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May 13, 2016

\* Also Admitted In Wisconsin  
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Honorable Marsh Blackburn  
Chairman  
Select Investigative Panel of  
the Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

Dear Madam Chairman:

In your May 11, 2016 letter, you ask that I answer three questions which I understand to have been posed to me by the Honorable Janice D. Schakowsky, Ranking Member of the Select Investigative Panel.

These questions, as well as their answers, are irrelevant to issues being considered by the Select Investigative Panel at its April 20, 2016 hearing. Indeed, these questions should be irrelevant to any competent, impartial federal prosecutor in determining whether or not there should be, in any case, a criminal investigation and/or prosecution. That other evils, perceived or real, should be solved by violating one of our Nation's criminal laws would result in anarchy.

As proclaimed by the United States Supreme Court in *Berger v. United States*, 295 U.S. 78, 88 (1935):

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper

methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one

Every federal prosecutor I have known is familiar with this Supreme Court declaration and takes it, and the prosecutor's oath of office to, among other things, support and defend the Constitution of the United States very seriously.

With the foregoing in mind, prior to my April 20, 2016 appearance before the Select Investigative Panel, the Select Investigative Panel asked me to opine whether, based on my experience as United States Attorney for the District of Colorado, I believed there to be sufficient credible evidence upon which to determine that there was probable cause to believe that the provisions of 42 U.S.C. § 289g-2 had been violated and, if so, what, if any, steps would I thereupon take.

The relevant statute is quite clear – the central question is whether anyone has profited from the sale of hearts, brains, livers, and other organs harvested from aborted babies. It seems clear from the documents and evidence that the Select Investigative Panel had gathered and made available to me prior to April 20, 2016, as well as the videos other materials I have previously reviewed, that there has been profiteering at multiple levels in this business.

During my testimony and in the answers to questions from Members of the Select Investigative Panel, here is what I attempted to communicate during the brief time I had to present my testimony:

1. A competent, impartial federal prosecutor would, with the help of competent federal criminal investigators, start by analyzing the elements of the offense as set forth in the relevant federal statute. Here, the statute prohibits the harvesting and trafficking of fetal body parts for profit, and provides for criminal penalties (a fine and/or imprisonment) for those who knowingly do so.
2. A competent, impartial federal prosecutor would, with the help of competent federal criminal investigators, then take time to view the videos, both the complete videos and the edited versions of the videos, which had been released by the Center for Medical Progress<sup>1</sup> to determine what the videos in fact depict.
3. These videos, which I have reviewed, depict that selected abortion clinics in, among other states, California, Colorado, and Texas, have admitted to making money by harvesting and trafficking the hearts, brains, lungs, eyes and livers of aborted babies. In addition, the videos and the evidence provided to me by the staff of the Select Investigative Committee prior to the April 20, 2016 hearing, further depict that there is a middleman procurement business involved which buys these organs from aborted babies from the abortion clinic and then sells them to others, including research universities. The values assigned by the abortion clinics and the middleman procurement business almost certainly evidence that there was a profit in these transactions.

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<sup>1</sup> These videos have been available at the Center for Medical Progress's website at <http://www.centerformedicalprogress.org/cmp/investigative-footage/>

4. One of these videos depicts Planned Parenthood Federation of America executive Deborah Nucatola discussing prices for the body parts of aborted babies and stating that Planned Parenthood's abortionists would alter abortion procedures in order to further Planned Parenthood's organ harvesting and trafficking program. These statements appear to be admissions of violations of an element of the relevant criminal statute, *i.e.*, the prohibition against any "alteration of the timing, method, or procedures used to terminate the pregnancy ... solely for the purposes of obtaining the tissue." 42 U.S.C. § 289g-1(c)(4).
5. To refute claims by potential subjects of the criminal investigation that the edited versions of the videos released by the Center for Medical Progress had been so "highly edited as to be unreliable," a competent, impartial federal prosecutor would then engage the services of a forensic analyst to determine if these claims by potential subjects of the criminal investigation had merit. As I testified on April 20, 2016, on Monday, September 28, 2015, such a forensic analysis, prepared by Coalfire Systems, a highly accredited forensic analyst and cybersecurity firm, released its report which demonstrated that the edited versions of the undercover videos released by the Center for Medical Progress showed no evidence of manipulation or "heavy" editing as had been alleged so as to make those edited videos misleading or unreliable. In any event, the unedited versions of the videos, not the shorter edited versions, would be relied upon by a competent, impartial federal prosecutor.
6. In my opinion, based on the foregoing, a competent, impartial federal prosecutor would, with the help of competent federal criminal investigators, would thereupon determine that what was depicted on the complete videos released by the Center for Medical Progress constituted probable cause to believe that the provisions of 42 U.S.C. § 289g-2 had been violated. As a result, a competent, impartial federal prosecutor would thereupon open a federal Grand Jury investigation into these apparent federal crimes. Search warrants, subpoenas, and Grand Jury testimony would be sought and presented. Putative defendants would include, among others, the abortion clinics and the middleman procurement business(es) involved in the harvesting and sale of body parts of aborted babies.
7. Because the details of payments, expenses, costs, and persons involved with any of the actions or monetary transfers would be indispensable in proving that the relevant statute had been violated, it is my further opinion, based on the foregoing, that a competent, impartial federal prosecutor would, with the help of competent federal criminal investigators, cause federal Grand Jury subpoenas to be issued to, among others, these putative defendants and to those entities which ultimately acquire the body parts of aborted babies for financial records from which it could be determined what, if any, profit any of these entities made from the sale of body parts of aborted babies.
8. Should this federal Grand Jury investigation lead a competent, impartial federal prosecutor to conclude that the provisions of 42 U.S.C. § 289g-2 had been violated, a competent, impartial federal prosecutor would thereupon present a proposed indictment to a federal Grand Jury. Should the federal Grand Jury vote to return the indictment,

the indictment would then be pursued as any other federal criminal charge was pursued.

What should be ignored by a competent, impartial federal prosecutor are protestations of innocence by the subjects of a criminal investigation. Thus, a self-serving letter from a potential subject that asserts that the potential subject has not violated any federal law, is meaningless.

What should also be ignored by a competent, impartial federal prosecutor is the fact that the subjects of a federal criminal investigation are politically well-connected. It would make a mockery of our federal criminal justice system to investigate and prosecute those who do not have friends in high places while, at the same time, declining to investigate and prosecute those who do have friends who hold high elective office in our Nation.

What should be recognized is that it is irrelevant that those involved with the Centers for Medical Progress surreptitiously obtained the undercover videos without the knowledge of the subjects of the investigation. Similar methods are regularly used by undercover law enforcement officers. The “facts” on the videos speak for themselves.

What should also be recognized is that, once it became known that a federal criminal investigation was underway, it is highly likely that key witnesses would come forward, either voluntarily or with immunity agreements, to provide corroborating testimony.

Likewise, the answers to the three questions posed by the Honorable Janice D. Schakowsky are also irrelevant to a competent, impartial federal prosecutor. Nevertheless, for what it is worth, my answers to these three questions are as follows:

- 1. Assume that you conducted an investigation and concluded to your satisfaction that no one is profiting from fetal tissue that is made available as a consequence of a legal abortion and that all laws have been followed with regard to donation of that tissue for research purposes. Would you support use of that tissue for research purposes?**

My Answer: No.

- 2. If you answered no to the first question – or otherwise qualified your response in any manner – are there any circumstances for which you would allow fetal tissue research?**

My Answer: No.

- 3. Prominent researchers have highlighted the need for fetal tissue to study and address the impact of the Zika virus on fetal brain development. For example, a leading researcher at the University of Pittsburgh Medical Center recently confirmed that “It is absolutely essential to study Zika infection in human fetal tissue.” Assuming, once again, that all laws related to fetal tissue donation have**

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**been followed, would you support the use of fetal tissue as part of research efforts to analyze and understand the Zika virus? To possibly help identify a cure?**

My Answer: No.

Thank you for your courtesy during the April 20, 2016 hearing. It has been a distinct honor to have been asked to participate in this important investigation. If I may be of further service to you or to the Select Investigation Panel, please do not hesitate to let me know.

Sincerely,

*s/ Michael J. Norton*

Michael J. Norton