

Can the title foretell the tale:

Expanding the view of legal narrative
to encompass the case caption.

- Three interactive factors participate in the process of comprehending a text:
 - The reader's goals
 - The application of previous organized experience
 - Contextual information in the discourse

- Biasing titles have been shown to alter the comprehension of a text by affecting the selection of information from a text and the organization of this information in memory
- If a title assumes the role of an anchoring point or superordinate context around which the text is organized, then biasing titles may alter comprehension of the text.

- Ely Kozminsky

Adversarial or neutral captions?

- Massachusetts as an example
 - Chapter 208 provides three avenues to pursue divorce
 - Section 1: fault based divorce
 - Complaint filed: plaintiff v. defendant
 - Section 1A: no-fault divorce – jointly filed
 - Spouses file a joint petition that lists both as petitioners
 - Section 1B: one spouse seeks divorce based on irretrievable breakdown of marriage
 - Divorce-seeking spouse files complaint: plaintiff v. defendant.

Section 301 of the UMDA

- Uniform Marriage and Divorce Act § 301(b) provides
 - “[a] proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled ‘In re the Marriage of ____ and ____.’ A custody or support proceeding shall be entitled ‘In re the (Custody) (Support) of _____.’”

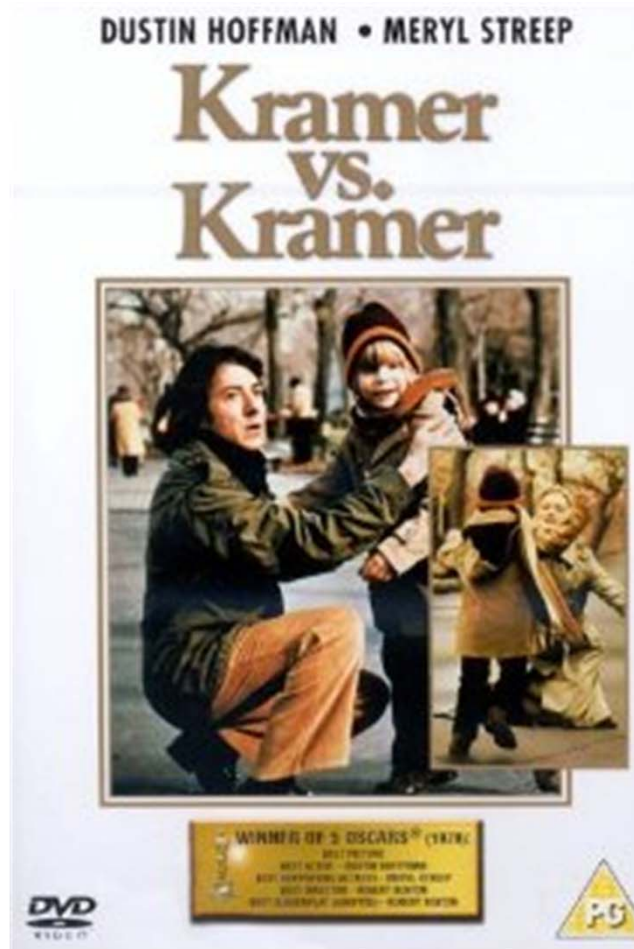
Back to the theoretical: the adversary system & metaphor

- The adversary system involves neutral & passive fact finders resolving disputes on the basis of evidence.
- The adversary system is replete with metaphors containing images of sports, battle, and sex.
 - War metaphors
 - Lawyers = heroes; hired guns; gladiators; champions
 - Parties marshal forces; deliver blows; engage in custody battles
 - Sport Metaphors
 - Courts are arenas; litigation is an obstacle course
 - Litigators make moves
 - Sex and sexuality metaphors
 - Lawyers speak of “screwing [their opponents]”
 - An unimpressive victory is like “kissing your sister”

Less adversarial metaphors?

- Negotiation as a dance or journey

What if . . .



Had been titled . . .

- In re: the Marriage of Kramer



What if . . .



Had been titled. . . The Dance of the Roses



Does the Casting of the Story Portend the Outcome:

A study of the impact that case
captioning has on the narrative of
family law cases.

Can the title foretell the tale:

Or – is it time for the title to catch up
with the evolving story?

The evolving narrative of divorce

- State legislatures adopt no-fault divorce
- Courts adopt programs to reduce acrimony in divorce proceedings
- Attorneys turn to processes that emphasize problem-solving approaches
- Rise in use of mediation to address divorce and custody issues

State legislatures adopt no-fault divorce

- Prior to the 1970's all divorces required proof of fault.
- In 1969, California legislature approved no-fault divorce, which became effective in 1970
- In 2010, New York became the last state to permit no-fault divorce.

Courts adopt programs to reduce acrimony in divorce proceedings, using Massachusetts as an example.

- Availability of lawyers for limited representation.
- Requirement that divorcing parents attend parent education as requisite for divorce.
 - Pilot program in Hampshire Division requiring parent education for never-married parents, seeking orders regarding paternity, custody, support, or visitation.
- Use of case managers.
- Pilot program in Hampshire Division for cases involving children.
- Every division of the Probate and Family Court has an ADR coordinator.
- Availability of conciliation and mediation services in some divisions.

Attorneys turn to processes that emphasize problem-solving approaches

- Collaborative law
- Cooperative law
- Promotion of mediation

Rise in use of mediation to address divorce and custody issues

- Mediation of family law cases is authorized in nearly every state.
- Some states mandate mediation of family law cases.
- Thirteen states mandate mediation of custody disputes, with exceptions for cases involving allegations of domestic violence.

Additionally . . .

- Acknowledgement in other disciplines that an adversarial approach does not serve the needs of litigants and family members, children or grand parents.

Neutral captioning – where we are at this time.

Sixteen states have adopted neutral captioning for family law cases:

- Alabama
- Alaska
- Arizona
- California
- Colorado
- Delaware
- Florida
- Indiana
- Iowa
- Kansas
- Montana
- New Hampshire
- Oklahoma
- Oregon
- Texas
- Wisconsin

In three states, it appears to be the practice to title divorce actions neutrally.

- Kentucky Practice provides a form petition for marital dissolution that uses the following caption: “In re the Marriage of ____, Petitioner, and ____, Respondent.” Ky. Prac. Dom. Rel. § 8:33.
- Missouri Practice provides an identical form for the captioning of a petition for dissolution of a marriage. 6A Mo. Prac. § 18:5.
- Washington does not require a specifically-worded caption; however, forms in a secondary source use “in re marriage of [] petitioner and [] respondent. 6A Mo. Prac. § 18:5.

In sum . . .