

Senator Chuck Grassley
Additional Questions for the Record
Stephen Six, U.S. Court of Appeals for the Tenth Circuit

I understand from your testimony and your written account of events that, generally, you allowed your Assistant Attorneys General to handle the legal actions relating to the prosecution of Planned Parenthood. However, as you rightly concede in your letter, you were the state's chief prosecutor and responsible for overseeing all cases in which your Office was involved, and it was under your name that legal actions preceded. Please address these questions candidly.

- 1. In testimony at your nominations hearing, you said that there was “never any decision on my part to pursue or not pursue” the case against Planned Parenthood. However, in a February 7, 2008, Associated Press article, you are quoted as saying the following in relation to the Planned Parenthood investigation, “That case was closed, and I’m not doing anything to reopen it.”¹ This quotation suggests that you made an affirmative decision to decline to reopen the case. How is this statement consistent with your testimony that you never made any decision whether or not to reopen the case against Planned Parenthood?**

Response: As you may be aware, I was not involved in the investigation and prosecution of Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., which began five years before I became Attorney General of Kansas. My understanding of the events before I became Attorney General is based on information taken from the following Kansas Supreme Court opinions:

Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline, 287 Kan. 372 (2008)

State v. Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., 291 Kan. 322 (2010)

State of Kansas, ex rel, Stephen Six, Attorney General of Kansas v. Anderson, (Kansas Supreme Court Case No. 99,050) The case was dismissed without written opinion. (Attorney General Morrison filed this case and I was substituted in after he resigned and I was sworn in)

Alpha Medical Clinic v. Anderson, 280 Kan. 903 (2006)

I became Attorney General on January 30, 2008. It is my understanding that Attorney General Morrison completed his investigation of Planned Parenthood and closed the case six months before I took office. After becoming Attorney General, I did not re-review any previously closed cases in the office. At the time I took office, the case against Planned Parenthood, previously investigated by the Kansas Attorney General's Office

¹ Hanna, John, AP NewsBreak: AG's office subpoenaed by Tiller grand jury, Associated Press, February 7, 2008.

and closed, was under investigation by a grand jury in Johnson County, Kansas and Johnson County District Attorney Kline was prosecuting that same case.

- 2. When you made the statement quoted by the Associated Press, were you aware of Judge Anderson's determination that Planned Parenthood's records – in his possession as custodian by appointment of the Kansas Supreme Court – appeared to have been manufactured in violation of Kansas criminal law?**

Response: I do not recall being aware of it.

- 3. Given Judge Anderson's concerns, as well as his statements questioning A.G. Morrison's decision to clear Planned Parenthood of wrongdoing, did you or anyone in your office (including the criminal division) reevaluate A.G. Morrison's decision to clear Planned Parenthood of any wrongdoing?**

Response: No. At the time I became Attorney General on January 30, 2008, the office did not re-review any previously closed cases. Additionally at the time I became Attorney General, the case against Planned Parenthood was the subject of a grand jury investigation in Johnson County, Kansas and the case was being prosecuted by District Attorney Kline, also in Johnson County, Kansas.

- a. If yes, what was the evaluation's conclusion?**

Response: Please see the answer to question 3.

- b. If no, why weren't Judge Anderson's concerns -- a District Court Judge with first-hand knowledge of the situation -- considered important enough to warrant a reevaluation?**

Response: Please see the answers to questions 2 and 3.

- 4. I understand that the mandamus actions undertaken by the Attorney General's office against District Attorney Kline (See *CHPP v. Kline*) and Judge Anderson (See *Morrison v. Anderson*) were commenced prior to your appointment. However, as Attorney General, your office continued to pursue these actions. Given the issues mentioned above, did you, or anyone in your office, reevaluate the legal positions taken by A.G. Morrison in these cases? Please explain why or why not. If your office did reevaluate the legal positions please explain the conclusion of that evaluation.**

Response: After I became Attorney General, the Kansas Supreme Court ordered that my office file a brief in each case. The brief that was filed in the case represented the position of the Attorney General's Office. I do not recall re-evaluating any previous position of the Attorney General's Office in coming up with the position taken by my office and filed with the Court. Assistant Attorneys General drafted the briefs and they were filed with my approval. In the mandamus action filed by Planned Parenthood

against Kline, my office sought the return of the file taken by Kline from the Attorney General's Office. It is my understanding that this is the same position taken by Morrison. In the mandamus action against Judge Anderson my office sought Court supervision of the medical records. It is my understanding that Morrison sought to have the records returned to Planned Parenthood.

5. **At your nomination hearing, I asked you whether you were ever pressured by Governor Sibelius or anyone in her administration not to pursue charges against Planned Parenthood. You responded in part, "I never had a discussion with her about any topics or any cases in the Attorney General's office in our criminal division." Did you, or anyone in your office, communicate with anyone in the Governor's Administration about pursuing criminal charges against Planned Parenthood? If so, please explain the nature of those conversations and with whom they transpired.**

Response: I did not discuss the topic of pursuing criminal charges against Planned Parenthood with anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with anyone in Governor Sebelius' administration.

CHPP v. Kline

1. **When you became Attorney General you replaced A.G. Morrison in the mandamus action in *CHPP v. Kline*. A.G. Morrison's mandamus action sought to have D.A. Kline return CHPP's medical records. However, the final brief submitted in your name sought, "each and every copy of those records that [Kline] has made and any and all other evidence Kline developed and obtained while he was acting as Attorney General that he took with him to Johnson County." (*Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline*, 197 P.3d 370, 393 (2008)). If it was not your intent to interfere in any way with D.A. Kline's investigation, why was your request for Mr. Kline to return all the documents, and not simply provide your office with complete copies of all the documents in his possession?**

Response: Former Attorney General Morrison intervened in the mandamus action filed by Planned Parenthood against Kline in July 2007 and sought return of the file containing the materials from the Judge Anderson inquisition taken by Kline when he left the Attorney General's Office. I became Attorney General six months later on January 30, 2008. Pursuant to a Kansas Supreme Court Order my office filed a brief in May 2008 asserting that former Attorney General Kline should return the file as improperly taken State property. It is my understanding that this is the same position previously taken by Morrison. (*Memo of AG Morrison In Support of Pet. for Mandamus*, at 18) ("return any and all evidence produced in response to the now-closed inquisition to the Office of the Attorney General"). The Kansas Supreme Court in *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline*, 287 Kan. 372 (Kan. 2008) ordered Kline to return a copy of the medical records and the investigation file taken

from the Attorney General's Office but permitted him to keep a copy for his criminal case against Planned Parenthood.

2. **It is my understanding that when Mr. Kline left the AG's office, he made copies of the records but deposited the original medical records with Judge Anderson. Furthermore, it is my understanding that AG Morrison was informed of the location of the records within the first few days of assuming office. Is this a correct understanding of the status of the records?**

Response: I became Attorney General more than a year after Attorney General Morrison was sworn in and the activities referenced in the question took place. I do not know the status of the records when Attorney General Morrison took office. The Kansas Supreme Court noted that no inventory of the file was completed when Morrison took office and that no Planned Parenthood records were in the office. *CHPP*, 287 Kan. at 384.

- a. **If so, why was it necessary for you to obtain copies of the records, when you had the originals available to you?**

Response: When I became Attorney General on January 30, 2008, there were not any Planned Parenthood records in the office. Prior to my becoming Attorney General, the Kansas Attorney General's Office had sought the return of the file taken by former Attorney General Kline when he left office. I did not re-evaluate the position taken by the Attorney General's Office that former Attorney General Kline should return the file as improperly taken State property.

- b. **Did you seek to obtain just a return of the records which Mr. Kline obtained while AG, or did you also seek to obtain any other evidence, including evidence he may have obtained as a result of his investigation while in his position as District Attorney?**

Response: My office filed a brief in the *CHPP v. Kline* mandamus action seeking the return of the file created by Kline while he was Attorney General of Kansas.

- c. **Was any of the evidence which Mr. Kline had gathered, other than the original medical records, shared with Planned Parenthood or their attorneys?**

Response: No. It is my understanding that only the medical records were returned to Planned Parenthood's attorneys.

3. **The Kansas Supreme Court ultimately ruled in Mr. Kline's favor on the merits of the case, but ordered him to provide complete copies of all the documents to your office. Had you been successful in requiring Mr. Kline to return all of the documents, wouldn't that have effectively prohibited any case against Planned Parenthood from going forward?**

Response: At the time I became Attorney General a case against Planned Parenthood was going forward before a grand jury in Johnson County, Kansas. The grand jury case against Planned Parenthood continued until March 2008 when the grand jury refused to return an indictment.

My office was not involved in Kline's prosecution of Planned Parenthood in Johnson County, Kansas. The Court's recitation of the facts in *State v. CHPP*, 291 Kan. 322, 338 (2010) show that Kline had access to the Planned Parenthood records from Judge Anderson and that pursuant to Kline's subpoena Judge Anderson testified and brought the records to court. Later in Kline's case, as discussed in *State v. CHPP*, he issued another subpoena to Judge Anderson seeking the Planned Parenthood records that was quashed by Johnson County District Court Judge Stephen Tatum. Kline appealed Judge Tatum's order and in *State v. CHPP*, 291 Kan. 322 (2010), the Kansas Supreme upheld portions of the order and reversed portions of the order and allowed Judge Anderson to produce the Planned Parenthood records. *State v. CHPP*, 291 Kan. at 363.

a. If so, do you believe this result would have been in the interest of justice, considering Judge Anderson's concerns about "manufactured records"?

Response: As discussed in the answer to question 3, the case against Planned Parenthood was being investigated by a grand jury. As district attorney, Kline had subpoena power and pursuant to Kline's first subpoena, Judge Anderson brought the Planned Parenthood records to court in Kline's criminal proceedings. Kline again exercised his subpoena power to obtain the records later in the case and the district court quashed his subpoena.

4. Did you, or anyone in your office, have a conversation with anyone representing Planned Parenthood or any representative of Planned Parenthood regarding your brief filed in *CHPP v. Klein*? If so, please explain the nature of those conversations and with whom they transpired.

Response: I did not have any conversations with Planned Parenthood's attorneys or any representative of Planned Parenthood on this topic. I do not recall anyone in my office telling me they had conversations with Planned Parenthood's attorneys or any representative of Planned Parenthood about the brief filed by the Kansas Attorney General's Office.

5. Did you, or anyone in your office, have discussions with then Governor Sibelius, or anyone in her Administration concerning the mandamus actions against D.A. Kline? If so, please explain the nature of those conversations and with whom they transpired.

Response: I did not discuss the topic of Planned Parenthood's mandamus action against former Attorney General Kline with Governor Sebelius or anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with Governor Sebelius or with anyone in Governor Sebelius' administration.

Morrison v. Anderson

- 1. When you became Attorney General you also replaced former A.G. Morrison in his mandamus action to require Judge Anderson to turn over the CHPP medical records in his custody. Were you, or members of your office, aware of Judge Anderson's statement that to return the documents obtained from Planned Parenthood, as you requested, "would unacceptably increase the risk that evidence could be lost, destroyed or compromised...it is difficult to understand how this could benefit the citizens of Kansas"?**

Response: I was not aware of Judge Anderson's statement. I do not recall anyone in my office discussing Judge Anderson's statement with me.

- a. If so, did your office take into account Judge Anderson's concern in your continuation of the mandamus action? Please explain why or why not.**

Response: Morrison filed the mandamus action against Judge Anderson six months before I became Attorney General. It is my understanding that Morrison sought to have the medical records returned to Planned Parenthood.

In the mandamus action against Judge Anderson, my office sought Kansas Supreme Court supervision and protection of these records. The motion suggested that the Court consider quashing the subpoena issued by Kline and leaving the records with Judge Anderson during the pendency of the mandamus case, placing the records in the custody of the Clerk of the Supreme Court or with District Court Judge Stephen Tatum who was assigned to the criminal case against Planned Parenthood. Any of these actions would, in my view, protect the records.

- 2. Did you or anyone in your office have a conversation with anyone representing Planned Parenthood or any representative of Planned Parenthood about seeking a judicial order compelling Judge Anderson to return the medical records in his possession? If so, please explain the nature of those conversations and with whom they transpired.**

Response: Former Attorney General Morrison intervened in the mandamus case against Judge Anderson seeking return of the medical records in July of 2007, six months before I took office. After I became Attorney General on January 30, 2008, I did not speak with anyone representing Planned Parenthood or any representative of Planned Parenthood about this topic. I do not recall anyone in my office telling me they spoke with anyone representing Planned Parenthood or any representative of Planned Parenthood about the mandamus action against Judge Anderson.

- 3. Did you, or anyone in your office, have discussions with then Governor Sibelius, or anyone in her Administration, concerning the mandamus action against Judge**

Anderson or the eventual emergency protective order sought by your office? If so, please explain the nature of those conversations and with whom they transpired.

Response: The mandamus case against Judge Anderson was filed under seal. I did not discuss the topic of the mandamus action against Judge Anderson or the motion for a protective order with Governor Sebelius or with anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with Governor Sebelius or anyone in Governor Sebelius' administration.

- 4. During his investigation, Mr. Kline issued a subpoena to Judge Anderson to testify at a hearing regarding Planned Parenthood. Based on unsealed court documents, Judge Anderson notified the Kansas Supreme Court of the subpoena and that he intended to comply with it unless directed otherwise by the Court. *Six v. Morrison*, No. 07-099050-S (2008), Notice of Collateral Proceeding and Receipt of Subpoena for Records. The same day, you sought an emergency protective order to quash the subpoena. Is it common practice for the State Attorney General to interfere with subpoenas and requests for evidence by local prosecutors? If so, can you provide any examples of other cases where Attorney General has done so?**

Response: The Kansas Attorney General's Office filed the motion for the protective order to ensure that the Kansas Supreme Court was aware of the subpoena directed to the records that were the subject of the mandamus case against Judge Anderson pending before the Court and to ensure that any further movement of the records took place under the supervision of the Court. The motion suggested that the Court consider quashing the subpoena, placing the records in the custody of the Supreme Court Clerk during the pendency of the mandamus case against Anderson, or placing the records in the custody of Judge Stephen R. Tatum who was handling the criminal case filed by Kline against Planned Parenthood in Johnson County. The Kansas Attorney General's Office believed that any of these actions would have provided Court supervision and protection of the records.

- 5. You cited privacy concerns in your emergency protective order request. You similarly alluded to such concerns in your testimony before the Committee and in the written statement you provided to me. But, it is my understanding that the medical records were redacted to remove any identifying information pursuant to a previous court order. Is this accurate?**

Response: The Kansas Attorney General's Office believed that the records contained information that could be used to identify a patient. Judge Anderson noted the redacted records could be used to identify a patient and the Kansas Supreme Court noted this risk of disclosure of patient privacy from the redacted records in *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc.*, 291 Kan. 322, 363 (2010).

- a. When were the medical records first redacted, and by whom?**

Response: I do not know. When I became Attorney General there were not any Planned Parenthood records in the office.

- b. If the records where redacted to remove patient identification information, how did they pose privacy concerns?**

Response: Please see the answer to 5.

- 6. Do you agree with Judge Anderson's assessment that the medical records obtained from the abortion clinics in Kansas pursuant to subpoenas requested by former Attorney General Phil Kline were redacted of identities even beyond the requirements of HIPPA? See *Morrison v. Anderson*, Case No. 07-99050-S (response of Judge Richard Anderson to Petitioner Attorney General Paul J. Morrison's Petition for Writ of Mandamus) (footnote 1).**

Response: I have never reviewed the records. I have no reason to disagree with Judge Anderson's assessment.

General Questions

- 1. It has been reported that between 2002 and 2003, Kansas abortion providers drastically underreported incidents of child sexual abuse/statutory rape, filing only 2 reports of child sexual abuse despite performing 166 abortions on children 15 years old or younger. Did you take any action to support or initiate an investigation into this apparent underreporting? If so, what action did you take?**

Response: After I became Attorney General in January 2008, I am not aware of the Kansas Attorney General's Office conducting such an investigation.

- 2. Did your office have access to reports provided by abortion providers under K.S.A. 65-445 to the Kansas Department of Health and Environment?**

Response: After I became Attorney General on January 30, 2008, I am not aware of my office seeking access to any reports under K.S.A. 65-445. The statute provides that the reports may be disclosed to the Attorney General's Office on a showing that reasonable cause exists to believe a violation of the Act occurred.

- 3. Are the reports provided by abortion providers under K.S.A. 65-445 redacted of patient identities?**

Response: I have never reviewed any such reports. The statute, K.S.A. 65-445, provides that the reports should not contain the patient's names.

- 4. Is it accurate to say that one of the reasons that Kansas's law requires such reports is to ensure compliance with Kansas's abortion restriction laws?**

Response: Yes.

- 5. Did you ever receive a request from a District Attorney to assist in gaining access to those reports in order to move forward with a pending criminal case? If so, what was your response and why?**

Response: I do not recall anyone discussing such a request with me. If a request was made in a criminal case by a District Attorney it likely would have been handled by the Assistant Attorneys General in the Criminal Division.

- 6. Did you, or anyone in your office, discuss the criminal proceeding against Planned Parenthood with Kansas Department of Health and Environment staff? If so, please explain what these discussions entailed.**

Response: I did not discuss criminal proceedings against Planned Parenthood with Kansas Department of Health and Environment staff. I do not recall anyone in my office telling me they discussed criminal proceedings against Planned Parenthood with Kansas Department of Health and Environment staff.

- 7. Did you, or anyone in your office, ever seek to prevent Kansas Department of Health and Environment staff from working with law enforcement officers or District Attorney Office's in investigations pertaining to violations of Kansas's abortions laws?**

Response: I did not seek to prevent Kansas Department of Health and Environment staff from working with law enforcement officers or a District Attorney's office. I am not aware of anyone in my office doing so.

- 8. What is your understanding of the state of the law in Kansas, as enunciated by the State Supreme Court regarding who can enforce Kansas abortion law? Can a District Attorney do so, or is it limited to the AG's office? It seems the Supreme Court has taken contrary views on this issue. Can you provide any clarification?**

Response: My understanding is that the Kansas Attorney General's Office does not have original criminal jurisdiction for criminal cases. The Kansas Attorney General's Office is required to be asked by a district or county attorney to assume jurisdiction in a case in order to become involved as prosecutors.