

Murder trial witness on alleged 1981 rape by prosecutor: 'He derailed my life'

[theguardian.com/us-news/2016/mar/27/terry-mitchell-richard-roberts-prosecutor-alleged-rape-interview](https://www.theguardian.com/us-news/2016/mar/27/terry-mitchell-richard-roberts-prosecutor-alleged-rape-interview)

Joanna Walters in Salt Lake City, Utah

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It was 2013 when Terry Mitchell reconnected out of the blue with Richard Roberts over their shared experience in the aftermath of a gruesome 1980 murder.

Roberts was a federal prosecutor in the case, brought from Washington DC to Utah to pursue charges against a proclaimed white supremacist accused of gunning down two black men with a sniper rifle as they jogged out of a park in Salt Lake City in August 1980.



Mitchell was a key witness, having been grazed by shrapnel from bullets that passed through one of the two young men.

An email from Roberts to Mitchell after the perpetrator was executed in November 2013 brought back to the fore of her mind details of an incident she said she had long suppressed, according to court documents.

"I didn't have much innocence left when I [first] met him but he destroyed what little I had left," Mitchell said of Roberts. "I had thought he was going to be the person who made everything okay."

That 2013 email unleashed a series of events that ended in Mitchell filing a lawsuit last week with astonishing legal claims against Roberts, who, until that day, was a senior federal judge in Washington DC.

The complaint accuses him of raping her in Utah in 1981 when he was preparing to conduct the civil rights trial for the racially motivated double murder.

Roberts abruptly retired as chief judge of the US district court for the District of Columbia on 16 March at the age of 62 – on the same day Mitchell filed the \$25m federal lawsuit against him.

Roberts has now admitted he had sex in 1981 with Mitchell, who was then aged 16, while he was 28, in what his lawyers have termed a "lapse of judgment".

A statement on his behalf released last week points out, however, that he “categorically” denies rape and, in a further mitigating claim, insists that nothing “physical” happened between them until after the trial was over, and that they had a consensual relationship.

Separately, the attorney general of Utah has recently investigated the past incident and ruled, to Mitchell’s dismay, that there is not enough evidence to bring criminal charges against Roberts.

Details of the investigation itself have not been made public, but a report reviewing the actions, by retired Utah judge Paul Cassell, found Roberts’s conduct “disturbing” and concluded that he had likely violated multiple ethical and constitutional rules and codes of professional conduct.

Terry Mitchell, now 51, sat down to talk to the Guardian at her lawyer’s office in Salt Lake City, in her only face-to-face interview since her story burst into public view.

“When I first met him, I thought he was so well-spoken and I had never seen anyone dressed that well before. It was like, wow, he is going to help us get justice. He seemed like a superhero,” Mitchell said. “After all I’d been through, I thought, ‘Now I can relax and breathe a bit because he is going to take care of things’ – he told me he would make sure the murderer was put away forever.”

He came to town to bring justice after the murder of Ted Fields, 20, and Dave Martin, 18, who were cut down in the street. They had been jogging with two white girls – Terry Mitchell, then named Terry Elrod, who was 15, and one of her friends.

Terry thought she heard firecrackers. “Then my arm just opened up,” she recalls now, referring to the bullet shrapnel that sliced her arm.

The gunman was caught a few months later. He turned out to be Joseph Paul Franklin, a Ku Klux Klan member and serial killer who was travelling around randomly shooting Jews and African Americans. He had also attempted to murder Vernon Jordan, the civil rights activist, and [porn baron Larry Flynt](#) for featuring interracial couples in his Hustler magazine.

Mitchell was hospitalized in deep shock after the shooting.

“I already felt guilty that I had survived while Ted and Dave had died. Then I was blamed,” she said.

Some accused her of setting Fields and Martin up for murder, and suggested that her father was somehow involved.

Others harassed her and her friend for hanging out with black men at all.

“I would go into school to find people had scrawled ‘nigger-loving whore’ on my locker,” she said. She was followed all over town, heckled and threatened.

The newspapers published her address and she recalls cowering at home as people drove past, yelling abuse. Her mother was bullied at work and one of her sisters was badly beaten.

Two months before the shootings, Mitchell had been a victim of another violent crime when a stranger tricked her into getting into his car, drove her to a remote patch of desert near the Salt Lake airport and raped her at knifepoint in a four-hour ordeal. She also had a long history of child sex abuse by a relative, she said.

Her rapist, Phillip Moore, had been caught and pleaded guilty on the day Mitchell showed up at his trial ready to testify, still in bandages from the shooting at the park.

“After the shootings, I was like a ghost of a human being,” she said.



▲ Richard Roberts has ‘categorically’ denied raping Terry Mitchell. Photograph: Larry French/Getty Images

She turned 16 in October 1980, and in January 1981 she was getting ready to testify in Franklin’s double-murder trial at the federal courthouse in Salt Lake City, when Richard Roberts swept into town.

They began having meetings to discuss her forthcoming testimony.

“Mitchell quickly trusted Roberts,” the lawsuit says.

It also states that Roberts was informed of all the traumatic things that had happened to Terry.

Roberts “assessed Mitchell’s vulnerabilities and exploited them”, the complaint says.

As the trial approached, the complaint states that Roberts asked Mitchell’s mother to drive her to the courthouse one evening. Mitchell entered his office for the requested meeting.

“Photos of Ted Martin and David Fields, bullet-ridden, bloody and dead were scattered over his desk,” the lawsuit states. Mitchell was aghast. Roberts cleared the pictures away and began talking about the case.

Then he asked her to dinner.

“She protested that she needed to go home to fix dinner for her sisters, yet she complied because Roberts was an authority figure,” the complaint says.

After that she asked to be driven home, but he drove her to his hotel instead, “to fetch something”.

The lawsuit says she asked to wait in the car, but Roberts refused. She said she would take the bus home. But he insisted, then ordered her to follow him. The lawsuit says she was frightened and intimidated, but “wanting to believe that [Roberts] was not like the other predators in her life”, she entered the hotel.

She asked to wait in the lobby, but he “adamantly refused”, saying it would look odd.

She asked to wait outside his room, but he admonished her. Once they entered his hotel room, he locked the door and started kissing her. She protested, but he raped her, the complaint says.

“Mitchell was ignored when she communicated verbally and physically that she did not consent,” the lawsuit states.

She didn’t attack him.

“I think I weighed 100lbs. I didn’t want it to become violent. That had happened to me before,” she said, her voice tightening in anger.

She also explains now that when she was raped as a child, if she screamed, her perpetrator would put his hand over her mouth, “and I was crying so then my nose was all plugged up and I would choke”. So she didn’t scream in the hotel room; she tried to get it over with quickly, she said.

And she fell back on one of her coping strategies – dissociating from herself so that she would feel numb and distanced from what was happening to her, she said.

Roberts later told her that if anyone discovered they had sex, a mistrial would be declared, the lawsuit says.

She was scared “to her core” that she would cause the case against Franklin to collapse.

The trial lasted four weeks and the complaint says that after that first night, Roberts manipulated Mitchell into having a sexual relationship with him for the rest of his short time in Utah. The lawsuit says they had sex on the day she testified. Roberts described their relationship to Mitchell at the time as an affair, Mitchell says.

He did so “even to the point of representing to Mitchell that he might end his then-pending engagement to be married so that he could be with Mitchell,” the complaint states.

Franklin was convicted and Roberts went back to Washington, where he rose through the

ranks at the US Department of Justice and then was confirmed by the Senate as a federal judge. Mitchell has not seen him in the 35 years since. They had some phone conversations shortly after he left Utah, then almost no contact thereafter, Mitchell's lawyer, Rocky Anderson, said.

Mitchell says up until the encounter with Roberts, she had kept her focus on school.

"School was where I felt safe and I relied on the structure. I had awesome teachers," she said, describing herself as a straight-A student.

"I thought I would like to become a marine biologist or an archaeologist," she said.

But the episode with Roberts undid her. She dropped out of school just a few months after Franklin's trial was over.

"I was coping pretty well, considering, up until he came into my life. Then he derailed it," she said.

Her lawsuit says she suffered, and still suffers, from depression and post-traumatic stress disorder and debilitating night terrors. She became anorexic and experienced lengthy migraines. It also describes how she repressed her memories, not of Roberts per se, but of having sex with him.



▲ Joseph Paul Franklin is seen in Cincinnati in 1998. Photograph: Al Behrman/ASSOCIATED PRESS

She had some counselling prior to meeting Roberts but none after, until she got married, had a daughter at 21 and told the doctor at a routine check up that every time she looked at her baby she thought about how the girl would one day be raped, she said. The doctor immediately got her into therapy.

Mitchell now has two daughters and in 2012, she graduated from Salt Lake Community College. In 2013, she was contacted by a journalist who was writing a book about Franklin. The murderer wanted to talk to her, and wrote her a letter. She found out that he had suffered appalling abuse as a child. He ultimately renounced racism. He was on death row in Missouri for another racist murder prior to Fields' and Martin's, and as his execution date neared, she agreed to talk to him on the telephone.

"I told him I forgave him. I told him to go in peace. I had learned you have a choice in life, to choose the darkness or the light, and I was choosing the light," she said.

In November 2013, Franklin was executed in Missouri.

Roberts got back in touch with Mitchell and the lawsuit describes the event as bringing everything about their time together flooding back into her mind.

She was devastated. She thought about taking her own life.

"Then I realized, this isn't me." She found a number for a local rape crisis center, and called.

"I was bawling. It lifted so much off me to pour it all out to someone who listened," she said. She had been experiencing acute insomnia.

"I got off the phone and slept for 24 hours," she said.

She gradually decided she wanted to seek justice. She wrote to Roberts, saying she wanted to talk to him to gain some understanding of what had happened.

He phoned her and she secretly taped the conversation, which is legal in Utah. In the discussion, he acknowledged their sexual relationship. In the summer of 2014, she asked the Utah attorney general's office to investigate. The case is not bound by time limitations, under Utah law. The age of consent in Utah was then 16, so there would have to be evidence of coercion. Mitchell turned over her tape to the authorities.

"It's never too late for justice," she said.

The attorney general's investigation finished later that summer and, unusually, it was then reviewed by Cassell, a retired federal judge in Utah.

After much delay, Cassell's report was made public earlier this month.

It recommended no criminal action, given the "reasonable likelihood" that prosecutors would not be able to convict Roberts of rape.

However, the investigators were convinced, against his denial now, that he began having sex with Mitchell before the trial that he was prosecuting began, and never disclosed it to the defense, nor mentioned it as his career took him right up to his senior position, both of which he was legally obliged to do, Cassell's report notes.

The Utah attorney general's office filed a judicial complaint against Roberts earlier this month but it was dismissed upon his abrupt retirement.

Spencer Austin, chief deputy attorney in the Utah attorney general's office, said he had provided the results of the investigation to the federal district court in Utah and the Department of Justice, and filed the judicial complaint with the court of appeals in DC and he is waiting to see what action the other agencies take.

Austin said he found Mitchell credible. "I have to admit most reasonable people would say when someone walks into your office more than 30 years after the incident, you have some skepticism," he said. "Why did you wait 30 years? And you have some skepticism when you are talking about someone as important as a senior judge – but the tape recording gave her all the credibility in the world."

He said Roberts took advantage of Mitchell. "I felt shock and disgust at someone who was a prosecutor taking advantage of a key witness, any witness in a case, and without a doubt she was incredibly vulnerable."

The laws have changed in Utah since 1981, he said. Now the age of consent is 18.

"Today, this office would file felony charges against judge Roberts," he said.

But he said the disclosures about violations of ethics and professional codes that officials have made to other agencies are important.

"I think it's pretty obvious to see that something is going to happen [to Roberts] and it is not going to be pleasant," he said.

Mitchell feels betrayed. She says her lawsuit now is to win accountability, "not vengeance". And she wants Roberts impeached.

The House oversight committee is investigating the case, including Roberts's retirement on \$203,000 a year for life.

"I want him to take responsibility. I'm tough, but I don't think I will ever be completely okay. I still see a therapist once or twice a week," she said.

"I want other victims to know they are not alone."