

## National Council of Juvenile Court Judges

### Introduction: Mirror to the Profession

- My subject is "The Future of Juvenile Justice"
- Having to tackle this subject reminds me of a story: (Conrad Hilton story)
- As an academic, my distinctive competences are two:
  - To see things in larger patterns
  - To see them more dispassionately
- Therefore, I can be a mirror to you and your enterprise - no doubt distorted, but even that might be helpful
- It is in that spirit I take on this task, for the future will not be determined by what I see and say, but what you do.

### Method: Mandate for Juvenile Justice

- The search for the future of the juvenile justice system is the search for an idea - at once visionary and practical - that can serve as a mandate.
- An idea that:
  - 1) Attracts broad support from the political community
  - 2) Is consistent with our laws and legal traditions
  - 3) Focuses the attention of the court on important work
  - 4) Challenges the court to develop along useful paths

### The Limiting Analogy of the Criminal Court: Leads away from a distinctive contribution

- Much of our current thinking is guided - probably unwittingly - by an analogy with criminal court
  - Juvenile crime as most important problem
  - Reduction of recidivism as most important measure of success
  - Departures from criminal court due process must be justified by some special features of children
    - Changeable, therefore shift balance of values and nature of dispositions
    - Easily influenced, in mediated relation with parents, less culpable
- - Leads to a court of "individualized justice" that has some appeal
  - not only as court for children, but also as a challenge to austerity and rigidity of adult court.

- My view, however, that this apparently comfortable resting point is quite vulnerable
  - As a criminal court, it is vulnerable to attacks from the political left:
    - Broad Jurisdiction: especially status offenses .
    - Sloppy Procedures/Discretion leads
    - Utilitarian justifications not achieved
  - As a criminal court, vulnerable to attacks from right
    - Insufficient accountability for offenders
    - Insufficient attention to community security
  - These attacks are gaining ground
    - Removal of status offenses
    - Lowering age
    - Waivers to adult court
    - Installation of due process procedures in juvenile court
  - National result: A special criminal court for crimes by and against children

An Alternative:

- Is there an alternative? My answer is yes

- A Civil Court

Administering an Existing Body of Law

Regulating conduct of children, parents, public caretakers

To advance society's interests in assuming that children are

- a) Decently cared for
- b) Effectively supervised
- c) Trained for citizenship

- This begins with different assumptions
  - Raising children is joint private public responsibility - public in default
    - No guardian
    - Parental attack
    - Parents divorce
  - Family is a public institution - has obligations to the society
    - Parents have duties related to care and protection of children
    - Children have special duties associated with their status
  - Raising children requires mixture of obligations and assistance - barbarians to citizen
  - Raising children often requires complex interaction of private and public agencies - increasingly
  - Court is well positioned
- The relevant analogy is not a criminal court, but a bankruptcy court
  - There are share-holders, people with interests
  - Signs that operation is not going well
  - Fix through liquidation (replacement) or restructuring (re-negotiation deal)
- Operational implications
  - Parties before the court: Parents and Public Care-takers as well as kids
  - Jurisdiction: Keep status offenses  
Keep abuse and neglect  
Goal is to keep relations to accomplish
  - At A Remove: Responsible for regulating others conduct
  - The important role of special masters, improvisation and innovate to deal with variety.
- Virtues of this approach
  - Makes sense of jurisdiction/true to its past:
    - makes abuse & neglect
    - Expert in family relations
    - public/private care of children
  - Focuses court on an important problem
  - Creates important set of operational challenges