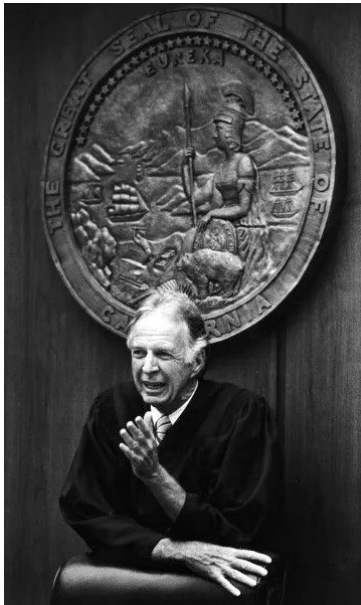




The Honorable Donald McCartin, Judge of the Superior Court for the County of Orange, California

Judge McCartin presided over RSK's trial, but he was not the originally appointed judge. Judge James K. Turner was the randomly selected Superior Court judge when the case moved to Superior Court after the Preliminary Hearing.

In December, 1987, Judge Turner developed heart problems that required open heart surgery. Consequently, he withdrew from the case for health reasons. A hearing to appoint a replacement was held around February 4 or 5, 1988. The randomly selected replacement was Judge Jean Rhinheimer. But prosecutor Bryan Brown claimed she was prejudiced against The People and that disqualified her. Both the prosecution and defense were allowed to reject a proposed judge without any reason. The next judge proposed was Judge McCartin who had lobbied the courthouse heavily and made it known he wanted to be appointed to the Kraft case. RSK's attorneys, Tom McDonald and Jim Merwin, could have disqualified McCartin but didn't. They told RSK later that they had appeared before McCartin before and had some "bad blood" with him. Both felt they could work with him as opposed to another judge, so they did not challenge McCartin, and he became RSK's judge.

Unbeknownst to RSK and his attorneys was McCartin's military record. He had been an officer in the U.S. Marine Corps in the legal division: the Judge Advocate General's Corps. His duty was to hunt down homosexuals in the Marines and the U.S. Navy, ferret them out and prosecute them and discharge them from the service. It had been widely reported that RSK was gay and accused of killing half a dozen marines, and McCartin wanted to judge him and so he kept his background secret. Had RSK known he would have asked for McCartin to be disqualified. RSK could have done that. He was co-counsel for his defense.

A day or two after McCartin became RSK's judge, a news article appeared in the Orange County Register reporting that McCartin had rejected a jury's recommendation that Charles Edward Burke, the murderer of a gay man, receive life in prison and instead reduced the sentence to 25 years to life, eligible for parole in 16 years. Burke had been found guilty of first-degree murder, attempted robbery and murder during the commission of a robbery - a special circumstance conviction - that could have resulted in the death penalty. After his arrest, he told police, "I'm not prejudiced but I hate gays." Allegedly, the victim stared at Burke too long, prompting him to tell a friend that he was going to beat and rob the victim. A family member of the murdered gay man said, "I think the judge is biased against homosexuals." And an embarrassed prosecutor responded by saying, "McCartin shot from the hip" when he over-ruled the jury decision, the first time McCartin had done so in 10 years.