



Using court records for research purposes

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What information can be found in court records?

- This will vary according to different countries' bureaucratic/administrative and legal systems. Variation exists even within the same country.
- In SA: list of criminal charges, appearances, bail, records and reasons for postponements, records of trial proceedings including judgement and sentence (transcripts), subpoenas and witness lists, correspondence within and between different departments, reports about victims and perpetrators, evidence/exhibits (medico-legal and DNA, fingerprints), applications for leave to appeal

[Obtaining access]

- ‘Justice must be seen to be done’ – thus all proceedings and records should be public. Some exceptions however eg juveniles, matters of state security
- But still important to inform court personnel of research and obtain permission beforehand – this is their territory. May see researchers as extra work and be unhelpful. Need for sensitivity to their workload.
- Courts more or less suspicious and open – how will your findings reflect on their performance?
- Not all court personnel know what they should be doing – each court may develop its own ‘culture’ and way of doing things.
- Do not remove or interfere with records in any way or be seen to inconvenience or interfere with the day-to-day operations of courts. Avoid corrupt officials wishing to sell information.

Strengths and limitations

- Secondary source of information (but can also be primary, depending on what is being studied).
- Information collected is for purposes of criminal prosecution and thus reflects courts' – and not researchers' – interests and priorities.
- Human error (and sometimes dishonesty) affects what is recorded; information may be missing, illegible, incomplete, inaudible, misfiled, lost, destroyed – implications for accuracy of data.
- Trial transcripts incredibly expensive but essential for knowing what happened – how evidence was used, why particular decisions made.
- Other court records essential to understanding the day-to-day processing of justice – law is not applied by robots existing in a vacuum

[Use of the findings]

- Can be used to say what is the ‘actual’ policy/law being implemented, rather than the policy/law on paper.
- Can identify policy gaps and point to how they could be addressed; also law reform and the setting of legal precedent.
- Expert testimony – educating judicial officers and widening their frame of reference
- Evaluating the performance of the courts
- Highlighting the limits of law and policy reform – understanding how people subvert policy.
- Understanding the dynamic subtleties of how the law ‘works’ – how can it be made to work differently?
- How the law constitutes gender identities and power relations; how does it define and disqualify women’s accounts?