

1 THE COURT: Good morning, everybody. Are we ready to
2 proceed?

3 MR. LEWIS: Yes.

4 MR. ROSE: Your Honor, one matter I wanted to raise
5 with the court.

6 THE COURT: Yes. Please be seated.

7 MR. ROSE: I am raising it at this point because a
8 later point may be too late. Defense is going to move to
9 exclude what we understand may be an exhibit with this witness,
10 with Agent Shelton, the DEA 6, a one page document purportedly
11 prepared on the 26th of April, 1994, and we also are going to
12 move for an order excluding any testimony concerning its
13 existence and the basis for it is the DEA 6 is the document
14 that indicates there was a supposed deactivation and
15 introduction of that document in evidence will violate the
16 discovery order of the court with respect to disclosing any
17 items, any documents it intends to introduce a year ago, and
18 most significantly because of the prejudice that is going to be
19 caused if such document is received and if testimony is being
20 given or can be given based on that document and the prejudice
21 consists of--

22 THE COURT: Let me stop you for a moment, if I might,
23 and maybe this will not short cut your concerns.

24 Usually, the party calling the witness is not
25 permitted to introduce prior consistent statements, and I would

1 assume that a DEA 6 to the extent that it represents or
2 contains statements by the witness, that is, Agent Shelton,
3 that the Government will not be seeking to offer his written
4 statement. They may well seek verbal testimony, but not the
5 written statement itself. It is my understanding that usually
6 it is the defense which utilizes DEA 6 to cross-examine and may
7 also wish to use it for the purpose of impeachment.

8 Now, let me check with counsel for the Government and
9 that may resolve the issue entirely. Does the Government, at
10 this point, do you envision that you will seek to admit a
11 particular DEA 6?

12 MR. LEWIS: No, sir.

13 THE COURT: Does that resolve the problem?

14 MR. ROSE: Partially. The other part has to do with
15 excluding testimony concerning its existence, and the reason
16 for that, this DEA 6 that mentions the activation includes the
17 name of the approving individual, Mr. Shea. Had we known of
18 Mr. Shea when we ought to have known about it, this is a
19 document in connection with this case, the Government in terms
20 of disclosing it, we would have had a chance to subpoena Mr.
21 Shea. We did not know of his existence until last week,
22 Thursday, with respect to the deactivation process. I raised
23 it also because I was informed by Mrs. Schwartz that this is a
24 document that it wanted to use in its case in chief. The
25 testimony itself should be excluded.

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1 arrangements.

2 (Thereupon, a short recess was taken.)

3 MR. ROSE: Before we begin, the Court's request
4 regarding production of the file, 94-0095, for purpose of
5 cross-examination, we do not have that file. We were told only
6 that there was a typographical error that '94 was supposed to
7 be '92, and the file was on its way. That doesn't quite do for
8 us in terms of cross-examination. We can go as far as we can
9 go without that, and at some later point review, take it up,
10 and be subject to recall.

11 THE COURT: Yes, I think that is the appropriate way,
12 but I will be listening to see if there is any type foundation
13 or predicate laid that would justify moving over to '94 file,
14 if it turns out that file has nothing to do with Mr. Dean, and
15 has no indication that it does, we will take a look at it as we
16 get there. Okay.

17 (Thereupon, the jury returned to the courtroom.)

18 THE COURT: Let's turn now to cross-examination.

19 Mr. Rose, when you are ready, you may proceed, sir.

20 MR. ROSE: May it please the court.

21 CROSS-EXAMINATION

22 BY MR. ROSE:

23 Q. Mr. Shelton, good morning.

24 A. Good morning.

25 Q. As you sit right here, do you have a present recollection

1 whether you communicated to Mr. Dean the deactivation that was
2 referenced in your testimony?

3 A. No, sir, I don't. I doubt that I did.

4 Q. Do you have any reason to believe that Mr. Dean knew that?

5 A. No, sir.

6 Q. Would it be fair to say that based on the communication you
7 had with him around June of '95, with respect to him going over
8 to Miami to meet with Agent Stephens, that he did not know,
9 that it is clear he really didn't know?

10 MR. LEWIS: Judge, I object to the form of the
11 question.

12 THE COURT: Well, if I understand the question, it
13 was, did Mr. Dean in any way subsequent to your listing him as
14 being deactivated? Did he ever say anything to you that would
15 have in any way suggested to you that he was aware that he had
16 been deactivated? I think that is the question.

17 MR. LEWIS: I don't object to that.

18 MR. ROSE: Yes, that is the question.

19 THE WITNESS: To my knowledge, he did not know that he
20 had been deactivated.

21 BY MR. ROSE:

22 Q. Do you recall, I am directing your attention to another
23 point, the name of the person who sent the letter to the U.S.
24 Embassy which provided information allegedly on Mr. Dean's
25 activities that were not legal?

1 Shelton. There was a time, though, that I had learned about
2 some information that I thought might have been able to cause
3 me to earn some money from the DEA that I told him about.

4 Q. Was this information pertaining to Perez or to another
5 subject?

6 A. This was in relation to somebody else.

7 Q. Did you ever know about being deactivated by the Drug
8 Enforcement Administration?

9 A. That is a term I only learned of in this room.
10 Deactivation, I only learn about that here.

11 Q. Had you known about a deactivation, would you have
12 continued to work as a CI and continue with your plans to
13 assist the DEA?

14 A. Absolutely not, that would have meant that the DEA would
15 not have authorized my actions and they would be illegal. I
16 always felt that I had the specific authority of the DEA,
17 especially Agent Shelton, to engage in the phone calls, to
18 engage in the activity, to engage in the preliminary plans that
19 I did, because I was under the authority of the DEA.

20 Q. When you spoke with Agent Shelton back in April about the
21 aircraft, do you recall what your intentions were regarding
22 those airplanes?

23 A. Yes. You know, I had already Mike, listen, I am working
24 with your brother, he is having no problems with me. In fact,
25 I don't make any demands. Sometimes he will say, well, you

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