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## UNITED STATES OF AMERICA

### Angel Francisco Breard: Facing Death in a Foreign Land

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Angel Francisco Breard, 32, is a citizen of Paraguay and Argentina who faces execution in Virginia on 14 April 1998. Like virtually all foreign nationals under sentence of death in the United States of America (USA), Breard was never informed by the arresting authorities of his treaty-based right to contact his consulate for assistance. The US courts have consistently refused to address this treaty violation on procedural grounds and have ignored the other significant issues raised in the Breard case.

The USA has unconditionally ratified the Vienna Convention on Consular Relations, which regulates the functions of consulates in more than 140 countries worldwide. Article 36 of the Vienna Convention protects the legal and human rights of detained foreigners, by requiring local authorities to promptly notify foreign citizens of their right to communicate with their consulate.

Amnesty International remains deeply concerned over the failure of the US authorities to respect the consular rights of detained foreign nationals. Furthermore, the organization finds it unacceptable that the US courts have provided no remedies for past violations of Article 36 which contributed to the imposition of death sentences on foreign citizens.<sup>1</sup>

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<sup>1</sup>For further information, see: *United States of America: Violations of the Rights of Foreign Nationals Under Sentence of Death*, AI index AMR/51/10/98, published January 1998.

Deprived of consular advice, Breard was unable to participate constructively in his own defence. Due to his failure to comprehend the cultural and legal differences between the US and his home countries, Breard made a series of potentially fatal decisions at his trial which directly contributed to his death sentence.

The refusal of the US courts to address this important issue (and the other compelling claims raised by Breard in his appeals) graphically illustrates the arbitrary nature of the death penalty. Despite judicial procedures intended to ensure that death sentences are fairly and rationally imposed, the death penalty in the USA continues to be a "lethal lottery", which is inflicted primarily on those individuals accused of murder who are least able to defend themselves; the poor, those from ethnic minorities and the mentally retarded and the mentally ill.

### **Personal Background**

Angel Francisco Breard was born in Corrientes, Argentina, the youngest of four children. When 7-years-old, he was sexually assaulted by a soldier. The family moved to Paraguay when he was 13-years-old. At the age of 15 he began consuming alcohol, often in the company of his father who was known to be a heavy drinker.

In 1985, Breard sustained serious head injuries in a car accident, which rendered him unconscious for several days. Family members later reported a distinct change in Breard's personality following the head injury, particularly a tendency to behave impulsively and to lose his temper.

Angel Breard moved to the USA in October 1986, whereupon he immediately enrolled in English classes and secured employment. By the time of his marriage to one of his English instructors the following year, Breard was drinking heavily. The couple separated after just four months of marriage in 1987.

After the failure of his marriage, Breard became severely depressed and increasingly dependent on alcohol. Although he continued to work and to send regular financial support to his mother in Paraguay, his personal life began to deteriorate. By 1992, his alcoholism had reached the point that he was drunk on a daily basis and unable to work.

### **Case Background**

On 17 February 1992, Ruth Dickie was assaulted and stabbed to death in her apartment. Breard was arrested and charged with attempted rape and capital murder. He has never denied his involvement in the murder. However, he has always insisted that he committed the murder because of a satanic curse placed on him by his former father-in-law. He also believed that the jury would be more lenient if he admitted committing the crime and expressed his remorse to them. This belief was based on his impression of trial procedures in his native countries. His lawyers were unable to persuade him that a jury in the US would only view his testimony as a further reason to sentence him to death.

Despite his own admission of guilt and the advice of his attorneys, Breard refused to accept the prosecution's offer of a reduced sentence in exchange for a guilty plea. Instead, he insisted on confessing on the witness stand at his trial, in the mistaken belief that the jury

would be lenient or even exonerate him, once they heard that he was the victim of a satanic curse. Breard entered a plea of "not guilty"; his case went to trial in June of 1993.

Capital murder trials in the USA are conducted in two separate stages. During the first phase, the guilt or innocence of the defendant is determined. A separate hearing is then held, during which the defence presents any information about the convicted person that might persuade the court to impose a lesser sentence. This "mitigating evidence" is weighed by the jury against the nature of the crime and other factors before determining a sentence of life imprisonment or death.

After hearing three days of testimony, the jury convicted Breard of attempted rape and capital murder. The penalty phase of the trial lasted only a few hours: Breard's attorneys presented almost no mitigating evidence. The jury never learned, for example, of the significant changes to his personality and behaviour following his head injury. His mother was one of the few witnesses who testified on his behalf; the jury never heard from a number of family members, friends and former teachers who were willing to testify for his good character prior to his car accident. Instead, the jury heard Breard confess openly to the crime while claiming that his actions were the result of a curse placed upon him. Breard has no prior convictions for criminal offenses.

Despite the incomplete mitigating evidence and his own extraordinary confession, the jury deliberated for six hours before agreeing on a sentence. Jurors asked the judge for instructions on the length of time that Breard would be incarcerated if they sentenced him to life imprisonment. They also asked if they could recommend a sentence of life imprisonment without parole. However, the judge refused to provide them with any additional sentencing information, thereby increasing the likelihood that they would recommend a death sentence. On 25 June 1993, Angel Francisco Breard was sentenced to death.

Amnesty International believes that the assistance of government officials from his countries of citizenship may well have led to Breard accepting the offer of a plea-bargain. In cases where foreign citizens face capital charges, prompt consular notification and assistance may literally mean the difference between life and death. Angel Francisco Breard was tried, convicted and sentenced without the benefit of the consular support necessary to ensure that he would understand the complex legal system of another country. Consular officials would have explained these cultural and legal differences in a way that his attorneys were unable to do; they would also have ensured that Breard's jury heard crucial mitigating evidence that might well have persuaded them to spare his life.

In 1996, Angel Breard finally learned of his right to consular assistance. The US courts have since ruled that it is too late for the issue even to be considered as part of his "*habeas corpus*" appeal.

The state and federal courts with jurisdiction over capital cases in Virginia strictly adhere to the doctrine of "procedural default", which places limits on the ability of prisoners to introduce new issues on appeal in the higher courts. Since Breard never raised the Vienna Convention violation in the state courts, the federal courts have ruled that they are prevented from considering the merits of the claim. In effect, foreign nationals like Angel Breard are

doubly penalized: once by the violation of their rights under the treaty and again on appeal, for not raising a timely objection to the failure of US authorities to notify them of those selfsame rights.

In response to the violation of Breard's consular rights, the Republic of Paraguay filed a civil suit in 1996 against Virginia officials. The suit seeks a court injunction to prohibit Angel Breard's execution and the vacating of his death sentence. However, the US Fourth Circuit Court dismissed the suit in January 1998, ruling that the Eleventh Amendment to the US Constitution prohibits a foreign government from suing a US state--even for non-compliance with an international treaty--in cases where there is no "ongoing violation" of the treaty.<sup>2</sup>

In January, the Fourth Circuit Court also dismissed Breard's "*habeas corpus*" petition, finding that his Vienna Convention claim was procedurally defaulted. Senior Judge Butzner was so troubled by the violation of Article 36 that he issued a separate opinion on the importance of the Vienna Convention, which includes the following comments:

"The protections afforded by the Vienna Convention go far beyond Breard's case. United States citizens are scattered about the world...Their freedom and safety are seriously endangered if state officials fail to honor the Vienna Convention and other nations follow their example...

The importance of the Vienna Convention cannot be overstated. It should be honored by all nations that have signed the treaty and all states of this nation."

Unless the US Supreme Court agrees to hear his final appeal, Angel Francisco Breard will face execution in Virginia on 14 April 1998. He would thus become the sixth foreign citizen to be executed in the United States since 1993. None were informed of their right under international law to obtain the crucial assistance of their consulates following arrest.

**KEYWORDS:** FOREIGN NATIONALS1 / DEATH PENALTY1 / PARAGUAY

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<sup>2</sup>Added to the US Constitution in 1798, the Eleventh Amendment prohibits any foreign citizen (or citizen of another state) from suing a US state without its consent.