

Police Misconduct and Civil Rights

LAW REPORT

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The Death of David Koschman: Ten Years Later

By G. Flint Taylor¹

In the early morning hours of April 24, 2004, 21 year old David Koschman and several of his suburban friends got into a verbal altercation on Chicago's Division Street with a group of four drunken revelers. Koschman, five foot five and 125 pounds, got "mouthy" and a six foot three 230 pound ex-football player punched him in the face. Koschman, knocked unconscious, fell backward to the ground, where the back of his head crashed against the pavement. The ex-football player fled with one of his friends, while Koschman was rushed to the hospital where he remained unconscious in critical condition.

The mysterious ex-football player, it turns out, was RJ Vanecko, a nephew of former Chicago Mayor Richard M. Daley, who was informed of the incident shortly after it occurred. Vanecko and his friends, who were also well connected to the ex-Mayor, were coming from a Daley family engagement party that was honoring Daley's niece, Kathleen. An investigation was started, but shortly thereafter, the Commander and Lieutenant in charge of the investigation were informed that the unknown assailant might be the Mayor's nephew. "Holy crap," one of them exclaimed, and the investigation, which had been classified as a simple battery, was stopped in its tracks.

David Koschman lay unconscious in the hospital, his mother at his side, for 12 days until he died on May 6.

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His death was reclassified as a homicide, and the investigation was reactivated. Koschman's friends were interviewed, and they accurately described the assailant as the biggest of the group. Vanecko's friends and two bystanders, were also interviewed, and the investigating detectives claimed that they did not learn that Daley's nephew was involved until these interviews were conducted. Vanecko himself subsequently appeared at the police station with a high powered criminal defense lawyer retained by the ex-Mayor's brother, and remained silent.

Despite possessing compelling evidence that Vanecko threw the killer punch, and that Koschman, while verbally combative, did not pose a physical threat, the CPD, with the concurrence of the head of the Cook County State's Attorneys' Felony Review Unit, decided not to charge Vanecko. They based this decision, which was reviewed by Cook County State's Attorney Richard Devine and his top assistants, on purported identification problems and on a theory of self defense. Police Superintendent Phil Cline announced the decision and its basis to the media in late May of 2004.

The case lay dormant for almost seven years until three Chicago Sun Times reporters began their own investigation. In response, the Chicago Police Department reopened the investigation, only to again close it without charges less than two months later. Cook County State's Attorney Anita Alvarez defended the decision, but nonetheless decided to have the Illinois State Police do yet another investigation. After first accepting the assignment, the ISP quickly withdrew after it became known that its newly appointed director was in charge of the Chicago Police Detective Division at the time of the 2004 investigation, and had later worked for Alvarez at the State's Attorneys' Office.

The Sun Times Reporters continued their investigation, and in November of 2011, lawyers representing Nanci Koschman moved for the appointment of a Special Prosecutor. The case was assigned to Cook County Judge Michael Toomin, and State's Attorney Alvarez vigorously opposed the motion, arguing once again that the evidence did not support charges against Vanecko. On April 23, 2012, Judge Toomin rejected Alvarez' arguments, finding that the self defense rationale was constructed by the police and prosecutors "from whole cloth." Judge Toomin appointed former U.S. Attorney Dan Webb to conduct the investigation to determine "(1) whether

criminal charges should be brought against any person in connection with the homicide of David Koschman in the spring of 2004, and (2) whether, from 2004 to the present, employees of the Chicago Police Department and the Cook County State's Attorney's Office acted intentionally to suppress and conceal evidence, furnish false evidence, and generally impede the investigation into Mr. Koschman's death." Press Release of the Special Prosecutor, at 1.

Webb and his staff from the law firm of Winston and Strawn then empaneled a special grand jury and conducted a 17-month investigation during which they examined 300,000 pages of documents and obtained evidence from 146 witnesses. Twenty-four of the witnesses testified before the grand jury, 10 of whom asserted their Fifth Amendment rights and were given use immunity. On December 3, 2012, the special grand jury indicted Vanecko for involuntary manslaughter, and, on September 18, 2013, Webb tendered a 162-page report to Judge Toomin which

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detailed the evidence that the Jury had developed during its investigation. Upon its tender, Webb publicly announced that his office had not sought additional indictments because:

(1) any prosecution as to actions taken by Chicago Police Department ("CPD") or the Cook County State's Attorney's Office ("SAO") personnel in 2004 are barred because of the three-year statute of limitations period, which was not otherwise extended under applicable state criminal law; (2) there is insufficient evidence to prove beyond a reasonable doubt any violations of Illinois criminal law as to actions taken by CPD personnel in 2011; and (3) there is no evidence of any kind suggesting any violations of Illinois criminal law as to actions taken by SAO personnel in connection with its participation in the Koschman investigation in 2011 and 2012.

Press Release at 3.

The Report was sealed pending the resolution of Vanecko's prosecution, which was transferred for trial to a Judge from a neighboring county. On January 31, 2014, pursuant to a plea agreement, Vanecko pleaded guilty to involuntary manslaughter, was sentenced to 60 days in jail, 60 additional days on home monitoring, and 30 months of probation. He also was ordered to pay \$20,000 in restitution and to make an apology to Nanci Koschman, which he did that day in open court.

On February 4, 2014, Webb publicly released the Office of the Special Prosecutor's (OSP) report. Curiously, the press release that accompanied the Report only addressed one issue—whether the former Mayor or his family was directly involved in influencing the investigation:

[T]he OSP conducted a thorough investigation of whether former Mayor Richard M. Daley, his family, or others at their direction, engaged in conduct to influence or attempted to influence the investigations CPD and SAO conducted in connection with the Koschman matter. As part of the OSP's investigation into that issue, the Special Prosecutor's staff, among other things, interviewed former Mayor Daley and eight of his relatives as well as fourteen members of his 2004 and 2011/2012 mayoral staff and security detail. Further, the issue of whether the Daley family or others at their direction

exercised undue political influence on the investigations was also extensively pursued by the Special Prosecutor throughout the course of his investigation, including during each OSP interview of CPD and SAO personnel and in the OSP's review of documents received pursuant to the Special Grand Jury's subpoenas. As a result of investigating this issue, the Special Prosecutor has concluded there was no evidence that former Mayor Daley, his family, or others at their direction engaged in conduct to influence or attempted to influence, the investigations which CPD and SAO conducted in connection with the Koschman matter.

OSP Press Release at 3-4.

The media reaction was both quick and varied. The conservative Chicago Tribune seized on the Release and its front page headline read: "Daley Didn't Aid His Nephew," while the Sun Times, whose reporters had doggedly pursued the story for years, ran a front page headline across Daley's picture that stated "What He Knew and When." Nanci Koschman's lawyers also questioned the featured Daley findings, and one, parroting the police commander upon hearing that a Daley relative might be involved, declared: "In this city, then and now, you don't need a phone call, you don't need a memo. When it's Daley, it's 'Holy crap, what do we do?'" Both papers also ran editorials that strongly condemned the police and the prosecutors, and the Tribune, picking up on the "holy crap" theme, entitled its editorial "Collateral Clout."

Found within the Report and its more than 800 footnotes were the following findings:

***Ranking officials in the police department, as well as former Mayor Daley and a top aide, had been briefed nearly two weeks before the lead detective claimed that he first learned of the involvement of the Mayor's nephew.

*** Investigators who twice declined to press charges knew Vanecko was Daley's nephew.

*** Evidence wasn't documented, witnesses weren't interviewed, reports were altered, and four separate Koschman police homicide files went missing, only to be "found" after the 2011 re-investigation was concluded.

***The case was first assigned to two detectives who both began vacations two days later. During the two weeks they were gone, no witnesses were interviewed. Koschman, meanwhile, died of his injuries.

*** A police commander described this turn of events as follows: "Vanecko is a suspect, he's related to Daley, the investigation stopped at some point."

*** The lead police detective in the 2004 investigation told the special grand jury he wanted to file charges against Vanecko even though he assumed they'd be thrown out. The department's liaison to the state's attorney's office urged prosecutors to file charges.

*** The head of the State's Attorneys' Felony Review Unit declined to approve charges, claiming self-defense and lack of identification. When he was later asked to locate his folder on the case, he first said he didn't make one, then subsequently told the special grand jury that he must have thrown it away.

*** Although the police concluded that two of Vanecko's friends, when interviewed by the investigators, had concealed Vanecko's identity and had participated in a post event rendezvous with him at a tavern, they were not charged with obstruction of justice;

***The Koschman case—per CPD order—remained open and 'in progress' from 2004 until 2011 although no investigative activity at all took place during this time, but the open designation gave the CPD the basis to deny a reporter's 2004 FOIA request;

*** In early 2011, Daley staffers scrambled to do spin control after Sun Times reporter Tim Novak filed a FOIA request.

*** The police department, which reopened its investigation in January of 2011 after Novak made his request, reassured the Mayor's Office that it would be closed shortly thereafter.

***Though the first investigation claimed to be unable to sufficiently prove who threw the fatal punch, the second concluded that Vanecko—10 inches taller and 105 pounds heavier than Koschman—acted in self-defense.

***The quote "fuck you! I'll kick your ass," attributed to David Koschman, was inserted as a last-minute "correction" into a draft of the investigating detectives' 2011 closing report by their commanding officers. The quote did not appear in any police reports or handwritten notes.

*** The Deputy Chief of Detectives emailed response to the corrected report read "Very nicely done."

*** The 36 page "corrected" report was approved by the supervising sergeant six minutes after it was submitted, and the case was "exceptionally" closed in March of 2011.

*** There was "limited evidence that was arguably consistent with a theory" that the detectives who re-investigated the case "manufactured the CPD's 2011 determination of self-defense" and thereby engaged in criminal misconduct.

*** There was "limited evidence that was arguably consistent with a theory that certain CPD commanding officers" in 2011 "engaged in criminal activity with requisite criminal intent to manufacture a phony self-defense determination."

***"The public could well conclude that the entire claim of self-defense came not from Vanecko, who was never interviewed, but, rather, was conjured up in the minds of law enforcement. A discerning citizen could well surmise that it simply is an argument made of whole cloth."

*** The State's Attorneys' Office "concur[ed] in what one might charitably characterize as a rather creative exercise of the police investigative processes."

A few days after the report was released, a special grand juror contacted one of the Sun Times reporters and vented his frustration at the police and prosecutors, including the head of the Cook County State's Attorneys' Felony Review Unit who decided not to charge Vanecko:

He's sitting before us, saying that reasonable self-defense was warranted by Vanecko, whom he never interviewed. . . . A 6-foot-2, 230-pound guy against a 5-foot-5, 125-pound

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guy. . . . Nobody in the room believed him. Most outrageous of anything I heard. Then, the fact that [he] threw away the felony review file on Koschman . . . We thought that was just amazing.

Chicago Sun Times, February 9, 2014, ***Vanecko grand juror 'frustrated' about no charges against police, prosecutors.***

The juror also revealed that the questioning of Daley, which was read into the record, also left much to be desired:

It was brief, not illuminating at all. Didn't really provide us any insider information, generic as it could be. Said he'd recused himself. Didn't remember when he first learned about his nephew being involved.

Id.

Many unanswered questions still remain, and in the town that immortalized clout, the Sun Times continues to ask hard questions about the Daleys, the police, and the State's Attorneys' Office. Additionally, it remains to be seen whether the voluminous evidence developed during the OSP investigation will be released to the public, whether the U.S. Attorney will look into the case, whether the SAO and the CPD will discipline any of their transgressors, and whether Nanci Koschman will sue the police and prosecutors for civil rights violations.

At this point, closure is not an option.

ENDNOTES

1. Taylor, one of the founding partners of the People's Law Office in Chicago, is one of Nanci Koschman's lawyers.