

35 years after serial killer's trial, a witness accuses the prosecutor — who became a D.C. federal judge — of rape

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By Michael E.
MillerReporter

Image without a caption

On the evening of Aug. 20, 1980, four youths went running in Liberty Park, a grassy expanse at the heart of Salt Lake City. After a while, 15-year-old Terry Elrod and her close friend Karma Ingersoll fell behind their two older male friends, Ted Fields and David Martin. That's when the two boys jumped out from some bushes to scare the girls.

It was around 10:15 p.m. by the time the four friends left the park. But as they crossed an intersection, gunshots suddenly cracked over the quiet park.

Martin stumbled on one leg and fell. As Fields tried to help his friend, he, too, was shot.

Both men died.

Elrod was struck in the arm by shrapnel but survived. A year later, she took the stand to testify against the man responsible for the double slayings: Joseph Paul Franklin.

Franklin was a white supremacist who had terrified the nation with a string of bombings and sniper shootings. He would eventually admit to more than 20 murders, mostly of African Americans like Martin and Fields. He would also admit to shooting Hustler publisher Larry Flynt, for showing interracial sex, and civil rights activist Vernon Jordan, Jr., who would survive to become one of Washington's most prominent lawyers.

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On the stand in Sept. 1981, Elrod was questioned by a young, handsome prosecutor named Richard Warren Roberts. As an up-and-coming civil rights attorney for the U.S. Department of Justice, Roberts was one of two attorneys in charge of the federal case against Franklin.

Thanks, in part, to Elrod's emotional testimony and Roberts's persuasive arguments, Franklin was convicted.

Thirty-two years later, on Nov. 20, 2013, Franklin was executed in Missouri for another murder. Hours later, Roberts allegedly emailed his former witness regarding the execution.

Since the trial in 1981, Roberts had risen through the legal system to become chief judge of the U.S. District Court for the District of Columbia, arguably one of the most powerful men in the country.

Terry Elrod, now named Terry Mitchell, had overcome a turbulent life to become an artist.

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Instead of comforting her, however, Roberts's 2013 mail did just the opposite.

It reminded her of an alleged crime — just not the serial killer's.

In a stunning lawsuit filed Wednesday in a Utah federal court, Mitchell claims that Roberts repeatedly raped her during the trial 35 years ago.

The lawsuit, first reported by the Salt Lake Tribune, alleges that the then 27-year-old attorney raped and abused his then 16-year-old witness before and during the two-week trial.

“Roberts exploited the psychological and emotional vulnerabilities of sixteen-year-old Mitchell who, as Defendant Roberts well knew, had experienced a lifetime of sexual abuse, grooming, violence, and rape, including a violent, four-hour-long rape just six months earlier, the murder of her two friends as they walked beside her just five months earlier, and tremendous trauma and physical and emotional isolation,” according to the lawsuit.

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Roberts also allegedly threatened her not to tell anyone because it could undo the case against Franklin, the white supremacist serial killer.

“Roberts maintained the secrecy of his abuse by using intimidation, deception, artifice, and the coercive, victim-blaming threat to Mitchell that if anyone discovered Defendant Roberts was engaging in sex acts with Mitchell then a mistrial in the Franklin case would occur,” the complaint says.

Roberts's attorneys call the allegations “categorically false” and say he intends to “vigorously challenge” the allegations in court.

His lawyers did say, however, that the judge had an intimate, consensual relationship with Mitchell.

On Wednesday evening, hours after the complaint was filed, Roberts retired as chief judge of the District's federal court.

Roberts cited unspecified health issues that he said prevented him from continuing to serve on the bench, according to The Washington Post's Ann E. Marimow.

“Roberts acknowledges that the relationship was indeed a bad lapse in judgment,” according to the statement from his attorneys, led by Reid Weingarten. “However, the relationship did not occur until after the trial and had no bearing on the outcome of that trial.”

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The lawsuit is already causing uproar on Capitol Hill.

Minutes after the Tribune broke the news of the complaint, House Oversight Committee Chairman Jason Chaffetz (R-Utah) released a statement saying his panel had already conducted a preliminary review of the allegations after the Utah attorney general recently made the committee aware of “credible evidence of misconduct” by the judge.

The Utah attorney general assigned a former U.S. District Judge, Paul Cassell, to review the office’s findings. In his 187-page report, Cassell found that Roberts did have a sexual relationship with Mitchell during the course of the Franklin trial. But Cassell, the AG’s office and a third judge all determined that it was not statutory rape since the age of consent at the time in Utah was 16. (It is now 18.)

“Under Utah laws as they existed in 1981, she was old enough to be able to consent to the sexual relations,” Cassell wrote in his summary. “And while... Mitchell has alleged some coercion to force her to participate in these sexual relations on the first occasion, it does not appear that these allegations are strong enough to support a criminal prosecution.”

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“In some theoretical sense, this description of the events on the first day could arguably fit the elements of the crime of rape — taking the evidence in most favorable light to a prosecutor,” he continued. “But in terms of a real world criminal prosecution, the case would be impossible to prosecute.”

Roberts has not been charged with any crime.

“Our initial review of the allegations has caused alarm and distress over their serious nature,” Chaffetz said in his statement. “We will work with the House and Senate Judiciary Committees to determine next best steps to ensure justice is served.”

Meanwhile, the woman at the center of the controversy said she filed the \$25 million lawsuit not for the money, but rather to help others.

“Could you have done this to a 16-year-old who had been raped [by someone else] six months before and shot and watched her friends die in the street? Could you do that?” Mitchell told The Post in an interview late Wednesday night. “That’s my question, to anybody that has this ‘bad judgment.’”

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At the same time, Mitchell acknowledged that the 35-year saga was almost too strange to believe.

“This story is so crazy I wouldn’t believe it if it wasn’t my truth,” she said, “if this really didn’t happen to me.”

A racist killing spree

Unbeknownst to Mitchell and her three friends on that August evening in 1980, the man shooting at them was one of America’s most wanted men: a white supremacist who, for three years, had sown terror across the country in an attempt to start a race war.

Born James Clayton Vaughn Jr. to a poor Alabama family and allegedly abused as a child, Franklin’s racial hatred would drive him to become one of the United States’ most prolific serial killers. As a teenager, he was inspired by Adolf Hitler’s manifesto Mein Kampf. Franklin spent his 20s drifting up and down the East Coast waiting for an opportunity to “cleanse the world,” according to [a 1997 New Yorker profile](#). He supported himself by robbing banks and donating blood. In 1976, he changed his name to Joseph Paul Franklin, after Paul Joseph Goebbels and Benjamin Franklin.

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His racist rampage began the following year when the 27-year-old Franklin bombed the Rockland, Md., home of a Jewish lobbyist and a synagogue in Chattanooga, Tenn.

The killings began about two weeks later.

On Aug. 7, 1977, Franklin shot a young interracial couple in a parking lot at East Towne Mall in Madison, Wisc. He then moved to St. Louis, where he hid in some bushes to ambush a bar mitzvah, fatally shooting Gerald Gordon, a 42-year-old father of three, two months later. In February 1978, Franklin attacked another interracial couple, killing the black man and injuring his white wife.

On March 6, 1978, Hustler magazine publisher Larry Flynt and his attorney were shot in Lawrenceville, Ga. Flynt was paralyzed from the waist down. Franklin would later admit to the shooting, saying it was because Flynt produced interracial porn, but was never charged with the crime.

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Franklin’s racist killing spree continued apace across the country. Over the next two years, he shot several interracial couples, many black men and a white prostitute who confessed to having black customers, according to court verdicts and [his own confessions](#).

On May 29, 1980, civil rights activist and National Urban League president Vernon E. Jordan Jr. was shot outside a hotel in Fort Wayne, Ind. Franklin would later be charged with attempted murder and acquitted in court, only to eventually admit to the shooting.

In the summer of 1980, Franklin carried out a trio of shootings, injuring two black teenagers in Cincinnati, killing an interracial couple in Pennsylvania and slaying two female hitchhikers in Virginia after one of them said she had a black boyfriend.

He arrived in Utah on Aug. 10, staying in hotels. Ten days later, he struck.

A horrific hate crime

Although Mitchell was only lightly injured in the Aug. 20 Liberty Park shooting, she was deeply traumatized.

“Mitchell was emotionally and physically isolated after the murders” and became “the target of cruel and devastating attacks and accusations by the media, fellow students, and others in the community,” according to her lawsuit.

Only 15 years old, Mitchell had been raped months before. Local media mistakenly reported that her rapist might have been trying to shoot her, not Fields and Martin, according to her lawsuit. Other reports suggested that her father was involved in the slaying, or that Mitchell had been dating one of the two victims.

Mitchell’s parents were hounded by people, white and black, who blamed her family for the shooting, according to the suit. Mitchell herself was “harassed and degraded at school, where she found written on her locker death threats and abusive language,” including some calling her “race traitor,” “murderer,” and “sniper girl.”

Franklin, meanwhile, was on the run.

On Sept. 24, 1980, he was arrested in Florence, Ky., for stealing a car. Already wanted for questioning in the Salt Lake City shooting, he managed to escape out of police station holding room through an open window.

He was finally arrested for good on Oct. 28, 1980, in Lakeland, Fla., when a blood bank employee recognized his racist tattoos.

Three days later, as states across the country linked him to mysterious sniper shootings, a federal jury in Salt Lake City indicted Franklin for violating the civil rights of Fields and Martin.

Richard Warren Roberts flew out from D.C. to handle the case.

A high-profile trial

Roberts rose from his seat in a Salt Lake City federal courtroom and asked the pretty, 16-year-old witness exactly what happened that day in Liberty Park.

“There was blood all over,” Mitchell said. “Ted kept saying, ‘Run, Terry!’”

Her Feb. 23, 1981, testimony was a key part of Roberts’s case against Franklin. Ten days later, a jury found him guilty — the first in a long series of convictions against the serial killer.

According to Mitchell’s lawsuit, however, by the time the verdict was delivered, the winning prosecutor had been raping Mitchell for weeks.

“He used that trial to gain acceptance in so many places. It opened so many doors,” she told The Post on Wednesday. “He is a f--- hypocrite.”

When Roberts took the case, he split the 67 witnesses with his co-counsel, Steve Snarr, then an Assistant U.S. Attorney.

“Roberts ended up with both of the girls who were jogging with the two male victims,” according to the investigation by the Utah Attorney General’s Office. “It didn’t raise any red flags, because they were dividing up all of the witnesses and it just worked out that way.”

What did raise red flags for Mitchell, however, was when Roberts asked her to come to the courthouse one night before the trial, only for her to find out that he didn’t have any questions for her, according to the lawsuit. Instead, he took her to dinner, where he sat next to her and put his hand on her thigh, according to the suit.

After dinner, Mitchell asked several times to be taken home, even volunteering to walk or take the bus, but Roberts ordered her to come inside his hotel.

“Terry get out of the car. Now!” he said, according to the lawsuit.

“Frightened, intimidated, sensing that something very bad was happening yet wanting to believe that Defendant was not like the other predators in her life, and not feeling she had a choice, Mitchell complied and got out of the car and walked to the hotel lobby with Defendant Roberts,” the complaint continues.

“When he finally had Mitchell in his hotel room, Defendant Roberts locked the door, took off her jacket, began kissing her neck, and said, ‘You aren’t going anywhere until I get a taste of you,’” the lawsuit claims.

The suit claims that Roberts “raped her twice” that night, then again and again over the course of the trial.

“Roberts continued to manipulate and control Mitchell for his own sexual, emotional, and ego gratification throughout the rest of his stay in Salt Lake City before, during, and shortly after the trial,” the lawsuit claims. “Roberts convinced Mitchell that his continued child sexual abuse of her was somehow her fault. He said at times, after placing Mitchell naked in front of a mirror, that he could not stop himself because of how attractive Mitchell was.”

Roberts also passed off the incidents as an “affair,” telling Mitchell that he might break off his engagement to be with her, the lawsuit claims.

When the trial ended, however, Roberts left Utah, never to return.

As Roberts rose through the judicial ranks, Mitchell “repressed all memory of the physical, sexual, and emotional abuse,” according to her complaint.

The two rarely talked over the decades. In one of the few conversations, sometime in the mid 2000s, Roberts kept saying: “We’re good, right?” She said she felt “uncomfortable” afterwards, but wasn’t quite sure why.

“My memory was gone,” she told The Post.

That would allegedly change on the day Franklin was executed.

An email triggers old memories

Joseph Paul Franklin hadn’t been dead long, killed by lethal injection in a Missouri prison, when Mitchell received an email from Roberts about the execution.

“This event triggered the beginning of the release of Mitchell’s memories about her abuse by ... Roberts,” her lawsuit alleges.

She puts it more simply.

“That’s when the memories came back,” she told The Post.

Ever since, Mitchell has been trying to hold the prosecutor turned judge accountable for what she claims he did to her 35 years ago.

On June 24, 2014, she emailed Roberts saying that she had suffered from night terrors and migraines ever since the trial, saying she had been raped and abused by many men. She also talked about their attraction to one another during the trial, and asked why he was attracted to her.

Minutes later, he called her, according to the Utah Attorney General's report. She taped the conversation, during which he admitted to a relationship but said he was “very careful about making sure that... your testimony happened and nothing, you know, physical went on until after you had finished your testimony.”

Mitchell took the tape to the AG's office, which eventually investigated her claims.

Cassell, after reviewing that investigation, concluded that there was “significant evidence that Mr. Roberts did engage in sexual relations” with Mitchell “on multiple occasions under the guise of ‘witness preparation.’ These events are firmly established not only by Ms. Jackson-Mitchell's own report but also by a recorded telephone call between her and Mr. Roberts. Additional witnesses provide generally corroborative information.”

Those witnesses, he said, included her mother, who said she had thought it was “odd about how much time her daughter and Mr. Roberts were spending together, but never questioned it because Mr. Roberts was an important prosecutor and well educated.” Also interviewed was a friend of Jackson-Mitchell, who said Jackson-Mitchell had told her about her “‘affair’” with Roberts and “that the two of them were having sex.” The friend told investigators “it made her sick because Mr. Roberts was 28 while Ms. Jackson-Mitchell was only 16...She said Ms. Jackson-Mitchell became an emotional wreck once she realized she had been taken advantage of by Mr. Roberts.”

While Cassell said “it does not appear that these allegations are strong enough to support a criminal prosecution” — noting that under the law at that time she was “old enough to consent” — he said that sex between a federal prosecutor and one of his witnesses, let alone a 16-year-old witness, has “ethical implications.”

“Mr. Roberts's sexual relationship during trial preparation with... Mitchell, a witness and a minor, very likely constituted a violation of multiple provisions of the Rules of Practice governing lawyers appearing in the federal district court in Utah and the Standards of Conduct for Justice Department employees codified in the Code of Federal Regulations,” he said.

Despite Roberts's retirement on Wednesday, Mitchell said she is not satisfied.

“Not if he gets a pension,” she said.

She called Roberts's claim that the sex was consensual “a lie.” And she said her lawsuit is not about money but “doing the right thing” and inspiring others to do the same.

“I want other victims to not feel like their lives are ruined and they are throw-away people because they were raped and silenced,” Mitchell said.

