermitted considering of whether a matter can be placed in issue solely by virtue of the arguments of counsel, we note that defense counsel did not make the argument described by the government. In its opening and closing remarks to the jury, reproduced in pertinent part in the appendix to this opinion, the defense did no more than stress the total absence of corroborating physical evidence and the resulting weakness in the government's case. Such remarks are entirely proper and do not, in our view, suggest that controlled buys are the exclusive investigative procedure utilized by the DEA. [**8] Nor did the cross-examination of Debbie Ryan place this matter in issue. Ryan was asked whether any federal agents were involved in the undercover work leading to her arrest. After a lengthy bench conference on the relevance of this question, see the appendix, *infra*, Ryan responded in the affirmative. This rather narrow line of interrogation, taken on cross-examination of a government witness, does not place in issue the matters testified to by agent Donald.

Indeed, we are offered no theory under which this testimony might be admitted.

By citing us to references to the right of rebuttal contained in *United States v. Sadler*, 488 F.2d 434, 435 (5th Cir.), cert. denied, 417 U.S. 931, 94 S. Ct. 2642, 41 L. Ed. 2d 234 (1974), the government suggests an argument that agent Donald's testimony was properly admitted as rebuttal evidence. Assuming *arguendo* the propriety of both the characterization and the admission of anticipatory rebuttal evidence in the government's case in chief, we nevertheless conclude that such evidence was not properly admissible in this case.

As this circuit has noted, the purpose of rebuttal testimony is "to explain, repel, counteract, or disprove the evidence [**9] of the adverse party." *United States v. Delk*, 586 F.2d 513, 516 (5th Cir. 1978) (emphasis added). The underlying rationale is that when the defendant has opened the door to a line of testimony by presenting evidence thereon, he cannot object to the prosecution's accepting the challenge and attempting to rebut the proposition asserted. *Id.* This case does not fall within that rationale. *Delk* suggests the reason: On appeal, ... the question boils down to whether the tag receipts were properly admitted in rebuttal. [*1007] In our analysis of this problem we do not consider the favorable testimony which defense counsel had elicited on cross-examination of government witnesses. This is so because it is well settled that the purpose of rebuttal testimony is "to explain, repel, counteract, or disprove the evidence of the adverse party" (Emphasis supplied.) *United States v. Delk*, *supra*, 586 F.2d at 516. In this case, the defense presented no evidence.

There was, consequently, nothing for the government to rebut.

United States v. Hall, 653 F.2d 1002, 1006-1007 (5th Cir.-OLD 1981)