Civil Justice System

1. Civil justice system:
   litigation between two private parties (not always)
   (see chart distributed comparing civil and criminal justice systems)

   includes: contracts, marriage/divorce/custody, probate/real estate
   and TORTS: civil suits for injury -- leads to compensation for harm or injury

2. Public debate and criticism
   distinguish policy analysis from social science inquiry
   approving of the civil justice system, "it is doing a fine job"
   improving the system, "here is how it could be better"
   what is wrong with the system, "how the American people are being screwed
   by the system"

   social science inquiry
   what evidence exists to substantiate claims about adequacy or failures
   of civil justice system (from social science research)
   how does the civil justice system distribute costs and benefits
   "why the 'haves' come out ahead" (characteristics of players and
   system)
   access to and use of civil justice system (by class, race, gender etc.)

4. Claims for a system in crisis
   too many claims
   American too quick to sue
   greedy lawyers encourage litigation
   many claims are frivolous
   irresponsible juries award ridiculous sums
   deep pocket plaintiffs asked to bear costs for others' actions

5. Example of Lubeck v. McDonald's

6. Evidence supporting / or challenging claims of a system in crisis
   Juries (not) biased toward plaintiffs (American Jury Project; Vidmar study)
   Proportion of awards to costs/injuries (role of inflation, medical costs, pyramid and
   sifting of disputes)

7. Pyramid of disputing (from 1000 events to 1.5 trials) (a system of linked parts)
   from all events - injurious events - perceived injuries (naming) - grievance (blaming) -
   claiming (against another for injury) - see a lawyer - file a suit - trial - appeal
   variable pyramids by type of event (automobile vs. environmental damage)
   (torts, discrimination, post divorce)
   possibility of too little claiming
8. Why the 'haves' come out ahead?
   one shotters vs. repeat players in a system of linked parts
   recurrent transactions generate routine disputes/predict events,
   routinize responses
   economies of scale
   relationships with institutional incumbents
   fewer constraints for settlement, play the odds
   play for rule changes
   access to quality legal counsel
   structure of a passive legal system (action initiated by plaintiffs)

9. Access to civil justice research
   social class affects court use directly because poor have fewer resources
   social class affects court use indirectly by shaping the legal needs of the poor
   legal needs often defined by the needs of middle and upper class, property holders
   legal needs and disputing defined by economic rationality, cost benefit analysis, ignores cultural variation and meanings that lie beside if not outside economic exchange
   variations in research produce differential results
   variations in need by type of problem
   variations in disputing interpretations by cultural location

10. A study combining multiple methods (broad demographically represented survey, in-depth ethnographic data collection)
   legal needs broadly defined (over 100 problems); average 14 per family
   no race, ethnic, socio-economic variation in # of problems reported;
   only variation in number by gender
   types of problems - noisy neighbors, consumer issues: race, socio-economic and gender variation in the types of problems
   legal action taken in 14% of problems
   no race, ethnic or social class variation in legal action
   confirmed low rate of civil litigation, confirmed rate of minorities in civil courts