

Robert Heyer

Comments to the House Committee on Oversight and Government Reform:

I think it's fair to say that Americans maintain a strong disdain for dirty little secrets, especially when those secrets are being kept by government officials looking to hide poor judgment and questionable actions. The death of Brian Terry in 2010 served as the catalyst that exposed a pattern of poor judgment and questionable actions of several top officials in the Department of Justice, the U.S. Attorney's Office in Arizona and the Bureau of Alcohol, Tabaco and Firearms. Despite Brian Terry's death, the repercussions of the failed gun trafficking investigation known as Operation Fast and Furious were not immediately made known to the American public because government officials were actively trying to keep a dirty little secret.

Good morning Chairman Chaffetz, Ranking Member Cummings and other honorable members of the committee. My name is Robert Heyer. I am the cousin of slain U.S. Border Patrol Agent Brian Terry and Chairman of the Brian Terry Foundation. It has been almost six years since I first appeared before this Committee. When I was here last, the impact of Brian Terry's death was still fresh and the revelation that our government had provided the very weapons to the men that killed Brian was almost too shocking to believe. Over time, I have developed a better understanding of Operation Fast and Furious and the questionable actions of government officials involved in the secret investigation.

My comments to this committee six years ago were tempered because of my strong belief that once the facts of the case were known, our President and Attorney General would move quickly and decisively to fully investigate Operation Fast and

Furious. Back then, I was confident that our leaders would ultimately find and hold those government officials responsible for the many failures of that poorly thought out gun trafficking investigation. Even the members of this committee promised to fully investigate and seek justice in the matter.

Instead, I witnessed a Department of Justice brimming with incompetence and arrogance. I witnessed government officials not interested in the truth or the facts behind an ill-conceived gun trafficking investigation but rather assertively moving to contain the public relations disaster of a U.S. Border Patrol Agent being murdered by drug cartel members carrying weapons provided to them by ATF. Agents in ATF who were privy to this information were expected to be good soldiers and keep their mouths shut. Inconceivably, no one in our government spoke openly about the connection between Operation Fast and Furious and Brian Terry's murder.

Brian Terry's murder was the absolute worst case scenario for those involved in orchestrating this flawed gun trafficking investigation. Just as some ATF agents had warned, a U.S. law enforcement officer had been murdered with weapons allowed to "walk" during that investigation. The immediate reaction by officials in the ATF, the U.S. Attorney's Office and the Department of Justice was to limit the release of information and to ultimately deny the fact that weapons were ever "walked" to straw-buyers working for the Mexican drug cartels. The fact that two assault weapons found at the murder scene were purchased a year earlier by one of the primary suspects in the investigation was deemed extremely sensitive and only discussed among top officials in these three organizations. The Terry Family and I believe that government officials responsible for Operation Fast and Furious were not only trying to contain the political

damage but also were attempting to cover-up the link between the gun running investigation and Brian Terry's murder. This was the dirty little secret that was being kept from the American public.

Over the last six years, we have witnessed a number of examples of clear incompetence and arrogance exhibited by those in ATF, the U.S. Attorney's Office and Department of Justice as they attempted to contain the public relations disaster and distance themselves from the secret gun trafficking investigation that armed Mexican drug cartels with American weapons and ammunition.

At Brian Terry's funeral, then DHS Secretary Janet Napolitano and Commissioner Alan Bersin traveled to Detroit to meet with the Terry family. Despite being the senior government officials present, neither Secretary Napolitano nor Commissioner Bersin chose to display the moral courage needed to inform the family that the two assault weapons found at the scene of Brian's murder had been linked to an active federal gun trafficking investigation being conducted jointly by agents from ATF and the Homeland Security Investigations. It should be noted that these two senior officials had just come back from Tucson, Arizona where they had been extensively briefed on Brian Terry's murder by the head of the FBI in Tucson and the U.S. Attorney's Office in Arizona.

In January of 2011, Brian's public memorial ceremony was held in Arizona. This time, Commissioner Bersin and Arizona U.S. Attorney Dennis Burke traveled to Tucson to meet with the Terry family. Once again, neither official chose to share the horrible information that the men that killed Brian Terry carried weapons provided to them by

ATF. It wasn't until February that the family began to learn the truth. The facts were not provided by government officials, but rather by a lone whistle blower who was alarmed at the lack of transparency surrounding Brian Terry's death. With the exception of this brave ATF agent, no one in government was willing to talk publicly about the dirty little secret known as Operation Fast and Furious and its connection to Brian Terry's murder.

In February of 2011, the family of Brian Terry learned for the first time through a television journalist that the weapons found at the murder scene were connected to a secret gun trafficking investigation. No one in the federal government had ever spoken to the Terry family about this connection. Despite the shocking claims of ATF Special Agent John Dodson, officials in ATF and the Department of Justice continued to deny that guns had been sold to individuals known as straw buyers and that those weapons eventually ended up in the hands of the Mexican drug cartels.

It was then, only after the news media began to publish Agent Dodson's claims that U.S. Attorney Dennis Burke offered to provide information to the Terry Family. In March of 2011, Mr. Burke, traveled to the Terry home in Michigan. When asked about the origin of the weapons found at the murder scene, Burke denied that they were part of Operation Fast and Furious. Instead, he told family members that the weapons found at the murder scene originated from a gun store in Texas.

We now know that this was untrue. We know through emails obtained by this committee that Mr. Burke knew without a doubt on the evening of Brian Terry's death that the two AK-47 style assault weapons found at the murder scene were from Operation Fast and Furious. We know now that on the same day of Brian Terry's death,

DOJ and ATF personnel were scrambling to find and arrest Jaime Avila Jr., the well-known straw buyer of these exact weapons. Despite these facts, no one in government wanted to talk about their dirty little secret with the Terry family or the American public.

In April of 2011, I traveled to Phoenix and received a briefing from the U.S. Attorney's Office on the status of the murder investigation. I was told that the FBI had conducted ballistic tests on the weapons found at the murder scene the bullet recovered from Brian Terry's body. I was told that the FBI had determined without a doubt that neither weapon recovered from the murder scene had fired the fatal bullet. I later obtained the FBI ballistics report from sources outside of Department of Justice, and what the report really says is that the test results were inconclusive due to deformities of the bullet recovered from Brian Terry's body. I have always wondered why the U.S. Attorney in Arizona and his staff were not more precise in their description of that FBI ballistics report.

On February 4, 2011, Assistant Attorney General Ronald Weich presented the now infamous denial letter to Congress, asserting that any claim "that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them to Mexico is false." Weich also said, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." Even today, I find it professionally incomprehensible that Mr. Weich and other Department of Justice officials failed to simply speak with ATF Agent John Dodson and interview him about Operation Fast and Furious. Had these officials chosen to speak with Agent Dodson, they would have learned the truth about gun-walking immediately.

The Department of Justice was forced to send a retraction of its February 4th letter. Then, almost eleven months after Brian Terry's murder, Attorney General Eric Holder finally admitted during Congressional testimony that the flawed tactic of gun-walking was in fact used in Operation Fast and Furious. The Terry's have always wondered why the facts of this investigation had not come to light sooner, especially since U.S. Attorney Dennis Burke knew on the same day that Brian Terry was killed that the weapons found at the murder scene were part of the gun running operation.

It was during this time that Assistant Attorney General Lanny Breuer arrogantly stated that if Brian Terry had not been killed with an Operation Fast and Furious gun he would have been killed by some other gun. I was sickened by Mr. Breuer's comments not only because they were incredibly callous, but also because Mr. Breuer's comments reflected an unprecedented level of arrogance within the Department of Justice at the time. We know now that Mr. Breuer himself received briefings on Operation Fast and Furious and failed to exercise the good judgment and common sense to foresee the public safety ramifications of letting 2,000 military style weapons "walk" to the Mexican drug cartels.

Mr. Breuer's callous comments also failed to take into account that Brian Terry and his team would have used different tactics when trying to apprehend a drug cartel rip crew if they had only known that ATF and the Department of Justice had armed these individuals with state of the art military style assault weapons. If only Mr. Breuer, the DOJ attorneys, and ATF agents had not kept this dirty little secret from the U.S. Border Patrol. I believe that if Brian Terry and his team had known this information, chances are Brian would be alive today. Unfortunately, Brian Terry and his team had no

idea that the rip crew they encountered would be embolden by the weapons that they carried and that the rip crew was ready to use these weapons against U.S. law enforcement.

The most disappointing and demoralizing act of all was in June of 2012 when President Obama asserted executive privilege over the documents being sought by Congressional investigators. The President's order effectively ended the hope of the Terry family to fully understand why the Department of Justice denied gun walking in the first place. My personal disappointment in the President on his decision to invoke executive privilege in this matter continues to this day.

In September of 2012, we read the long-awaited report on Operation Fast and Furious from Inspector General Michael Horowitz. Mr. Horowitz's investigative report identified several Department of Justice employees who bore particular responsibility for the many mistakes made in Operation Fast and Furious. It should be noted that these individuals have continued in their employment with the Department of Justice despite the findings of the Inspector General's report and the death of Brian Terry. Additionally, ATF's own Professional Review Board had recommended termination for at least one of these individuals; yet, ATF leadership failed to act on this recommendation. Instead, these employees were instructed to keep their mouths shut and in return they were provided with private defense attorneys whose fees were paid by American taxpayers.

In 2014, I spoke with the lead FBI Special Agent investigating the murder of Brian Terry. The agent told me that she had not been informed by ATF agents or U.S. Attorney personnel that the weapons recovered from the scene of the murder had been

traced to Operation Fast and Furious. Imagine my shock in learning that members of ATF's Phoenix Field Division and the U.S. Attorney's Office in Arizona kept this important piece of information from the lead investigator in a federal agent's murder. The FBI agent went on to say that she learned of this connection only when the news media began to report the link almost two months after Brian Terry's murder. Incredibly, not even this senior FBI agent was allowed to know this dirty little secret.

Had members of ATF's Phoenix Field Division and the U.S. Attorney's Office in Arizona attempted to keep the details of Operation Fast and Furious and its connection to the murder of Brian Terry from becoming public knowledge? We now know through review of official emails that ATF officials in Phoenix associated with Operation Fast and Furious and members of the U.S. Attorney's Office in Arizona knew on the evening of December 15, 2010 that the two weapons found at the murder scene were directly linked to the gun trafficking investigation by means of weapon trace data. However, this critical information was not passed to the lead FBI case agent investigating Brian Terry's murder.

I also have been witness to a continued pattern of abuse and retaliation directed towards ATF Special Agent John Dodson by members of ATF. Incredulously, senior members of that agency continue to blame Agent Dodson for going public with the information connecting Brian Terry's murder with Operation Fast and Furious. I have watched as other ATF agents who were regarded as "good soldiers" have been promoted while Agent Dodson remains in the same pay grade and shunned by most of the agency.

Ladies and gentlemen, it's time for the dirty little secrets of Operation Fast and Furious to be fully exposed. A number of lingering questions should be asked: why was Operation Fast and Furious initiated and then suddenly concealed by senior members of ATF, the U.S. Attorney's Office and the Department of Justice? Why did the Department of Justice deny that the tactic of gun-walking only to retract that denial weeks later? How many Fast and Furious weapons have been recovered over the last 10 years? How many people besides Brian Terry have been killed or wounded by individuals carrying Operation Fast and Furious weapons? Was there an attempt to keep the link between Operation Fast and Furious and Brian Terry's murder from becoming public knowledge?

We urge the Trump Administration and the Department of Justice to revisit the claim of Executive Privilege as it relates to Operation Fast and Furious. The American public deserves to see the documents previously sealed by executive order and for those documents to be turned over to Congressional investigators. We need all of you, both Republicans and Democrats to exercise your responsibility of oversight in this matter. Brian Terry gave his life protecting the United States and he deserves at the very minimum that we honor his sacrifice by demanding answers to the many questions left unanswered surrounding Operation Fast and Furious... and once and for all putting an end to this dirty little secret.