

A jury found defendant murdered prostitutes Inez Espinoza and Peggy Tucker and attempted to murder four other prostitutes between November 1994 and September 1995 in Fresno. Each surviving victim identified defendant as her assailant. One murder victim's boyfriend testified that he saw the victim get into a car that was driven away. Sometime later, the boyfriend saw defendant driving the same car, alone. Ballistics tests, tire treads, incriminating statements and other evidence also linked defendant to the crimes. The jury set defendant's penalty at death. His appeal directly to the Supreme Court is "automatic" — hence the characterization, "automatic appeal." (In all other cases, appeals go from the trial court to the Court of Appeal — and then they continue to the Supreme Court only if that court decides the case is important enough to merit review.) Among the many issues defendant raises, the following are likely to be discussed at oral argument.

a. A criminal defendant has a constitutional right to competent counsel who is free from any "conflict of interest" that divides the lawyer's loyalty to his client. In this case, defendant was indigent and his appointed lawyer was paid according to a contract with the trial court. Under the contract, counsel was paid a flat amount to cover his fee and the cost of hiring investigators and experts to help the defense. Payments were made in installments. After trial, any unspent part of the contract amount was paid to counsel. Defendant argues that this agreement gave his lawyer a financial incentive to not fully investigate and prepare his case and that his lawyer, in fact, failed to fully investigate and prepare his case. As a result, defendant claims, his lawyer was working under a conflict that divided his loyalty between the lawyer's interests and those of the defendant. The Attorney General argues that the contract amount was based on counsel's initial estimate of what expenses would be necessary, but, as the preparations progressed, it became obvious that not all the expenditures would be required. He urges that, just as with other professional services, most fee agreements contain at least the potential for conflicting interests, but that courts can and should rely on an attorney's obligation to act ethically. The Attorney General also argues that defendant has failed to show that his lawyer's performance was in any way effected by the fee arrangement.

b. In a death penalty case a judge has discretion to appoint a second attorney for an indigent defendant, so long as the defendant shows that a second lawyer is needed. Approximately one month before trial, defendant asked for a second lawyer but the court refused his request. Defendant now claims the court erred because his was a complicated death penalty case involving scientific evidence with numerous crime scenes and witnesses. The Attorney General asserts the trial court acted within its discretion because defendant made no showing that an extra lawyer was necessary — and in any event, evidence of guilt

was overwhelming, and hence the verdict would not have been different even if a second attorney had been appointed.

c. Even though an indigent defendant has the right to appointed counsel, the defendant may also choose to represent himself at trial or at the sentencing hearing. On the day set for sentencing, defendant asked the court to appoint a different lawyer and to postpone his sentencing for two weeks. The court refused that request. Defendant then asked to represent himself and to have the court appoint an “assistant” to draft motions for him. The court denied his requests, in part, because they were made very late in the proceedings. Defendant argues that his request was late because his lawyer was deficient and he needed more time to challenge his sentence. The Attorney General argues that the requests were properly denied because defendant was simply trying to delay his sentencing when he asked for a different lawyer or to represent himself.