MARINO, TORTORELLA & BOYLE, P.C.

ATTORNEYS AT LAW
437 SOUTHERN BOULEVARD
CHATHAM, NEW JERSEY 07928-1488
TELEPHONE (973) 824-9300
FAX (973) 824-8425

KEVIN H. MARINO
JOHN D. TORTORELLA*+
JOHN A. BOYLE*
ROSEANN BASSLER DAL PRA*

*ALSO ADMITTED IN NEW YORK
+ALSO ADMITTED IN PENNSYLVANIA
e-mail: kmarino@khmarino.com

April 2, 2014

VIA EMAIL

Randy M. Mastro, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

Re: *Demand for Correction Of Report*

Dear Mr. Mastro:

We write to demand that you immediately correct two false and misleading statements — one of fact and one of law — regarding our client William Stepien that are contained in the document entitled *Report Of Gibson, Dunn & Crutcher LLP Concerning Its Investigation On Behalf Of The Office Of The Governor Of New Jersey Into Allegations Regarding The George Washington Bridge Lane Realignment And Superstorm Sandy Aid To The City Of Hoboken* (the "Report"), which is dated March 26, 2014, and was published to the world on March 27, 2014. We make this demand privately in the first instance in the hope that you will recognize the validity of our objections and take swift and appropriate corrective action without the need for public confrontation. Specifically, we envision a brief statement by your office acknowledging and correcting the Report's factual and legal inaccuracies regarding Mr. Stepien. Such a statement would go a long way toward restoring Mr. Stepien's standing in the community, which has been severely compromised by those inaccuracies. Absent such correction of the Report, we will be compelled to take such public steps as are necessary to rehabilitate his reputation. Given the importance of this matter to Mr. Stepien, we respectfully urge you to give it your immediate attention.

First, we demand that you retract the statement, contained at Page 126 of the Report, that Mr. Stepien falsely assured Governor Christie that he (Mr. Stepien) had no "prior knowledge of the [GWB] lane realignment."[1] At Page 94, the Report itself acknowledges — albeit obliquely — that Mr. Stepien advised Governor Christie on December 12, 2013, that he (Mr. Stepien) ***did***

[1] Report at 126 ("[T]he Governor, having been 'assured' that his senior staff and Stepien had no involvement, told the press that day that none of them had any prior knowledge of the lane realignment. The Governor and his senior staff accepted Kelly's and Stepien's assurances, which were later revealed to be false.")

have prior knowledge of the lane realignment.[2] Indeed, that acknowledgement was entirely consistent with the Report's earlier findings that "Wildstein first approached Stepien about this idea to realign the Fort Lee toll lanes"[3] and that "Stepien, who was no longer a State employee at the time, sidestepped the question, telling Wildstein he would have to go to 'Trenton,'"[4] and its subsequent statement that "Wildstein communicated the concept of a traffic study, which Stepien apparently dismissed as one of Wildstein's '50 crazy ideas.'"[5] It is also consistent with the Report's statement that, upon publication of the emails on January 8, 2014, "[Michael] DuHaime considered the newly disclosed emails to be consistent with what Stepien had told him earlier: that Stepien had sidestepped the traffic study issue when Wildstein first mentioned it."[6] To state, as the Report does at Page 126, that Mr. Stepien lied to Mr. Christie — a man to whom he was unshakably loyal and unfailingly honest throughout their relationship — is reprehensible regardless of your motive for doing so. It is also actionable. We insist that you retract it now.

Second, we demand that you correct your demonstrably false legal assertion that an adverse inference can be drawn from Mr. Stepien's invocation of the Fifth Amendment in response to the subpoena of a legislative committee. That misstatement of law, which engendered a similar error by the Governor at his March 28th press conference, presented Mr. Stepien in a false and damaging light. That error is particularly damning when one considers

---

[2] Report at 94 ("The Governor asked Stepien to meet with him after the breakfast to discuss a few issues, and they met in the dining room following breakfast. During that meeting, Governor Christie asked Stepien what, if anything, he knew about the lane realignment. Stepien denied having any involvement in the lane realignment decision or its implementation. Rather, Stepien told the Governor that Wildstein would come to him with '50 crazy ideas a week,' and that Stepien would remind Wildstein that Stepien was not in the Governor's Office anymore, so Wildstein would have to run his ideas through the normal channels at the Governor's Office."). There is no dispute that at that December 12, 2013 meeting, Mr. Stepien informed the Governor that the proposed "lane realignment" was one of Mr. Wildstein's "50 crazy ideas." Otherwise, his quoted reference to those ideas and how he responded to them would have been entirely irrelevant to the Governor's inquiry.

[3] Id. at 3.

[4] Id.

[5] Id. at 116.

[6] Id. at 104; see also id. n.606 ("At some point during December 2013, Stepien told DuHaime that Wildstein had also come to him beforehand with this idea to do a traffic study, but Wildstein was constantly coming to Stepien with 'crazy ideas,' and Stepien sidestepped Wildstein's idea, telling Wildstein that Stepien was no longer in the Governor's Office, so Wildstein would have to take his idea to 'Trenton.' DuHaime came away from that conversation believing that Stepien had not done anything wrong, and that Stepien was not involved in the lane realignment decision. DuHaime believes that he eventually conveyed this information to the Governor, although he was unsure when.").

that it was delivered by a talented team of former Assistant United States Attorneys, writing what is billed as an objective report that the press and the public at large are expected to accept as authoritative and reliable. As you well know, when the Fifth Amendment is in issue, an adverse inference is permissible (a) ***within a particular civil case*** (b) ***only at the close of discovery*** and (c) ***only to the extent the witness refuses to testify in response to probative evidence offered against him in the case.*** Even when such an inference is permitted in a particular civil case, the same inference can **never** be imported into another legal proceeding, let alone to an "internal investigation" such as the one at issue here, to which the concept of an adverse inference is wholly foreign. Accordingly, we demand that Gibson Dunn retract its statement that an adverse inference can be drawn against Mr. Stepien and make clear that, to the contrary, no legal conclusion can fairly be drawn — in this investigation or elsewhere — from Mr. Stepien's refusal to produce documents in response to a subpoena from the New Jersey Legislative Select Committee on Investigation[7] or his decision not to speak with Gibson Dunn investigators.

Coming, as it does, in the context of a report devoid of evidence that Mr. Stepien was involved in the origination, planning, execution, or concealment of the lane closure conspiracy, your false assertion that an adverse inference can be drawn from his invocation of the Fifth Amendment in response to the Select Committee's subpoena, like your gratuitous reference to his relationship with Bridget Anne Kelly, is a transparent and misguided attempt to justify the errant and wrongful termination of his consultancy with the Republican Governor's Association and the equally unwarranted rescission of his nomination to head the New Jersey Republican Party. For that reason — and because the Report was prepared and published by a team of lawyers whose impeccable credentials themselves lend particular credibility to its conclusions of law — we provide you with the following detailed explanation of the legal infirmity of your assignment of an adverse inference to Mr. Stepien's exercise of his Fifth Amendment rights in response to the Select Committee's subpoena.

As a threshold matter, because the Gibson Dunn investigation was not a "proceeding" — either civil or criminal — under any meaning of the term, the concept of an adverse inference is inapposite to that investigation. Moreover, Mr. Stepien's decision not to be interviewed by Gibson Dunn — the same decision apparently also made by Port Authority Executive Director David Samson and his law firm, Wolff & Samson — is not akin to a litigant's invocation of the Fifth Amendment privilege as a basis for refusing to provide documents or testimony. None of the policy rationales that permit an adverse inference under certain circumstances in fairness to opposing litigants at the end of a civil case obtain in this setting. Thus, the Report's conclusion that "adverse inferences can appropriately be drawn"[8] in the context of the investigation from Mr. Stepien's assertion of his Fifth Amendment privilege in response to the Select Committee's subpoena is not correct.

---

[7] Referred to throughout as the "Select Committee."

[8] Id. at 10.

The United States Supreme Court has long recognized that the Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings."[9] Mr. Stepien invoked the Fifth Amendment and its state-law analogue in responding to the Select Committee's subpoena in reliance on the settled principle that "one of the Fifth Amendment's 'basic functions . . . is to protect innocent men . . . who otherwise might be ensnared by ambiguous circumstances.'"[10] Recognition that the Fifth Amendment protects the innocent and guilty alike has given rise to the corollary principle that in a criminal case, it is constitutional error to permit a jury to draw an inference of guilt from a defendant's failure to testify about facts relevant to the case.[11] The law is settled that the "government cannot penalize assertion of the constitutional privilege against compelled self-incrimination by imposing sanctions to compel testimony which has not been immunized."[12]

While not questioning that principle, the Report deems it irrelevant, relying primarily on S.E.C. v. Graystone Nash, Inc., 25 F.3d 187 (3d. Cir. 1994), for the proposition that reliance on the Fifth Amendment may give rise to an adverse inference against a party in a civil case under appropriate circumstances.[13] But the reasoning in Graystone demonstrates precisely why that evidentiary principle has no application here. In Graystone, the defendants in a Securities and Exchange Commission enforcement action invoked their Fifth Amendment rights not to respond to questions regarding their participation in stock transactions under investigation during depositions by the SEC in that action.[14] The district court granted the SEC's motion to preclude the defense and for summary judgment based in part on that invocation, but the Third Circuit reversed.

Although the Third Circuit recognized the general proposition (in the passage from the opinion cited in the Report) that an adverse inference could be drawn against a party invoking

---

[9] Lefkowitz v. Turley, 414 U.S. 70, 77 (1973).

[10] Ohio v. Reiner, 532 U.S. 17, 21 (2001).

[11] Baxter v. Palmigiano, 425 U.S. 308, 317 (1976) (citing Griffin v. California, 380 U.S. 609 (1965)).

[12] Lefkowitz v. Cunningham, 431 U.S. 801, 806 (1977).

[13] Report at 10 & n.87; id. at 118 & n.679. The Report also cites but does not discuss In re Grand Jury, 286 F.3d 153 (3d Cir. 2002) (incorrectly cited in the Report as 286 F. Supp. 153). Other than citing Baxter and Graystone for the general proposition that reliance on the Fifth Amendment may give rise to an adverse inference, In re Grand Jury does nothing to support the Report's position. The case addressed the question of whether a federal grand jury could subpoena documents covered by a protective order in a civil case.

[14] Graystone, 25 F.3d at 189.

the Fifth Amendment in a civil action,[15] it went on to emphasize that the Constitution "limits 'the imposition of any sanction which makes assertion of the Fifth Amendment "costly."'"[16] The court stressed that the Federal Rules of Civil Procedure expressly provide for withholding responsive materials based on a proper claim of privilege, stating that "[a] refusal to respond to discovery in such circumstances is proper and does not justify the imposition of a sanction.[17] Thus, while inferences based on the assertion of the privilege are permissible at the conclusion of a civil action, the entry of a judgment based only on the invocation of the privilege and "without regard to the other evidence" exceeds constitutional bounds.[18] For the same reason, because a plaintiff may not rest a judgment on a defendant's constitutionally protected silence alone, a valid claim of privilege in response to the allegations of a complaint at the outset of a case must not be treated as an admission of those allegations.[19] In other words, permitting an adverse inference is one way for a court to be fair to other litigants when faced with a defendant's silence at the end of discovery, but even then silence alone will not support an adverse decision.[20]

The Graystone court discussed at great length the fairness considerations that inform a decision to permit an adverse inference in some cases, viz., "a party's invocation of the privilege . . . does not take place in a vacuum; the rights of the other litigant are entitled to consideration as well."[21] Thus, the purpose underlying the allowance of an adverse inference in civil cases is equitable, not punitive, and serves to vitiate the prejudice to the party denied discovery by invocation of the privilege.[22] Where, as here, there is ***no adversarial proceeding***, there has been

---

[15] Id. at 190

[16] Id. (citing Spevack v. Klein, 385 U.S. 511, 515 (1967) (quoting Griffin v. California, 380 U.S. 609, 614 (1965))).

[17] Id. at 190-91 (citing Wehling v. Columbia Broadcasting Sys., 608 F.2d 1084, 1087 (5th Cir. 1979).)

[18] Baxter, 425 U.S. at 318.

[19] National Acceptance Co. v. Bathalter, 705 F.2d 924, 932 (7th Cir. Ill. 1983); LaSalle Bank Lake View v. Seguban, 54 F.3d 387, 391 (7th Cir. Ill. 1995) ("deeming an allegation of a complaint to be admitted based on the invocation of the Fifth Amendment privilege without requiring the complainant to produce evidence in support of its allegations would impose too great a cost and exceed the authorization of Baxter.")

[20] Graystone, 25 F.3d at 191 (citing Baxter, 425 U.S. at 317-18); LaSalle Bank, 54 F.3d at 391 (7th Cir. 1995) ("[E]ven in a civil case a judgment imposing liability cannot rest solely upon a privileged refusal to admit or deny at the pleading stage. . . . The entry of judgment based only on the invocation of the privilege and 'without regard to the other evidence' exceeds constitutional bounds.").

[21] 25 F.3d at 191.

[22] See United States v. 4003-4005 5th Ave., 55 F.3d 78, 82-83 (2d Cir. 1995).

no discovery within the meaning of the state or federal rules, and there is ***no prejudice*** to any party from Mr. Stepien's decision not to participate in the Gibson Dunn investigation, the equitable reasons for permitting the fact finder to draw an adverse inference at the conclusion of a civil case is wholly and demonstrably inapplicable.[23]

Nor does the Report provide any support for its conclusion that the adverse inference permissible in a civil case under certain circumstances can properly be drawn in the context of this investigation. In SEC v. J.W. Barclay & Co., Inc., 442 F.3d 834 (3d Cir. 2006), the Third Circuit examined the question of what constitutes an "action," noting initially that *Black's Law Dictionary* very broadly "defines an 'action' as any 'civil or criminal judicial proceeding."[24] Citing commentary from *Black's*, the court went on to provide a more detailed analysis of the term:

> An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.[25]

There is no question that Gibson Dunn's investigation does not meet this or any other definition of an action, civil or criminal, because: (a) it is not a proceeding in a court of justice; (b) it does not involve one party prosecuting another for enforcement or protection of a right, redress or protection against a wrong or punishment for some public offense; and (c) it did not and could not result in a judgment or decree.[26] To the contrary, it was nothing more than an

---

[23] Cf. SEC v. Huttoe, No. 96 Civ. 2543, 1998 U.S. Dist. LEXIS 23211, at *50 (D.D.C. Sept. 14, 1998) ("The Court is not, however, required to draw an adverse inference based on an individual's exercise of his Fifth Amendment right not to testify. It is in the Court's discretion whether to draw such an adverse inference, and the Court declines to do so in this case. To do so where, as here, the government seeks to compel testimony from an individual against whom a collateral criminal action is pending would be to undermine the very purpose of the Fifth Amendment and to penalize those who assert their rights under that Amendment.").

[24] J.W. Barclay, 442 F.3d at 844 n.16.

[25] Id. (quoting *Black's Law Dictionary* 31 (8th ed. 2004) (quoting 1 Morris M. Estee, Estee's Pleadings, Practice, and Forms § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885)).

[26] Significantly, when Mr. Stepien did invoke his Fifth Amendment rights — in response to the subpoena *duces tecum* served on him by the Select Committee — he did not do so in the context of a civil action.

internal investigation into alleged misconduct conducted by a private law firm at the behest of the Office of the Governor and at the expense of the taxpayers. As a result, even if Mr. Stepien had invoked his Fifth Amendment rights when asked to participate in Gibson Dunn's investigation — rather than, as he did, simply declining to do so — that invocation would not have triggered the evidentiary principle of an adverse inference.

It also bears noting that even in those circumstances where it is appropriate to draw an adverse inference from a party's refusal to testify when confronted with probative evidence in a particular civil case, it is **never** permissible to draw the same inference in a separate proceeding, as the Report attempts to do here.[27] In Fujisawa Pharm. Co. v. Kapoor, for example, a pharmaceutical company sued a doctor for alleged RICO violations in connection with allegedly false submissions he made to the FDA. Prior to trial, the doctor moved in limine to bar evidence that he previously invoked his Fifth Amendment right to remain silent before a congressional subcommittee that was investigating the generic-drug approval process.[28] Although the court recognized that it was permissible to draw an adverse inference in a civil action under Baxter, it held that "this rule applies to Fifth Amendment invocations that take place in the proceeding at hand, not in a separate proceeding."[29] As the Fujisawa court pointed out, Baxter was predicated on the idea that an adverse inference could be drawn against parties in civil actions "'when they refuse to testify in response to probative evidence offered against them.'"[30] Here, Gibson Dunn made no allegation that Mr. Stepien was compelled to cooperate in its investigation (nor could it have), and the investigators confronted him with no evidence that required explanation. Baxter makes clear that his silence in this context is not an event from which any adverse inference could be drawn.

In all events, Mr. Stepien never invoked his Fifth Amendment rights when declining to be interviewed by or provide documents to Gibson Dunn. Your team requested that he submit to an interview in a letter dated February 4, 2014.[31] By letter dated February 6, 2014, I advised you that "Mr. Stepien respectfully declines to be interviewed by or provide documents to your investigators."[32] In so doing, I did not raise Mr. Stepien's Fifth Amendment privilege as a basis

---

[27] Fujisawa Pharm. Co. v. Kapoor, No. 92 Civ. 5508, 1999 U.S. Dist. LEXIS 11381, at *28 (N.D. Ill. 1999) (citing National Acceptance Co. v. Bathalter, 705 F.2d 924, 929-30 (7th Cir. Ill. 1983)).

[28] Id. at *27.

[29] Id. at *28 ("Dr. Kapoor's invocation of the Fifth Amendment came in March 1991 during a congressional hearing that was prior to and separate from the instant case. Further, the questions put to Dr. Kapoor during that hearing are not "evidence" within the meaning of Baxter.")

[30] Id. (quoting Baxter, 425 U.S. at 318).

[31] Letter from Randy M. Mastro to Kevin H. Marino dated February 4, 2014.

[32] Letter from Kevin H. Marino to Randy M. Mastro dated February 6, 2014.

for declining your interview request, nor was it necessary for me to do so. As you well know, an individual need only rely on the Fifth Amendment when the party demanding his testimony or documents has the power to compel compliance with that demand, as the right against self-incrimination is a critical limitation of the government's power to compel testimony.[33] Gibson Dunn of course has no power to subpoena or otherwise compel individuals to provide it with information, as evidenced by its inability to obtain cooperation from a host of critical witnesses; instead, it can merely request voluntary compliance. Your firm made such a request of Mr. Stepien, which he declined without ever mentioning his Fifth Amendment rights. In that regard, Mr. Stepien's response was exactly the same as that of David Samson. But somehow Gibson Dunn has decided that Mr. Stepien's decision not to voluntarily cooperate with your internal investigation permits an adverse inference that he engaged in wrongdoing, while expressly disavowing that the same decision by Mr. Samson has similar negative implications. Aside from being dead wrong as a matter of law, the adverse inference Gibson Dunn draws from Mr. Stepien's decision not to cooperate is illogical, inconsistent, and hypocritical.[34]

Regrettably, in every instance in which the investigators who prepared the Report were confronted with a gap in the evidence, they filled that void with surmise — surmise which, in

---

[33] See, e.g., Pillsbury Co. v. Conboy, 459 U.S. 248, 254 (1983) ("The power to compel testimony is limited by the Fifth Amendment."); Kastigar v. United States, 406 U.S. 441, 444 (1972) ("[T]he power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty, the most important of which is the Fifth Amendment privilege against compulsory self-incrimination.").

[34] Indeed, Mr. Samson's decision not to be interviewed by Gibson Dunn was excused as an appropriate measure to protect attorney-client communications. C-SPAN telecast of Governor Christie's Press Conference, March 28, 2014, at 13:24–13:53, available at http://www.c-span.org/video/?318584-1/gov-chris-christie-rnj-news-conference. The Report notes that Mr. Wildstein sent an email to Ms. Kelly on September 13, 2013, after learning that "[t]he New York side [of the Port Authority] gave Fort Lee back all three lanes," in which he stated "Samson helping us to retaliate." Report at 70 n. 440. The Report concludes that there was no evidence of retaliation, though the Gibson Dunn investigators did not speak with Mr. Samson to get his version of the communication that the email suggests he had with Mr. Wildstein. To the extent Gibson Dunn justified Mr. Samson's decision not to speak with investigators based on the attorney-client privilege (which might conceivably apply to Wolff & Samson's representation of the Rockefeller Group given Mayor Zimmer's allegations), any such justification could not apply to a conversation between Mr. Samson and Mr. Wildstein. We do not suggest that Mr. Samson engaged in retaliation or any other improper behavior, or that Gibson Dunn should have speculated about his knowledge or intent; rather, we note this example to highlight that Gibson Dunn's appropriate decision to refrain from drawing an adverse inference against Mr. Samson for his failure to cooperate is flatly inconsistent with its improper decision to draw one as to Mr. Stepien and the other witnesses who refused to participate in its investigation.

Mr. Stepien's case, seems designed for the sole and improper purpose of justifying what has since been revealed to be the clear mistreatment he received. So, for example, rather than simply concluding that the reason for closing Fort Lee access lanes to the George Washington Bridge was unknown, the Report chose to inject details about the personal lives of Mr. Stepien and Bridget Anne Kelly into the mix, then speculate that those events "may have had some bearing on [Ms. Kelly's] subjective motivations and state of mind."[35] Where certain witnesses refused to cooperate with the investigation — such as Mr. Stepien, Ms. Kelly, and Mr. Wildstein — the Report attempted to fill the gap with an "adverse inference." Inconsistently, where other witnesses, most notably Mr. Samson and the members of his law firm, declined to cooperate, their refusal was either ignored or justified. All of which leaves the reader with the impression that Gibson Dunn filled the gaps in a way that advanced a particular narrative rather than in an objective manner supported by other evidence.

The evidence Gibson Dunn collected, viewed objectively, leads inexorably to the conclusion that Mr. Stepien did nothing wrong. Gibson Dunn learned — apparently from interviews with Michael DuHaime, Michael Drewniak, and the Governor himself[36] — that Mr. Wildstein approached Mr. Stepien with the idea to realign the Fort Lee toll lanes.[37] When the Governor asked Mr. Stepien directly whether he had prior knowledge of the lane closures, Mr. Stepien truthfully told the Governor that Mr. Wildstein had come to him with the idea, to which Mr. Stepien responded that Mr. Wildstein would have to run the idea by normal channels in Trenton (i.e., the Governor's Office).[38] Based on the Report, it appears that the Governor's recollection of his conversation with Mr. Stepien was consistent with the information Mr. Wildstein separately conveyed to Mr. DuHaime and Mr. Drewniak. Given Gibson Dunn's evidence-based conclusion that Mr. Stepien had no reason to know of any ulterior motive for the lane closures, it was completely gratuitous for Gibson Dunn to state that Mr. Stepien's "email

---

[35] Report at 114.

[36] Id. at 88-89, 93-94, 99-100 & n.606.

[37] Id. at 3.

[38] Id. at 3, 94. As discussed earlier in this letter, although the Report details how Mr. Stepien truthfully told Governor Christie on December 12, 2013, about his initial interaction with Mr. Wildstein on the topic of the lane closures, the Report later states "the Governor, having been 'assured' that his senior staff and Stepien had no involvement, told the press that day that none of them had any prior knowledge of the lane realignment." Id. at 126. The Report goes on to state "[t]he Governor and his senior staff accepted Kelly's and Stepien's assurances, which were later revealed to be false." Id. In light of the evidence that Mr. Stepien told the Governor on December 12 that Wildstein came to him with the "crazy idea" of realigning the Fort Lee toll lanes, id. at 3, 94, 116, the Report's statement that Mr. Stepien gave the Governor an "assurance" that was "later revealed to be false" is wrong and must be corrected.

communications during and after the lane realignment are concerning,"[39] or for the Governor to state that those communications reflected a lack of judgment.[40] If Mr. Stepien did not know the lanes were closed for an improper purpose — and the Report states that Gibson Dunn uncovered no evidence to that effect — then all that the supposedly concerning emails show are (i) Port Authority officials keeping him apprised of a situation that could have ramifications for the campaign; and (ii) Mr. Stepien consoling Mr. Wildstein, who appeared nervous that the incident was causing a problem for the Governor "close to November" for which Mr. Wildstein would be held responsible.

For the foregoing reasons — and given the Report's assertion that "the principal objective of Gibson Dunn's investigation has been to determine the facts"[41] — it is incumbent upon you to now, once and for all, amend the Report to acknowledge that (i) Mr. Stepien had no role in the origination, planning, execution, or concealment of the GWB lane closures; that he candidly informed Governor Christie that David Wildstein had raised the idea of lane closures with him before they occurred; and that he further informed Governor Christie that he had advised Mr. Wildstein to bring his idea to the appropriate authorities in Trenton; and (ii) no adverse inference can be drawn from Mr. Stepien's decision not to cooperate with Gibson Dunn's investigators or from his invocation of his Fifth Amendment rights in responding to the Select Committee's subpoena.

I am sending you this letter in advance of publishing it to the press — an accommodation I was not afforded with respect to the Report itself — because I want to give you the opportunity to right the wrong that has been done to Bill Stepien. It is not my intent to embarrass or impugn you or your excellent team of lawyers, for whom I have great respect, or to give aid and comfort to the Select Committee, which I continue to believe is conducting its investigation for purely political reasons. To the contrary, my only goal is to restore Mr. Stepien's well-earned reputation for truthfulness and excellence as a political consultant, which I feel has been unfairly damaged. I hope you will accept this letter in that spirit and correct your Report as requested. If you choose to ignore it, I will take such steps as are necessary to achieve that goal.

Thank you for your consideration of this letter.

Very truly yours,

Kevin H. Marino

---

[39] Id. at 115.

[40] C-SPAN telecast of Governor Christie's Press Conference, March 28, 2014, at 20:17–21:32, available at http://www.c-span.org/video/?318584-1/gov-chris-christie-rnj-news-conference.

[41] Report at 36.