

Power, Privilege and Cover-up: A Case Study on How Intertextuality in Police Records Can  
Mislead Homicide Investigations

by

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### **Abstract**

Despite the newfound interest in homicide investigations, only a limited number of studies have been able to examine the validity of police and other official records which are collated during the course of an investigation. Moreover, linguistic presentation of gathered statements and evidence in official records is often overlooked. The focus of this paper is to investigate how intertextuality in police records can lead to disingenuous accounts of an incident. Using the Koschman homicide investigation as a case study, the results of this research explore the following avenues which can be used to mislead investigations: 1) Archival management of witness statements; 2) manipulation of investigatory procedures; and 3) compliance, complicity and the use of power. This research illustrates how police officers can use their editorial powers to alter the outcome of a homicide investigation in order to meet political or other exigent agendas. Furthermore, the power of the police and their complicity with other seemingly independent agencies can be used to reinforce police statements and attain compliance from the general public.

**Keywords:** homicide investigations; intertextuality; police record-keeping; police cultures

## Introduction

The act of murder is considered to be the most heinous of all violent crimes. Correspondingly, solving murder cases is said to be a paramount concern for police departments (Keel, Jarvis, & Muirhead, 2009). Murder cases also tend to generate heightened coverage in the various forms of media (Alvarez & Bachman, 2003). Moreover, the entertainment television industry has also seized the opportunity to capitalize on public interests in such crimes by producing several fictional television shows that depict murder and its investigation (Gerbeth, 2006). Such shows are most often reflective of the traditional definition of a successful homicide investigation. Existing literature states that most common definitions of a successful homicide investigation constitutes the identification of a suspect followed by an appropriate charge and the eventual conviction of the suspect (Brookman & Innes, 2013). More recently however, there has been a shift in homicide research that examines more complex perceptions in conjunction with the above-stated measures of a successful homicide investigation. For example, the work of Brookman and Innes (2013) highlights the importance of preventative success as well as community impact reduction as integral elements of a successful homicide investigation.

Although lacking in abundance, current literature on homicide investigations often examines the social or demographical aspects of the investigative process including the various perceptions of the detectives. Only a limited number of researchers have attempted to examine police cultures alongside the investigative processes of homicide investigations. Furthermore, standard police practices, such as police record-keeping, have not been critically analyzed in conjunction with homicide solvability. It is evident in current literature that homicide detectives often use their intuition and discretion at various stages of their investigations (Innes, 2002b). What remains unexplored is how the detectives manage information that is contrary to their

intuition. Additionally, existing research fails to examine if and how police records can be distorted to meet political or exigent agendas.

The aforementioned shortcomings in the existing literature on investigative epistemology suggest that there is a need for additional research. As proposed by Hoyono (1999), police record-keeping and information management systems are of particular importance in understanding the trajectory of adversarial decisions resulting from various police investigations. Given the inherent links between police record-keeping and investigations, it is important to examine the processes that are involved in the creation of such records. Moreover, a qualitative analysis of the content within police records is warranted to explore the integrity of such documents. Moreover, given the subjective nature of police investigations, it is important to explore the notion of power and privilege which may be influential in the outcome of an investigation. A critical analysis of police cultures alongside investigative procedures and practices is integral in order to build a comprehensive understanding of the exhibited police behavior in various investigations. Lastly, it is important to examine how police records and mandated investigative procedures can be distorted and manipulated to meet political and exigent ends.

The purpose of this research is to examine how the creation of disingenuous police records can tarnish the course of a homicide investigation. This research focuses on the principles of intertextuality which can be observed in police records. Since the plausible effects of various linguistic devices in police records are completely overlooked in existing literature, this research analyzes how contradictory statements or information is managed and phrased in police records. This research uses a case-study method to examine police record-keeping practices, information management and homicide solvability in a homicide case which involves a

strong political influence. It is argued that, given the editorial powers of the police agencies, police records can be altered and omitted to provide a disingenuous account of a homicide incident.

In what follows, a detailed account of the David Koschman homicide case will be provided using court records, news reports and police documents. A review of literature on homicide investigations, including police record-keeping and information management, will follow. The data and methods section will outline the various sources of data as well as the method of analysis. Subsequently, the results section will highlight various stages of the Koschman investigation in which the police records were accumulated. Special attention will be paid to the editorial powers of the police with respect to the creation and preservation of police reports and records. Moreover, the influence of other external, seemingly independent agencies on an on-going investigation will also be examined. The paper will conclude with a detailed discussion on the findings of this research along with directions for future research.

## **Background on the Koschman Case**

### *The Incident*

On April 25<sup>th</sup> of 2004, two Area 3 detectives from the Chicago Police Department were assigned to investigate a battery case that occurred in the heart of Downtown, Chicago. This incident occurred at 3:15am on the sidewalk of 35 W. Division Street (Gilger, 2011a). According to the official police records, as well as various news reports, the narrative of this incident describes that David Koschman, the victim, along with four of his friends, got into an altercation with Richard Vanecko, the offender, and three of his friends (Novak, Fusco & Marin, 2011a). On the night of April 24<sup>th</sup>, 2004, Koschman and his friends – Scott Allen, James Copeland, Shaun

Hageline and David Francis Jr. - had been bar-hopping on Rush Street where they came in contact with Vanecko and his friends – Craig Denham, Kevin McCarthy and Bridget McCarthy who were returning from an engagement party (Novak, Fusco, & Marin, 2011a). Witnesses say that both groups were under the influence of alcohol when the confrontation occurred (Gilger, 2011a). The altercation began as Koschman bumped into Denham as a result of which Denham's glasses fell off (Gilger, 2011a). An exchange of insults and profanity occurred between the two groups (Gilger, 2011). The altercation commenced as Vanecko punched Koschman as a result of which Koschman fell backwards, hitting the back of head against hard concrete (Novak, Fusco & Marin, 2011). Vanecko and two of his friends fled the scene. Kevin McCarthy was later detained as per witnesses' identification of his involvement. When questioned, McCarthy told the police that he did not know who the other involved subjects were (Gilger, 2011a). Koschman, who was seemingly unconscious as per witnesses' statements, was rushed to Northwestern Memorial Hospital (Gilger, 2011a). Given his condition, Koschman was moved from the ER and admitted to Neural-Intensive Care Unit where he was said to be in critical, but stable condition (Gilger, 2011a).

During this time, the two assigned detectives, Detective O'Leary and Detective Clemens, interviewed Nancy Koschman (mother of David Koschman), Kevin McCarthy and two additional witnesses, Michael Connolly and Philip Kohler, who were not a part of either of the groups involved in the altercation (Gilger, 2011a). On May 6<sup>th</sup> of 2004, 11 days after the incident, David Koschman was pronounced dead at 12:16pm at the Northwestern Memorial Hospital (Gilger, 2011a; Main & Speilman, 2004). Consequently, Koschman's body was transported to the Cook County Medical Examiner's Office where an autopsy was conducted on the 8<sup>th</sup> of May, 2004 by Dr. Tae Lyong An, M.D (Gilger, 2011a). The results of the autopsy

concluded the cause of death to be cranial-cerebral injuries resulting from blunt trauma. Based on the findings from the Medical Examiner's Office, the death of David Koschman was ruled a homicide and the case of battery was reclassified to a case of homicide/murder (Gilger, 2011a). According to police records, on May 10<sup>th</sup>, 2004, Detectives Yawger and Vilar dita were also assigned to assist with the on-going investigation (Gilger, 2011a).

### *The Homicide Investigation*

Proceeding the reclassification of the Koschman case as a homicide investigation, Detectives Yawger and Vilar dita conducted a series of interviews with witnesses and other key individuals who have been involved with this case (Gilger, 2011a). These series of interviews revealed some new information. An interview with Kevin McCarthy and his wife Bridget McCarthy confirmed that Kevin McCarthy had lied to the police in his initial statement on April 25<sup>th</sup>, 2004 in which he stated that he did not know any of the involved individuals (Gilger, 2011a). Moreover, these interviews led to the identification of Richard Vanecko and Craig Denham as the other two involved individuals who had fled from the scene after Koschman was injured (Gilger, 2011a). Following these interviews, the detectives arranged Vanecko, Kevin McCarthy and Denham to appear in a line-up to be viewed by all witnesses including friends of the victim along with Connolly and Kohler (Gilger, 2011b). According to the Chicago Police Department's Case Supplementary Report (CSR) submitted on the 28<sup>th</sup> of February, 2011, none of the witnesses were able to identify Vanecko; however, McCarthy and Denham were positively identified (Gilger, 2011b). Following the line-ups, the results of the investigation were forwarded

for felony review<sup>1</sup>. Eventually, it was concluded that no possible charges would be sought since none of the witnesses could identify who punched Koschman (Gilger, 2011b). They also concluded that the victim, David Koschman, was the aggressor whereas whoever punched Koschman acted in self-defense (Gilger, 2011a; Gilger, 2011b). Based on the aforementioned conclusions, the Koschman homicide case was classified ‘cleared closed/exceptionally’ (Gilger, 2011a; Gilger, 2011b).

### *The Victim – David Koschman*

David Koschman was the only son of Nancy and (late) Robert Koschman. After the death of his father, Koschman and his mother lived in Mount Prospect (a suburb of Chicago) leading an average middle-class lifestyle. Born on February 11<sup>th</sup>, 1983, Koschman was 21 years old, 5 foot 5 inches in height and weighed 125 pounds when the incident took place on April 25<sup>th</sup>, 2004 (Gilger, 2011a; Novak, Fusco, & Marin, 2011b). He was a recent graduate of the Prospect High School. His peers described Koschman to be friendly and amiable (Novak, Fusco & Marin, 2011). When interviewed by Chicago Sun-Times reporters, the dean of Prospect High School described Koschman to be a “very spirited young boy ... absolutely not an aggressive boy at all” (Novak, Fusco, & Marin, 2011b). Correspondingly, Koschman had no criminal record (Novak, Fusco, & Marin, 2011b).

### *The Offender – R.J. Vanecko*

In contrast with David Koschman, Vanecko had close familial relations to some of the most powerful individuals in Chicago. Vanecko was named after his (late) grandfather who was

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<sup>1</sup> A felony review is an assessment of the charges filed by the police. Assistant State’s Attorneys (ADAs) with the Cook County State’s Attorney’s office review the charges and determine if enough evidence exists to proceed with a felony charge. ADAs are assigned to area-level command headquarters and conduct reviews at the police station.

a well-reputed mayor of Chicago in his time (Novak, Fusco, & Marin, 2011c). Vanecko also happened to be the nephew of Mayor Daley who was the presiding mayor of Chicago when this incident occurred (Novak, Fusco, & Marin, 2011c). Moreover, Vanecko was 29-years old, 6 foot 3 inches in height and 230 pounds in weight – almost twice the weight of Koschman (Gilger, 2011a). Prior to the incident on April 25<sup>th</sup>, 2004, Vanecko had plead guilty to misdemeanor criminal charges in an incident where a teenager was hit in the head with a baseball and Vanecko held the victim at gunpoint (Novak, Fusco, & Marin, 2011c).

### **Sun-Times Investigation and Reinvestigation of Koschman’s Homicide Case**

Seven years after the death of David Koschman, the Chicago Police Department (CPD) decided to reinvestigate the ‘cleared closed’ case (Novak, Fusco, & Marin, 2011a). The reinvestigation began days after a reporter from Chicago Sun-Times filed a request seeking copies of all police documents in relation to the Koschman case under the Illinois Freedom of Information Act (FOIA). The request was filed on the 4<sup>th</sup> of January in 2011; however, the CPD denied full disclosure of the records on the grounds that the Koschman case has been reopened and constitutes an on-going investigation (Novak, Fusco, & Marin, 2011a). The reinvestigation was moved from Area 3 to Area 5 which involves a different bureau of detectives altogether. Two months into the Chicago Police Department’s reinvestigation of the Koschman case, while interviewing the same witnesses from 2004, the detectives were able to establish and name Vanecko as the individual who punched Koschman (Gilger, 2011b). Upon conclusion of this reinvestigation, the file was sent to the Cook County State’s Attorney’s Office for a felony review where ASA Darren O’Brien was assigned to this case. ASA O’Brien, after consulting with the involved detectives, concluded that no possible charges would be sought since Vanecko

was acting in self-defense when he punched Koschman, the aggressor (Gilger, 2011b). The case was again classified as ‘cleared closed/exceptionally’ (Gilger, 2011b).

In contrast with CPD’s reinvestigation, the Sun-Times investigation revealed several notable findings in relation to the initial homicide investigation in 2004 as well as the reinvestigation in 2011 of the Koschman homicide case. Among most alarming, findings included the disappearance of significant police records such as the felony-review file pertaining to the Koschman case (Novak, Fusco, & Marin, 2011a). Secondly, Novak, Fusco and Marin (2011) reported that Vanecko had made major physical transformations (i.e. shaved his head) before he was presented in the line-ups that were conducted a month after Koschman’s demise. Moreover, as claimed in witness statements, the man who allegedly punched Koschman was wearing a hat, however, when presented in the line-up, none of the participants were wearing a hat (Novak, Fusco, & Marin, 2011a). Another point of contention found in police-recorded witness statements is in regards to the behaviour of Koschman during the altercation. As mentioned above, the initial investigation and reinvestigation of the Koschman case were concluded as Koschman was named as the aggressor and the alleged offender was seen as acting in self-defense (Gilger, 2011a; Gilger, 2011b). According to the Sun-Times investigation, Koschman’s friends did not agree with the aforementioned statement and claimed that Koschman was the “victim of a sucker punch” (Novak, Fusco, & Marin, 2011a).

#### *The Appointment of a Special Prosecutor*

Following the inconsistencies of the Koschman homicide investigation brought forth by the Sun-Times investigation, Nancy Koschman filed a petition to appoint a special prosecutor before the judge at the Circuit Court of Cook County, Criminal Division (Circuit Court of Cook

County, 2011). In addition to the inconsistencies found through the Sun-Times investigation, the petitioners noted a few more issues. First, the petitioners mentioned the fact that, as admitted by CPD, official police records relating to the Koschman case went inexplicably missing (see Gilger, 2011c). Among these files was the Felony Review file from the Cook County State's Attorney's office (ASA O'Brien) (Circuit Court of Cook County, 2011). In agreement with the Sun-Times news reports, the petitioners believed that the initial investigation as well as the reinvestigation of the Koschman case were purposely misguided due to the powerful influence of the Daley family and Vanecko's direct connection with them (Novak, Fusco, & Marin, 2011; Circuit Court of Cook County, 2011). The petitioners posited that a special prosecutor needed to be assigned to investigate the Koschman case in an unbiased manner. Additionally, the petitioners posited that a special prosecutor needed to be appointed to investigate the following: (1) whether the detectives from CPD prepared false reports; (2) if ASA O'Brien and the employees of the Cook County State's Attorney's Office intentionally conspired to rid Vanecko of criminal responsibility; and (3) if charges can be laid on Vanecko in connection with the Koschman homicide (Circuit Court of Cook County, 2011).

### **Previous Works on Police Cultures**

#### **Defining 'Police' in an Anglo-American Context**

In order to understand the actions of police agencies, it is important to construct a definition of what constitutes the 'police' and the overarching police culture which promotes and instills various ideologies that, in turn, govern police behaviours. Although there are many police agencies around the world, each with its own specific cultures, a typical Anglo-American police force is often defined by its features (Manning, 2004). An idealistic definition that includes the

features of democratic policing is presented by Liang (1992). He states that democratic policing should be legalistically guided, ensure civilian security and remain uninfluenced by politics (Liang, 1992). A more functioning and accepted definition of the police is provided by Manning (2004). He states that the police in Anglo-American societies are often defined as “authoritatively coordinated legitimate organizations that stand ready to apply force, in a legitimate territory to sustain political ordering” (Manning, 2004, p. 53). Manning (2004) also states that it is important to note that the police are not always neutral and/or nonpolitical; rather, they are likely to be guided by structural or organizational motivations, ideologies and interests that are internal to the police force or department.

### **Defining Police Cultures**

#### *Occupational Culture*

Existing literature on police studies most commonly examines police culture as an occupational phenomenon that is specific to police officers. Most descriptions of police cultures from an occupational point of view entail perceived hazards and the dangerous nature of police work (Manning, 1995). In his research, Paoline (2001) states that there are two main elements of the occupational culture; these elements include the following: potential for danger and the officers’ unique power of authority and coercion. Since the element of danger is considered to be integral to the occupational nature of policing, many researchers have used this element to examine police behaviours and their relations within society (Reiner, 2000; Walker & Katz, 2005). In line with the occupational depiction of police cultures, it is argued that the “foundation of the police culture is built upon the anxiety associated with the dangers that officers perceive in their working environment” (Paoline, 2001, p. 13). The perception of danger or perceived danger

is also seen to have a unifying effect on police officers as it separates them from the general public which is considered to be the chief source of danger (Paoline, 2001).

Furthermore, the aforementioned power of authority and coercion which is granted and routinely exercised by police officers also plays an important role in the creation and maintenance of police cultures. Policing is among one of the few occupations in which the employees (i.e. police officers) are given the power to legitimately exercise coercion as a means to maintaining social order (Caldero & Crank, 2004). Such elevated authority granted to police officers distinguishes the police from the general public which further adds to the overall cohesion of occupational police cultures. Although all police officers are granted the power of authority over civilians, it is important to note that such powers are largely controlled by the structural and organizational hierarchy that resonates within police agencies (Manning, 2004).

### *Organizational Culture*

In contrast to the depiction of occupational culture, the organizational culture of the police acknowledges the existence of multiple police cultures that are fluid and specific to each police agency (Manning, 2004; Paoline, 2001). In line with the organizational aspect of police cultures, Reuss-Ianni (1983) is most cited for her work called the *Two Cultures of Policing*. According to Reuss-Ianni (1983), the conceptualization of police cultures needs to account for the various roles that exist within police departments alongside the distinction in levels of authority that are prescribed amongst the officers. She states:

The organization of policing is best described and understood in terms of the interactions of two distinct cultures: a street cop culture and a management cop culture. These two

cultures are increasingly characterized by competing and often conflicting perspectives on procedures and practice in policing (Reuss-Ianni, 1983, p. 1).

The above mentioned quote alludes to the notion that differences in practice and procedures exist with respect to police officers and their superiors. Reuss-Ianni's (1983) work on police cultures states that the variation in behaviours and attitudes of police officers is attributable to their classification within their department (i.e. patrol officers and management-level personnel). To further this concept, existing research on police cultures states that police officers are often confronted with two major issues with respect to the organizational culture of police agencies. Manning (1995) refers to these issues as *role ambiguity* and *uncertainty* with respect to supervisory expectations. Although the primary objective of police officers is to enforce the law, they are also expected to follow procedural rules and regulations that are set in place by the police department (Caldero & Crank, 2004). The purpose of such rules and regulations is to guide the conduct of police officers thereby ensuring effective and efficient service along with the accountability of action (Walker & Katz, 2005). Any negligence or dismissal of procedural regulations can result in disciplinary actions against the officers as well as the overall police department (Walker & Katz, 2005). Conversely, research shows that supervisors or higher ranked officers are most likely to play around the ascribed rules and regulations upon their discretion (Paoline, 2001). The dismissal of procedural rules and regulations by the superior officers is often regarded as the main source of role ambiguity and uncertainty in expectations which are experienced by subordinate officers (Manning, 1995; Punch, 2007). Moreover, on a broader level, deviance from procedural rules and regulations can lead to issues of police misconduct and corruption which jeopardizes the legitimacy of police departments as well as the state in some instances (Punch, 2007; Henry, 2004).

## **Theorizing Police Cultures**

It is important to theorize police cultures in order to construct an understanding of the environment in which the police operate alongside its effects on the police organization. There are three primary theories that emerge consistently and commonly in the literature on police cultures (Walker & Katz, 2005). These theories include the following: resource dependence theory, institutional theory and contingency theory. The purpose of utilizing these theories is to examine and explain police organizations with respect to their environments. Moreover, resource dependence theory, institutional theory and contingency theory can be used to conceptualize organizational structure of the police as well as their operational strategies (Walker & Katz, 2005).

### *Resource Dependence Theory*

The resource dependence theory is premised upon the organizations' need of resources which are necessary to its sustenance and maintenance. The acquisition of various external resources is considered to be significant aids to the strategic and tactical management of an organization (Davis & Cobb, 2010). Proponents of this theory argue that organizations must facilitate and engage in exchanges with other organizations as well as their environments in order to acquire the necessary resources. It is also argued that the procurement of external resources affects the behaviours of the members within that organization (Boyd, 1990). The reliance on the environment and other organizations for necessary resources forces organizations to alter their structures and operational strategies in order to accommodate for those who are providing or aiding in the acquisition process of the much-needed resources (Pfeffer & Salancik, 1978). Although some accommodative measures must be taken by organizations, it is important to note

that resource dependence theory also states that organizations have a unique capacity to influence their environments to ensure the flow of resources (Davis & Cobb, 2010).

In relation to police cultures, resource dependence theory would dictate that the structural and procedural changes made within police organizations can be a consequence of the exchange of resources between the environment and the police agency (Walker & Katz, 2005). For example, although police organizations are largely funded by the government, other organizations within the society will often collaborate with their local police service, facilitating the exchange of resources and information (Reiner, 2001). Correspondingly, a study conducted by Katz, Maguire and Roncek (2002) on specialized police units and resource dependency illustrates the importance of external resources in the creation and success of specialized police units. While controlling gang-related crimes, Katz and colleagues (2002) found that police agencies that received external resources were 2.8 times more likely to have specialized gang units. Given the tenets of the resource dependence theory, it can be argued that the structural change within the police department (i.e. creation of a specialized unit) results from the acquisition of external resources that help facilitate specific and aimed efforts of crime-control within the community (Walker & Katz, 2005; Katz, Maguire & Roncek, 2002). More research is needed to address the types of influences that external funding or resources can have on police agencies and their objectives to practice unbiased enforcement of the law and delivery of justice.

### *Contingency Theory*

Contingency theory is among the few widely applied organizational theories. This theory examines organizational change which encompasses internal and external organizational factors. The underlying presumption of this theory is that organizations are established and structured to

achieve specific goals (Walker & Katz, 2005). The main tenet of this theory dictates that in order for organizations to be effective, change and adaptation of organizational factors are essential. According to the contingency theory, change typically occurs in organizational contingency factors such as technology, strategy, task-uncertainty and size (Hollenbeck et al., 2002). It is argued that in order for organizations to be effective, the structure of the organization needs to adapt to and facilitate the changes which are brought forth by the above-mentioned organizational contingency factors (Zhao, Ren & Lovrich, 2010). Correspondingly, poor adaptation or lack thereof can lead to the overall ineffectiveness of the organization (Zhao, Ren & Lovrich, 2010).

In relation to police cultures, contingency theory is often utilized to explain and examine innovation in police organizations and behaviours. For example, the emergence of community policing can be seen as a structural change within the traditional policing approach that attempts to address the changing nature of crime and society (Walker & Katz, 2005). It can be argued that if police organizations refuse to adapt to the changing nature of their external environment, policing initiatives will largely remain ineffective (Zhao, Ren & Lovrich, 2010). According to the underpinnings of this theory, failure to adapt and implement changes in relation to the changing nature of crime or the increase and decrease in crime rates can render policing objectives unsuccessful (Cherney & Murphy, 2011). More research is needed to address the decisive factors which lead to structural changes within police organizations. Moreover, a gap in literature exists with respect to the various external influential factors, such as a broader political agenda, that may play a significant role in facilitating structural changes within police departments.

### *Institutional Theory*

Institutional theory is commonly used in literature on public policy with regards to policy-making and social institutions. The framework of institutional theory places a strong emphasis on various aspects of institutions including isomorphism and legitimacy (Giblin, 2006). Although the term ‘institution’ can be defined in several different ways, a commonly accepted definition with respect to institutional theory defines institutions as “social structures that have attained a high degree of resilience” (Scott, 2001, p.48). Defining institutions within the social realm allows one to examine cultural-cognitive and regulative elements alongside their resources and activities which serve to provide meaning and stability to social life (Scott, 2001). Furthermore, institutional theory accounts for the processes by which institutions, structures, rules and norms are established as authoritative principles of regulating social behaviours (Crank, 2003).

In relation to police cultures, institutional theorists would posit that police agencies are inherently a form of social institution. Given the underpinnings of this theory, it must be acknowledged that, as social institutions, police organizations operate in relation to their political and social environment (Walker & Katz, 2005). Moreover, as Crank (2003) states, police organizations cannot function independent of their social construct; social interactions between police organizations and their external environment is how the police attain legitimacy and authority (King, 2003). Moreover, the efficiency of police agencies is also contingent upon their interactions with their external environment. The efficiency of police service and how well the department functions largely depends on how well the expectations of actors in other institutions are met (Shane, 2010; Walker & Katz, 2005). Correspondingly, much of police behaviours can be understood as efforts to define their organization’s legitimacy within their external environments (Shane, 2010). Thus, the application of the institutional theory on police cultures

dictates that police organizations are in constant interaction with their external environments thereby adapting and facilitating the expectations of other institutions in order to gain and maintain their own legitimacy (Crank, 2003; King, 2003; Shane, 2010).

### **Police Cultures and Politics**

The link between police and polity has been examined at length by various scholars within social sciences. Although largely disputed by many police agencies, research posits that police cultures are heavily influenced and impacted by politics and political figures (Reiner, 2000). As stated earlier, civil police service is inherently a social organization which is substantiated and created by a political process for the purpose of maintaining social order (Reiner, 2000). Since the actions of the police are considered to be guided by internal ideologies that resonate within police departments, it is imperative to examine the notion of police cultures in order to conceptualize police behavior.

Police cultures are highly complex in nature consisting of many structural and organizational intricacies at various levels of the agency. A theory that is widely cited in the discussion of police culture is proposed by J. Q. Wilson (1968) in his work *Varieties of Police Behaviour: The Management of Law and Order in Eight Communities*. In this book, Wilson (1968) proposes the theory of local political culture and police styles. The construction of this theory emerged from Wilson's (1968) observation of police cultures in different communities. In his study, Wilson (1968) observed that there are significant and undeniable differences in the way police officers from various departments interact and behave around the members of their community (Liederbach & Travis, 2008). Wilson's (1968) theoretical framework is intended to examine and explain three main objectives. At first, the theory of local political culture and

police styles investigates how police agencies influence the actions of front-line officers (Wilson, 1968). Secondly, the organizational factors that may hinder or limit the behaviours of individual officers are investigated. Lastly, Wilson (1968) investigates how the contextual influences of political cultures alongside that of the overall community are significant in shaping the organizational styles that are exhibited by local police departments. Over four decades later, although some assertions of this theory are refuted, Wilson's (1968) theory of local political culture and police styles is still regarded as a seminal piece of literature with respect to police cultures (Liederbach & Travis, 2008).

The literature on police cultures provides significant insights on police behaviours. The underpinnings of the various theoretical paradigms presented above illustrate how police agencies are often influenced by other external agencies. Moreover, the actions or inactions of individual police officers are also representative of the overall culture of their department. Considering the findings presented in the review of literature above, it is important to note police cultures can have a significant impact on police investigations. Furthermore, the above-presented literature is particularly important in order to understand the actions of the CPD with regards to the Koschman investigation. The rest of the literature review will discuss existing literature on homicide investigations. Various standards and procedures pertaining to homicide investigations will be discussed. The results section will build on the understanding of police cultures as well as homicide investigations in order to illustrate how the overarching culture of CPD was at play throughout the course of the highly problematic Koschman homicide investigation.

### **Previous Works on Homicide Investigations**

#### **Understanding Homicides**

### *Legal Definition*

The term homicide is defined and categorized in numerous ways. The simplest definition of homicide defines the term as a series of actions that culminate in the death of a human being (Downs, 2009). From a legal perspective, it is important to note that not all homicides are considered unlawful. Homicides resulting from actions such as police officers acting in the line of duty or citizens acting in self-defense are legally justifiable and not considered as criminal offenses (Brookman, 2005). Conversely, the term ‘murder’ is legally classified and defined as an act of unlawful killing of a human being (Brookman, 2005). Homicides can be classified as murder once elements of *mens rea* and *actus reus* have been established (Downs, 2009). Murder is further categorized into first and second degrees. First degree murder generally refers to killing that involves malice aforethought or premeditation whereas second degree murder refers to the absence of premeditation (Alvarez & Bachman, 2003). In addition to first and second degrees of murder, there exists a legal classification known as a felony murder. This type of murder involves the accidental or unintended killing of a person in the midst of another crime (Alvarez & Bachman, 2003). Other legal categories of homicides include, but are not limited to, voluntary or involuntary manslaughter.

### *Theoretical Explanation*

Most sociological theories of homicide are aimed at explaining situational or circumstantial aspects of the crime. Examination of homicides under a sociological lens allows researchers to explore beyond the individualistic characteristics of the offenders with a special emphasis on societal structures and social relations (Lee, 2011). It is argued that a greater majority of homicides tend to be situational in nature rather than premeditated which is why

theorists often use structural theories in order to explain the prevalence of homicides in society (Roth, 2010). According to this theoretical paradigm, structural factors, such as economic disparity, inequality of resources and lack of opportunities, are directly related to violent crimes that occur in society (Roth, 2010). Harboring feelings of deprivation and strain is said to lead to frustration in daily and social interactions which can further lead to violent behaviours including homicides (Miller, 2010).

Theorists have also posited subcultural theories as a means of explaining homicides (see Luckenbill, 1977). According to this school of thought, values and belief systems of individuals are developed through the interaction with one's surroundings (Luckenbill, 1977). The subculture theory addresses the normalization of violence within a culture. It is stated that cultures among disadvantaged neighborhoods or poverty prone areas will value 'toughness' and 'trouble' more as means of survival whereas middle or upper-class neighborhoods will often promote values such as 'educational achievement' (Downs, 2009). Proponents of this theoretical paradigm argue that crime-ridden neighborhoods are more likely to see increased homicide rates with violence being considered an effective means of conflict resolution and problem solving through the process of socialization (Downs, 2009).

Limited literature has also focused on explaining homicides through psychological and biological paradigms. Biological theories are often apparent in literature that attempts to explain prevalence homicides, or lack thereof, especially in relation to gender differences (DiCristina, 2006). Employing this theoretical paradigm, it is argued that males are more likely to commit harsher crimes due to their higher levels of testosterone than females (Miller, 2010). Although largely disputed, Cesare Lombroso's theory of biological criminality is also often addressed in literature. Lombroso pioneered the idea that distinct physical attributes, such as thin lips and

black curly hair, are predisposing factors to criminogenic behavior (Miller, 2010). Following the work of Lombroso, other theorists have proposed similar theories that link homicides and other violent acts to biological factors. More recent theories that examine homicides in a biological realm encompass environmentally induced deficiencies (Brookman, 2005). Such theories examine the role of drugs, alcohol and other substances that can cause biological deficiencies, which, in turn, may lead to criminal behavior including homicide (Brookman, 2005). However, more research is needed to validate such findings.

On the contrary, some researchers argue that individuals who commit murder or other violent offences, regardless of their gender or biological deficiencies, often suffer from some form of psychological disturbance which hinders their ability to refrain from violent behaviors (Lee, 2011). Psychological explanations of homicides, similar to the aforementioned biological explanations, stem from the positivistic school of thought. The underlying assumption shared by both perspectives dictates that individuals who commit violent offences are intrinsically different from those who do not partake in such offences (Brookman, 2005). The psychological perspective differs from other ones as proponents of this school of thought use the human mind, personality structure and psyche in order to explain the occurrences of such violent outbursts. The earliest form of clinical psychology that links violent criminality to the human psyche can be traced back to Sigmund Freud (Lee, 2011). According to his theory, Freud argued that violent behaviour as a means of conflict resolution often results from unresolved conflicts in one's childhood (Brookman, 2005). Modern theorists have used latent content from Freud's work in conjunction with other psychological constructs to explain violent criminality. For example, Gilligan's (2000) study on imprisoned violent males reveals that lethal violent behaviour results from internal psychological conflicts primarily related to feelings of shame and loss of self-

respect. Other psychologists have proffered similar theoretical explanations to study the act of homicide alongside offenders' psyche (Brookman, 2005).

### *Homicides in the Media*

Out of all serious crimes, murder captivates public concern and receives heightened attention in the media. Homicides are often presented as highly sensationalized stories in the news media (Gruenewald, Pizarro, & Chermak, 2009). Prior research on homicides and the media claims that in general, the media fail to capture situational and procedural aspects of homicides, regardless of the over coverage of homicidal incidents (Alvarez & Bachman, 2003). Moreover, it is argued that not all homicide incidents receive equal coverage. Disparities in media coverage of homicide cases have been examined in the literature. Some key findings indicate that homicides that are particularly violent or sexual in nature receive more media coverage. Furthermore, victims who seem more vulnerable, such as children or the elderly, also receive an increased amount of media coverage (Taylor & Sorenson, 2002). Other researchers have made similar assertions using race, gender and/or economic statuses as differing factors. According to Feist (1999), police agencies spend up to 40% of the 48 hours following any serious violent crimes debriefing media or dealing with various media-related inquiries. The first 48 hours preceding the discovery of the crime are considered particularly crucial by the investigating officers as well as the media (Feist, 1999). After this time period, media tends to lose interest as other stories begin to develop.

Another direction of research considers media as a resource in homicide investigations. As commonly observed in press conferences and/or news briefings, police officers often use news media to address the general public in regards to the ongoing investigation. Researchers

have identified various key strategies that are carried out through the collaboration of police agencies and news media (Innes, 1999). Primarily, media is used as a tool to inform the general public of a crime that has been committed while providing assurance that a police investigation has been initiated. At a later stage, a public information officer or in some instances, the chief of police, will use the media to appeal to the general public for witnesses or information which may be fruitful for the investigation (Innes, 1999). Furthermore, some researchers claim that police agencies will often strategize media release with just enough information regarding the crime in an attempt to rejuvenate public appeals for witnesses or information (Brookman, 2005). It is also argued that news media tend to be of most help in cases that revolve around serious criminality such as homicides or when the victims are considered to be particularly vulnerable, such as women, children or the elderly (Feist, 1999).

### **Homicide Investigations**

Homicides investigations continue to be an under-researched genre within homicide literature despite the overemphasis on fictional and factual media. Existing research on homicide investigations illustrates that describing and defining various aspect of this process is a complex task (Snow, 2005). Although there exist official sources such as the ‘Murder Investigation Manual’, most researchers agree that homicide investigations in practice do not follow a linear approach given the varying circumstances (see Geberth, 2006). The complexity in explaining this process lies in the use and reliance on inference-based decision making and other subjective measures that are often necessary for a homicide investigation (Snow, 2005). Nonetheless, it is extremely important to consider the processes and procedures that a homicide investigation entails in order to understand its outcome.

*Organization and Procedure of a Homicide Investigation*

As prior research indicates, the organization of any police investigation, especially a homicide investigation, entails many complexities with regards to procedural structures. A very simple, yet lacking description of this process would necessitate crime scene investigation, classification of homicide and reporting of the incident to specialized detectives which is followed by further investigation of the evidence and interrogation of any witnesses or potential suspects (Brookman, 2005). Although there are significant differences in theory and practice between national and international jurisdictions, most researchers have divided homicide investigation into two very crucial parts: initial response and secondary inquiry (Geberth, 2006). Initial response often involves uniformed officers who report to the scene of the crime. Upon the commencement of their preliminary investigation, if the case is deemed a homicide, homicide detectives are informed and assigned to the case. General duties of first responding officers include the following: protecting life and the crime scene, detaining witnesses or potential suspects, arresting the perpetrator if possible and taking notes (Geberth, 2006). Secondary inquiries are usually conducted and completed by the assigned homicide detectives. These detectives have a whole host of responsibilities that must be fulfilled in order to attain a successful outcome. In continuation of the secondary inquiry, homicide detectives must first confer with first responding officers to learn about the initial observations of the crime scene (Snow, 2005). It is the specialized homicide detectives who continue the investigation by assessing and reassessing evidence, questioning witnesses and suspects and reexamining various reports in an attempt to solve the case (Snow, 2005).

Literature on homicide solvability is generally lacking in several aspects. A limited amount of literature on procedural aspects of homicide investigations can be identified, however,

detailed accounts of structural framework alongside procedural framework remains largely unaddressed. In light of such limited literature, it is stated that the process of a homicide investigation should also be understood as a social process (Salfati & Dupont, 2006). According to Innes (2002), homicide most likely occurs as an outcome of a series of complex social relations alongside the exchange of interaction between two or more parties. It is argued that homicide investigators should also approach this phenomenon as a social process by conducting an in-depth analysis of all events and persons related to the crime (Salfati & Dupont, 2006). Furthermore, examining interactions, actions and reactions of individuals and social groups connected to the victim as well as the suspected offender is integral.

In order to understand the process of homicide investigations situated in a social context, prior researchers have used Goffman's (1986) concept of framing (see, Innes, 2002). In light of this concept, three key elements within homicide investigations are emergent: (1) the incident, (2) organizational properties and (3) the law (Innes, 2002). The incident refers to the situational circumstances in which the homicide occurs. It is argued that the nature of the circumstances in which a crime is situated is directly linked to the difficulty in the solvability of its investigation (Snow, 2005). Secondly, organizational properties refer to two main substructures within a homicide investigation known as 'conceptual knowledge structures' and 'administrative management structures' (Innes, 2002). Lastly, the law refers to the various legal discourses that are supposed to guide the trajectory and procedure of a homicide investigation (Innes, 2002). Taken together, these three elements help to build a comprehensive structure of a homicide investigation that accounts for the situational nature of this process.

*Issues in Homicide Investigations*

As mentioned above, homicide investigations can be highly complex resulting in various structural or procedural issues that must be addressed. Literature on investigative epistemology dictates that actions of investigative officers are usually rationalized by what they have inferred from the gathered knowledge regarding the case (Brookman & Innes, 2013). The process of investigation becomes exceptionally challenging given the varying complexities in social constructs and circumstances that envelope a homicidal incident. Under such circumstances, false leads and misinterpretations are not uncommon (see Foster, 2008). It is argued that such misguidance is often down-played in documented accounts and police records (Brookman & Innes, 2013). Existing literature on homicide investigations also notes that police attitudes toward various groups or populations (e.g. drug addicts or ethnic minorities) will often guide further investigative action (Schlesinger, Gardenier & Sheehan-Cook, 2014). In such cases, misinterpretation of information throughout the investigation can occur. Prejudicial and misleading beliefs or attitudes of police officers towards specific groups or populations are very rarely, if ever, documented (Hoyano, 1999). Other researchers have also discussed race, gender and economic stability of the victims and/or offenders as plausible factors that may be used by police officers to rationalize discriminatory perceptions and actions taken during the course of an on-going homicide investigation (see Shircore, 2006).

Another major source of issues found within homicide investigations results from various pressures that homicide detectives face. Innes (2002) identifies three main types of pressures that homicide detectives often face throughout the course of an investigation. These pressures can have significant ramifications on the overall process as well as the outcome of a homicide investigation. Innes (2002) classifies these pressures as temporal pressure, reputational pressure and financial pressure. Temporal pressure stems from the necessity of completing the

investigation in a timely manner, in order to protect evidence. Secondly, reputational pressure refers to the perceived competency of the detective; unsolved cases challenge the competence of the detective while cleared cases embellish it. Thirdly, financial pressure refers to the cost of time, money and resources being invested during the course of the homicide investigation (Innes, 2002). Other researchers have also brought forth discussions around circumstantial pressures placed upon police officers, particularly in high-profile cases (see Pratt & Lowenkamp, 2002). It is argued that cases as serious as homicides tend to generate a considerable amount of public concern that is further perpetuated by the heightened attention on the incident in the media. Such a high level of public concern warrants additional pressure to be placed on homicide detectives with respect to generating leads and results as fast as they can in order to diffuse public concern (Alison et al., 2013).

### *Police Performance and Training*

When examining homicide investigations, it is essential to consider training and performance of homicide detectives as well as other officers involved in this intricate process. Police officers as well as homicide detectives are often faced with difficult and emotion-provoking circumstances (Shircore, 2006). It is argued that the success of a homicide investigation greatly depends on skillful use of investigative strategies and resources by the personnel in charge (Geberth, 2006). The role of a homicide detective entails several duties that vary in complexity. Some of these duties include gathering knowledge and information from witnesses, suspects, informants, police databases and forensic specialists. It also falls under the purview of homicide detectives to infer what they believe happened and how the actions of all involved parties are to be construed within legal discourse (Wright, 2013). Research dictates that a quintessential element of the duty and performance of a homicide detective is the ability to

establish validity in the information that is gathered (Dabney et al., 2013). The processes of homicide investigations then are largely constructed around the knowledge that is accepted by the detective; any new information gathered serves to modify or confirm the pre-established knowledge of the case (Brookman, 2005). Although homicide detectives are most often credited for a solved homicide investigation, researchers argue that all officers, including patrol officer and dispatcher, should play an active role to contribute to this crime solving process (see Geberth, 2006).

The discretionary nature of homicide investigations has also been addressed in the limited studies that attempt to examine police efficiency. A process entrenched in homicide investigations that requires the use of discretion and subjectivity is often referred to as 'profiling'. This process was originally created by the Federal Bureau of Investigation (FBI) in order to understand and predict the behaviours of serious violent offenders (Alvarez & Bachman, 2003). The process of profiling is not free from public criticism; however, it continues to be utilized throughout the FBI as well as most police agencies. This process entails the use of discretionary powers and personal intuition on behalf of homicide detectives which transforms their leads into active investigations (Alvarez & Bachman, 2003). Such a subjective process warrants research to be conducted on police discretion alongside use of intuition as a method of solving homicide cases. It is stated that through processes such as profile building, detectives will often identify multiple suspects who are then questioned further. As noted above, the identification of suspects is often based on inferences of the detectives or their team members (Fahsing & Ask, 2013). This process is continued and repeated until a prime suspect is identified. In some cases, researchers have argued that this sub-process of an investigation can be

attributable to miscarriages of justice as not all that is inferred can be substantiated with evidence (Reasons et al., 2010).

### **Measuring Homicides**

Existing literature on measuring homicides generally carries a skeptical undertone with regards to processes of gathering and reporting crime data. Researchers address several issues that hinder the reliability of crime data, given the complex nature of homicides and its investigative process (see Alvarez & Bachman, 2003). It is argued that murders, along with many other forms of crime, often go unreported. In addition, many homicide cases that are reported to the police can often be lost or misreported at the various stages of data collection (Trussler, 2010). For example, cases of homicides, especially infanticides, can often be wrongly classified as non-criminal by the investigative officers due to the many intricacies that entail such a crime (Alvarez & Bachman, 2003). Moreover, out of the cases discovered and classified as homicides by the police, only a portion of such cases are cleared by an arrest (Roberts, 2007). Researchers argue that the more information that is filtered through the justice system, the more unreliable it becomes, often due to the use of generalization and categorization that is necessitated at the various stages of data collection as well as the reporting process (Riedel & Regoeczi, 2004). Although largely contested by scholars, the two primary sources for homicide data used in the United States are the National Center for Health Statistics (NCHS) and Uniform Crime Reports (UCR). Almost all US-based publications that require the use of statistical data on homicide cases use one or both of the two aforementioned sources to acquire desired data (see Pizarro & Zeoli, 2013).

#### *Clearing Homicide Cases*

Clearing homicide cases at hand is said to be a paramount concern for the respective police departments. Clearing such cases are often regarded as indicators of police performance and satisfaction within police departments as well as by the general population (Regoeczi, Jarvis & Riedel, 2008). Given the immense interest and fear that resonates within society with respect to homicide incidents, police departments are often faced with an increased pressure to clear such cases as soon as possible (Luckenbill, 1977). The Federal Bureau of Investigation defines two ways in which an offence can be considered as 'clear'. The first category of cleared offences is called 'cleared by arrest'. This categorization encompasses offences that have been "cleared by arrest or solved for crime reporting purposes when at least one person is arrested, charged with the offense, and turned over to the court for prosecution" (FBI, 2011). The second category of cleared offences is called 'cleared by exceptional means'. This categorization encompasses offences that have been cleared by the "identification of the offender, collection of sufficient evidence to support an arrest and turned over to the court for prosecution, and the existence of circumstances that prohibits the agency from arresting, charging and prosecuting the offender" (FBI, 2011). These definitions, as provided by the FBI, are generally used and applied in most homicide cases in various jurisdictions across the nation. In some instances however, police departments may use additional metrics depending on the differing circumstances of a case (Davies, 2007). For example, in cases where the offender dies before an arrest can be made, police departments will often classify such a case as exceptionally or administratively cleared (see Regoeczi, Jarvis & Riedel, 2008).

#### *Factors Affecting Homicide Clearance Rates*

Literature on homicide solvability illustrates that the rates of homicide clearance have significantly decreased since the 1960s. As presented by Keel et al. (2009), clearance rates of

homicides have decreased from 90% in 1960 to about 61% in 2006 according to the statistics gathered by the FBI. Divergent opinions of scholars are apparent in the literature on homicide solvability with respect to the future trajectory of homicide clearance rates. Some researchers purport that homicide clearance rates will increase with time while others contest that these rates will steadily decline in absence of sufficient efforts to improve various caveats of the investigative process (see Trussler, 2010; Keel et al., 2009). Given such disparate assertions in existing literature, it is necessary to examine and analyze possible factors that may affect homicide clearance rates.

As mentioned before, homicide investigations tend to be inherently complex. While some cases may be straightforward and relatively easy to conceptualize, others may be enveloped in evidential deficiencies and identification problems. Rather, it is stated that most homicide cases are disorderly and non-sequential, making the investigative process difficult (Puckett & Lundman, 2003). Previous researchers have examined organizational and operational variables such as management and resources as possible factors that affect the clearance rates of homicides (see Roberts, 2007). There is a general consensus among scholars on the notion that although the availability and management of resources play a role in case clearances, other and more significant factors need to be addressed in conjunction with organizational variables (see Litwin & Xu, 2007). Researchers have also examined the role of analytical processes including investigative procedures and decision making in relation to clearance rates of homicide cases. Taken together, organizational and investigative procedures attempt to explain some of the factors that can be observed in clearance rates (Keel et al., 2009).

Most of the existing literature on homicide solvability is in agreement that demographic factors can have substantial effects on the clearance rates of homicide cases. It is argued that

homicide cases involving non-White victims and offenders have lower clearance rates than cases that involve White victims (Borg & Parker, 2001). Differing hypotheses have been offered in order to explain this disparity. Some researchers insist that lower clearance rates for non-White homicide victims is a reflection of devaluing attitudes that are held by investigating officers with respect to racial minorities (see Borg & Parker, 2001). Similar assertions have been made for homicide cases in which the victims are considered to be at odds with the law, especially if the victim has a prior criminal history or substance abuse issues (Davies, 2007). Conversely, other researchers argue that such disparities in clearance rates within certain demographics is indicative of the lack of trust and submission to police authorities that may resonate among specific populations (Keel et al., 2009). Nonetheless, racial disparities are highly ranked among factors that significantly affect clearance rates of homicides.

### **Police Record Keeping and Knowledge Management Systems**

Systematic organization of case files and resource management are also very crucial to the structural competencies of an investigation. During and following the initial stage of a homicide investigation, detectives must systematically sift through the gathered information in order to generate leads (Gottschalk, 2006). Some researchers have made a distinction between knowledge and information (see Innes, 2002). It is stated that knowledge is the result of gathered information that provides a contextual analysis of a phenomenon (Dean et al., 2008). The construction of such knowledge is arguably the most significant part of a homicide investigation. After gathering sufficient information, it is upon the detectives to systematically organize the evidence alongside other relevant materials prior to making an arrest (Adderley & Musgrove, 2001). In order to do so, detectives use a variety of information management systems (e.g. Violent Criminal Apprehension System, also known as VICAP). The purpose of these systems is

to store and reproduce data on crimes and offenders that have been recorded previously (Adderley & Musgrove, 2001). Systems such as VICAP have allowed police agencies to coordinate and collaborate across state boundaries using secure and electronic transaction of information. In addition, police agencies will employ an individual or a team of crime analysts; these individuals are considered to have mastery over crime recording systems and the nature of their employment requires them to assist on-going investigations by generating and integrating information from various systems (Adderley & Musgrove, 2001).

Research on police record keeping and knowledge management systems is particularly important in order to understand the adversarial decisions that follow an arrest of a suspected homicide offender. Prior research indicates that police records, including notes from detectives, can be brought up or even challenged in trials (see Hoyano, 1999). Because of such intricacies, most police agencies will often have their own internal policies that are implemented to minimize the potential scrutinizing of officers and/or detectives when questioned in court (Dean et al., 2008). As proposed by Gottschalk (2006), a lack of appropriate measures and policies for recording and storing information can result in severe consequences with significant impacts on the judicial process. For example, Gottschalk (2006) argues that although the use of information technology aids officers in information management, some forms and reports that are still completed manually often get challenged in courts due to errors that emerge. As a remedy to judicial scrutiny, researchers have proposed that a growth in knowledge management systems is necessary (see Dean et al., 2008; Gottschalk, 2006).

*Use of Language in Police Records*

The account of an incident produced by a police agency through various reports and the language used within such documents are particularly important elements as they provide a narrative of the crime. Moreover, such accounts are expected to be grounded in legal reasoning and discourse which in turn guides the adversarial process that follows the investigation (D'hondt, 2009). These narratives are used to assign meanings to the actions that are central to the trajectory of a homicide investigation. It is argued that such documents or culminating reports are more reflective of what the detective has inferred of the crime rather than what may have happened in actuality (Trace, 2002). The language used to produce a narrative will often depend on a few pivotal elements such as satisfying the queries of an audience as well as satisfying the requirements of expected results (Alison et al., 2013). Prior research indicates that police officers will often omit pieces of information that do not concur with the overall sense of their narrative in order to contextualize and create connections between places, people and objects that are substantive to their claim (see Trace, 2002). Additionally, researchers have utilized the term 'glossing' when referring to the text in narrative reports that serves the purpose of 'filling in' information using related or unrelated inferences where there is a lack of substantive evidence (Innes, 2002b).

Communication is considered to be one of the most essential elements in the organization and the structure of any investigation. As prior research on investigative studies illustrates, sharing information and knowledge within the organization helps to build and strengthen a shared understanding of the case (Brookman, 2005). It is often through the process of sharing knowledge internally between officers that a pragmatic interpretation of a person or the object in question is established (Innes, 2002b). These interpretations are then used to guide preceding steps of the investigation. Innes (2002b) argues that communally negotiated and shared

perceptions of individuals, including witnesses, suspects and victims, serve to ease the complexity within the environment surrounding the case. Furthermore, it is these shared pragmatic perceptions that are reported and conveyed with varying outlets such as the media (Trace, 2002). The use of specific yet subtle language used by police officers is often indicative of the above mentioned pragmatic perceptions constructed within the police organization (Neal, 2012). The perceived severity of a crime or dangerous nature of an offender can also often be deduced from publically made police statements (Neal, 2012).

Additionally, the use of discourse and rhetoric in police records is especially worthy of examination due to the culminating effect that such records have on the adversarial processes. It is stated that police officers will often tailor their statements so that their narrative is slightly suggestive of an imputed motive and intent (Wright, 2013). Accounts of statements of police officers in Innes' (2002a) study of homicide investigations reveal that although proof of motive is not legally required for prosecution, officers believe that juries need to be presented with some sort of an account of a motive. According to the literature within legal studies, motive and intent are considered to be highly internal and often difficult to discern (see Raitt, 2013). In cases where a clear motive cannot be established, detectives and police officers will often use their own judgment to suggest possible rationalizations of the crime in order to strengthen their understanding of the case as well as that of the jurors' (Fahsing & Ask, 2013).

Taken together, the works of Innes (2002b), Raitt (2013) and Trace (2002) on police use of language bring attention to the concept of intertextuality as a basic principle of interpretation. The term 'intertextuality' can be broadly defined as a mode of literary interpretation of various textual mediums; such interpretations are often based on processing and/or gathering critical knowledge from other textual sources (Shank, 2008). The concept of intertextuality presents the

notion that meanings presented in textual archives are always negotiated with other, preexisting texts or perceptions held by the addressee (Burns, 2010). Moreover, internal inferences, allusions and references from other sources of information are most common elements that aid in formulating intertextual assumptions (Panagiotidou, 2012). A limited number of qualitative studies have recognized the importance of intertextuality, particularly in narrative texts. Shank (2008) claims that the paramount role of examining intertextuality in research is premised on intertextual relations between various systems. When examining intertextuality, qualitative researchers are most concerned with discovering and understanding the inferential reflections that are presented through various texts (Shank, 2008). Since police records are also considered narrative accounts of reported incidents, the role of intertextuality in such documents warrants further examination (see Neal, 2012).

### **Shortcomings in the Existing Literature**

Existing literature on homicide investigation and homicide solvability is generally limited. Although there is a considerable amount of literature available on the act of homicide itself paired with various contextual analyses of social institutions, there remains a gap in the literature with regards to the solvability of homicides. Moreover, existing literature that does address the process of homicide investigations fails to integrate a critical analysis of police practice and other factors that may hinder the success of an investigation. For example, practices and policies of police record keeping are significant in current literature; however, the language used in such records is completely overlooked. As evident through various pieces of literature, police statements can be tailored and embellished; yet the linguistic features of such accomplishments remain unaddressed. The plausible effects of the use of various linguistic

devices on the latent content or the general tone of police statements are unknown and unexamined.

Furthermore, even though there is a consensus in literature that effective information management is critical to the success of a homicide investigation, the means by which police agencies manage their knowledge and information are only superficially explored. In particular, previous literature fails to examine cases in which detectives may have to manage numerous statements from witnesses. There can be many instances in which statements of witnesses are contrary to the views of the detectives regarding the overall investigation. Under such circumstances, it is important to examine how such contradictory statements are recorded, phrased and preserved in police files. Existing research fails to examine if and how police records can be distorted to meet political and exigent ends. Overall, there remains a paucity of research in investigative epistemology that accounts for the role of archival record keeping and the use of language in police records within police agencies.

## **Data and Methods**

### **Method of Analysis**

A homicide case as complex as the Koschman case entails many intricacies with regards to its investigative process alongside political influences. A comprehensive understanding of such a case requires a holistic approach that provides a detailed description of the situation and events along with an in-depth analysis of the various motivations and interactions of the actors involved. In correspondence with the complex nature of the Koschman case, this paper will employ a 'case study method' as a means of analysis.

Most accepted definitions of a case study define the term as an “intense analysis of a unit, such as a person or community, with special attention to the developmental factors in relation to the environment” (Denzin & Lincoln, 2011, p. 301; Stake, 2009). As stipulated in the definition above, the intensive analysis of a unit allows for a rich, detailed and complete description of the case that typically evolves with time (i.e. developmental factors) and is interconnected within a specific context (i.e. the environment) (Denzin & Lincoln, 2011). Furthermore, a case study method allows the researcher to observe and analyze a situation or an event along with its constitutive processes as well as the actors involved (Gagnon, 2010). As stated by many researchers in the past, a case study method is best suited for the purposes of building a theory; however, other researchers also posit that case studies are equally useful for the purposes of validating a theory (Guthrie, 2010; Woodside & Wilson, 2003). Nonetheless, a case study method is widely applied in qualitative research due to its explanatory powers in the examination of a given phenomenon (Stake, 2009).

One of the main advantages of employing this method is that case studies can present an in-depth analysis of an event or a situation while supporting the development of historical perspectives and guaranteeing a high degree of internal validity (Gagnon, 2010). It is also stated that case studies are best suited to analyze “practical issues in which the experience of the subjects is central and the context of the experience is decisive” (Gagnon, 2010, p. 15). Since the purpose of this paper is to analyze the role of intertextuality in police records, using the Koschman case as a means of analysis will help to illustrate how linguistic devices are used by police officers and what outcomes such practices may entail.

This research examines official police records and court documents pertaining to the homicide of David Koschman in an attempt to illustrate how police officers use language to

purposely alter statements and furnish their inferences as evidence. In order to do so, detailed narratives of the incidents pertaining to the Koschman homicide using all available police records are compiled. To further this examination, all narratives from police records are verified against the news reports published by the Chicago Sun-Times as a result of their own private investigation. Any and all points of contention between the news reports and the police reports are further verified by a thorough analysis of court documents such as the special prosecutor's report as well as the various petitions filed before the court by the victim's family and friends. Archival data from the above-mentioned documents is collated in various thematic categories in order to illustrate the effects of disingenuous record-keeping on the overall investigation. Furthermore, divergence between theory and practice of various investigative procedures is also discussed. Lastly, the role of publicized statements made by various high-ranking and influential officials during the course of the investigation is examined in light of compliance and complicity.

### **Source of Data**

For the purpose of this paper, primary documents, such as police records and court documents, pertaining to the Koschman case were examined. A list of all primary documents used is provided in the appendix. These documents were attained from the archives of the Chicago Sun-times' website. Following the Sun-Times' investigation of the Koschman case, all documents that were released by the CPD were uploaded on to their online archival database. These documents were originally obtained by Tim Novak of the Chicago Sun-Times via a FOIA request. Similarly, an independent FOIA was submitted to the CPD on the 30<sup>th</sup> of January, 2015 for the purpose of this paper, however, no response was received. In addition to the aforementioned primary documents, news reports published during and following the Sun-

Times' investigation are used to corroborate the claims that were made in various police reports. Furthermore, inconsistencies that appear in the examination of police records, court documents and news reports were analyzed in order to illustrate how the information presented in police records can be fabricated.

## **Results**

### **Archival Management of Witness Statements**

#### *Omission of Witness Statements*

After searching through police records, court documents and various news reports pertaining to the Koschman case, it is evident that one of the ways in which police records can become disingenuous is through the omission of certain evidence such as witness statements. Although previous research has not examined omissions in witness statements specifically, tailoring of witness statements in police records has been discussed. As noted by Trace (2002) and Innes (2002b), statements in police reports are often presented to provide evidentiary support of intent or motive which is being proffered by the recorder. In what follows, instances of omissions in witness statements pertaining to the Koschman case are presented. Such omissions tactfully insulate Vanecko from criminal liability while presenting a seemingly fair investigative police record.

During the initial investigation of the Koschman case, Detective Yawger conducted an interview with Scott Allen (one of Koschman's friends). In that interview, it was initially recorded that Allen told Detective Yawger that the largest member of Vanecko's group of friends was very aggressive during the altercation and threatened to assault Koschman and his friends (*People v. Vanecko*, 2013). This statement clearly implicates Vanecko as the aggressor since

Vanecko was physically larger than all the parties involved. Consequently, Detective Yawger failed to include Allen's statement in the final version of his General Progress report (GPR, hereafter) (*People v. Vanecko*, 2013; *Koschman v. City of Chicago et al.*, 2014). While impossible to verify, the omission and slight alteration of witness statements on the part of both detectives functioned to insulate Vanecko from any criminal liability.

Similarly, Detective O'Leary also adjusted her initial Supplementary Report which had been drafted on April 25<sup>th</sup>, 2004, directly following the investigation of the altercation and prior to the death of David Koschman. On May 20<sup>th</sup>, 2004, Detective O'Leary edited her initial Supplementary Report by omitting parts of a witness statement which indicated that Vanecko's assault on Koschman was not justified (*People v. Vanecko*, 2013). In the report drafted on April 25<sup>th</sup> 2004, Detective O'Leary recorded in her interview with Michael Connolly (a bystander witness) that Connolly did not know if Koschman was the aggressor or the peacemaker before he was violently attacked (*Koschman v. City of Chicago et al.*, 2014). In the edited version, Detective O'Leary omitted the abovementioned statement altogether (*People v. Vanecko*, 2013; *Koschman v. City of Chicago et al.*, 2014).

Furthermore, although all of Koschman's friends and bystanders consistently stated that the physically largest individual from Vanecko's group was the assailant, Detective Yawger did not name Vanecko as the assailant in his records. As evident from arrest records, court documents and news reports, Richard Vanecko was obviously the largest member from his group with the height of 6'3 and weight of 230 pounds, followed by Kevin McCarthy who was 6'2 and 190 pounds, and Craig Denham who was 5'10 and 170 pounds (Gilger, 2011b; Main & Speilman, 2004; *People v. Vanecko*, 2013). On official records, Detective Yawger even admitted to the Special Prosecutor that he was well-aware from his initial investigation that it was

Vanecko who had punched Koschman; however, during the course of his original investigation, Detective Yawger omitted the witness statements that alluded to the physical description of Vanecko and concluded that the assailant is unidentifiable (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

#### *Alteration in Witness Statements*

With respect to archival management, the slight alteration of witness statements is also apparent in the police records from the Koschman case. In addition to omitting various key witness statements, the detectives at CPD tactfully altered some statements in an attempt to solidify and support their version of the story. Although lacking in abundance, few previous studies have examined the role of altered statements in police and/or court records. It is important to note that the recorder of such records is not free from his or her own judgments and rationalizations (Trace, 2002). Moreover, records can be altered by the recorder in an attempt to support his or her interpretation of events (Innes, 2002b; Raitt, 2013; Trace, 2002). More research is needed to examine various causes and effects of the editorial power of the police with respect to police documents and records. In what follows, examples of witness statements being altered in police records pertaining to the Koschman case are provided. It should be noted that the tactful alteration of witness statements helped to protect Vanecko from being charged in the homicide of David Koschman.

Prior to the reclassification of the Koschman case as a homicide, Detectives Yawger and Giralamo interviewed the available witnesses. The very first instances of witness statements being alerted can be observed in Detective Giralamo's GPR. In his interview with Philip Kohler, a bystander, Detective Giralamo recorded that Kohler stated that "Koschman had rushed forward

to the center of the group and was aggressive” (*Koschman v. City of Chicago et al.*, 2014, p. 11). This statement in Detective Giralamo’s GPR presented Koschman as physical aggressor whereas, in actuality, Kohler only stated that Koschman was being verbally aggressive (*Koschman v. City of Chicago et al.*, 2014). The discrepancy between Kohler’s actual words and the ones reported in Detective Giralamo’s GPR later served as a justification for Vanecko’s actions as self-defense.

Moreover, towards the end of the initial investigation, Detective Yawger incorrectly concluded in his final report that all of the witnesses who were interviewed named David Koschman as the aggressor. The above-stated conclusion can be viewed as yet another attempt at insulating Vanecko from any criminal liability by the means of altering witness statements. It is also important to note that to further the theory of self-defense, ambiguous witness statements were slightly manipulated which functioned to protect Vanecko. As verified in various court documents along with news articles from the Chicago Sun-Times and the medical examiner’s report, witnesses who were close enough to actually see the entire altercation uniformly stated that Koschman was punched rather than pushed (*People v. Vanecko*, 2013; Circuit Court of Cook County, 2011; Novak, Fusco & Marin, 2011c). Only those witnesses who saw the altercation from a distance expressed uncertainty with regards to whether Koschman was pushed or punched; however, Detective Yawger omitted the actual statements of witnesses who stated that Koschman was punched and presented an altered version in his report stating that all witnesses were unsure if Koschman was pushed or punched (*Koschman v. City of Chicago et al.*, 2014).

#### *Fabrication of Witness Statements*

In addition to omission and alteration of witness statements, this case study also alludes to the possibility of fabrication of discourse in official records. In what follows, instances of fabricated witness statements are discussed alongside plausible effects of such fabrication on the overall investigation. During the course of the original homicide investigation as well as the reinvestigation conducted in 2011, what has been consistently and prominently put forth by the officials at CPD as well as from the State's Attorney's Office (SAO) is the notion that Koschman's death was a result of an act of self-defense rather than a violent assault. As noted earlier, detectives omitted and altered witness statements to accomplish this objective. In this section, the role of fabricated witness statements in police records is examined.

Instances of manufactured evidence appear in the examination of police records from the reinvestigation of the Koschman case. From his interviews with the friends of Koschman on January 17<sup>th</sup>, 2011, Detective Gilger recorded that James Copeland stated that he was trying to pull Koschman back from the altercation (*Koschman v. City of Chicago et al.*, 2014). This statement was a fabrication altogether since Copeland later testified that he did not say anything as such and that no one had to pull anyone back from the altercation (Novak, Fusco & Marin, 2011d; *People v. Vanecko*, 2013). Detective Gilger also recorded that, as per Copeland's statement, Koschman had walked up to Vanecko's group. This statement was also falsely attributed to Copeland. In his testimony, Copeland clearly recalled that both groups were in the same area and Koschman was not moving towards anyone when he was punched (Novak, Fusco & Marin, 2011d; *Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). Similarly, in his interview with Scott Allen, Detective Gilger recorded that Allen stated that Koschman had been yelling aggressively. This statement again was a mere fabrication as Allen's testimony is in clear contradiction with what Detective Gilger had recorded (*People v. Vanecko*, 2013).

Additionally, more fabricated evidence appears in the record of interviews that Detective Gilger and Detective Spanos conducted with the bystander witnesses. As recorded in Gilger's GPR, Phillip Kohler stated that there was "pushing and shoving happening between the two groups" (Gilger, 2011c). This statement was also a fabrication since Kohler himself testified that there was no physical contact of any sort between the two groups until Koschman was assaulted (*People v. Vanecko*, 2013). Similarly, as recorded in Gilger's GPR, another bystander named Connolly stated that Koschman was pushed by someone from the other group (Gilger, 2011b). Connolly's testimony clearly contradicts the above-mentioned statement as Connolly explained that his view was partially blocked and he had no way of knowing if Koschman was pushed or punched (*People v. Vanecko*, 2013). Detective Gilger and Detective Spanos' records did not include any interview evidence from Vanecko or his friends that could possibly contradict the fact that Koschman did not threaten Vanecko.

Following these interviews, a case report was drafted on February 11<sup>th</sup>, 2011. This draft consisted of all the fabricated evidence discussed above; however, the report itself did not explicitly state that Vanecko had acted in self-defense (*Koschman v. City of Chicago et al.*, 2014). In an attempt to substantiate Vanecko's self-defense story even further, Detective Salemm, Detective Andrews, Detective Cirone and Detective Gilger edited the report by adding that witnesses reported that "Koschman aggressively went after Vanecko stating 'fuck you, I'll kick your ass'" (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). They also added that "these aggressive actions caused Vanecko to take action to defend himself and his friends from being attacked" (*Koschman v. City of Chicago et al.*, 2014). The two aforementioned statements were entirely fabricated by the detectives as all of the witnesses denied the ownership of such statements in their testimonies (Novak, Fusco & Marin, 2011d;

*People v. Vanecko*, 2013). These statements were inserted in Detective Gilger and Detective Spanos' case report by Detective Cirone in order to substantiate that Koschman was aggressively attacking Vanecko and his friends when Vanecko pushed or punched Koschman. Email records between Detective Cirone and Detective Andrews reveal that Detective Andrews complimented Detective Cirone's fabrication by stating that it was "very nicely done" (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

#### *Summary of Archival Management of Witness Statements*

As illustrated above, the findings of this research are indicative of three specific ways in which witness statements are managed and misreported within police records. At first, it ought to be noted that police officers can indeed alter witness statements in such a manner that the statements become detached from its original context. Altered witness statements can then be used as evidentiary support for the version of the incident that is being proffered by the police rather than the factual account of the incident. With slight alterations in witness statements, as observed in the Koschman case, police records can be structured to present a version of the incident which can be misleading to the overall investigation. Secondly, contradictory witness statements can be omitted from official records altogether. Omission of various statements can aid the detectives to construct or delete a suspect from police records entirely. Lastly, this case study illustrates how police officers have the power and resources to fabricate witness statements in order to strengthen the outcome of their investigation. As noted above, the fabrication of plausible statements attributed to witnesses can be crucial to the outcome of the investigation. Conclusively, the findings of this research indicate that homicide detectives have at their disposal numerous ways to compromise the integrity of a homicide investigation. The editorial power to craft the text of the discourse provides the police with another aspect of police power besides the

power to wield coercive force. As illustrated throughout this case study, the police also wield the power to craft a suspect into existence or the power to erase a guilty one by simply altering, fabricating or omitting various witness statements. In addition to the coercive powers of the police, the police also exercise textual power—to construct and edit reality for political ends.

### **Manipulating Investigatory Procedures**

Another major finding of this case study reveals that homicide detectives are able to manipulate standard investigative procedures to create supportive documentation in the form of official police records in order to support their desired outcome of an investigation. In addition to the archival management or mismanagement of police records, manipulation of various investigatory procedures of the CPD is also evident in the archives of the Koschman case. Standard investigatory procedures such as identification line-ups and general canvassing were not conducted according to the mandated regulations as per CDP's training manual. Moreover, the chain of custody with respect to the police records from the Koschman case was highly problematic. The sections below illustrate how the aforementioned investigatory procedures were conducted inadequately. Existing research on standard investigative procedures is provided as a means of reference on the intent and purposes of such procedures.

#### *Conducting a Faulty Line-up*

An identification line-up is a fairly common investigative procedure used by the police in their investigations (Hobson & Wilcock, 2011). Previous research indicates that eyewitness identification is considered to be a powerful and persuasive source of evidence within the criminal justice system (Porter et al., 2014). On the contrary, recent research on eyewitness identification and police line-ups has brought forth compelling evidence of fallibility within this

procedure. For example, Pozzulo and her colleagues (2009) cite erroneous eyewitness identification among the leading causes of wrongful convictions. Moreover, from the examination of police records on identification line-ups, Porter and his colleagues (2014) assert that one in five witnesses are likely to identify a filler rather than the actual suspect. Given such alarming findings, advancing research on identification line-ups has focused on plausible factors that can influence its validity and accuracy. Factors such as appearance changes, age of witnesses and number of suspects presented are commonly examined with respect to eyewitness misidentifications (see Hobson & Wilcock, 2011). Correspondingly, this research found appearance change and time lapse between the incident and the identification line-up as possible reasons for misidentification. In what follows, a procedural description of the identification line-up conducted by the CPD is provided. Attention must be paid to procedural flaws of this line-up as a result of which Vanecko remained protected from the bounds of the law.

The identification line-up for the Koschman case was conducted on May 20<sup>th</sup>, 2004. In this line-up, Koschman's friends and bystander witnesses were asked to identify Vanecko, Denham and McCarthy. As corroborated by court records, news reports as well as the Special Prosecutor's report, the manner in which this line-up was presented was misleading (Circuit Court of Cook County, 2011; *People v. Vanecko*, 2013). First, the line-up was conducted nearly a month after the incident between two groups of inebriated strangers had occurred. Secondly, knowing that the witnesses had physically identified Vanecko by the virtue of his relatively larger built, the detectives of CPD presented white male fillers who were physically larger than Vanecko (*People v. Vanecko*, 2013). Moreover, the witnesses consistently reported that the assailant was wearing a hat at the time of the altercation yet, none of the participants in the line-up wore a hat (*Koschman v. City of Chicago et al.*, 2014). The identification line-up presented

ideal conditions for misidentification as a result of which none of the witnesses were able to identify Vanecko as the assailant.

#### *Erroneous Canvassing of the Initial Incident*

Canvassing is one of the primary procedures which often marks the beginning of an investigation. As detailed in the literature put forth by the Federal Bureau of Investigation (FBI), any major investigation begins with fact-finding and management thereof (Edwards, 2009). Within the preliminary, fact-finding stage of the investigation, law enforcement officials are supposed to complete a general canvas of the incident. The practice of canvassing includes interviews with witnesses, involved parties, and individuals from the neighborhood or the surrounding areas (Edwards, 2009). Research on investigative practices elucidates the practice of canvassing as a major lead-generating procedure (Geberth, 2006). Moreover, it is stated that canvassing creates a broad framework of data which can be utilized at the various stages of the investigation (Geberth, 2006). As cited in existing literature, failure to canvas appropriately can result in an overtly complex and strenuous investigation (Snow, 2005). This research exemplifies how inadequate canvassing can obscure the course of the investigation as significant information pertaining to the case may remain concealed. The section below describes how the lack of appropriate investigative measures on behalf of the CPD affected the course of the investigation.

The destruction or concealment of records and evidence can be observed throughout the course of the two investigations conducted by the CPD. A significant piece of evidence that the officers at CPD failed to acquire was the available video footage of the altercation. As per CPD's standard investigative procedures, officers and detectives involved in an investigation are expected to canvass the area for additional witnesses and evidence (*Koschman v. City of Chicago*

*et al.*, 2014). This above-stated protocol was completely ignored by all of the detectives involved in the investigation of the Koschman homicide. If appropriate measures of canvassing were undertaken by any one of the detectives that worked on the Koschman case, surveillance tapes of the initial altercation between Vanecko and Koschman would have been acquired. There are at least 13 establishments that would have had video footage of the area where the altercation took place; however no efforts at gathering such evidence were made by Detectives O’Leary and Clemens (*Koschman v. City of Chicago et al.*, 2014). Consequently the investigation of the Assault/Battery case was concluded in a matter of a few hours. After the death of David Koschman and reclassification of the case as a homicide, Detective Yawger, along with all other detectives assigned to the case thereafter, also failed to acquire any sort of surveillance footage that could have provided a factual recount of the altercation which resulted in the death of David Koschman (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

#### *Misplacement of Physical Records*

Another anomaly that indicates concealment of evidence can be observed throughout the procedural investigative work of Assistant State’s Attorney (ASA) O’Brien and Detective Yawger. After the Koschman case was sent over to the SAO, ASA O’Brien, accompanied by Detective Yawger, began to re-interview some of the key witnesses. ASA O’Brien and Detective Yawger were highly experienced in their field of work with a well-renowned reputation for being thorough and detailed in their investigations (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). Contrasting such claims, both ASA O’Brien and Detective Yawger failed to take meaningful notes during the interviews that they conducted. The notes that they did manage to take were destroyed thereafter. Furthermore, the process of advice assignments are intentionally designed to create a sufficient procedural paper trail before any such advice or

recommendations can be made by the SAO (see *Koschman v. City of Chicago et al.*, 2014). Even with the existence of strict procedural guidelines, ASA O'Brien was able to avoid the creation and submission of strictly mandated records. For example, according to SAO's procedures, a record must be made in the Felony Review Unit's case-tracking database known as 'PROMIS'; however, no such record pertaining to the Koschman case was ever created (*People v. Vanecko*, 2013). Ironically, as a Chief of the Felony Review Unit, it is an integral part of ASA O'Brien's job description to ensure that such guidelines are followed. Moreover, as mandated by the SAO, a felony review folder must be created and turned in for every case that is assessed for the purpose of internal recordkeeping, however, ASA O'Brien did not turn in any such record. The felony review file pertaining to the Koschman case was classified as 'missing' (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

As the reinvestigation of the Koschman case unfolded, more and more instances of missing files began to emerge. A day after the FOIA request was submitted by the Chicago Sun-Times, Detective Yawger, who had retired prior to when the reinvestigation began, called Detective Walsh to discuss Koschman's homicide file (*People v. Vanecko*, 2013). Detective Walsh later reported to CPD's Commander Yamashiroya that David Koschman's homicide file was missing. That same file was later recovered from Detective Walsh's own office in an incomplete state (*People v. Vanecko*, 2013). Among many other records, the newfound homicide file was missing all the GPRs from the initial investigation in 2004 (see Gilger, 2011c). These GPRs would have included witness statements which were indicative of Vanecko's unjustified assault on Koschman. Nevertheless, the reinvestigation of the Koschman case was closed in March of 2011 without any charges in question as had been decided amongst the officials at CPD, SAO as well as the Mayor's office.

Following the inconsistencies with respect to missing police records, the City of Chicago's Inspector General Office (hereafter, IGO) launched an investigation on how the CPD had handled the Koschman case. In April of 2011, the IGO sent a request to CPD in order to acquire all documents pertaining to the Koschman case (*People v. Vanecko*, 2013). Following this request, telephone records show that Detective Walsh and retired Detective Yawger had several conversations. A day after their telephone conversation on June 28<sup>th</sup>, 2011, Detective Walsh was able to recover a copy of the Koschman homicide file which appeared to be in an altered state (*People v. Vanecko*, 2013). A day after the discovery of the Koschman homicide file, retired Detective Yawger was able to recover his working file from the CPD locker room (*People v. Vanecko*, 2013). These newfound files remained in the custody of Detective Walsh and retired Detective Yawger before the eventual turnover to the IGO (*People v. Vanecko*, 2013). Both of these newfound files appeared to be altered; the consisting documents did not match the inventory sheets which is indicative of the fact that materials within the files had been rearranged and removed (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). Moreover, as found in the Special Prosecutor's Report, Detective Clemens testified that he saw Detective Walsh with another file pertaining to the Koschman case in the spring of 2011; however, that file was never located (*People v. Vanecko*, 2013).

#### *Summary of Manipulating of Investigative Procedures*

As illustrated above, the manipulation of standard investigative procedures by the officials at the CPD created further ambiguity in the official police records which in turn, afforded Vanecko with further insulation from criminal liability. At first, by conducting a faulty line-up, the detectives were able to generate an official police record which illustrates that a suspect could not be positively identified by the available witnesses thus, erasing Vanecko's

existence as a suspect from official records. Secondly, the lack of adequate canvassing also aided in the obliteration of plausible suspects from police records. Since no video footage of the incident was acquired, the information presented in official records was entirely reconstructed from altered, omitted and/or fabricated witness statements and remained uncontested. Lastly, the uncanny misplacement and replacement of police files are also indicative of the notion that the police records pertaining to the Koschman case were tampered with. The findings of this case study reveal that the discretionary powers exercised by police officials, even in standard, mandated procedures, allow for the production of erroneous police documents that are reflective of the detectives' inference rather than the factual account of an incident.

### **Complicity, Compliance, and Power**

Another important finding that emerged from this case study is with respect to the role of other agencies which are often externally coordinated with the police department. In this case, it can be stated that the CPD was closely working with the SAO. The SAO reaffirmed the decisions which were made by the CPD in regards to the Koschman case which resulted in the accumulation of more falsely prepared police documents. Furthermore, the officials at CPD used their power and the powerful influence of the Daley family in attempts to attain compliance from the involved parties, various media outlets as well as the general public in order to suppress the release of the police records. Such compliance was attained through public statements that were made by the high-ranking officials at CPD which were reaffirmed by the SAO. In what follows, examples of public and private statements made by the CPD and the SAO are discussed. The role of such statements ought to be noted with regards to attaining compliance from various parties.

#### *Attempt to Attain Compliance*

Another means by which the officials at CPD and SAO were able to successfully mislead the Koschman investigation was via making false official public statements. The purpose of such statements was to assure the public and the press that the officials were handling the investigation with due diligence. At the onset of the initial investigation of the Koschman case, the conspiracy to protect Vanecko from criminal liability is evident in the statements made by Detective Yawger to the victim's mother, Nanci Koschman, in May of 2004. In an interview with Nanci Koschman, Detective Yawger communicated false information in an attempt to convince Nanci Koschman of her son's aggressive actions. Detective Yawger told Nanci Koschman that all the witnesses uniformly stated that David Koschman was the aggressor in the altercation and that based on the evidence, David Koschman would be the only plausible party that could have faced any charges in that situation (*Koschman v. City of Chicago et al.*, 2014). Detective Yawger also advised Nanci Koschman not to pursue this matter any further given that she would be against 'very powerful forces' (*Koschman v. City of Chicago et al.*, 2014). Furthermore, Detective Yawger refused to provide a copy of the CPD's case file on the grounds that the investigation was still open. Following this meeting, Detective Yawger, along with other officials at CPD, managed to keep the investigation open through undue delay in the completion of mandated paperwork (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). In contradiction to standard practices, Case Supplementary Reports drafted in April and May of 2004 by Detective Yawger, Detective O'Leary and Detective Clemens were not approved until November of 2004 (*People v. Vanecko*, 2013). The homicide case of Koschman remained open thereafter until 2011; however, no further investigative steps were taken until Chicago Sun-Times filed an official FOIA request (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

*Complicity with Other Agencies*

The continuation of this conspiracy can be observed in the series of events that took place after the FOIA request was submitted by the Chicago Sun-Times which initiated the reinvestigation of the Koschman case. Five days after the reinvestigation began, lead detectives from CPD along with CPD's Lieutenant and Commander of Legal Affairs had contacted Mayor Daley's office to assure him that no charges would be brought forth against his nephew (*Koschman v. City of Chicago et al.*, 2014). Furthermore, email records of February 9<sup>th</sup>, 2011 revealed that Detective Walsh informed Detective Gilger that the case will be closed without any charges even though the official case report had not been submitted to a senior officer and the eventual meeting with SAO was a month away (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). Also, email records from March 2<sup>nd</sup> and 3<sup>rd</sup> of 2011 between Officer Biggane (Commanding Officer of Legal Affairs) and the City Hall clearly state that the purpose of this reinvestigation is to create a completed file that can be turned over to Sun-Times as per their FIOA request (*People v. Vanecko*, 2013). Officer Biggane provided reassurance that no charges will be laid.

As the reinvestigation of the Koschman case unfolded and Vanecko's involvement became public knowledge, various media outlets began to develop special interest in the investigation. In an attempt to satisfy public and press queries that sprung from the reinvestigation, a spokesperson from SAO announced to the reporters of the Chicago Tribune on May 22<sup>nd</sup>, 2011 that the SAO has concluded that no charges will be filed in the homicide case of David Koschman (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). This statement was announced after an inconclusive, preliminary review of the evidence and files; the approval for such a statement came from State's Attorney Devine who at one point had served as

an Assistant State's Attorney to Mayor Daley himself (*People v. Vanecko*, 2013). Following the public statement from the SAO, the Superintendent of CPD, Phil Cline, also made a public statement that consisted of a false version of events as a justification for Vanecko's exoneration from the case. In his statement, Superintendent Cline stated that Vanecko and Koschman were 'mutual combatants'. He also stated that there was "no basis for criminal charges based on the witness statements and all the evidence we have" (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). Given the amount of fabricated evidence and altered witness statements, the public statement presented by Superintendent Cline was incorrect; his statement could be interpreted as cover-up led by the CPD to protect Vanecko from legal consequences.

Similarly, on February 28<sup>th</sup>, 2011, CPD's Deputy Superintendent also provided an inaccurate statement to the Chicago Sun-Times. Deputy Superintendent Brown told the reporters of Chicago Sun-Times that upon a comprehensive reinvestigation of the Koschman homicide, the facts from the initial investigation in 2004 remained unchanged and the reinvestigation would be closed shortly (*Koschman v. City of Chicago et al.*, 2014). This statement was yet again misleading; the only truly unchanged fact from the initial investigation was the fact that all witnesses uniformly reported that Koschman was not the aggressor in the altercation. Prior to the statement issued by CPD's Deputy Superintendent, Cook County's State's Attorney (CCSA), Anita Alvarez, issued a similar statement to the Chicago Sun-Times. In her statement, CCSA Alvarez reiterated the fabricated account of the initial altercation. She stated that all the witnesses who were questioned in 2004 stated that Koschman was the aggressor and initiated physical confrontation by charging at Vanecko's group (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013). In correspondence with such statements, ASA O'Brien also provided a false narrative to the reporters of Chicago Sun-Times. He too stated that all witnesses

named Koschman as the aggressor and the person who shoved or pushed Koschman could not be positively identified (*People v. Vanecko*, 2013). Conclusively, on March 19<sup>th</sup>, 2011, CCSA Alvarez made another statement to the Chicago Sun-Times stating that the SAO does not have any legal basis to bring charges and it would be “unethical” for her office to do so (*Koschman v. City of Chicago et al.*, 2014; *People v. Vanecko*, 2013).

#### *Summary of Complicity, Compliance, and Power*

As illustrated above, the interconnection between the CPD and the SAO resulted in further documentation which was solely based on the faulty investigation led by the CPD as well as the reinvestigation which was initiated by the SAO. The process of attaining advice from the SAO resulted in additional documentation which was in support of the wrongful conclusions that were proffered by the detectives at the CPD. Furthermore, this case study reveals the collaborative power of the police and the seemingly external agencies, such as the SAO, with respect to attaining public compliance. As discussed above, the public and private statements made by high-ranking officials of the CPD as well as the SAO served as a tactic to suppress public release of police records pertaining to the Koschman case. Moreover, the political influence of the Daley family was also mentioned in order to discourage any further action in the Koschman investigation. This research evidently illustrates the potential shortcomings of the US legal and political system with respect to its checks and balances of power provision. In an idealistic sense, the SAO is set in place to oversee the powers of the police; however in this case, the SAO worked alongside the CPD which furthered the accumulation of wrongful official records and aided in undue delays of its public release.

#### **Discussion and Conclusion**

The results of this study brought forth a few noteworthy findings. Although there is a growing body of literature on police powers, especially with respect to the use of force, there remains a paucity of research on discretionary powers of the police with regards to the various investigative processes. As evident in the discussion above, this case study illuminates the various ways in which police officers wield their editorial powers to manage and manipulate official police records. The textual and editorial powers of the police add another dimension to notions of police power. This study illustrates that, using their editorial powers, police officials are able to construct a narrative which is then accepted as the reality for all the intents and purposes of the homicide investigation. Consequently, the narrative presented by the police becomes permanent in a sense, for unless they are challenged, they remain inert.

In order to understand the actions and inactions of the police officials involved in the Koschman case, one must consider existing literature on police cultures. The negligent actions of the CPD detectives can be explained through the application of the theory of local political culture and police styles as well as the institutional theory of police cultures. The underpinnings of both theories dictate that police behaviour and culture is heavily influenced by the overall political culture of their society (Wilson, 1996; Walker & Katz, 2005). In accordance with Wilson's (1968) theory of local political culture and police styles, it can be observed that the actions of CPD's detectives were influenced by the local political culture of Chicago and that Vanecko's direct connection to Mayor Daley afforded Vanecko the protection against criminal charges. Moreover, as postulated by the institutional theory of police cultures, it can be argued that the decision of multiple officers to engage in malpractice alludes to the overall culture of the CPD rather than the actions of individual officers. Lastly, in accordance with Wilson's (1968) argument, the contextual influences of the political culture of Chicago were evidently significant

in shaping the organizational styles that were exhibited by the CPD. As the results of this study illustrate, the detectives purposely engaged in a series of actions which produced inaccurate and inadequate police records which in turn, afforded the Mayor's nephew with protection from any legal consequences. The findings of this research confirm that the detectives of CPD misled the investigation by altering witness statements and furnishing false evidence on the basis of which Vanecko was protected from criminal prosecution.

As evident from this study, police officers have at their disposal, the power to edit official police records. In the Koschman case, the CPD have used this power to create disingenuous police records which afforded the offender with insulation from criminal liability. Instances of such editorial power being wielded can be observed in the archival management of witness statements. The detectives at CPD were able to protect Vanecko from criminal charges by omitting, fabricating and altering witness statements that were recorded in the police records. Furthermore, the detectives at CPD were able to accumulate additional official records that were reflective of the detectives' version on the incident by manipulating standard investigative procedures. By conducting a faulty identification line-up, inadequate canvassing, and misplacement of physical records, the detectives were able to successfully mask Vanecko's involvement. Lastly, the detectives were able to use their own powers as the police alongside the influence of other external agencies to attain compliance from various parties and protect the erroneous police records from public exposure. The findings from this study then extend the notion of police culture to others in the criminal justice system who work closely alongside the police. Prosecutors who are ostensibly charged with objective review of felony cases failed to maintain records, as mandated by their own policy and procedures. Furthermore, the state's

attorney's office neglected to correct the deficiencies in the investigation. In that sense, the CCSA's office is just as complicit as the CPD, for they failed to check the powers of the police.

The actions of the CPD officials can be explained through the application of the local political culture and police styles theory as well as the institutional theory of police cultures. Both of the above-mentioned theories postulate that the actions of police departments are highly influenced by the overarching political culture of their local jurisdiction. Given the strong political presence of the Daley family in Chicago, proponents of the local political culture and police styles theory and the institutional theory of police cultures would posit that the incompetently-led Koschman homicide investigation is reflective of the political influence of the Daley family on the overall police culture of the CPD. Furthermore, we might tentatively add that the Daley family influence permeated into other agencies that worked closely with the CPD, those agencies which had the duty to oversee and serve as a check on police powers.

### *Limitations*

Although this paper has discussed a few notable findings, some limitations of this research ought to be noted. The findings of this research are gathered from the examination of a single case study which cannot be generalizable to every homicide investigation conducted by the CPD. Moreover, since the FOIA request for this research remains unaddressed, the data presented in this research is solely derived from the documents that were released to the Chicago Sun-Times Press; General Progress Reports prepared by each of the involved officers were not available for examination. Future research on such a topic can benefit from the disclosure and the examination of all police documents rather than a selected few. Moreover, having more than one case for analysis can improve the overall generalizability of the results. Lastly, conducting a

comparative study using various cases from other jurisdictions can provide a cross-national analysis of the integrity of police records and practices in homicide investigations.

#### *Directions for Future Research*

The results of this research bring forth some alarming findings with respect to discretionary powers and police investigations. There have been numerous studies on the use and misuse of police powers and physical coercion yet, editorial powers of the police remain largely unaddressed in the existing literature. Given the detrimental effects of the negative use of editorial powers by the police in homicide investigations, additional research is needed to examine plausible motivations of police officers or departments which may lead to such miscarriages of justice. As speculated in the discussion above, the motivation behind protecting Vanecko from police custody can be linked to the undeniable political influence of the Daley family in Chicago. Future research should examine other sources of motivation which can be linked to such flawed police investigations. Furthermore, there remains a paucity of research on subject of homicide investigations with respect to the discretionary powers exercised by homicide detectives. More studies on homicide detectives and their use of powers need to be conducted in order to sufficiently examine the effects of the use of personal discretion and inference-based investigative techniques on the overall validity of a police investigation.

Lastly, as mentioned in existing literature, the Anglo-American concept of policing gains and maintains its legitimacy through various displays of accountability towards the public. Correspondingly, there are several independent agencies within the American justice system that are set in place to oversee police actions and performance within their jurisdiction. Unfortunately, as evident in the Koschman case, the independent agency which was supposed to

oversee the actions of the CPD failed to hold the detectives accountable for their negligent actions throughout the course of the investigation. Moreover, once the negligent actions of the CPD were proved in court, the detectives remained lawfully protected under the Illinois Statute of Limitations act. Additional research needs to be conducted on such caveats of the American justice system. Future research on flawed police investigations can benefit from a detailed examination of the contentions between theory and practice within various aspects of the American justice system such as the Statute of Limitations Act. As evident in this study, the unintended effects of the Statute of Limitations Act provided CPD's detectives with wrongful protection against plausible charges for their negligent work. It is integral for researchers to critically analyze such facets of the American justice system in order to illustrate how law enforcement officers can lawfully evade potential repercussions for their negligent work.

## Appendix

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