

# How acts become hate crime: The police's documenting of criminal cases

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**Abstract:** This article presents findings from a qualitative study of criminal cases labelled hate crime in Norway. The author asks what kind of knowledge is being produced through the criminal cases and what does it say about policing? The study captures how the cases become registered in the system. This results in the creation of three main categories of events, namely what the author calls post hoc victim reported incident, post hoc police reported incident and in situ incident. The author finds that the practice-oriented document analysis enables an understanding of how some acts are criminalized and turned into ‘hate crimes.’ In addition, the few cases that are exercised in court, have an impact on policing hate crime, as actors and materiality come together in producing a sense of justice, urgency and need of police attention on future, similar events.

**Keywords:** Police, criminal cases, hate crime, legal issues, qualitative research

## 1.0 Introduction

Documentation is a central enactment of policing. Broadly speaking, the police document and maintain files in order to demonstrate modern bureaucracy (Dery, 1998). Here, documentation entails – to use Weberian terminology – both legitimacy and ethical competency in enacting the state’s monopoly of violence. For instance, criminal law requires documentation against defendants not only for the sake of proving or dismissing a case but also for maintaining public records and limiting the power of the state. In practice, a criminal case does not ‘exist’ in modern bureaucracy if no one has reported it, requiring at least one document in the police database system. It is therefore important to look at these documents carefully as they represent what Hull (2012, p. 253) describes as ‘mediators that shape the significance of the signs inscribed on them and their relations with the objects they refer to.’ A basic premise of policing is ‘accounting for acts’ (Meehan, 1997, p. 182) and the study of documents represents how certain problems are ‘talked into being’ and ‘textualized’ (Åkerström & Jacobsson, 2019, p. 181). In police records, clients are categorized as victims, suspects or

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witnesses and acts are labelled as for instance unlawful behavior. As Giacomantonio (2015, p. 97) argues, almost all police work takes place based on the central importance of the file following an incident. Thus, these documents represent tools that can have not only a major impact on a person's life but also have societal effects in considering what is criminal, deviant or morally wrong behavior (see also Durkheim, 1997).

The article is inspired by an actor-network theory (ANT) approach to tracing certain documents in law enforcement, from what Latour (2010, p. x) describes as 'the essence of law'. This means that a practice 'ties a whole range of heterogeneous phenomena in a certain specific way' (ibid). As Lundgaard (2021, p. 51) states, ANT is based on an ontological understanding that the social and the material are equal matters in shaping society. Documents created make a criminal case 'real' and are shaped by a number of networks and actors. The 'network' in this study refers to a selection of documents marked as 'hate crime' in a criminal cases database and represents sites where people, personal trauma, conflict and violence meet the exercise of law. The 'actor' is not reduced to a person, as Latour (1996, p. 369) has pointed out. Rather, a technology such as a criminal database system, a button marking the crime as 'hate crime', a police officer typing a report, something happening that makes someone act, and the media covering a story all deeply modify a network (ibid, p. 371). Everything that occurs, the people and technology involved, adds to the knowledge of the topic of hate crime and hate speech, and understanding of crime and policing. In this article, I ask what kind of knowledge is being produced in the documents and what does it say about policing? As Löscher (2000) writes, the police represent an interface between the criminal justice system and society and, in so doing, not only translate 'everyday incidents into the vocabulary of criminal law' but also take part in creating reality. This exercise results in documents with a bureaucratic format of factual and categorized knowledge. The article shows how various events become part of a shared experience of hate crime, how the cases develop in the system, and how they represent new terrain for law enforcement.

Empirically, this article traces criminal cases labeled as hate crime in the Norwegian police's criminal database system and studies the narratives presented in the files, from what the case represents, who introduces the case, to the case procedure. Documents not only mirror a given issue in text but, more profoundly, take part in shaping and modifying issues and their context (Asdal, 2015, pp. 86-87). Hate crime, also known as bias crime, is a field of shared interest between civil society, scholars, policy makers and legal system. It is also a judicial term in the

penal codes of different countries, specifying protected characteristics such as ethnicity, religion, sexual orientation and gender expressions, and disabilities. Penal codes vary across countries due to different cultural, social and political contexts shaping which perceptions of prejudices are seen as problematic in different societies (see e.g. Mason, 2015). To give an example, homosexuality may be considered a criminal act in some countries, cultures and times, but represent in other contexts a marginalized group with extra protected rights and thereby included in a discourse of potential hate crime victims.

The extensive literature on hate crime raises a number of concerns regarding law enforcement. One recurring scholarly debate analyses why hate crime is underreported to the police and the potential policy implications of this (see Atak, 2020; Balboni & McDevitt, 2001; Chakraborti, 2010; Christmann & Wong, 2010; Cronin et al., 2007; Giannasi, 2015). Here, police discretion, particularly at street level, is problematized in relation to recognize hate crime (Boyd et al., 1996; Hall, 2013; Martin, 1996). Another scholarly debate concerns understanding offenders as found in the case files of the police (McDevitt et al., 2002; Näsi et al., 2016; Roxell, 2011). Critique of the latter literature concerns how typologies of offenders have limitations when it comes to generalizability to other reported hate crimes, especially where hate is a peripheral motivation (Phillips, 2009). Moreover, as Iganski (2008, p. 23) found, the majority of offenders are ‘ordinary people who offend in the unfolding contexts of their everyday lives’ often involving ‘random encounters between offenders and subsequent victims, rather than being engineered by the perpetrators.’ In other words, hate crime offenders could be anyone at any place and time. This study takes a somewhat different angle. The documents at hand have passed the level of police discretion and classification of an incident as hate crime. Instead of taking these documents as the basis for creating typologies of offenders or pointing out the lack of attention in police work, I study how hate crime processes are initiated, and the knowledge production created by actors and technology in the terrain of policing hate crime.

The article is structured as follows. First, I establish the making of hate as a crime (cf. Jenness & Grattet, 2001). Second, the methodology used in this article is presented. Third, the empirical analysis is offered, namely tracing these criminal records and how they are moved by different actors and their placement in criminal law. From the analysis, I have the following findings. I trace how the cases become registered in the system, namely the type of actors and material things that come together. This results in the creation of three main types

of event that I name 1) post hoc victim reported incident; 2) post hoc police reported incident and; 3) in situ incident. These types differ in knowledge production in the system, where types two and three typically result in a thicker node of paper production and actors involved. Type 1, which is the most commonly found in the documents at hand, tends to end after registering the case and/or one interview/interrogation. I argue that it matters, in terms of knowledge production, who narrates the document (victim or police officer) in the knowledge production, namely from whose perspective the incident is being told, who is present and who follows up. However, the few cases that result in Supreme Court or lower court decisions, have an impact on the terrain of policing hate crime as multiple actors and materiality (documentation, exercising legal Sections, media, activists) come together in producing a sense of justice, urgency and need for police attention on future, similar events.

## **2.0 What is the issue? ‘Hate crime’ in law enforcement agendas**

In this section, I will provide a brief context for hate crime to establish the type of actors and material things that come together in forming the concept. It is important to note that hate crime is a highly constructed policing task, mainly reflecting law enforcement history in Global North democracies. As Asdal (2015, p. 87) argues, ‘the concepts we use to name things and phenomena are essential to how issues are realized and grasped.’ In other words, there is a ‘tremendous communicative work that has to be done in numerous interactions in order to transform a socially unspecific incident into a ‘case’ that is relevant to criminal law’ (Löschper, 2000, p. 4). Hate crime represents a phenomenon considered to be part of human history. Verbal and physical violence towards people with a different religion, skin color or illness, manifested as bigotry, prejudice, xenophobia and hate happen in different times and contexts. However, the phrase hate crime was coined in the USA in the 1980s and considered a law-centered politics followed by legislative campaigns (Jenness & Grattet, 2001, p. 2). Central to the legal argument is that hate crimes do not just affect a victim but send a message of fear to an entire community, which cannot be tolerated (Jacobs & Potter, 1998). After establishing hate crime statutes in the US in the 1980s and early 1990s, an emphasis on law enforcement continued in the late 1990s which also saw the creation of special hate crime units (Bell, 2002; Jenness & Grattet, 2001, p. 128). Following right behind the US, in the UK, the murder of Stephen Lawrence in London in April 1993 represented a moment of rupture in policing and racism that changed law enforcement in placing hate crime on the agenda (see Giannasi, 2015). In both the UK and the US, putting hate crime on the law enforcement

agenda can be seen as a step towards articulating ‘claims to citizenship, equal treatment and justice’ (McLaughlin, 2002, p. 497).

Similar changes followed, some years later, in the study context. In Norway, hate crime, in its more narrow definition in the penal code, was considered a non-issue in criminal investigation prior to 2006 (Bruknapp, 2009). In the Norwegian penal code, hate crime was introduced and refined from past legal sections in 2005.<sup>2</sup> Hate crime in the Norwegian penal code is an umbrella term covering hate speech, violence, threats, damage, reckless behavior, and any other criminal act with a bias motive.<sup>3</sup> This is different to US Constitutional Law, where hate speech is not criminalized due to the protection of freedom of speech (Fisch, 2002). However, the Norwegian penal code is, for many reasons, more similar to European legal systems in terms of different people being protected from abusive and threatening speech based on their protected characteristics. The Norwegian penal code follows, for example, the International Covenant on Civil and Political Rights (ICCPR) dating back to 1976, and the European Convention on Human Rights (ECHR) (e.g. Bull, 2009; Kierulf, 2012, 2018).

In the annual letter to the police and prosecuting authorities by the Norwegian Director of Public Prosecutions, hate crime has been listed as one of the criminal offenses to be given the highest priority by the police districts since 2007.<sup>4</sup> The phrasing of hate crime in these letters stayed more or less consistent between 2007-2015.<sup>5</sup> But with the momentum of the national priority set out in ‘The Government’s Strategy against Hate Speech 2016–2020’, the phrasing of why hate crime is a priority issue for police and prosecutor evolved. Namely, the issue moves from solely a focus on how the criminal offense ‘creates fear and insecurity’ for people of similar identity, but towards a societal concern about participation in the public space being inhibited (*offentlig ordskifte*) and emphasizing the importance of participating ‘freely in the public space’ (Director of Public Prosecutions, 2018). Multiple actors and materiality have shaped this transformation of hate crime in law enforcement. To mention only briefly, the

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<sup>2</sup> Hate crime are covered in two Sections, namely 185, on hate speech, and 186, on discrimination, in the Norwegian penal code. In addition, there are five more Sections that have elements of hate/bias motivation relevant for judicial consideration, these are Sections 174 (torture), 264 (serious threats), 272 (serious bodily violation), 274 (serious bodily harm), and 352 (serious damage to property).

<sup>3</sup> The national police webpage (in Norwegian only) offers a summary of the legal text, accessed 29<sup>th</sup> April 2022 at <https://www.politiet.no/en/rad/hat-ytringer-og-trusler/hatkriminalitet/>

<sup>4</sup> Documents can be found <https://www.riksadvokaten.no/document/?docType%5B%5D=42&orderBy=DESC> , in Norwegian only, accessed 26<sup>th</sup> June 2020.

<sup>5</sup> Accessed 26<sup>th</sup> June 2020 <https://www.regjeringen.no/en/dokumenter/the-governments-strategy-against-hate-speech-20162020/id2520975/>

lobbying and reporting of, especially, The Equality and Anti-Discrimination Ombud, together with civil society, played a role in communicating with a number of key actors. These included representatives of the police and Public Prosecution, and, regionally, to the European Commission against Racism and Intolerance which, in turn, reported on Norway through their country monitoring work. Building on this, as in the US (Bell, 2002), a small hate crime unit in Oslo was established in 2014, consisting of two to four police officers and one part-time legal representative covering the police prosecution of such cases.<sup>6</sup> Recently, in 2021, the unit evolved into a national resource tasked to enforce hate crime investigation in Oslo and online, and supporting police officers and prosecutors in other police districts. It is likely that hate crime reporting will increase in the years to come, based on these internal efforts within the police.

Alongside changes in law enforcement agendas, scholarly debates on hate crime have widened considerably (Chakraborti & Garland, 2015). In part, these debates have centered on definitions (Perry, 2001; Schweppe, 2021) and key legal aspects (Gerstenfeld, 2013; Iganski, 2003; Jenness, 2001; Mason, 2015), as well as contextualizing ‘victim’ and ‘suspect’ (Chakraborti & Garland, 2012; Mason, 2005). The elastic concept of hate crime, as Chakraborti (2015, p. 21) argues, represents ‘a diverse and complex range of emotions and behaviors, whose meanings are contingent on contextual factors relevant to individual cases and open to the interpretation of law enforcers.’ As Jenness (2001, p. 282) writes, ‘the discourse on hate crime signifies a new set of subjects, social facts, and social action’, namely, ‘an increasing acceptance of the idea that criminal conduct is somehow different when it involves an act motivated by bigotry and manifest as discrimination.’ This study contributes to interpreting practices of policing hate crime and knowledge created in this process.

### **3.0 Methodology**

Register-based studies, i.e. data involving records kept by public agencies such as the police, often involve quantitative methods based on positivist epistemology, where the intention is to provide unique, generalizable insights that would otherwise be ethically challenging from survey data (Lyngstad & Skardhamar, 2011). Instead, this article takes an in-depth, qualitative

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<sup>6</sup> Interview with head of Hate Crime unit, Oslo Police District, 28<sup>th</sup> November 2019.

look beyond ideas of statistics and generalization and towards, rather, an interpretive methodology on how such documents offer knowledge about specific issues in a given society (Asdal & Reinertsen, 2022) . Specifically, the article is based on a qualitative, practice-oriented document analysis. This emphasizes practice in the sense that texts are objects, something material, created by people and are shaped and transformed to create new realities (Asdal, 2015; Asdal & Reinertsen, 2022; Riles, 2006). As a methodological move, Asdal and Reinertsen (2022, p. 61) assert, this approach enables us to understand what actors *do*, not only what they *think* or *say* they do. Although using slightly different vocabulary, this methodological move aligns with, for instance, Global South research on practices of government and state-making (Ferguson & Gupta, 2002; Hamani, 2014; Olivier de Sardan, 2014; Solhjell, 2019) as well as classic Global North literature such as Lipsky's (2010) street-level bureaucracy in public services. However, these two contain a crucial difference. Namely, that in practice-oriented analysis, paperwork – documentation, filing and record making - is the central site of observation. In the other two, the actors – their negotiations, interactions, practices in the everyday – are the study subjects.

In this article, inspired by actor-network theory, I trace these documents as conducted by people (police officers or legal advisors), within specific systems (police database) and tools available to extract cases nationally (The National Database of Criminal Cases). They are not unitary (Asdal & Reinertsen, 2022): whilst they may appear similar, they contain the specific priorities and case understanding of the individuals involved. How a case is dismissed or investigated, for example, depends on what (what is the case), who (people involved) and priorities (resources, knowledge and understanding), not limited to an understanding of the judicial justification (criminal law). In other words, these documents are situated knowledges (Haraway, 1988) by constructing meaning, and placing people, acts and technologies in a knowledge system. Specifically, there are claims about objectivity, such as what is the nature of the crime (Section x in the Penal Code), what are known 'facts' and how an officer and/or a legal advisor position this case in light of 'hate crime'.

The documents studied are different case files of hate crimes reported and investigated by the police, as well as political-judicial documents directing law enforcement. Each case file is understood as a separate network with its own history and characteristics. The case files represent, more broadly, 'acts of labeling some behavior as 'criminal'' (Taeger, 2002, p. 6) and they are, as such, constructed through the 'police gaze' (Finstad, 2000). Each network

refines the understanding of how a criminal case comes into existence (becoming a criminal case) and how it passes through the system, narrated by different actors, including the victims, suspects, police, lawyers, and court summary reports.

The case files forming the main empirical contribution in this article are highly sensitive and, simultaneously, bureaucratic documents. First, the documents in this study, that is the criminal cases, are deeply personal. At a basic level, they contain information not shared with anyone except those granted access; those involved with the right to request permission or those – such as law enforcement - with access due to their status. In other words, they contain information not commonly known to the public (Bjelland & Dahl, 2017, p. 2). At a deeper level, they may represent personal trauma. Firstly, in cases of hate crime, this may involve a sense of exclusion from majority society due to experiences of racism, hatred and/or discrimination. Secondly, the format of the documents is bureaucratic in containing a formal statement and, potentially, a summary of the investigation, where only by reading between the lines, can one sense the feelings of the parties involved. This can be referred to as ‘the victim cries’, or that the incident ‘made her move to a different city.’ In my understanding, both these aspects, the deeply personal and the highly bureaucratic, represent key characteristics of criminal case file documents more broadly.

Specifically, the article takes an in-depth study of 36 cases across Norway’s 12 police districts, reported between 2016 and 2018. National criminal statistics show that during this period 1639 cases were reported to the police.<sup>7</sup> With the only dedicated hate crime unit in Norway, 37% of these cases (n=611) were in Oslo Police district alone.<sup>8</sup> Due to the sensitivity of the data, only general examples will be given to protect the people involved. Accessing these documents required applying to the Norwegian Police Directorate (under the Ministry of Justice) and the Higher Prosecuting Authorities (*Riksadvokaten*), as well as a Notification Form to the Data Protection Services (NSD). My documentation – the justification of the study, ethical considerations and signed Agreement of Confidentiality and

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<sup>7</sup> National Criminal Investigation Service annual report 2019 with numbers dating back to 2015 on hate crime, accessed 1<sup>st</sup> November 2021 at <https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/strasak/2019/strasak-2019.pdf>

<sup>8</sup> Oslo Police district annual hate crime report 2019 with numbers dating back to 2016, accessed 1<sup>st</sup> November 2021 at <https://www.politiet.no/globalassets/dokumenter/oslo/rapporter/anmeldt-hatkriminalitet-oslo/Anmeldt-hatkriminalitet-i-Oslo-2019>



Non-Disclosure – were reviewed, commented on and finally granted approval by the aforementioned authorities.

The selection of criminal proceeding cases in this study was based on the following criteria. First, they were selected from a complete list of the hate crime cases registered in the National Database of Criminal Cases in the period 2016-2018, in total 1639 cases. Hate crime forms a category in the criminal database, defined as the victim's/or police's perception of the motive for the crime. This imposes some limitations, mainly that hate crime cases might have been reported in other categories. The advantage of choosing more recent cases (from 2016) is that police registration has improved since the system was introduced in 2006 (Kaugerud, 2017, p. 5), so that in the period 2015 to 2019, cases increased from an annual 347 to 761 nationally, representing a broader spectrum of cases entering the police registry system.

Second, they were concluded with a variety of outcomes (cases dropped, investigation, fines, civil settlement and/or prison sentence). If cases are not yet concluded, access to the documents for outsiders (author) is normally denied. Third, they were chosen from all 12 police districts in Norway and selecting, where possible, cases from all the protected groups (religion, ethnicity, sexual orientation, and disability). This was done to capture a wide variety of cases, addressing, in as far as possible, all the groups protected in the penal code. I did not have access to the criminal cases directly, that is to the database. Instead, the National Criminal Investigation Service (NCIS) assisted in extracting case files. NCIS provided a list of all the registered cases during the study period, and I then randomly selected 48 cases, four from each district to reflect the four protected groups. When I received the files, some were empty or did not specifically concern a protected group. This left the 36 cases closely examined in this article.

Race/ethnicity featured in all police districts, but several districts had no instances involving disability, leading to there being additional cases from the other protected groups. Additionally, for Oslo Police district, where a dedicated hate crime unit was working full time on such cases during the period, I asked them to point me to cases containing a longer paper trail regardless of outcome, resulting in three extra cases from this police district. The intention with this approach is to capture thicker networks, where a dedicated task force in the police establishes new knowledge in policing such incidents.

In the initial systematization of these documents, I looked specifically at what is the entry point that establishes the criminal cases. I ended up with a pattern of three typical events that structures the article; 1) post hoc victim reported incident, 2) post hoc police reported incident and 3) in situ incident. In the analysis, I further develop an understanding of the following three sub-questions: 1) Which networks are established? 2) What do they consist of? And, 3) How solid are these networks?

#### **4.0 Documenting acts of hate: The development of criminal cases**

Criminal cases are typically bureaucratic in nature, following the rules and jargon of the legal system. They are aimed primarily at a law enforcement audience, including the police and legal experts, and are often narrated by the person writing the report unless the files contain an official report by a lawyer or citizen, such as the victim or a witness to the events. Moreover, the procedures in handling the cases, which cases are dismissed, and which get a more thorough investigation demonstrate by no means a uniform criminal proceeding. The level of police effort – how solid the networks are – may vary not only between police districts but also within the same district. The investigations of a similar type of offense can vary from dismissal to 100 pages of documented investigation and/or Supreme Court decision.

Interpreting how the cases in this study were introduced to the criminal cases database requires careful reading. At a practical level, the cases are registered as hate crime in the case file system. This is a type of registration where the victim and/or the police recognize the hate crime motive. In other words, this activity forms part of the police's discretionary power, which can be either visible or invisible knowledge practices, ranging from a 'gut feeling' of suspicion to using the relevant legislation for investigating a potential criminal case (Holmberg, 2000, p. 180). In the context of hate crime registration, the power of prosecution, and placing emphasis on the visible legal definitions of hate crime, are most relevant. However, according to the aim<sup>9</sup> of this registration, the police are supposed to emphasize the victim's perspective, that is, not applying discretionary power to the victim's experience. In other words, if the victim feels that the incident happened due to her protected characteristics such as religious identity, regardless of what the suspect claims or, potentially, what the police witnessed (if relevant), the case should be filed as being a crime motivated by hate, which is

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<sup>9</sup> Internal police document, accessed by the author 19<sup>th</sup> January 2020.

similar to UK law (Hall, 2012). The police then select the type of protected characteristic under the Norwegian penal code - religion, ethnicity, sexual orientation and/or disability - and attach the files/documents relevant to the case (interrogation, tape recordings, and photos). This is also how the cases were brought to the author’s attention. Below is a summary of the type of protected characteristic representing the main motive identified in the reported case, where the majority of cases are found among ethnicity and religion, sometimes in combination (when this occurs, they are grouped together).

*Table 1 Main motive based on group characteristic*

Main motive	Sexual orientation	Ethnicity	Religion	Ethnicity and religion	Disability
Number of cases = 36	6	11	10	5	4

Establishing how the cases came to the attention of the police in the first place, before they were registered, requires further careful reading. I have grouped these into three types, namely 1) post hoc victim reported incident, 2) post hoc police reported incident and, finally 3) in situ incident. In the first type, the cases are often introduced by the victim in an incident making a statement at the police station, or by the police taking their statement. The second type, is where the police decide to follow-up a case. This could result from a tip from the public and/or police officers with special responsibility for radicalization. For example, in a case that went to court, it was stated in the district court summary that the case was first introduced by a coordinator in the police tasked with preventing hate crime. Finally, the third type is where the police patrol was given information by the police Emergency Control Center that is, calls by the public made to the police emergency number, which, in turn, led to a response attending an active crime scene. These may be cases where violence, often both physical and verbal, has occurred with witnesses present who made the call. Below is a summary of the number of cases in each category (Table 2).

Table 2 Summary of type of cases entering the system

Type	Post hoc victim reported incident	Post hoc police reported incident	In situ incident
Description	The offended submits a case to the police	The police decide to follow-up on a case	The Emergency Control Center in the police send patrols to an active crime scene
Number of cases	24	6	6

These three types of registration also shape how the case is documented and how well or not the case travels further through the law enforcement bureaucracy. This will be further discussed below, but it is worth mentioning that when the police enter an active crime scene, it, more often than not, results in several documents. In addition, for cases involving a thicker paper trail, time has usually passed since the event(s) took place and the narratives evolve. This means that documenting and detailing events is usually more reflexive, involving the police in asking retrospective questions, more carefully documenting personal trauma, especially in follow-up questioning of the victim(s). When a case is victim-reported, the case may appear as a disagreement between two or more people – a victim and an accused – appearing in a few documents summarizing their accounts of the event. In the next section, we will look at the process and representation of these cases from translating and narrating life ruptures and traumatic events into knowledge about hate crime and policing.

*4.1 Establishing and representing criminal cases*

The criminal database contains hate crime cases that end up amounting to nothing more than two or three pages of documentation with no follow-up or an example of protecting human dignity and the boundaries of freedom of speech. Most likely, these cases end up with a registration form (logging file with personal details), a statement from the police at the scene or a self-reported summary from the victim, and potentially a follow-up such as summary of the interrogation of the suspect. A single case typically averages between five and 15 pages of documentation. The ways in which the cases evolve represent a broader field of practice. This is not only the public’s and law enforcement’s understanding of and alertness to hate crime, but also priorities and context, such as perception of severity, timing and prior offenses by the suspect. I will select a set of ‘typical’ cases from each of the groups of registration; post hoc

victim reported incident, post hoc police reported incident, and in situ incident. By typical, I mean that within this small selection, there are similar incidents/events that take place within each category, and they appear well balanced as cases that fall either fully or in part within the hate crime or hate speech discussion. In the group of in situ incidents, I have chosen a case that in itself is 'typical', namely a hate crime case involving a gay couple beaten up after going home late one Saturday night. However, the chain of documents generated in this case is rather atypical and represents the work of the hate crime unit in Oslo. This selection of case is to illustrate the knowledge production of a targeted police response to a politically and legally prioritized topic. Through a combination of actors and materiality coming together on a topic (hate crime), the exercise of law can transform its trajectory in law enforcement. For instance, hate crime cases can evolve from a 'new' and 'unknown' field towards a 'routine' exercise of practice for the police.

The criminal database contains hate crime cases amounting to no more than two or three pages, with no follow up or anything suggesting the protection of human dignity or the limits to speech. These cases, most likely, result in nothing more than a registration form, a statement from the police at the scene or the victim's account, and maybe a summary of the subsequent questioning of the suspect. Typically, though, a case results in five to 15 pages of documents. The way in which cases evolve represents a broader field of practice, not only the public's understanding of, and alertness, to hate crime, but also priorities and context - such as perception of severity, timing and prior offenses by the suspect. I will select 'typical' cases from each of the groups: post hoc victim reported incident, post hoc police reported incident, and in situ incident. By typical, I mean that within this small selection, there are similar incidents/events that take place within each category, and they appear well balanced as cases that fall either fully or in part within the hate crime or hate speech discussion.

One such in situ 'typical' case, involving a gay couple beaten up on their way home late one Saturday night, involves a chain of documents which, the work of the Oslo hate crime unit, is nonetheless somewhat atypical. This case illustrates the knowledge production of a targeted police response to a politically and legally prioritized topic: through a combination of actors and materiality coming together on a topic (hate crime), the exercise of law can transform its trajectory in law enforcement. For instance, hate crime cases can evolve from a 'new' and 'unknown' field towards a 'routine' exercise of practice for the police.

#### *4.2 Post hoc victim reported incident*

From the documents collected, the post hoc victim reported incidents are, as noted above, those cases containing a statement by the victim in a case and, if the police decide to follow it up, a statement by the accused. Most of these cases are filed and narrated through the police officer who interviews the victim, usually a few days after the event, and a summary of the interrogation of the offender, if known to the victim and/or police. In the examples at hand, none resulting from post hoc victim reported incidents ended in court apart from one that ended in a civil settlement (mediation service). One case involved a taxi driver and two passengers, where the taxi driver was the victim reporting to the police, one passenger was the suspect, the other a witness. The case is filed under hate speech directed at a religious minority (Muslim). Careful reading of the file reveals that the victim used his mobile phone to record the conflict between himself and the passenger and decided to call the police who arrived ‘only minutes later’, taking information briefly to note the suspect and incident, and encouraging the victim to report the incident (go the police station on Monday). It appears crucial from the victim report that the combination of technology (proof of verbal offenses), actors (police) and action (rapid response, confirmation that it ‘matters’ in policing) led to the victim reporting the case to police on the following Monday and the police following up by questioning the accused and the witness. Interviewing of the suspect occurs two weeks later, and takes place at a smaller police station, where details about the suspect’s view on Muslims are sought, including the statement that he would ‘shoot all muslims’ [sic], which the suspect immediately laughs and denies. In both the witness and suspect accounts, there is no reference to the recording of the incident – which is said to have been obtained and secured by the police – which perhaps could strengthen a case that typically ends after the two sides provide different perspectives on the events.

There may also be documents submitted personally by the victim as a handwritten document or an e-mail or as a more extensive document elaborating details, such as photographs of evidence, names of suspect, list of laws which the crime is claimed to involve and other records that can be used in law enforcement work. To illustrate this, a group of women from a Muslim background (self-identified) come forward with a case describing an incident of their pictures being taken unknowingly and published on a named website critical of Islam. In the report, they document this with the pictures used and how the website tried unsuccessfully to conceal their identity. This led to them receiving threatening messages. They also named the

editor of the webpage as being responsible, carefully narrated both their and the broader Muslim community's fear in the public space and, finally, pointed to the law regarding intellectual property rights (*Åndsverkloven*) on unlawful publication of photographs without consent. This is the only document in the file and the case was closed from the police's side. The only other materiality in the file is a stamp stating 'Entered in the Common Criminal case System' (*Felles straffesaksinntak*), which refers to a system for reviewing all incoming cases in a police district to ensure 'equal treatment of cases.'<sup>10</sup> This case seems to enter the system differently than the other cases of hate crime reviewed in this section. First, the document is self-written by the victim instead of being a registration form narrated by the police. The case is submitted to the only police district with a dedicated hate crime unit (Oslo) and refers to the prejudice against Islam. This is a type of offense that is well understood compared to, especially, disability, and therefore maybe having a better chance of getting the police's attention asked for by the victim. Instead, the file appears to have entered a system that reviews all registered cases (the Common Criminal case System) before the police receive them and where legal experts grant the status of a criminal case or not. Only knowing the documents at hand and having followed cases in court, my interpretation is that intellectual property rights are perhaps not a strong incentive for the police's attention in similar cases involving harassment (Section 266 *Hensynsløs atferd*)<sup>11</sup>, further discussed below (post hoc police-initiated). This, combined with being self-written rather than by the police, perhaps containing some minor language flaws, may have contributed to a lack of legal priority and hence police attention.

#### *4.3 Post hoc police reported incident*

When there are post hoc police reported incidents, one typically finds several documents attached to the case. This can be that the police have chosen to question the victim or suspect (whatever is possible and makes sense first), which then becomes the first document in the file. From there, the chain of events varies considerably – from full stop to in-between cases when it comes to documentation, and major cases transforming the policing of hate crime. In

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<sup>10</sup> Statement by The Director of Public Prosecutions Jørn S. Maurud 27 March 2020 to a legal magazine accessed 14 June 2022 at <https://juristen.no/nyheter/2020/03/roser-effekten-av-politi%C2%ADreform%C2%ADtiltak>

<sup>11</sup> Accessed 10 June 2022 from [https://lovdata.no/dokument/NLE/lov/2005-05-20-28/\\*#&#x2a](https://lovdata.no/dokument/NLE/lov/2005-05-20-28/*#&#x2a) 'Any person who by frightening or bothersome behaviour or other harassing conduct stalks a person or otherwise violates another person's peace shall be subject to a fine or imprisonment for a term not exceeding two years.'

order to demonstrate some of the processes, I will use two examples; one in-between case in which the matter is taken , and one case that went all the way to the Supreme Court. Regarding cases that end abruptly, the narrative in the documents reveals that they are typically part of a larger pattern of crimes committed by the suspect(s). In other words, filing a hate speech incident involving the suspect may affect the outcome of the conviction and requires the police to be attentive to such incidents during, for instance, an arrest. These can also be cases of known extreme groups where the police register a verbal statement made in public by one or several group members. In such events, one can assume that the police are particularly attentive to hate speech incidents due to the nature of the groups involved and their history of public provocation.

One police-initiated example, filed as concerning bodily harm (Section 271), came to the police's attention via two police officers in civilian clothing and driving an unmarked car. The event was understood as a combination of hate speech (religious minority Muslim) and offensive behavior including attempting to tear off a niqāb and acting violently towards witnesses trying to help. The police officers did not personally witness the incident but one of them met with a private security guard at a shopping mall who had witnessed the event. Through mutual agreement between the officers, they decide to follow-up on the case, contact the security guard, review and secure the footage of the incident (evidence) and file several reports. The documentation is relatively solid in terms of including three witnesses to the incident, the victim, the suspect, and the penalty (a fine). There is also a discussion with the suspect in terms of niqāb vs hijab, with the latter being a familiar garment while the former provoked the suspect, according to the police interrogation. He argues that he dislikes this garment in particular as he cannot see the person and that 'there are so many walking around and blowing themselves up.' This and other reflections are richly summarized in the report, reflecting the police's initiative to build a case for a prejudice motive in the criminal offense.

In a final example of this type of post hoc police reported incident, a case of online hate speech towards ethnic and religious minorities is interesting to follow from beginning to end. The first document starts in the manner of a 'soft approach' narrative, namely as a 'police



conversation intervention'<sup>12</sup> with a senior, respected<sup>13</sup> police officer, in order for the suspect to reflect on his own behavior and change his practices. When his behavior does not change, despite positive conversations based on the summary of the police report, the police describe how they attempted to contact him, which included forced entry to his home. As the case develops, the suspect was charged under hate speech (Section 185). There follows paperwork from the District Court to Court of Appeals to the Supreme Court, where the charges (that is, those filed against him) were upheld. In the documents from the District Court and Court of Appeals, the case is reviewed carefully along the lines of freedom of speech (from the Norwegian Constitution, Section 100) and hate speech (Section 185). The use of derogatory labels for all Muslims, such as equating Muslims with animals and insects, combined with calling for the use of violence leads to a verdict dismissing the statements and their context as 'expressions of societal and political opinion'. As such, the case, along with another case tried in parallel in the Supreme Court, represents a landmark case in what represents acceptable (freedom of speech) and non-acceptable speech (hate speech) and thus pushes the field of hate crime further in Norwegian society; from law enforcement, court practices, to civil society organizations and public awareness more broadly. To take an extract from the case, a passage, that in my view is surprisingly free from bureaucratic jargon, is quoted below. Here, the narrative concerns the court's decision (unanimous) on sentencing after reviewing similar court cases and decisions:

The defendant's expressions have not only harmed a specific person but also the human dignity of an entire group of people and represent an increasing societal problem. Minorities try to find their place in Norwegian society. They need protection from intolerance and xenophobia that the phenomenon of faceless trolling takes part in underpinning, and that Norway, through international and national law, is committed to act upon. Hate speech online is aimed at a widespread [audience] and is therefore liable to do great harm. (Author's translation)

This passage represents an unusual reflection on personal and societal harm compared to the legal and bureaucratic jargon of other similar documents.<sup>14</sup> The exercise of law in the

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<sup>12</sup> For more details on the methodology, see (in English) [https://www.regjeringen.no/contentassets/a5050923704d4615af1271c8258ebad5/bekymringssamtalen\\_engelsk.pdf](https://www.regjeringen.no/contentassets/a5050923704d4615af1271c8258ebad5/bekymringssamtalen_engelsk.pdf) accessed 25<sup>th</sup> June 2020.

<sup>13</sup> It is practically impossible to highlight what is meant with respected without exposing details on the people involved, but the narrative of the suspect's voice seemed to have faith in the police officer.

<sup>14</sup> I attempted English translation of more typical jargon heavy court decisions but found myself unable to translate due to unfamiliarity of the legal language (both Norwegian and English) and my attempts often led to the text losing its original meaning. An example of original text in a Norwegian court case: '(...) den voldte tort

Supreme Court in Norway affects the field of hate speech in criminal law and knowledge production on what is acceptable and non-acceptable behavior, societally and legally. This is one of the most solid networks created in the criminal cases included in this study and a case that deeply modifies the understanding of hate speech in the Norwegian law enforcement context. In practical terms, this makes future instances of similar behavior easier to establish as a case and with a possibility of referring to Supreme Court decisions without needing a full round of law exercises at the appeal and high court levels.

#### *4.4 In situ incident*

Finally, cases that are grouped as in situ incidents resulting in police patrol response often generate a longer paper trail. Some of these cases concern both physical and verbal violence and are, based on extensive investigation from a number of angles, taken as priority cases by the police. In one case, the police entered an active crime scene where a gay couple (self-identified) were being targeted by three men during a late night out. This case has a long documentation (90 pages) of the crime scene, witness accounts and interrogations of people directly involved during and after the event, as well as a district court verdict. What appears to be crucial to the comprehensive case is a combination of several factors. Apart from some of the obvious issues, namely physical violence and bias motive (sexual orientation), the police, the victims and the witnesses in combination appear to recognize the incident as hate crime from the first caller to the police officers taking the reports of victims (2), suspects (3) and witnesses. From there, the case is taken up by the specialized hate crime team in Oslo. The interrogation documents also give a detailed account of the suspects' perspectives on homosexuals, that is their bias motive, when called in for questioning. Even though the suspects deny having biased views towards homosexuals, the combination of victim and witness accounts along with securing evidence leads to the verdict of serious bodily harm (Section 272), with a bias motive against the sexual orientation of the victim and affected parties. From the small selection of cases in this study, such a detailed and easy-to-follow chain of actions leaving the reader with an impression of 'case closed' is rather atypical.

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og smerte og for annen krenking eller skade av ikke-økonomisk art. (...) De har således fått redusert sin livskvalitet.'

Another case, which is categorized as bodily harm (Section 271) and public disorder (Section 181) with a bias motive (ethnicity) reveals some of the chaos at an active crime scene. The police received information about a fight outside a pub and the first file contains information about one victim, six witnesses, a guardian to a person who is a minor, and a suspect. The first report is a summary statement reporting the case and the events that took place. In the report establishing the case, the officer offers a vivid description of how the Emergency Control Center received several calls about a mass fight, the situation being tense upon arrival and them running to arrest the suspect, and how the victim was bleeding. There were four patrols, consisting of two officers each, that arrived at the scene, where one of the officers took a brief witness statement from four of the six witnesses, summarized in less than one page. The police also reveal that they watched the surveillance video of the incident and happened to notice an off-duty colleague, whom they name, who arrived *after* the violence took place. In other words, had the timing been different, their colleague could have been another source of information in the case. The witness statements reveal that there were two suspects – not one as stated initially – and the documentation further contains the interrogation of both suspects. However, there is no information about the victim in the case due to his situation – he having been advised to get medical attention. In the view of one of the suspects, he felt threatened by the ‘foreigners’ and, therefore, security guards arrived and threw the ‘foreigners’ out of the pub, which led to the fight outside. The other suspect, who was placed in solitary confinement and questioned the next day, is confronted with having made a racial slur, calling them ‘monkeys’ during the escalating situation and the video of the event showing his actions. There are many actors involved in the case, but the documentation does not contain first-hand information about them, such as the victim and the security guards (unnamed) who changed the situation by escorting the victim and witness out of the pub. If we take the case above as comparison, one would expect a set of reports containing a statement from each of these individuals, perhaps as a follow-up after the event. In this case, the police were attentive to the racial slur escalating the situation but appear less attentive to this as a hate crime and are more focused on public disturbance and bodily harm. Similar cases of comparing people to animals (‘monkeys’) have led to Supreme Court decisions as stated above, while in this case, I interpret a sense of ‘injustice’ as the police did not take a statement from the victim and did not follow up the act of the private security guards who took the side of the suspect.

## 5.0 Concluding remarks

The documents studied in this article are vital to an understanding of how seemingly unrelated, everyday, as well as ‘violent or dramatically out of the ordinary’ (Boyd et al., 1996, p. 828), events are brought together through the exercise of the law (cf. Latour, 2010). The essence of this practice-oriented analysis is to trace the knowledge production of hate crime through these documents. In other words, it traces knowledge in law enforcement – from interpretation, coding and registration, considerations of expertise - and the establishment of new terrain in criminal justice. The analysis of the case files establishes knowledge on empirical context and enables us to understand how some acts are criminalized and turned into ‘hate crimes.’ Since many of the cases end after only a few pages of documentation – a reported incident logged in the police system and perhaps one interrogation - knowledge is also established by what is *not* stated. For instance, why the case did not move forward points to a broader issue of challenges in policing hate crimes (e.g. Atak, 2020) but also to how solid the networks may be.

This article, inspired by ANT and using a practice-oriented document analysis, engages with an understanding of these documents as infrastructure for combining knowledge regimes (law enforcement, language), materiality (paper-work), norms (legal sections), technology (hate crime coding) and a variety of actors (victims, suspect, witnesses) (Turner & Wiber, 2022, p. 761). Combined, each of these has effects other than if acting on their own (*ibid.*). In other words, they materialize societal realities by translating individual experiences into a broader shared human experience of criminal (in)justice. Future studies may include different criminal cases – not only hate crime - to observe and interpret the knowledge terrain of criminal justice in different countries and societies. Similar events may be interpreted widely differently and be subjected to different treatment in the criminal justice system, which is a field worth exploring further.

The three patterns identified of how a case is brought to the attention of the police illustrate the narrative and urgency from a law enforcement perspective. The narrative in the documents available in the victim reported category lack, overall, some of the bureaucratic jargon typically found in the two other categories. They often appear more personal (humiliation, degrading experiences) and they are categorized as hate crime because this is the perception of the victim. The type of events categorized as *in situ* incident narrates a combination of

public disturbance, physical and verbal violence, witnesses and identified victim(s). As such, they have a thicker node of materiality resulting in investigations and verdicts relevant to future practice in law enforcement. This issue of urgency can be found in the broader critical field of police discretion and police officers as decision-makers in prioritizing who and what deserves attention (Bowling et al., 2019; Loftus, 2009).

The practice-oriented document analysis enables an understanding of how hate crime becomes a public issue (priorities set at the political and judicial levels) and on the policing agenda. As Asdal (2015, p. 88) states, '[d]ocuments (...) take part in modifying and sometimes radically transforming issues' that can produce new realities. By analyzing a case from a dedicated hate crime unit vis-à-vis other cases also narrates different functions within the police and organizational structures. The dedicated interest in hate crimes, prioritizing a detailed investigation and legal expertise to place events in the criminal justice system exemplifies practices of making these events a matter for law enforcement. The majority of cases studied are not taken from such specialized police officers. As such, these documents represent a time capsule of early attempts in systematizing and organizing events as 'hate crime' in the Norwegian police registry system.

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