

*The following response to the December 8, 2014 “Interim Report” commissioned by Democrats on the New Jersey Legislative Select Committee on Investigation was authored within 24 hours after receipt of that “Interim Report”:*

One of the fundamental risks inherent in a legislative “interim report” involves announcing as “fact” matters upon which a public body has not completed taking testimony.

Democrats on the New Jersey Legislative Select Committee on Investigation hired the authors of their December 8, 2014 “Interim Report” to serve as attorneys, not as soothsayers or empaths. Unfortunately, that report repeatedly asserts as “fact” matters upon which no evidence presently exists, entering into the realm of rank speculation that, presumably, was the mission of the Select Committee to dispel.

For example, the very first paragraph of that “Interim Report” avers that the George Washington Bridge lane reassignments were “set in motion” via an email from Bridget Kelly. That conclusion is not-self evident, nor is it supported by testimony from anyone with actual knowledge as to what set the events in motion. We note that, at the outset of the events, William Stepien, before asserting a right to silence, alluded to having seen such a proposal from David Wildstein well prior to the implementation. Mr. Wildstein’s response to Ms. Kelly’s email tends to support the idea that this project had been discussed well prior to the date cited in the report.

A seemingly trivial detail such as this demonstrates the inherent danger attendant to arriving at conclusions in the absence of evidence. No less an authority than Sherlock Holmes once noted, “It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.”

The “Interim Report” demonstrates, in spades, the merits of withholding judgment until one possesses sufficient data upon which to base an accurate assessment.

When we first commenced this investigation, many of us suggested an expedited process, requesting that the process be completed within three to six months. Unfortunately, the inability to secure the testimony of the most important witnesses complicated this calculus. Despite our inability to call, as witnesses, the only people with direct knowledge of events, we embarked on a process of compelling the testimony of those with only the most tangential involvement and with little or know personal knowledge of events. The results of those hearings were entirely predicable: lengthy, essentially useless hearings, producing essentially no relevant information. It rapidly became apparent that these hearings served no public purpose, but, with the involvement of Federal prosecutorial authorities, securing testimony from the crucial witnesses became impossible.

Even before we formed the Select Committee, the “what happened” was already patent. Indeed, the “whodunit” was fairly clear, but, to the extent that issue was ever in doubt, the committee process served the public interest by essentially putting to rest all but the

most ideologically blinkered speculation respecting the identity of the participants. The only issue which remains outstanding, then, involves the motivation of the architects.

That motivation remains unclear, and despite media assertions to the contrary, there exists no compelling evidence that the lane reassignments were “politically motivated.” It remains entirely possible – indeed, counsel’s Lt. Thomas “Chip” Michaels interview memorandum seems to indicate – the idea to reassign access lanes came from Mr. Wildstein, that he sincerely believed that such reassignment served the public interest, and that subsequent e-mail banter represented nothing more than schadenfreude.

Here, of course, we lapse into speculation. Those (perhaps ideologically) inclined to ascribe ill motivations to those involved might scoff, but the simple fact is that without the testimony of the only four people on the planet who might, conceivably, possess information about the motivation, there exists no way to authoritatively determine those motivations.

The Select Committee, as an arm of the Legislature, exists to investigate for the purposes of informing legislative policy making. Knowledge of the operative facts might, conceivably, assist the Legislature to adjust policy. Too, since the Port Authority of New York & New Jersey has long been something of a rogue agency, well-meriting legislative scrutiny and sorely in need of fundamental reform, to the extent that this investigation enables the Legislature to craft suitable reforms to ensure that the Port Authority acts in the interests of the people of New Jersey, it serves a salutary purpose.

It has never been entirely clearly why the motivation of the people involved in the lane reassignment fiasco should matter to the Legislature. Certainly, simple intellectual curiosity, discovering the motivation, presents an interesting question. But it is not obvious that further pursuit of the answer to that question merits the substantial expenditure of public funds required to secure it.

At times, the Republican Select Committee members worried that the essential investigative purpose of the committee was being subsumed into a quasi-impeachment process, or that elements of a criminal prosecution threatened to deflect the focus from a proper investigation attendant to legislative policy making. Throughout the exhaustive, expensive, media-saturated hearings, we continued to abide the calling of witnesses who might actually further the goal of better informing legislative decision making. Unfortunately, the process seemed more designed for the cameras than to guide us in drafting good legislation.

After a lengthy hiatus, and with no apparent rationale, we are asked to endorse the Democrats' "Interim Report" which does very little other than to rehash an already well known time line, rife with speculation, and which concludes by asking the questions this committee was purportedly created to answer. All of which begs the ultimate question: why issue an interim report at all?

If the issue of “why” remains important, only the testimony of the four or five absent witnesses can resolve it. In that case, the issuance of any report, pending the disposition of the federal investigation and possible testimony by those witnesses, is most curious.

Alternatively, if we, as a committee, decide that knowing the rationale of the individuals involved in the decision making, serves no legislative purpose, not only does that call our entire undertaking into question, but the report should be final, and the committee should either move on to investigate other matters of legislative concern – which, of course, are legion – or disband. (Presumably, in either case, there exists no rationale for continuing to pay taxpayer dollars to a Chicago-based law firm, as counsel in the state Office of Legislative Services is completely capable of handling the routine investigations upon which this committee might embark).

Simply put, either the Select Committee's George Washington Bridge inquire should continue, likely abiding the termination of the federal investigation, or it should end. In either case, the issuance of the “Interim Report” makes absolutely no sense whatsoever.