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