# United States District Court

## Southern District of Florida

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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 99-0528-CIV-LENARD/SIMONTON

**ZITA CABELLO BARRUETO, in her capacity as personal representative of the Estate of Winston Cabello, and in her individual capacity, ELSA CABELLO, KAREN CABELLO MORIARTY, and ALDO CABELLO,**

Plaintiffs,

vs.

**ARMANDO FERNÁNDEZ LARIOS,**

Defendant.
_____/

**ORDER GRANTING DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EXPERT TESTIMONY AND DENYING PLAINTIFFS' MOTION FOR JUDICIAL NOTICE OF HISTORICAL FACTS**

**THIS CAUSE** is before the Court on the Motion in Limine to Preclude Expert Testimony (D.E. 200), filed May 21, 2003, by Defendant Armando Fernandez Larios, and the Motion for Judicial Notice of Historical Facts, or Alternatively to Present Expert Testimony (D.E. 255), filed on August 26, 2003, by Plaintiffs. Plaintiffs filed a Response to Defendant's Motion in Limine on June 2, 2003. (D.E. 207.) At the Court's direction, Plaintiffs filed a Supplemental Opposition to the Motion in Limine (D.E. 229) on June 30, 2003, and Defendant filed a supplemental Reply (D.E. 232) on July 11, 2003. On September 8, 2003, the Defendant filed a Response to Plaintiffs' Motion for Judicial Notice. (D.E. 258.)

On September 12, 2003, Plaintiffs replied. (D.E. 270.) Having considered the filings and the record, the Court finds as follows.

## I. Introduction

This case involves allegations that Defendant participated in extrajudicial killing, torture, and crimes against humanity in Chile after the Pinochet regime took power in September, 1973. Plaintiffs are the family members of Winston Cabello, who was allegedly killed in Copiapó, Chile, in October, 1973, by agents of the Pinochet regime, as part of a series of killings and disappearances that became known as the "Caravan of Death."

The subject of the instant Motion in Limine is the testimony of two expert witnesses proffered by Plaintiffs, Jorge Escalante and Roberto Garretón.[1] Escalante is an investigative journalist who has researched and written extensively on the Caravan of Death. Garretón is a human rights lawyer, who presently represents Latin America and the Caribbean for the High Commissioner of the United Nations on Human Rights and previously served as Chile's Ambassador to the United Nations Human Rights Commission. The Court held a two-part evidentiary hearing consisting of legal argument and the testimony of Jorge Escalante on July 31, 2003, and the testimony of Roberto Garretón on August 18, 2003.

## II. Parties' Arguments

Defendant argues that the testimony of these witnesses is inadmissible under Rule 702

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[1] Initially, Defendant also sought to exclude the testimony of a third expert proposed by Plaintiffs, Joan Smalchik. In their Supplemental Response, Plaintiffs indicate that they no longer intend to introduce Ms. Smalchik as an expert witness. (D.E. 229 at 1 n.1.)

of the Federal Rules of Evidence because Plaintiffs' experts are unqualified to present factual arguments in this case, in that neither has any firsthand knowledge of the events at Copiapó. Defendant contends that Garredón's testimony should be excluded to the extent that he expanded the scope of his testimony from his initial export report to the supplemental proffer of testimony; in particular, he added that Defendant "knew or should have known of the extrajudicial killings and torture committed by the Caravan." Defendant asserts that Plaintiffs' experts use a faulty methodology, in that they are merely relating the conclusions reached in various records and reports, and repeating what other people have told them. Further, Defendant argues that the expert testimony is unhelpful because the experts cannot demonstrate any reasoning behind their opinions, but, instead, they simply make outcome-determinative conclusions regarding Defendant's knowledge and intent. Defendant also asserts that the experts are biased and are simply espousing their political views.

Plaintiffs contend that their expert witnesses are qualified and reliable to testify on the matters described in their proffers. In their memoranda, Plaintiffs cited case law in which courts allowed non-scientific expert testimony. At the hearings, Plaintiffs' counsel broke the testimony of Jorge Escalante into nine categories of opinions and that of Roberto Garretón into seven categories. Plaintiffs contend that each of these categories is relevant to the claims alleged in the Second Amended Complaint, and that the experts should be allowed to testify about each of them.

At the Court's suggestion, the parties have conferred and Defendant has agreed to

stipulate to certain historical facts proffered by Plaintiffs.[2] In their Motion for Judicial Notice of Historical Facts, Plaintiffs request that the Court take judicial notice of additional proffered "historical facts.".

## III. Analysis

### A. Motion in Limine

Rule 702 of the Federal Rules of Evidence, which controls the admission of expert witness testimony, provides 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, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702 (2000). The Supreme Court has stated that "the inquiry envisioned by Rule 702 is a flexible one." Daubert v. Merrill Down Pharmaceuticals, 509 U.S. 579, 594 (1993). "Many factors will bear on the inquiry, and [there is no] definitive checklist or test." Id. at 593.[3]

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[2] Defendant has agreed to stipulate to certain facts contingent upon the Court's determination of relevancy.

[3] The Supreme Court in Daubert set forth a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony. The Daubert factors include: (1) whether the expert's technique or theory can be or has been tested—that is, whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether

In Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), the Supreme Court held that the testimony of non-scientific experts must also be tested for reliability and relevance under Rule 702. The Court stated that "a trial court should consider the specific factors identified in Daubert where they are reasonable measures of the reliability of expert testimony," id. at 152, but noted that a district judge has broad latitude to determine whether the Daubert factors are appropriate measure of reliability, which depends upon "the particular circumstances of the particular case at issue." 526 U.S. at 149-52.

In the Eleventh Circuit, the proponent of expert testimony must show that: (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue." City of Tuscaloosa v. Harcros Chems., Inc., 158 F.3d 548, 563 (11th Cir. 1998) (citing Daubert, 509 U.S. at 589); Maiz v. Virani, 253 F.3d 641, 665 (11th Cir. 2001). The burden of laying the proper foundation for expert testimony rests on the party offering the expert, and admissibility must be shown by a preponderance of the evidence. Allison v. McGhan Med. Corp., 184 F.3d 1300, 1306 (11th Cir. 1999). In addition to the Daubert analysis, the Court must apply all of the Federal Rules of Evidence, including 402 and 403, to expert testimony. Allison, 184 F.3d at 1309. "The judge's role is to keep unreliable and irrelevant information

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the technique or theory has been generally accepted in the scientific community. Daubert, 509 U.S. at 593-94.

from the jury because of its inability to assist in factual determinations, its potential to create confusion, and its lack of probative value." Id. at 1311-12.

In this case, the Daubert factors are not readily applicable to the testimony of an investigative journalist and a human rights lawyer concerning events that occurred in Chile thirty years ago. Nonetheless, the Court will endeavor to determine whether the proffered testimony meets the ultimate test of admissibility under Rule 702 – relevance and reliability. Upon careful consideration of the proffered evidence and the parties' arguments, the Court concludes that the testimony is inadmissible, primarily because it would not assist the jury in its role as trier of fact. See Tuscaloosa, 158 F.3d at 563; Montgomery v. Aetna Cas. & Sur. Co., 898 F.2d 1537, 1541 ("[A]n expert may not . . . merely tell the jury what conclusion to reach. . . ").

Although Plaintiffs' proposed experts are highly respected in their respective fields, their testimony is not being offered on the subjects of their expertise. In other words, Escalante is not being asked to give expert opinions on the field of investigative journalism, and Garretón is not offering expert opinions on international human rights law. Instead, their expert "opinions" are a recitation of historical facts based on information conveyed by others, much of which is hearsay.[4] The law permits experts to rely upon inadmissible evidence if it is the type reasonably relied upon by experts in the particular field. FED. R. EVID. 703;

[4] The parties have agreed to stipulate to certain historical facts that will place the events, which are the subject of this case, into historical context. (See Parties Stipulated Historical Facts, Plaintiffs' Notice to the Court of Efforts to Stipulate, Ex. 2.)

United States v. Floyd, 281 F.3d 1346, 1349 (11th Cir. 2002) (upholding admission of testimony of firearms expert who testified that the hearsay statements he relied upon were of the type reasonably relied upon by experts in the field). In this case, however, the experts are being offered in lieu of factual witnesses to convey the events that took place in Chile during the relevant time period. Neither witness has any firsthand knowledge of the events that occurred in Copiapó or any events pertaining directly to Winston Cabello or Defendant Fernández-Larios. As explained further below, the Court cannot admit this type of factual testimony under the guise of expert testimony because it would not help the jury to decide the material issues of fact in this case.

**i. Jorge Escalante**

(a) Background

Jorge Escalante is a Chilean investigative journalist who has published a book on the Caravan of Death, entitled "La Mision Era Matar" ("The Mission was to Kill"). Two weeks after the September 11, 1973 coup by which General Agosto Pinochet came to power, he was detained and imprisoned without judicial process. After over a year of imprisonment in Chile, Escalante was allowed to leave Chile on the condition he would never return. He emigrated to West Germany in 1975, where he attended the University of West Berlin and worked toward a degree in Communication Sciences. In 1985, he was allowed to return to Chile, where he earned a degree in journalism from the University of Santiago. After obtaining his degree in journalism, Escalante worked for the International Press Service and

various newspapers. Since 1994, he has worked for the periodical *La Nación*, and as a correspondent for the Spanish news agency "*EFE*." He has published numerous articles on the human rights abuses of the Pinochet regime, and, in 2000, he published his book on the Caravan of Death.

(b) Mr. Escalante's Opinions

At the hearing on July 31, 2003, Plaintiffs offered the following "nine opinions" upon which Jorge Escalante would testify: (1) the collection of officers including the Defendant commandeered by General Arellano, which came to be known as the Caravan of Death; (2) the Caravan's actions were carried out pursuant to a deliberate plan and purpose; (3) the objectives of the Caravan were to instill fear in the civilian population, particularly outside of Santiago, and to ensure that Army commanders did not challenge or resist Pinochet in the North; (4) the victims who were targeted were community leaders including people who had been members of the Allende government; (5) the targeted people, the victims, were not charged with crimes (with some exceptions); (6) members of the squad knew or should have known that civilian prisoners were killed from the junta; (7) there was a consistent method of operation in each city; (8) members of the squad were selected based on their perceived loyalty and toughness; and (9) members of the squad went on to have distinguished military careers and further that indicated Pinochet regime support of their conduct.

(c) Methodology of Investigative Journalism

At the hearing, Escalante explained the nine-step "methodology" of investigative

journalism, in which the journalist: (1) finds a subject; (2) carries out a mental exercise to determine what he already knows about the subject without having investigated anything; (3) consults all published materials in the written press, audio visual, anything that exists about that subject; (4) determines whether there exists or ever existed any legal process or trial on that subject;[5] (5) reviews a list of possible witnesses who may be interviewed concerning the subject, and interviews the witnesses; (6) cross-references all of the information that has been checked up to that time; (7) reviews all sources and looks for information that is considerably more precise after having carried out the initial evaluation; (8) conducts a second evaluation and second cross-referencing of information to decide whether the information collected is sufficient to prove the main theme; and (9) writes the book or other publication.

(d) Escalante's Research on the Caravan of Death

Escalante testified that he applied this methodology in his investigation of the Caravan of Death, which culminated in the publication of numerous articles and the his book, *La Mision Era Matar*, in 2000. He began his investigation in 1988 by traveling to Northern Chile to interview the family members of several victims who died at Antofagasta. In 1989, another journalist, Patricia Verdugo, published *The Claws of the Puma*, the first book that made public the existence of the military's secret operation. For the next ten years, Escalante reviewed everything that was published in the media on the Caravan, and continued speaking

[5] Escalante indicated that "I must insist on the importance of this step because normally in a legal process before a judge, the people, be they witnesses or defendants, or accused, most always say considerably more to the Judge than they would say to a journalist." (7/31/03 Hrg. Tr. at 16.)

to family members of some of the victims. He also investigated the DINA, because principal members of the Caravan also belonged to the DINA.[6] He testified that it was not until 1998, when he obtained access to the files of Judge Guzman,[7] that the "fundamental organization concerning the case begins to appear." (7/31/03 Tr. at 23.)

Within the files of Judge Guzman, Escalante reviewed statements provided by the members of the Caravan, including the confrontations or "face-offs" that took place between them.[8] In addition, he reviewed statements by officers who were witnesses to the Caravan's passage through several cities; scientific and expert reports, including autopsy and ballistic reports; statements provided by the family members of the victims; the procedural reports or indictment reports from Judge Juan Guzman, in which the Judge carries out a summary of the facts of the case; Judge Guzman's reports on his visits to the killings sites; and the judicial resolutions handed down by the Court of Appeals and Supreme Court of Chile. Escalante estimated that he read at least 400 or 500 sworn statements from the files of Judge Guzman. (Tr. at 25.) Escalante also testified that he personally interviewed 30 or 40 witnesses, including military witnesses, civilian witnesses, victim family members, and

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[6] The Dirrecion Nacional de Inteligencia ("DINA") was Pinochet's secret police force, established around October, 1973.

[7] Judge Guzman was not mentioned by name in Plaintiffs' proffer of Escalante's testimony, and the Court has not been provided a full description of the nature of the legal proceedings being carried out in Chile under the supervision of Judge Guzman.

[8] As explained by Escalante, a "face-off" or "*careo*" is a confrontation where a judge confronts one or more people against each other when there are discrepancies in their sworn statement concerning the same subject. (7/31/03 Tr. at 25.)

attorneys. (Tr. at 26.) He estimated that he spent three or four years investigating the Caravan. In addition, Escalante testified that he is unaware of any academic writing on the Caravan in Chile, and that only he and Patricia Verdugo, another journalist, had written on the subject. Escalante theorized that this is because there is "a certain degree of fear concerning injecting themselves into a subject that is still rather fresh in Chile and maybe because not enough time has transpired in history." (Tr. at 28.)

(e) Analysis

Based on Mr. Escalante's testimony and his extensive list of publications, the Court does not doubt that he is a highly experienced investigative journalist. Yet, as he explained the bases for his "opinions" at the hearing, it became evident that his testimony would not be helpful to the jury because it would simply supplant the juror's function as trier of fact. See Tuscaloosa, 158 F.3d at 563; Montgomery, 898 F.2d at 1541. Many of Escalante's opinions are based upon his examination of documents, including the face-offs between various witnesses. Many of the same witnesses, including participants in the Caravan of Death and witnesses in the cities visited by the Caravan, have given testimony in this case through depositions or letter rogatories. For Mr. Escalante to give his "opinion" that one of these witnesses is not credible based on the face-off before Judge Guzman would supplant the adversary system of this Court. For instance, Escalante testified that to reach his conclusion that the members of the Caravan knew or should have known of the squad's mission, he looked at many documents, most importantly, a face-off between General

Arellano and Colonel Arredondo, where Arredondo told the Judge they knew what they were embarking upon. (Tr. at 40.) Both Arellano and Arredondo have given testimony via letters rogatory in this case. Thus, any contradictions in their testimony should be brought out in the adversary process in this court, rather than through the testimony of an investigative journalist. Similarly, Escalante's opinion on how members of the helicopter squad were selected was based upon a face-off where General Arellano says that he appointed the members of the squad. (Tr. at 41-42.) In this case, General Arellano testified by letter rogatory that he did not select the members of the squad. While General Arellano's face-off testimony might be used to impeach him, it should not come in through the "opinion" of an expert witness.

While many of these issues could be brought out by defense counsel on cross-examination, see Allison, 184 F.3d at 1311 (quoting Daubert, 509 U.S. at 596) ("[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."), the Court's role "is to keep unreliable and irrelevant information from the jury because of its inability to assist in factual determinations, its potential to create confusion, and its lack of probative value." Id. at 1311-12. In this case, the Court acting as gatekeeper cannot place its imprimatur on expert testimony that would essentially take the place of the adversarial system in this Court.[9] It became clear to the Court at the evidentiary hearing that

[9] In Jinro Am. Inc. v. Secure Invs., Inc., 266 F.3d 993, 1004-06 (9th Cir. 2001), the Ninth Circuit held that the district court abused its discretion by admitting the testimony of a commercial

if Mr. Escalante were allowed to testify at trial, defense counsel would need to take each "opinion" and determine the basis for it, which entails a full explanation of Judge Guzman's legal process in Chile. This would take an inordinate amount of time and undoubtedly confuse the jury, whose role should be limited to deciding the facts of this case. See Allison, 184 F.3d at 1311-12. Plaintiffs have the burden of establishing the admissibility of the testimony of their expert witnesses, see id. at 1306, and the Court finds that they have not satisfied that burden with respect to Jorge Escalante. A journalist may be an "expert" in gathering facts, but it will be the jury's role to determine the facts in issue in this case.

**ii) Roberto Garretón**

(a) Background

Roberto Garretón graduated from law school in Chile in 1967. In 1973, he began working with the Committee for the Cooperation for Peace in Chile, an organization formed by a group of churches to defend persons who were persecuted by the Pinochet regime. From 1976 through 1990, he served as a staff attorney for the Vicariate of Solidarity, which was created by the archbishop of Santiago in 1976 to defend detainees and investigate cases

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investigator as an expert on the business practices of Korean companies. The Jinro court explained that, "[the witness] came before the jury cloaked with the mantle of an expert. This is significant for two reasons: First, it allowed him to testify based on hearsay information, and to couch his observations as generalized 'opinions' rather than as firsthand knowledge about Jinro and its activities in particular. Second, as the opinion of a purported 'expert' on Korean business practices and culture, his statements were likely to carry special weight with the jury." Id. at 1004. For the same reasons, the Court cannot allow Escalante's testimony, based almost purely on hearsay, to come before the jury under the guise of expert testimony.

of persons persecuted by the Pinochet regime. He filed numerous habeas corpus petitions on behalf of missing persons in an attempt to locate them and effect their release. In 1990, Garretón was appointed as the Chilean Ambassador to the United Nations High Commission on Human Rights. In 1994, Garretón was appointed by the United Nations as the Special Rapporteur on Human Rights for the Democratic Republic of the Congo, where he served until 2000. Mr. Garretón currently serves as the Regional Representative for Latin America and the Caribbean for the High Commissioner of the United Nations on Human Rights.

(b) Ambassador Garretón's Opinions

At the August 18, 2003 hearing, Plaintiffs' counsel offered seven categories of opinions by Robert Garretón: (1) a brief history of Chile and Coup; (2) how the coup resulted in the end of the Chilean legal system; (3) Pinochet's pattern and practice of human rights abuse; (4) judicial remedies for human rights abuses were unavailable under Pinochet regime; (5) the DINA and its secretive creation; (6) the Caravan of Death; and (7) Defendant knew or should have known of extrajudicial killings or torture committed by the Caravan.[10]

(c) Analysis

The record indicates that Ambassador Garretón is a world-renowned international

[10] Defendant argues that many of these opinions should be excluded because they were not offered in the expert report dated October 2, 2002. In particular, Garretón did not propose to testify specifically with respect to Defendant Fernandez-Larios. When the Court directed the parties to submit supplemental memoranda, it did not expect Plaintiffs to expand the opinions of their experts so broadly; however, the Court will exclude the evidence on the merits, as explained above, rather than on this procedural basis.

human rights lawyer. As demonstrated at the August 18, 2003 hearing, however, the seven proffered opinions either do not relate directly to his field of expertise or are irrelevant to the issues in this case. Most of his research with respect to the Pinochet regime concerns the DINA, which the Court has ruled is irrelevant to the issues in this case. As such, Garretón's expertise on the DINA is not helpful to the jury's understanding of this case.[11] See Daubert, 509 U.S. at 591 ("Rule 702's 'helpfulness' standard requires a valid . . . connection to the pertinent inquiry as a precondition to admissibility . . ."); Allison, 184 F.3d at 1306 ("This connection has been appropriately denominated as 'fit'".). In addition, Garretón has provided no basis for his conclusion with respect to Defendant's knowledge or intent in this case. Garretón testified that he knew of the Caravan's existence and Defendant's participation in it through interviews, books, through conversations with attorneys trying cases in Santiago, and because Judge Guzman has identified Defendant as a participant in the Caravan. (8/18/03 Tr. at 31-32.) Garretón compared the Caravan to the Nazi regime's "Night of the Broken Glass," in that both are famous events that have been discussed and investigated to an extent that today no one could doubt that they occurred. (8/18/03 Tr. at 32.) Yet, Garretón indicated that he himself has not carried out any investigations into the Caravan or this Defendant's participation in it. (Id.) Although an expert may rely upon

[11] Garretón testified that the Caravan of Death and the DINA were "parallel" events because the DINA was created in October, 1973, while the Caravan was occurring, and it "is still in the dark" whether the Caravan was carried out by the DINA. Even if Defendant's participation in the DINA were relevant, Garretón's testimony revealed that the interrelation between the Caravan and the DINA is confusing and would only serve to prejudice Defendant without advancing the material issues in this case.

inadmissible materials and hearsay to form his opinion, the expert must also carry out some independent analysis of the material issues in the case. See United States v. Corey, 207 F.3d 84, 89 (1st Cir. 2000) (rejecting appellant's challenge to district court's admission of testimony by firearms expert, who testified that his conclusion was based in part on conversations with a gun historian but also on his own research and consultation of other materials routinely relied upon by experts in the field).

Plaintiffs have simply failed to establish that Mr. Garretón's testimony is relevant and reliable, or that it would be helpful to the jury in deciding the material facts of this case. See Tuscaloosa, 158 F.3d at 563. Plaintiffs could not show any methodology applied by Mr. Garretón to the investigation of this case; indeed, he indicated that he has not investigated the Caravan or the facts of this case. While his professional study and personal experience might make him an expert in the field of international human rights law, the judicial system under Pinochet or any other dictatorial regime is not on trial here. It is undisputed that Winston Cabello had not been convicted of a crime when he was killed. Thus, it would not be relevant or helpful to the jurors to hear about the military tribunals or other human rights abuses committed by the Pinochet regime outside of the Caravan of Death. In sum, the Court finds nothing in Mr. Garretón's testimony that would be helpful to the jurors in deciding the facts of this case. Thus, it must be excluded from the trial of this case. See Tuscaloosa, 158 F.3d at 563.

**B. Motion for Judicial Notice of Historical Facts**

Rule 201 of the Federal Rules of Evidence states in relevant part: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Eleventh Circuit has recognized that "the kinds of things about which courts ordinarily take judicial notice are (1) scientific facts: for instance, when does the sun rise or set; (2) matters of geography: for instance, what are the boundaries of a state; or (3) matters of political history: for instance, who was president in 1958." Shahar v. Bowers, 120 F.3d 211, 214 (11th Cir. 1997).

In the instant case, Defendant has stipulated to certain historical facts proffered by Plaintiffs. The subject of Plaintiffs motion is six categories of proffered facts not stipulated to by Defendant, including: (1) "Chile's history of democratic political transitions"; (2) "the junta's consolidation of power following the coup and its exercise of control over Chilean government"; (3) "the junta's use of widespread arrests and illegal detention after the coup, as well as its well-documented human rights abuses including torture, disappearance and illicit killings"; (4) "its efforts to align the military with the junta's repressive policies; (5) the purpose of Arellano's mission and the killings of at least 72 prisoners in cities at which Arellano's squad stopped, while they were present"; (5) "and the creation and purpose of the DINA, including facts concerning the membership in the DINA of Defendant and other members of Arellano's squad, as well as facts concerning the later careers of other members

of the squad." (Reply at 2.)

The Court finds that all of the above-listed categories of proffered fact either do not fall within the scope of the Court's relevancy determinations as set forth in its Omnibus Order on Motions in Limine, or are not capable of accurate and ready determination and, therefore, are not the proper subject of judicial notice under Rule 201.

Accordingly, it is

**ORDERED AND ADJUDGED** that:

1. The Motion in Limine to Preclude Expert Testimony, filed May 21, 2003, by Defendant Armando Fernandez Larios (D.E. 200), is **GRANTED.**

2. The Motion for Judicial Notice of Historical Facts, or Alternatively to Present Expert Testimony (D.E. 255), filed on August 26, 2003, by Plaintiffs, is **DENIED.**

**DONE AND ORDERED** in Chambers at Miami, Florida this 8th day of September, 2003.

Joan A. Lenard

**JOAN A. LENARD**
**UNITED STATES DISTRICT JUDGE**

cc: U.S. Magistrate Judge Andrea M. Simonton
All counsel of record
**Case No. 99-0528-CIV-LENARD/SIMONTON**