

STATE OF OREGON

INTEROFFICE MEMO

GOVERNOR'S OFFICE

TO: Neil Goldschmidt
 FROM: Cory Streisinger (cb)
 SUBJECT: Francke Investigation

DATE: August 22, 1989

CONFIDENTIAL

This memo is a summary and follow-up to conversations you have had regarding the Francke murder investigation, any possible connection with wrongdoing at the Department of Corrections, and further actions that may be in order.

Where We Are Now

Investigations by the State Police and the district attorney's office have produced no evidence to support allegations that Mike Francke's death was in any way connected to events within the Department of Corrections. Indeed, the available evidence suggests the opposite: Nothing in Mike Francke's files or elsewhere indicate that he was working on anything other than his pressing budget problems, and Mike's family made no mention of the much-reported phone call about "organized criminal activity" when they had their initial interviews with the police.

In addition, we have no evidence of organized wrongdoing in the prison system today. Although not everybody connected to the 1986 investigation was ultimately convicted, the "higher-ups" associated with the investigation are no longer part of Oregon corrections. The State Police and the Department of Corrections are reasonably confident that, despite the uncomfortable level of drug use in the prisons, there is no corruption or organized crime at work.

Nevertheless, several factors may make an outside investigation advisable at this point:

- The murder investigation has come to a virtual dead end. Dale Penn's current activities, which we've discussed, are unlikely to produce anything new even if an indictment ultimately results.
- Regardless of the lack of evidence, it remains possible that Mike Francke's death was connected to wrongdoing in the Corrections Department. So long as the possibility cannot be ruled out, it may deserve investigation.
- Due to their involvement in the 1986 investigation, the state's normal investigative arms -- the State Police, the DA's office, and Corrections -- are viewed as tainted by the Francke family and some members of the press and public. The same may hold true for the Department of Justice now that Scott MacAllister's name has been linked publicly with the investigation. Any investigation by these entities will be viewed with suspicion regardless of the facts. (The Francke family has been contacted and advised that the investigation is ongoing.)

- The Francke family's activities and the presence of Phil Stanford ensure that the issue will continue to receive attention by the press and public until some decisive step is taken to resolve it. Even identification of a potential murderer at this point is unlikely to stop the public's questions about possible links to wrongdoing at Corrections. We are starting to hear charges of "cover-up," and this may very likely be the response to any indictment.
- Legislators are starting to get pressured to do something about this issue. The leadership has said that they don't believe legislative action is appropriate or necessary, but they may not be able to hold this position for much longer if no executive-branch action is taken. An investigation initiated by the legislature would obviously be less desirable than one we might set up.

What Can Be Done

The suggestion you have discussed is the appointment of a special investigator or investigative team. The issues raised by this suggestion include the following:

1. What charge should the investigator be given?

There are three possible areas of inquiry: (a) investigation of the Francke murder, (b) investigation of possible wrongdoing at the Department of Corrections, and (c) investigation of any possible link between the two. Your initial thought was to limit the investigation to the third of these areas. You also suggested that the investigative team be directed to turn over to the appropriate authorities any information not related to a possible link.

In light of the recent focus on the 1986 prison investigation, however, I believe it may be wise to expand the scope somewhat. Obviously it would be inappropriate and an invasion of Dale Penn's jurisdiction to start a complete re-investigation of the Francke murder. And it would be premature to demand an investigation of wrongdoing at the Department of Corrections. But several newspapers have now alleged that they have "sources," with lots to tell, who are "afraid" to tell the State Police or the DA. If your investigative team is directed to turn its results over to the State Police or the DA in the absence of a Francke/corrections connection, these sources will still have an excuse to refuse to come forward — and we will be in the same spot we are in now.

I recommend that you direct the investigative team to do two things: (a) investigate any possible link between the Francke murder and the Department of Corrections, and (b) advise you as to whether further investigation of the Department is needed, and if so, by whom. If the team gives the Department a clean bill of health, so much the better. If the team recommends further investigation by the police or DA, you can order it. And if the team finds reason to recommend a further outside investigation, better you should know it now.

2. Who should lead the investigation?

You need someone of unquestioned integrity, who also has the investigative skills to take on a task like this. A former judge would be ideal. Herb Schwab's name met with general approval when it was suggested previously.

_____ Jake Tanzer's name was also suggested, but this possibility is complicated by his involvement in the Portland Office Building lawsuit.

I have not been able to reach Stan or Ted yet to confirm other suggestions.

3. One investigator or several?

Your original discussion contemplated a single investigator, assisted by staff. However, you may also want to consider appointing a team of three with one of the three (such as Herb Schwab) in charge. This would allow you to include someone with law enforcement experience, such as Pierce Brooks, who Stan suggested but who would not be suitable for a lead position. I would also suggest including a community figure unconnected to state government, who cannot be accused of covering up. ~~_____~~

4. Who will provide the investigative staff?

This is a difficult problem. Obviously you cannot draw staff from the normal sources such as the State Police or the Department of Justice. The idea you discussed was to ask for the cooperation of local law enforcement, and to allow your investigator to select a team from law enforcement agencies statewide. This may well be the appropriate route to take. However, it requires that the investigative team be fairly familiar with law enforcement personnel statewide so as to make an adequate selection.

You may want to seek the advice of others on this point. For example, Mike Schunk may well have some suggestions. Simply for the sake of appearances, I suggest that you not draw from Marion County (because of the ties to Dale Penn) or from the Multnomah County Sheriff's Department (because of the ties to Fred Pearce). It is also possible that you could get federal assistance, but I believe it is crucial not to turn this into a federal/FBI investigation if you want any assurance that it will stay within the bounds you have set.

5. How will the investigation be funded?

If you are to avoid charges of whitewash, the investigative team will have to be adequately funded. This may take an E-Board request, unless you believe the State Police budget can provide funds. If funds are taken from the State Police or other state agencies, the arrangement must be structured so as to preserve the investigation's complete independence. Investigative staff should not go on the agency payroll or otherwise be formally connected with the agency.

If you believe an E-Board request would be more appropriate, I would not foresee any problem getting legislative approval. The legislators are getting very nervous about this issue, and an E-Board vote would give them an opportunity to say that the legislature has responded. However, an agreement would have to be made with the leadership in advance not to engage in any extended discussion of details during the E-Board session. This should not turn into an opportunity for legislators to grill Fred Pearce about drug dealing in the prison. I would suggest that the E-Board action take the form of an appropriation to this office, not to State Police or Corrections, and that it be presented to the E-Board by Tom Imeson or myself without Fred, Emil or Dale being present.

I do not have any way of guessing what an appropriate budget would be. Stan Long may be able to advise on this; I have a call in to him but have not been able to reach him yet.

6. How public should the investigation be?

To some extent, this is a "damned if you do, damned if you don't" question. If you insist on the investigation being confidential, you will encounter charges of whitewash and cover-up. ~~_____~~
~~_____~~ However, if you ask that the investigation be semi-public (i.e., some access to records, frequent updates from the investigator), nothing will be accomplished and the various "sources" we keep hearing about will again have an excuse not to come forward.

I think the balance is an easy one; the investigation should be confidential. Without confidentiality, it will produce no results. I suggest that you direct the investigators to promise confidentiality to their sources, thus invoking the "confidential disclosures" exemption to the public records law. The investigators' product would also be subject to the "criminal investigatory material" exemption. You would need to make clear that you are taking this step to protect the confidentiality of sources who have felt reluctant to come forward thus far.

7. How should the investigation be set up?

I suggest that you issue an executive order. This would give the investigative team some legal standing, and would enable you to order other state agencies (such as Corrections and the State Police) to cooperate. It would also give you a mechanism to spell out the investigators' charge and functions in a formal way.

Alternatively, the investigative team could be set up as an adjunct to the grand jury. Although this idea may have some logistical problems, it is also attractive for a number of reasons. The investigators would have formal authority through the grand jury, rather than being outside the normal criminal justice process. They would be entitled to complete secrecy, they would have subpoena powers, and they would report directly to the grand jury when their work is complete. If you are interested in this possibility, it will obviously need more discussion with Dale Penn.

8. To whom should the investigators report?

Regardless of whether the investigators are officially connected to the grand jury, the grand jury should receive their report. The report should also go to you for any further action that may be necessary, i.e., any further investigations of the Corrections Department that may be called for.

9. What should your public position be?

As I see it, you will have to make some fairly fine distinctions in explaining why this investigation is being set up. You will obviously want to avoid any implication that the allegations about the Corrections Department are correct, but you also don't want to sound like you are pre-judging the outcome of the investigation. I suggest that you continue to state that you have seen no evidence of any connection between the Francke murder and Corrections, but that the allegations are obviously going to continue nevertheless, that if there is any truth to the allegations it's important that the truth be brought out, and that an outside investigation seems to be the best way of clearing the air one way or the other.

You will also need to be sensitive to questions about why you find it necessary to go outside normal investigative channels. If you opt for linking the investigators to the grand jury, this will be easy; the investigation will become part of the normal process. Otherwise, I suggest that you stress the value of a fresh look, and also say that you want to avoid any later challenges to the investigation on the basis of it being conducted by insiders. You will need to be particularly careful to characterize this investigation as an adjunct to the grand jury proceeding, not a replacement for it.

What Happens Next

Before taking any action on these proposals, I suggest that you talk to the following people to make sure they are comfortable with it:

- (1) Dale Penn. You should discuss the relationship of this investigation to his grand jury proceeding, and you will also need to make clear that this is not intended as a criticism of his investigation thus far.

- (2) Fred Pearce. You will need to talk to Fred about avoiding morale problems within Corrections as a result of this investigation. Corrections personnel need to understand that you have not joined the crowd of those accusing them of wrongdoing.
- (3) Emil Brandaw. Apparently the State Police are considering bringing in a new team to take a fresh look at the Francke investigation. If you are going to call in outside investigators, this new team would be superfluous. You will need to discuss funding with Emil also, unless you would prefer the E-Board route.
- (4) Dave Frohnmayer. He should get at least a courtesy call before any announcement is made, so that he won't be caught short in responding to questions.

Given Dale Penn's expedited grand jury schedule, all of this should take place fairly soon if you intend to proceed.

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cc: Stan Long
Ted Kulongoski
Tom Ineson