

Determinants Of Court Sentences For Police Crime: An Empirical Application of the Conceptual Framework for Police Deviance

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Abstract

The great majority of individuals involved in policing is committed to honorable and competent public service and is consistently demonstrating integrity and accountability. However, in every police agency there exists an element of dishonesty, lack of professionalism and criminal behavior. This article is based on empirical research of criminal behavior in the Norwegian police force. A total of 56 police employees were prosecuted in court because of misconduct and crime from 2005 to 2009. Court cases were coded as two potential predictors of court sentence in terms of days imprisonment, i.e. crime motive and damage. Scales for motive and damage were organized according to the conceptual framework for police deviance. Empirical results suggest that the combined effect of motive and damage significantly explain 18 percent of the variation in jail sentence.

Keywords

Police Misconduct, Content Analysis, Crime Motive, Criminal Court

Introduction

Policing is about people and place. At its most general level, police work is the application of a set of legally sanctioned practices designed to maintain public order by imposing the rule of law on people who live in or travel through a given place which is internationally recognized as a geographically defined territory under the control of a particular national state (Sheptycki, 2007).

According to the United Nations (UNODC, 2006), the great majority of individuals involved in policing is committed to honorable and competent public service and is consistently demonstrating high standards of personal and procedural integrity in performing their duties. Still more would probably do so if the appropriate institutional and training was given. However, in every policing agency there exists an element of dishonesty, lack of professionalism and criminal behavior.

Dean et al. (2010) proposed a conceptual framework for managing knowledge of police deviance. The framework sought to address the lack of an adequately formulated framework in the literature of the breath and depth of police misconduct and crime. They argue for the use of a proposed "sliding scale" of police deviance by examining the nature, extent and progression of police deviance and crime.

This article is based on empirical research of criminal behavior in the Norwegian police force. From 2005 to 2009, a total of 56 police employees in

Norway were prosecuted in court because of criminal behavior. These court cases were coded and studied to answer the following research question: What determines the court sentence for police crime when applying the conceptual framework for managing knowledge of police deviance in terms of the sliding scale?

Police Crime

Police integrity and accountability has been a concern in most regions and countries, for example in Australia (OPI, 2007; Prenzler and Lewis, 2005) and in Norway, as presented in this article. According to the United Nations (UNODC, 2006), the great majority of individuals involved in policing are committed to honourable and competent public service and consistently demonstrate high standards of personal and procedural integrity in performing their duties. More officers would perform in this manner if appropriate training were given. However, in every policing agency there probably exists an element of dishonesty, lack of professionalism and criminal behaviour.

The prevalence of police deviance is a much-debated statistic and one that is often rife with problems, according to Porter and Warrender (2009). While some researchers that they quote suggest that corruption is endemic to police culture across the globe, others argue that incidents are rare. Despite such statistical problems, incidents of police deviance do surface from time to time all over the world. Some examples in the UK involve suppression of evidence, beating of suspects, tampering with confidential evidence and perjury.

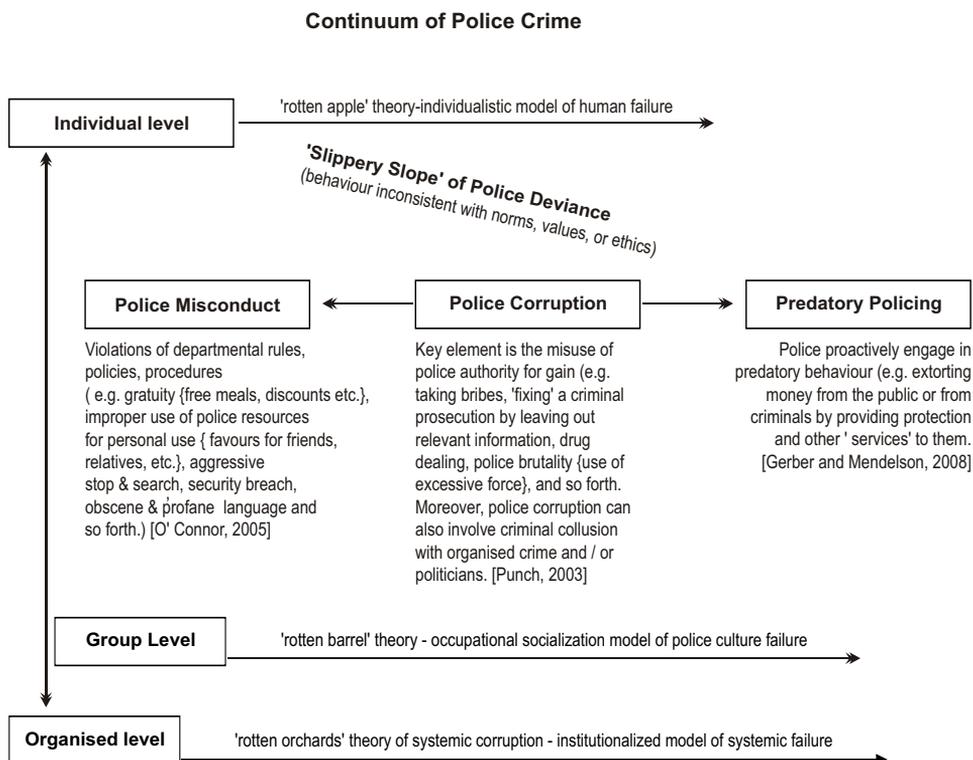
Conceptual Framework

A prominent theory regarding police deviance is the notion of a slippery slope (O'Connor, 2005), in that, once a police officer engages in even relatively small and minor violations of departmental rules like accepting a free meal or discounts, then they have taken the first steps towards other more serious forms of misconduct, which can eventually lead them into a downward slide into major crime practices. This notion of progression in police deviance and criminality is not captured by static typological classification schemes that seek hard and fast rules and precise definitions in order to classify.

Such classification schemes and theoretical notions have their merits and taken together create a mosaic of police deviance as perceived from different vantage points. Dean et al. (2010) developed a conceptual framework in order to appropriately capture from a knowledge management perspective the salient dimensions of police deviance.

As can be seen in Figure 1, police deviance is often viewed as a slippery slope. The slope is viewed as a two-dimensional matrix, in that, on the horizontal axis at one end of the matrix is 'police misconduct', and at the other end is 'predatory policing' with 'police corruption' somewhere in the middle on this horizontal dimension.

Figure 1. A two-dimensional conceptualization of police crime



Some may argue that the term 'predatory policing' as introduced by Gerber and Mendelson (2008) into the literature on police deviance is just another label for 'police corruption' as extortion by police for personal gain is also part and parcel of corrupt police practices. While this is the case to some extent, Dean et al. (2010) believe that the notion of 'predatory policing' has more substantive merit. It draws attention to the 'proactive' nature of police corruption; for instance, when some police officers move from an accepting of bribes (kickbacks) from criminals to turn a blind eye to illegal gambling or prostitution rackets, to a more active soliciting of protection money from criminals. Such a role change from a passive acceptance to an active approaching is a qualitative difference that makes a world of difference.

The essential difference is what is captured in the notion of 'predatory policing', which delineates it from much of what can be more appropriately considered as 'police corruption': bribery, theft, fraud, tax evasion, and racketeering (Ivkovic, 2003). Extortion, while also part of police corruption, might be considered more appropriately as predatory, since it is instigated by police in a proactive manner. Much of what is called police corruption can be considered predatory policing if it has a proactive element to it.

On the vertical axis in Figure 1 we find a scale for the unit or level of interest. A distinction is made between the individual, the group, and the organization respectively. At the individual level we find the 'rotten apple' that, when removed, will only well-behaving police officers in the organization. At the group level we find the 'rotten barrel' that represents a complete part of the organization involved in misconduct and crime. At the organization level we 'rotten system' that represents a complete organization involved in misconduct and crime.

The 'rotten apple' metaphor has been extended to include the group level view of police cultural deviance with a 'rotten barrel' metaphor (O'Connor, 2005). Furthermore, Punch (2003) has pushed the notion of 'rotten orchards' to highlight police deviance at the systemic level. Punch (2003:172) notes, "the metaphor of 'rotten orchards' indicate(s) that it is sometimes not the apple, or even the barrel, that is rotten but the *system* (or significant parts of the system)". That is, deviance that has become *systemic* is:

... in some way encouraged, and perhaps even protected, by certain elements in the system. "Systems" refers both to the formal system the police organization, the criminal justice system and the broader socio-political context and to the informal system of deals, inducements, collusion and understandings among deviant officers as to how the corruption is to be organized, conducted and rationalized." (Punch, 2003:172).

These metaphorical extensions represent increasing deeper level meanings associated with police crime. For instance, in regard to the 'rotten apple' thesis this level of explanation for police deviance is as Perry (2001: 1) notes "...most major inquiries into police corruption reject the 'bad-apple' theory: 'the rotten-apple theory won't work any longer. Corrupt police officers are not natural-born criminals, nor morally wicked men, constitutionally different from their honest colleagues. The task of corruption control is to examine the barrel, not just the apples, the organization, not just the individual in it, because corrupt police are made, not born.'"

Furthermore, Punch (2003:172) makes the point that "The police themselves often employ the 'rotten apple' metaphor the deviant cop who slips into bad ways and contaminates the other essentially good officers which is an individualistic,

human failure model of deviance.” One explanation for favoring this individualistic model of police deviance is provided by O'Connor (2005:2) when he states, “Police departments tend to use the rotten apple theory... to minimize the public backlash against policing after every exposed act of corruption.”

Hence, it follows according to this individualistic view of police criminality that anti-corruption strategies should be targeted at finding the 'rotten apples' through measures like 'integrity testing' (Commission on Police Integrity, 1999), and putting policies and procedures in place reduce the opportunity for engaging in misconduct and/or corrupt practices.

Empirical Cases

In this study, we used data from court cases in Norway. The Norwegian Bureau for the Investigation of Police Affairs prosecutes police officers in court. The Norwegian Bureau is similar to police oversight agencies found in other countries, such as the Independent Police Complaints Commission in the UK, the Police Department for Internal Investigations in Germany, the Inspectorate General of the Internal Administration in Portugal, the Standing Police Monitoring Committee in Belgium, the Garda Síochána Ombudsman Commission in Ireland, Federal Bureau for Internal Affairs in Austria, and the Ministry of the Interior, Police and Security Directorate in Slovenia.

Since 1988, Norway has a separate system to handle allegations against police officers for misconduct. The system was frequently accused of not being independent of regular police organizations (Thomassen, 2002). In 2003, the Norwegian Parliament decided to establish a separate body to investigate and prosecute cases where employees in the police service or the prosecuting authority are suspected of having committed criminal acts in the police service.

The Norwegian Bureau for the Investigation of Police Affairs has been effective since January 2005. The Bureau is mandated to investigate and prosecute cases where employees in the police service or the prosecuting authority are accused of having committed criminal acts in the service. The Norwegian Bureau has both investigating and prosecuting powers and in that way it differs from some comparable European bodies. The Norwegian Bureau does not handle complaints from the public concerning allegations of rude or bad behavior that does not amount to a criminal offence (Presthus, 2009).

Since the operations started at the Norwegian Bureau in January 2005 and until February 2009, a total of 56 police officers were on trial in Norwegian courts. This was the sample for our study. There were 3 prosecuted officers in 2005, 14 in 2006, 16 in 2007, 20 in 2008, and 3 so far in 2009.

The unit of analysis applied in this study is the individual prosecuted, rather than the court case. An individual police officer may appeal his or her case to a higher court. Therefore, there were more court cases than individuals on trial. There were a total of 75 court cases for the 56 prosecuted individuals. The unit of analysis is the individual, rather than the organization. This is because an organization is never prosecuted in criminal court for jail sentence. Therefore, this study is initially based on the rotten-apple thesis. However, since it is obvious from research (e.g., Perry, 2001; Punch, 2003) and the applied framework that police crime might be explained at the group and organizational level as well, court cases are similarly classified into individual, group and organizational deviance.

This archival and case research is based on court records of cases that are characterized by a degree of realism and composition of variables almost impossible to simulate. We are looking at variables that are very challenging and impractical to study directly. Therefore, a limitation in archival studies is the uncertainty of the reliability of information (Stedje, 2004).

Research Model

We suggest that the court sentence will be more serious when there is a case of predatory policing rather than police corruption or police misconduct. Furthermore, we suggest that organizational crime will lead to a more serious court sentence than do individual or group crime. Our research model is illustrated in Figure 2.

The scale on the horizontal axis is from police misconduct via police corruption to predatory policing. The scale on the vertical axis is from individual crime via group crime to organizational crime. It is suggested that the direction from less serious to more serious police crime is represented from the left upper corner to the right bottom corner of Figure 2.

Figure II. Research model for empirical testing of seriousness and sentence

	Police Misconduct	Police Corruption	Predatory Policing
Individual Crime	1. Efficient Police Work	3. Negative Reaction	3. Act Towards Property
Group Crime	2. Professional Police Work	4. Personal Gain	4. Act Towards Person
Organizational Crime	1. Act Cause Medical Treatment	2. Act Creates Danger	5. Act Towards Finance

Seriousness is measured on two different scales as illustrated in Figure 2. The first scale is concerned with motive. The independent variable "motive" of crime by police employees was organized on a four-point scale from efficient and professional police work to negative reaction and personal gain:

1. Efficient Police Work

Policing is about people and place. At its most general level, police work is the application of a set of legally sanctioned practices designed to maintain public order by imposing the rule of law on people who live in or travel through a given place which is internationally recognized as a geographically defined territory under the control of a particular national state (Sheptycki, 2007). The set of policing practices cover core issues like law enforcement through crime investigation and crime prevention, security issues involving mainly surveillance and counter-terrorism on a population, and jurisdictional issues in relation to having the legal authority to act in a particular place and under what legal framework and conditions. The police are given the power to use force legitimately in the course of fulfillment of their tasks (Ivkovic, 2009). Efficient police work is important, because it aids in the mitigation of role ambiguity in a given task environment, and therefore acts as a mechanism of control over discretion.

2. Professional Police Work

Within the professional model of policing, officers deliver service objectively through a standard of service and a presence in the community (Dukes et al., 2009). The police are given the power to use force legitimately in the course of fulfillment of their tasks (Ivkovic, 2009). The powers given by the state to the police to use force has always caused concern (Klockars et al., 2004). Similar to efficient police work, professional police work is important, because it aids in the mitigation of role ambiguity in a given task environment, and therefore acts as a mechanism of control over discretion. While efficiency is concerned with doing things right, effectiveness in terms of professional police work is concerned with doing the right things. Distinctions are sometimes made between a professional model of policing and a community model of policing. Community policing represents a combined effort by local police simultaneously to control crime, reduce social disorder, and provide services to citizenry (Giblin and Burruss, 2009). Advocates of community policing argue that law enforcement agencies must adopt a role that is both community-oriented and response-based (Dukes et al., 2009). The professional model of policing is based on institutional theory, where pressures locally, nationally as well as globally tend to make police organizations more and more similar in structure.

3. Negative Reaction

In the daily work, police employees may have negative reaction to individuals in the public and policing cases occurring in the public. The existence of a legislative structure for complaints is an important step towards police integrity and accountability, but that system must be more than a legislative expression of intent. Any system must be readily accessible to members of the public and user friendly. It must protect complainants against negative consequences and offer a responsible, professional and timely resolution. Without such qualities, the public will soon label the complaints system as a waste of time and will not support it (UNODC, 2006).

4. Personal Gain

Typical examples are taking a bribe or stealing from a crime scene for personal gain. Johnson (2005) argues that personal gain is a primary motivation for almost all kinds of criminal behavior.

The second scale is concerned with damage. In this study, we decided to organize the independent variable "damage" along a scale or axis from 1 to 5, starting at no person involved, to harm that gives medical treatment to another person:

1. Act that Can Cause Medical Treatment to Offender

Indiscriminate and careless use of powers delegated to police officers is a major factor in alienating the public. When and where police apply their powers is usually a matter of individual discretion. Because officers often are required to make people do something, or refrain from doing something, police action may be met with resistance, conflict, or confrontation. Under such circumstances, members of the public may wish to complain. The validity of such complaints will depend on the context and will be judged against standards of police conduct enshrined in law or regulation. This is what Prenzler (2009) is calling excessive force or brutality that covers the wide range of forms of unjustified force. This can be anything from rough handling - such as excessive frisking - through to serious assault, torture, and murder. Use of excessive force is an abuse of police power. However, as argued by Johnson (2005), appropriate use of force can, in many cases, be very difficult to discern, especially since the line that separates brave from brutal is thin.

2. Act That Can Create a Dangerous Situation

Traffic violation is a typical example here, which creates or causes a dangerous situation. There are limits to what police officers can do when driving a car. Even in cases of emergency, police cars are not allowed to create dangerous

situations. Whether the car is a uniformed police car, a non-uniformed police car or a private car, other cars should be informed about the police driving by light and/or sound signal. If there is no emergency, the police have to follow speed limits and other traffic regulations (Klockars et al., 2006).

3. Act that Can be Directed at Property

This category will for the most be property crime. This is involving the unlawful conversion of property belonging to another to one's own personal use and benefit. It might be fraudulent appropriation to personal use or benefit of property or money entrusted by another, where the actor first comes into possession of the property with the permission of the owner (Williams, 2006). Property crime involves no damage or loss, and no physical threat or harm to victim (Reiner, 1997).

4. Act that Can be Directed at Person

Physical abuse including both physical and psychological misconduct such as prisoner mistreatment or sexual misconduct. However, no medical treatment is requested. This may also be threat or other indirect intimidation or menacing behavior on the part of police interviewers or because the experience is otherwise physically and mentally distressing. People in police interviews are normally anxious and find themselves in an unequal dynamic situation in favor of the interviewer(s). There is ample evidence to show that certain people are predisposed to answering police questions in any way that will help to shorten the interview and, as a result, they will wrongly confess to offences they did not commit. In some countries, the risk of a false confession is perceived as so great that confession of guilt made solely to a police officer are not admissible in court (UNODC, 2006).

5. Act that Can be Directed at Finance

To use a commonly applied category in criminology, most of these cases will be kinds of white-collar crime. White-collar crime is crime against property for personal or organizational gain, which is committed by non-physical means and by concealment or deception. It is deceitful, it is intentional, it breaches trust, and it involves losses (Henning, 2009).

The dependent variable "jail sentence" was measured in terms of days in prison that ranged from 0 to 730 days.

Research Results

In terms of motive, we find the distribution of as listed in Table I. There were 21 cases of efficient police work, and the average jail sentence for these cases was 2 days. There were 22 cases of personal gain, and the average jail sentence for these cases was 167 days.

Table I. Distribution of Court Cases According to Motive

Scale	Item	Cases	Days
1	Efficient police work	21	2
2	Professional police work	3	11
3	Negative reaction	10	36
4	Personal gain	22	167

In terms of damage, we find the distribution as listed in Table II. There were 6 cases of an act that can cause medical treatment to offender, and the average jail sentence for these cases was 1 day. There were 18 cases of an act that can be directed at profit, and the average jail sentence for these cases was 194 days.

Table II. Distribution of Court Cases According to Damage

Scale	Item	Cases	Days
1	Act that can cause medical treatment to offender	6	1
2	Act that can create a dangerous situation	16	10
3	Act that can be directed at property	6	24
4	Act that can be directed at person	10	34
5	Act that can be directed at profit	18	194

The average age of prosecuted police employees was 39 years. The average investigation time was 18 months before cases were brought to court.

When simple regression analysis is applied to motive (Hair et al., 2010), then motive is a significant predictor of jail sentence. The regression coefficient for motive explains 15 percent of the variation in imprisonment days. Similarly, when simple regression is applied to damage, then damage is a significant predictor of jail sentence. The regression coefficient for damage explains 13 percent of the variation in imprisonment days.

When multiple regression analysis is applied to the survey data (Hair et al., 2010), the combined effect of motive and damage explain 18 percent of the variation in imprisonment days. However, neither motive nor damage is significant predictors in the regression equation, as listed in Table III.

Table III. Regular Multiple Regression Analysis Applied to Predictors of Jail Sentence

Independent Variables	Unstan B	Error	Statistic	Sign
Motive of police crime	42	29	1.4	00.161
Damage from police crime	29	20	1.4	00.159

When stepwise multiple regression analysis is applied (Hair et al., 2010), then one of the predictors becomes significant as listed in Table IV.

Table IV. Stepwise Multiple Regression Analysis Applied to Predictors of Jail Sentence

Independent Variables	Unstan B	Error	Statistic	Sign
Motive of police crime	46	15	3.1	00.003

Thus, the dominating predictor for jail sentence is the motive of police crime as illustrated in Table IV.

Conclusion

This research sets out to empirically test a theoretical concept. Based on conceptual research by Dean et al. (2010), this paper has empirically tested the assumption of a sliding scale in police deviance by linking the seriousness of deviant acts to jail sentences in court. Seriousness was combined in two measures, i.e. motive and damage of crime. From a statistical point of view, we did indeed find a relationship between seriousness and days of imprisonment for convicted police officers.

However, future research will need to validate the measurements of motive and damage as representations of the sliding scale phenomenon. Future research will also need to apply samples from other countries than Norway.

There are several avenues for future research. First, it should be tested whether breadth (ranging from misconduct via corruption to predatory policing) and depth (ranging from individual to group to organization) lead to more serious sentences. Hence, a more explicit testing of the sliding scale is needed. It should also be made clear how and why it is expected that motive and damage influence sentences. Furthermore, the operational definitions of the two independent variables might be improved. The four-point scale for motive does not really explain the categories, at least not in an explicit and unambiguous way.

References

- Blackburn, R. (2001). *The Psychology of Criminal Conduct. Theory, Research and Practice*. Chichester, UK: John Wiley & Sons Ltd.
- Commission on Police Integrity [Chicago] (1999). *Report of the Commission on Police Integrity*, Chicago Police Department: Chicago, IL.
- Cossette, P. (2004). Research Integrity: An Exploratory Survey of Administrative Science Faculties, *Journal of Business Ethics*, 49, 213-234.
- Dean, G., Bell, P. and Lauchs, M. (2010). Conceptual framework for managing knowledge of police deviance, *Policing & Society*, 20 (2), 204-222.
- Dukes, R.L., Portillos, E. and Miles, M. (2009). Models of satisfaction with police service, *Policing: An International Journal of Police Strategies & Management*, 32 (2), 297-318.
- Edelhertz, H. (1970). *The Nature, Impact and Prosecution of White-collar Crime*. Washington, DC: US Government Printing Press.
- Fijnaut, C. and Huberts, L. (2002). Corruption, Integrity and Law Enforcement, in: Fijnaut, C. and Huberts, L., *Corruption, Integrity and Law Enforcement*, Kluwer Law International, The Hague, The Netherlands, 3-34.
- Gerber, T.P. and Mendelson, S.E., 2008. Public experiences of police violence and corruption in contemporary Russia: a case of predatory policing? *Law & Society Review*, 42 (1), 1_43.
- Giblin, M.J. and Burruss, G.W. (2009). Developing a measurement model of institutional processes in policing, *Policing: An International Journal of Police Strategies and Management*, 32 (2), 351-376.
- Gottschalk, P. (2009). Policing police crime: the case of criminals in the Norwegian police, *International Journal of Police Science & Management*, 11 (4), 429-441.
- Hair, J.F., Black, W.C., Babin, B.J. and Anderson, R.E. (2010). *Multivariate Data Analysis*, Seventh Edition, Pearson Education, NJ: Upper Saddle River.
- Henning, J. (2009). Perspectives on financial crimes in Roman-Dutch law: Bribery, fraud and the general crime of falsity, *Journal of Financial Crime*, 16 (4), 295-304.
- Ivkovic, S.K. (2003). To serve and collect: measuring police corruption, *Journal of Criminal Law and Criminology*, 93 (2/3), 593-649.
- Ivkovic, S.K. (2009). The Croatian police, police integrity, and transition toward democratic policing, *Policing: An International Journal of Police Strategies and Management*, 32 (3), 459-488.

Johnson, D.T. (2003). Above the Law? Police Integrity in Japan, *Social Science Japan Journal*, 6, 19-37.

Johnson, R.A. (2005). Whistleblowing and the police, *Rutgers University Journal of Law and Urban Policy*, 1 (3), 74-83.

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Sheptycki, J. (2007). Police Ethnography in the House of Serious and Organized Crime, in: Henry, A. and Smith, D.J. (editors), *Transformations of Policing*, Ashgate Publishing, Oxford, UK, 51-77.

Stedje, S. (2004). *The Man in the Street, or the Man in the Suite: An Evaluation of the Effectiveness in the Detection of Money Laundering in Norway*, MA Social Sciences and Law Criminal Intelligence Analysis/CIA, The University of Manchester, UK.

Thomassen, G. (2002). Investigating Complaints against the Police in Norway: An Empirical Evaluation, *Policing and Society*, 12 (3), 201-210.

Thurstone, L., L. (1927). The method of paired comparisons for social values. *Journal of Abnormal and Social Psychology*, 21, 384-400.

Tingretten (2008). *Saksnummer 08-096029MED-OTIR/01 (Case number 08-096029MED-OTIR/01)*, Oslo Tingrett (Oslo District Court), Oslo, Norway, October 9, 2008; judge Espen Urbye; prosecutor Jan Egil Presthus; defense lawyer Jens-Ove Hagen; prosecuted John Harald Sundseth.

UNODC (2006). *The Integrity and Accountability of the Police: Criminal justice assessment toolkit*, United Nations Office of Drugs and Crime (UNODC), Vienna International Center, Vienna, Austria, www.unodc.org.

Williams, C.C. (2006). *The Hidden Enterprise Culture: Entrepreneurship in the Underground* Wilson, J.Q. (1978). *Varieties of Police Behavior - The Management of Law & Order in Eight Communities*, Harvard University Press, Cambridge, Massachusetts.

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