

LENE RUBINSTEIN (LONDON)

MAIN LITIGANTS AND WITNESSES IN THE ATHENIAN COURTS: PROCEDURAL VARIATIONS

One of the most significant developments in modern research on the role of the Athenian witness has been the emphasis on the witness's personal connection with the litigant whom he was supporting. It is widely held that an Athenian litigant would attempt to enlist the support of as many family members and personal friends as he possibly could, and that the main function of such witnesses was to make a public display of the loyalty that the main litigant was able to command. In an influential article, S.C. Humphreys (1985) presented a survey of attested Athenian witnesses, grouped in concentric circles around the individuals whom they were supporting, starting from citizens who appeared in their official capacities as magistrates in the outermost circle and ending with the litigant's closest kin in the innermost circle. One of the conclusions reached by Humphreys (1985: 350) on the basis of this evidence is that an important function of the witnesses was to convey an impression to the judges that the litigant enjoyed the personal backing of the social networks in which he operated. The interpretation of the role of the witness as that of a partisan of the litigant, rather than as a potential source of information relating to the case itself, is attractive for several reasons.

First, it helps to explain why the part played by the witness in the fourth century was restricted to a mere confirmation of a statement drawn up and submitted in advance either by the witness himself or by the main litigant for whom the witness was appearing. This practice suggests in itself that, in the context of the court hearing, the identity of the witness was more important than the actual information that he was called to corroborate.

Second, it provides us with a key to understanding not only why there were considerable risks associated with testifying in an Athenian court, but also why some witnesses were willing to face those risks. As is well known, a witness in the fourth century would expose himself to potential financial loss or even *atimia* merely by nodding confirmation of a statement read out to the court.¹ If the opponent decided to challenge the statement confirmed by a witness, and if he

¹ This observation of course applies only to the witnesses who appeared after the introduction of the rule that witness statements had to be submitted in writing prior to the court hearing.

followed up this challenge with a successful *dike pseudomartyrion*, the witness might be faced with a considerable compensation claim.² It is therefore a reasonable assumption that only those individuals who had very strong personal ties to the main litigant, or a direct personal interest in the outcome of his case, would be willing to assume the witness's risk.

If we accept the proposition that the main function of the witness was to provide a public demonstration of his personal support of the litigant for whom he testified, it may be assumed not only that most litigants would attempt to present as many supporters as they could muster, but also that any litigant would try to present the widest possible *range* of witnesses, from kin and personal friends to prestigious citizens with high political profiles, in order to convey to the court the impression that he enjoyed the support of a considerable cross-section of the community. Moreover, we should expect this strategy to have been employed in all types of legal procedure, from inheritance disputes to heavyweight *graphai paranomon* and *eisangeliai*. On this point, however, the surviving evidence points in a different direction. It will be argued here that a litigant's choice of witnesses from the different categories as defined by Humphreys depended to a certain extent on the procedural heading under which his legal action had been brought to court. The choice of individual witnesses, as well as of the type of evidence they were asked to confirm, was a highly strategic one that depended on the nature of the litigant's wider argumentation, and ultimately on the type of case in which he was involved.

In general, most scholars have ignored the ways in which the formal procedural context of a given court-hearing may have influenced the litigants' choice of witnesses. One reason for their disregard is undoubtedly that, when viewed from a modern angle, the similarities between the parts played by Athenian witnesses across the entire range of attested legal procedures appear much more striking than the differences. The basic principles governing the use of witnesses seem to have been the same in public and private actions. In both cases the witness would expose himself to personal risk,³ the witness invariably appeared at the request and initiative

² As I have argued elsewhere (2000: 71), the risk assessment made by a potential witness would be complicated by the fact that his risk would in many cases be inversely proportional to the success of the person he was supporting. If the party supported by the witness won the action, the opponent would presumably have had an increased financial incentive to compensate for his loss by means of a *dike pseudomartyrion*.

³ The witness's risk, most likely in the form of *dike pseudomartyrion*, is mentioned in connection with the following public procedures: *graphe paranomon* (Dem. 22.23), *graphe xenias* (Dem. 24.131), *euthynai* (Aisch. 2.170), *dokimasia rhetoron* (Lys. 10.22-24), and *endeixis* ([Dem.] 58.26). The spread is sufficiently wide to allow the conclusion that the risk must have applied across the entire range of public actions.

of the main litigant (or his supporting speakers),⁴ and, most importantly, once he appeared in court, the witness had no further control over the wording of the testimony as it had been set out in writing prior to the trial. It is thus not surprising that there has been a tendency to discuss ‘the Athenian witness’ as if his role was fundamentally the same regardless of the type of legal action in which he participated.

In his ‘The purpose of evidence in Athenian courts’, however, Todd (1990) suggested that the use of witnesses did vary along procedural lines. He makes the crucial observations that the frequency of witness statements is far higher in private suits than in public actions, that it seems to have been particularly low in *graphai paranomon* and *graphe nomon me epitedeion theinai*, and that it is highest in speeches delivered in inheritance disputes and other *oikos*-related legal actions. According to Todd, witness statements in public actions may have been replaced by other types of corroboration in the form of laws, decrees and contributions by *synegoroi*. Todd’s suggestion is highly plausible, but it does not go all the way towards explaining the procedural variations that show up in our material in regard to the litigant’s choice of witnesses from the different categories of potential supporters.

The task of establishing a link between a particular piece of testimony and the identity of the witness or witnesses is not an easy one. As is well known, the majority of witnesses are not identified at all by the speakers who ask one or several witnesses to come forward in order to confirm certain points of their narratives; more often than not the witnesses are simply introduced by standard phrases such as ‘to confirm that what I say is true, please call the witnesses’ and other variations on this frustratingly familiar theme. We know from the relatively few witness statements preserved in the manuscript tradition, which normally refers only to the witness testimony with the heading MARTYRES or MARTYRIA, that the identification of individual witnesses was often incorporated in the actual evidence read out to the court (see e.g. the preserved witness statements in [Dem. 43]). It may well be that most litigants felt that an additional introduction of the witnesses in the main speech would have been redundant.⁵ Even so, a significant minority of the witness statements are attributed by the speakers to individuals identified by their name, by

⁴ Six of the surviving twenty *synegoriai* delivered in public actions contain witness statements: Lys. 13, [20]; Dem. 18, 25, [59].16-126; Dein. 1. As far as [Dem.] 59 is concerned, the inserted documents suggest that Apollodoros managed both the practicalities and the formalities of obtaining testimony against Stephanos and Neaira.

⁵ This is likely especially in the context of a private action, where the water clock was stopped while testimony was read out (e.g. *Ath. Pol.* 67.3). Often one statement would be corroborated by several witnesses, and identification of all of them during the main speech would have further reduced the already limited time at the litigant’s disposal.

their relationship with the speakers or their opponents, or by their official capacity.⁶ Although such witnesses are sometimes accompanied by yet other unidentified individuals, it is a reasonable assumption that a witness who is named or otherwise identified by the speaker himself is one to whom the speaker wishes to attract attention, because confirmation by this *particular* individual will be perceived as lending the most important support to the credibility of the statement. If that argument is accepted, there is a sufficient amount of evidence to allow at least some tentative conclusions as to the connection between a witness's identity, the type of evidence he is asked to endorse, and the nature of the trial in which he appeared.

In the appendix I have set out separately the witness statements corroborated by ten different categories of witnesses in public and private actions. Some of the statements were confirmed by witnesses of more than one category, and each of those statements has been entered under the appropriate different headings. Thus, the total of 418 references must not be equated with the total number (393) of witness statements in our surviving material: 418 represents the sum of attested appearances by individuals belonging to each of the ten groups.⁷ When set out in this fashion, the material suggests very clear procedural variations in the following areas: in the use of witnesses belonging to the speaker's own inner circle, in the attribution of statements to named witnesses, and in the use of the city's officials as witnesses.

Witnesses identified explicitly as belonging to the innermost circle of people surrounding the main litigant himself, that is kin, friends, neighbours, fellow members of religious organisations and civic subdivisions, are very rare in public actions. No statements in the surviving speeches are attributed to the main litigants' neighbours or fellow associates. Witnesses identified as the speaker's own kin occur only once (And. 1.69), and only once do we find witnesses identified as the speaker's personal friends (Ant. 5.35). In the speeches delivered in private actions, by contrast, 43 statements are attributed in the main text to witnesses belonging to the speaker's own inner circle. It is, of course, likely that several friends and relatives of the

⁶ Of the 271 statements in private actions, 187 are corroborated by witnesses who are not identified in the main text. For public actions the corresponding figure is 54 out of 122 witness statements. For the distribution of testimony attributed in the main text to different categories of witnesses in private and public actions respectively, see the appendix to this article.

⁷ When compiling the material in the appendix I have excluded identifications provided in the relatively few witness statements that have been preserved in the manuscript tradition, although the majority of these are now regarded as genuine. I have also excluded speeches delivered before the Athenian *boule* (Lys. 16, 24, 26, 31, Dem. 51) as well as the Areiopagos council and other homicide courts (Ant. 1, 6, Lys. 1, 3, 4, 7). In cases heard by the homicide courts, regulations pertaining to the use of witnesses differed significantly from those applying to witnesses appearing before the normal *dikasteria*. Most importantly, the witness was required to swear the party's oath (Ant. 5.12), which may have restricted the range of witnesses who were willing to testify in such cases.

speakers lurk among the unidentified witnesses who appear in our public speeches. But if that is so, it is all the more significant that the main litigants do not actively try to draw attention to their own personal relationship with the persons called to testify. Thus, if we go by the main text surrounding the testimony of the unidentified witnesses, it seems to have mattered less from a rhetorical point of view *who* these witnesses were than what they confirmed by nodding their assent from the *bema*.

A second point of difference is that witnesses are identified by name in the main text far more frequently in public than in private actions. In the speeches delivered in public actions 43 out of a total of 122 statements (ca. 35%) are attributed to named witnesses. These witnesses fall into two main categories: 22 are connected with the speakers' opponents by friendly or hostile relations, while a further fourteen of the named witnesses are appearing in their capacity as the city's officials. For private actions, 26 statements attributed to named witnesses are attested out of a total 271 (ca. 10%). Nine of these witnesses were connected with the speaker's opponent, while one was appearing in his official capacity. There is a clear connection between the litigant's decision to identify a particular witness by name and the witness's personal standing in regard to the two opposing parties either as part of the opponent's social network (sometimes, but not always, indicating a social relationship that has broken down) or as a witness who is represented as 'neutral'.

This leads us to the third important difference between public and private actions, namely the use of witnesses who are identified in the main text as public officials of various kinds. In the speeches delivered in public actions, 26 statements are confirmed by witnesses in their official capacity. Witnesses of this type are found in eleven of the 22 public speeches in which witnesses are called. In the private speeches, by contrast, there are only eight such statements, of which six, confirmed by officials connected with the Athenian navy, are concentrated in just two speeches in which the main litigants' trierarchical duties are represented as central (Dem. 47 and [50]).

The discrepancies listed here are arguably so wide that they cannot be purely coincidental. It remains to consider the possible explanations for these phenomena. It is in itself not surprising that a litigant's use of personal friends, relatives, and other associates as witnesses is a feature especially of private legal actions. Witnesses tend to be identified explicitly as belonging in the litigant's own inner circle in contexts where the speaker wishes to emphasise that the witnesses concerned have privileged access, by virtue of their personal relationship with him, to information that he claims is important to his case. Most speeches delivered in private actions relate to matters in the domestic sphere, and a witness's proximity to either (and sometimes both) of the parties would maximise the credibility of his testimony. Litigants tend to identify witnesses as belonging to their own inner circle only in contexts where such an identification seems to be directly relevant to the contents of the testimony, which suggests that the witness's identity and personal connection with the speaker

mattered first and foremost in relation to the evidence confirmed by him. That in turn suggests that the role of such witnesses in private disputes went considerably beyond a public demonstration of the support commanded by the main litigant from his social network.

The evidence for the use of witnesses in public actions points in the same direction. As noted above, in such actions litigants only exceptionally identify their witnesses as belonging to their own inner circle: the personal relationships that are highlighted most frequently in public actions are those which connect particular witnesses with the speaker's *opponent*, and these witnesses are, as a rule, identified further by name.⁸ This applies not only to the categories of kin, personal friends, neighbours, and business associates; but also to the category of named individuals listed under the heading 'other' in the appendix: the persons recorded here had all played a direct part in the stories told by the speakers, and most of them were represented as connected with the speakers' opponents, sometimes as his kin or friends, sometimes as his enemies. In most of these cases the speakers do not indicate at all how they themselves were connected with the witnesses in question, and the witnesses are not presented as the litigants' personal allies in the disputes.

As far as our material will permit any generalisations, the reluctance on the part of the speakers involved in public actions to identify their witnesses explicitly as their own personal connections appears just as marked in defence speeches as in prosecution speeches. This runs counter to expectations: defendants often took care to convey a favourable impression of their personal conduct in general, and we might have expected statements confirmed by inner circle witnesses to have been highly relevant in contexts where the defendants wished to stress their propriety in matters relating to the domestic sphere and to their dealings with friends. Prosecutors in public actions, on the other hand, often kept a low personal profile in their rhetoric, concentrating instead on the person of the defendant; thus, the use of witnesses recruited from their own inner circle would be less relevant to them from a strategic point of view.⁹ Since their narratives placed the person of the defendant at the centre of the court's attention, witnesses who could confirm testimony relating to the defendant's personal conduct would be far more of an asset.

As far as public defence speeches are concerned, part of the explanation for the apparent reluctance to present inner circle witnesses may be related to the question of procedural economy. In public actions, the task of presenting a favourable personal image of the defendant as he operated within his own social context may well have

⁸ Unnamed witnesses recruited from the opponent's social network in public actions are found in Dem. 25.58, 25.62, [58].15, and Lyk. 1.19-20. Their use in private actions is attested in Lys. 23.4, Isaios 2.34, 8.42, Dem. 28.11a, 35.20, 35.23, 39.24, 47.82, [57].14, Hyp. 5 *Ath.* 34.

⁹ On the asymmetric roles of prosecutors and defendants, and the observation that prosecutors focused more attention on the defendant's personal conduct than on their own, see Johnstone (1999: 95-100) and Rubinstein (2000: 193-195, 213-216).

been taken over in part by *synegoroi*. Unlike a witness, whose role was limited to a mere confirmation of a written statement but whose testimony would still be deducted from the defendant's time allowance, a friend or relative acting as *synegoros* in a defence team could take on a multiplicity of functions, including not only a vocal statement confirming the defendant's personal credentials but also the various rituals of supplication.¹⁰ The absence from our record of witnesses belonging to the speakers' inner circle may, then, be due to different factors, depending on whether we are discussing public defence or prosecution speeches. Even so, it does require a considerable leap of faith to maintain, on the basis of the surviving material, that Athenian litigants tended to draw first and foremost on witnesses recruited from among their kin, personal friends and associates, regardless of the nature of the legal action in which they were pleading.

As indicated earlier, the differences between public and private actions are equally marked when it comes to the use of witnesses who are introduced in the main text in their capacity as the city's officials. The emphatic designation of witnesses appearing in a particular official capacity signals very clearly that their position was believed to lend extra weight to the testimony that they were asked to confirm, and in all cases where one or several officials were asked to confirm a statement, that statement appears to have been directly related to the remit of their office.¹¹ It was evidently not just the prestige that might go with certain types of office that made the support of these witnesses desirable from a rhetorical point of view, but equally that their position itself gave them privileged access to knowledge that might not be universally available.

Arguably, the litigant who proved himself able to enlist the backing of his fellow citizens in an official capacity might still regard such witnesses as an asset primarily because their testimony would create a powerful impression of the range of support that he was able to command. A litigant who perceived a strategic advantage in presenting a particular official (or board of officials) on his *bema* would no doubt often be able to structure his narrative in such a way that it could include suitable points for such an *ex officio* witness to corroborate. This strategy may be illustrated by Aischines' use (2.167-170) of the general Phokion and the *taxiarchos* Temenides, who testified to Aischines' bravery at the battle of Tamynai. Aischines' conduct as a citizen soldier is of course relevant to his general attempt to prove that his disposition was not that of a traitor, and that he was unlikely to have behaved in a treacherous fashion in connection with the embassy to Philip II. But we may well suspect that the choice of that particular battle as evidence for Aischines' patriotic

¹⁰ For the use of persons belonging to the defendant's inner circle as part of larger defence teams, see Rubinstein (2000: 148-163); for the question of procedural economy in relation to the use of witnesses and *synegoroi* in public and private actions, see Rubinstein (2000: 70-75); for supplication by and on behalf of defendants, see Johnstone (1999: 109-120).

¹¹ For the statements confirmed by officials see appendix.

disposition was made not least because a general as prominent and respected as Phokion had declared himself willing to testify on Aischines' behalf.

On the other hand, the fact that litigants could and sometimes did construct their stories partly with a view to fitting in particular witnesses whose support was expected to impress the *dikastai* makes it considerably harder to explain why such witnesses appeared far more frequently in public than in private actions. If it was desirable for *all* litigants to muster as wide and diverse a range of supporters as possible, it is very odd indeed that we do not find more litigants building testimony by officials into their narratives and argumentation in *dikai*. After all, many such litigants do mention their dealings with the city's officials at different stages in the run-up to the actual court hearing, and officials of various sorts often play an active part in their stories.¹² But they are only exceptionally called to testify, and when viewed from that angle the absence of *ex officio* testimony from ordinary *dikai* and *diadikasiai* is significant.

The explanation for their absence may, of course, be straightforward. I have argued elsewhere (1998: 133-139) that Athenian officials were expected to preserve a certain degree of neutrality when they were dealing with their fellow citizens in an official capacity. That may be one reason why officials were reluctant to throw their weight behind either of the two parties in a *dike*. It may, by contrast, have been perceived as more acceptable in a public action for an *ex officio* witness to become involved, because such trials were regularly presented as affecting the community as a whole and may thus have provided an appropriate context for participation as witnesses by the city's officials. It is striking, though, that the line distinguishing public from private actions appears as marked as it does in our material.

A further reason for the low number of *ex officio* witnesses in *dikai* and *diadikasiai* may be that officials in general may have tried actively to avoid situations in which they could be held personally and financially liable, and that many may have declined to become involved in other people's disputes for fear that they themselves might be taken to court in a *dike pseudomartyrion*.

However, if we accept either one or both of these factors as the explanation for the absence of *ex officio* witnesses from the private speeches, we are faced with a different problem, namely that of accounting for their presence in public actions. As noted earlier, the personal risk to the witness posed by the *dike pseudomartyrion* appears to have existed also in connection with public actions, and we have to ask what may have induced *ex officio* witnesses to assume that personal risk and responsibility.

¹² E.g. Isaios 1.21-24 (*astynomos* who was allegedly in possession of Kleonymos' will), Isaios 6.31-33 (eponymous archon in whose presence Euktemon revoked his will), Isokrates 17.14 (*polemarchos* in whose presence guarantee was paid for Pasion's slave). These officials all played an important part in the speakers' narratives, yet none of them is called to testify. There are numerous parallel examples.

In what follows I shall discuss three points that, when considered together, may account for the more frequent use of the city's officials as witnesses in public actions. The first concerns the question whether a litigant involved in a public action had particular procedural means at his disposal by which he could put pressure on individuals to testify, including procedural means that were not available to the litigants who were fighting ordinary *dikai* or *diadikasiai*. The second question to be raised is whether the *de facto* risk of being called to account for one's testimony was in fact lower in public actions than in private ones, simply because there was less incentive for the original litigants (winners as well as losers) to follow up public actions by means of the *dike pseudomartyrion*. The third is to what extent procedural differences relating to the pre-trial proceedings may have shaped the litigants' argumentation in such a way as to render 'neutral' *ex officio* witnesses more attractive as a rhetorical strategy in public actions.

That there were procedural means by which individuals could be forced to confirm testimony in court is strongly suggested by Hyp. 4 *Phil.* 12, a well-known and much discussed passage. Here the speaker refers to a rule that no person with two previous convictions for false testimony can be forced to give evidence a third time, even to events at which the witness had been present.¹³ It is hard to make sense of this passage unless we assume that the decision to testify was not always at the witness's own discretion. This conclusion is supported to some extent by the evidence of the law-court speeches. Two means of putting pressure on witnesses will be considered below: the *exomosis* and the *kleteusis*.

In both private and public actions, main litigants appear to have been able to present reluctant witnesses with the alternatives of either endorsing the witness-statement or swearing the oath of *exomosis*, and there are strong indications that witnesses could be compelled to choose either one or the other. The simple and formulaic nature of the oath allowed the witness to swear only that he had no knowledge of a particular fact or that he had not been present at a particular event. He apparently did not have the option of rejecting parts of the statement as drawn up in advance by the main litigant.¹⁴

The format and contents of the oath of *exomosis* themselves help to explain the dispensation from testifying referred to in Hyp. 4 *Phil.* 12. Since the only options

¹³ Hyp. 4 *Phil.* 12: ἔπειτα δὲ ὡς περ τοῖς τῶν ψευδομαρτυρίων δις ἠλωκόσιν δεδώκατε ὑμεῖς τὸ τρίτον μὴ μαρτυρεῖν, μηδ' οἷς ἂν παραγένωνται, ἵνα μηδενὶ τῶν πολιτῶν ἢ τὸ ὑμέτερον πλῆθος αἴτιον τοῦ ἠτιμῶσθαι, ἀλλ' αὐτὸς αὐτῶι, ἂν μὴ παύηται τὰ ψεύδη μαρτυρῶν, οὕτω καὶ τοῖς ἠλωκόσι παρανόμων ἔξεστιν μηκέτι γράφειν, εἰ δὲ μὴ, δῆλόν ἐστιν ὅτι ἰδίου τινὸς ἕνεκα τοῦτο ποιοῦσιν.

¹⁴ Only one passage, Dem. 29.16, may be taken to suggest that a witness had an opportunity to reject a statement even as it was being read out to the court: πρῶτον μὲν γὰρ, εἴπερ ὡς ἀληθῶς ταῦτα μὴ ἐμαρτύρησεν, οὐκ ἂν νῦν ἔξαρνος ἦν, ἀλλὰ τότε εὐθὺς ἐπὶ τοῦ δικαστηρίου τῆς μαρτυρίας ἀναγιγνωσκομένης, ἦνίκα μᾶλλον ἂν αὐτὸν ἢ νῦν ὠφέλει...

open to the witness was to deny knowledge or swear that he had not been present at a particular transaction, a witness who was known to have been present at a given event would hardly be in a position to deny knowledge of it and would thus not be able to swear the *exomosia* in good faith. If such a witness had already incurred two previous convictions for false testimony, he would be placed in an extremely vulnerable position, especially if the evidence he was asked to endorse was sufficiently contentious to leave an opportunity for the opponent to attack it through a *dike pseudomartyrion*. The only way of protecting this type of witness from a third-time conviction for false testimony seems to have been to grant him special exemption from what was apparently a duty to testify to facts or circumstances that he was supposed to know.

The *exomosia* has caused debate in regard to both its purpose and its application in practice.¹⁵ There is broad agreement that the *exomosia* could not be used as an instrument to force testimony from a witness who had decided to stay away from the court in the first place. As for the use of the *exomosia* to put pressure on people who had actually turned up at a preliminary hearing or at the trial itself, there is now a general consensus that the oath served first and foremost as a way of forcing the witness to declare openly whose side he was on.¹⁶ This, of course, fits well with the modern interpretation of the witness as the partisan of the person for whom he testified. But the actual application of the oath in known trials indicates that its use was considerably more subtle than that.

In the context of private actions, the use of the oath seems in practice to have been limited to those individuals who could be expected to testify for the speaker's opponent on a particular point. By forcing such a witness either to confirm the speaker's version or else totally to deny knowledge of a contested point, the main litigant would have prevented him effectively from confirming the opponent's version of that particular fact or event. However, as noted by Carey (1995: 118), the litigant would not have been able by this means to prevent the witness in question

¹⁵ For a systematic account, see most recently Carey (1995). Thür (1977: 317) has discussed problems of procedural economy in regard to *atechnoi pisteis* other than straightforward witness statements, arguing that the *exomosia* involving a formal ceremony of oath-taking would have been impracticable during the main court hearing. There are, however, passages that leave us in little doubt that the *exomosia* was sometimes sworn by witnesses in the very presence of the *dikastai* (e.g. Isaios 9.18, Dem. 45.88, Lyk. 1.20). The oath-taking procedure need not have been a time-consuming affair because of the formulaic nature of the oath. A basic requirement for swearing the *exomosia* in the court room was an altar, and Lyk. 1.20 suggests that altars were part of Athenian court-room equipment (see also Aristoph. *Wasps* 860-890).

¹⁶ This was first suggested by Todd (1990: 36), who also pointed out the lack of evidence that the *exomosia* and *kleteusis* were used to force witnesses to turn up in court (1990: 24-25).

from backing his opponent on other issues.¹⁷ The ways in which a litigant could spike his opponent's guns by forcing the *exomosia* on his witnesses were limited and had to be deployed with considerable precision. That may be one reason why the actual use of the *exomosia* in private actions seems to have been comparatively rare, and only two litigants go as far as to imply that pressure could be applied to their witnesses.¹⁸ In general, it may have been a safer strategy for a litigant in a private action to call on persons who were happy to testify without compulsion. This may be part of the explanation for the marked preference for witnesses recruited from the litigant's own inner circle in *dikai* and *diadikasiai*.

In public actions, litigants assert more frequently that they intend to use force against unwilling witnesses.¹⁹ This is undoubtedly related directly to the higher incidence of persons belonging to their opponents' social network being called as witnesses. But we must also consider the question whether there were particular procedural rules pertaining to witnesses in public actions that did not apply in private ones, rules that made the use of 'neutral' or even hostile witnesses both more feasible and more desirable from a strategic point of view. In this context it is important to ask what the consequences would be for a witness who refused both to testify and to swear the oath of *exomosia*.

We know from [Dem.] 49.19-20 that a litigant in a private action had the option of bringing a legal action for compensation, probably in the form of a *dike blabes*, against a witness who had refused both the alternatives open to him, and there can be little doubt that a recalcitrant witness ran a risk from the party whom he had let down, unless he chose to stay away from the court altogether.²⁰ This threat would be especially serious for the witness, whose presence at and knowledge of a particular transaction was incontrovertible, precisely because the *exomosia* was not an option

¹⁷ Carey (1995: 118 n.11) lists three examples of witnesses who were offered the *exomosia* and who almost certainly appeared also as witnesses for the opponent. At least one more example (Dem. 19.176) should be added to Carey's list, and Dem. 29.15 is also relevant.

¹⁸ Isaios 9.18 and Dem. 45.60 imply that the witnesses have no choice except to testify or to swear, but explicit language of force is not employed.

¹⁹ Aisch. 1.47-50 (threat of *kleteusis*), 2.64-68 (threat of *kleteusis*), Lyk. 1.19-20 (threat of *kleteusis*), Dem. 19.176 (ἀναγκάζω), 19.198 (ἀναγκάζω), [59].28 (ἀναγκάζω), [59].53-54 (ἀναγκάζω), [59].84 (ἀναγκάζω).

²⁰ Two procedures are mentioned in that passage, the action for *lipomartyrion*, which the speaker claims to have initiated during an arbitration procedure, and the *dike blabes* which the speaker has brought against the recalcitrant witness Antiphanes. Although scholars disagree over the exact reconstruction of events in this passage (e.g. Lipsius [1905-15: 784-785] and Harrison [1971: 142-144]), there seems to be a consensus that action was taken against Antiphanes because he failed altogether to appear at the arbitration, in spite of his promise to give evidence. The Greek, however, allows the interpretation that Antiphanes *did* turn up in the end, having been successfully summoned from his house, but that he *then* decided to refuse both to testify and to swear the *exomosia*.

for him. The effect seems to have been to catch the witness between a rock and a hard place, that is to place him at risk from both the opposing parties. If he chose to endorse a controversial statement on behalf of one party, he might face a *dike pseudomartyrion* brought by the opponent. If he did not, he might face a comparable financial risk from the litigant who had demanded his testimony. His only remedy appears to have been to bring a compensation claim himself against the litigant who had put pressure on him to testify, as envisaged in Dem. 29.16.²¹

This is a perfect illustration of the procedural complexity of the Athenian legal system: the use of witnesses was controlled by a delicate set of checks and balances, and the risk to the witness caught in the middle consisted primarily in the existence of legal procedures that allowed *either* of the main parties a chance to cover their financial losses at the witness's expense. However, the threat of a compensation claim brought by either of the main parties only really makes sense in the context of a private action, in which a main party could assess the amount of damage that the loss of his legal action had caused him with a view to seeking reparation from the witness. It is less clear how such a private compensation claim could have worked as a deterrent in the context of a public action, in which neither prosecutor nor defendant was entitled to financial compensation as a result of the verdict. It may of course be envisaged that a defendant in a public action, who had been sentenced to a fine, might seek compensation from a witness who could plausibly be held responsible for his conviction because of his refusal to endorse testimony that the defendant could represent as crucial. But unless he was able to pay his fine to the *polis* in order to regain his *epitimia* and with that his right to bring legal actions, the remedy of a *dike blabes* would not have been open to him. This is where the procedure of *kleteusis* must be considered as an alternative to the threat of private compensation claims as a way of creating alternative checks and balances to keep the witnesses in line.

Kleteusis as a means of compelling a witness to either testify or swear the *exomosis* is securely attested only in the context of public actions. As a result of this procedure the witness could incur a fine of 1000 drachmai to the *polis* if he refused both the alternatives open to him. *Kleteusis* was used as a threat against a witness by both prosecutors and defendants, and it appears to have been imposed summarily without any need for further legal action.²² The existence of this

²¹ Because Dem. 29 was long regarded as a forgery, this passage has not been taken sufficiently into account (see e.g. Harrison [1971: 142 n.4]), but MacDowell (1989) makes a strong case in favour of the authenticity of this speech.

²² Aisch. 1.46, Aisch. 2.68, Dem. [59].28, Lyk. 1.20. Only one passage, Dem. 32.29-30, has been interpreted to the effect that the speaker is envisaging the possible use of *kleteusis* in the context of a *paragraphe* (Lipsius [1905-1915]: 880). However, the verb κλητεύειν here is more likely to refer to the formal summons to a legal action issued to an individual outside Athenian territory (cf. e.g. Dem. 18.150). The speaker's point is precisely that Protos, claimed by both parties to be a key person in their dispute and responsible for part of their financial loss, is no longer in

additional weapon may very likely have lent credibility to the language of force and compulsion which we find in some public speeches, and it may also provide some of the explanation for the higher frequency of neutral and hostile witnesses. One reason why litigants in public actions had this additional means at their disposal may well be a perceived need to balance out the increased risks faced by the witness who consented to testify in a public action, a balance that could not be created by the availability of private actions for compensation.

A witness called to testify in a public action would, in principle, be exposed to the same risks as the witness who appeared in any *dike* or *diadikasia*. That meant, at a formal level, the *dike pseudomartyrion*; but the witness also faced an equally serious risk at an informal level in the form of personal intimidation from the party against whom his testimony was intended. Allegations that witnesses had been scared into silence are legion, along with allegations that they could also be persuaded by gentler means (*i.e.* bribes) to stay away from the *bema*.²³ But on top of this, there was a considerable risk for some witnesses in public actions that they might incriminate themselves through their testimony. This applied in particular to cases in which a citizen in a position of public responsibility, be it as a magistrate, a general or an ambassador, was charged with an offence directly related to his office. Since most officials discharged their duties as members of boards, it must often have been the case that those who were in the best position to confirm information relating to the charge against an official would have been his colleagues – who might very well have been implicated themselves.

It is hardly a coincidence that two threats of *kleteusis* are attested precisely in contexts where the witnesses would run the risk of self-incrimination: Demosthenes' threat against Aischines' fellow ambassadors (19.176) and Aischines' attempt to force Misgolas to admit to his relationship with Timarchos (1.46-48). Likewise, Epichares, in his *endeixis* against Theokrines for having dropped a *phasis*, urges the judges to assist him in forcing his witnesses to testify ([Dem.] 58.7). In [58].26 he dramatises the situation, claiming that it was only with difficulty that he could make the *epimeletai tou emporiou* admit to the fact that Theokrines' *phasis*, initiated under their jurisdiction, had been allowed to be struck out. It does not take much imagination to work out why these officials were not overjoyed at the prospect of confirming that piece of evidence. The *kleteusis* did, of course, have a wider application than just that of forcing officials to rat on their colleagues or incriminate themselves. Lykourgos, who employed the threat against the defendant's neighbours

Athens, let alone in the court room. It is generally held that *kleteusis* could not be used against an absent witness to compel him to appear in court. For the *kleteusis* as a summary procedure, the argument of Lipsius (1905-15: 880 n.55) remains fundamental; modern scholars, however, are still cautious (see most recently MacDowell [2000: 278]).

²³ For witnesses being scared or bribed into silence, see e.g. Isaios 8.42, Dem. 21.137, [49].19, [58].7.

and another witness who had spoken against Leokrates in the assembly, represents *kleteusis* as a means of counteracting the temptation of bribes offered to the witnesses in return for withholding their confirmation (Lyk. 1.20). Overall, there can be little doubt that the Athenians saw the *kleteusis* first and foremost as a measure by which additional pressure, in the form of a substantial fine, could be brought to bear on a witness to balance out the temptation not to testify.

This additional pressure may, then, go some way towards explaining the appearance of 'neutral' *ex officio* witnesses as well as witnesses recruited from the opponent's social network. But it is not the whole explanation, and, as mentioned above, at least two other contributing factors need to be taken into account. One is that the *de facto* risk of financial loss to the witness as a result of a *dike pseudomartyrion* was less significant for those who testified in a public action rather than in a *dike* or *diadikasia*; the other, that the preference for such witnesses reflects a strategic choice that was, in part, determined by the nature of the pre-trial proceedings, which differed considerably according to the type of legal procedure employed by the prosecutor.

We have considered the personal risks of intimidation and self-incrimination, which may have been particularly serious for the witness in a public action. However, the formal risk of a *dike pseudomartyrion*, a prominent theme in private speeches and undoubtedly a considerable deterrent, may have played a much reduced role in the context of public actions simply because the main parties might often have had far less real incentive to attack a witness by this procedural means.

The financial incentives for main litigants to recover their losses by suing one or several of their opponents' witnesses have already been discussed. As attested in Isaios 3, even victorious litigants might sometimes attempt to follow up their success by prosecuting the witnesses of the loser. But did a volunteer prosecutor (winner or loser) have a similar financial incentive to bring a *dike pseudomartyrion* against the witnesses of the defendant? It is, in fact, unlikely that he would be able to claim personal compensation: after all, by bringing a public action he had acted, at least in principle, on behalf of the community; and all but a few public procedures meant that the prosecutor had to relinquish the material gains of victory.

For a defendant, the situation may have been rather different. As argued by Behrend (1975: 139-148), we cannot rule out that in certain types of action one or more successful *dikai pseudomartyrion* might have meant an annulment of his conviction or, in the case of the *graphe xenias*, an actual retrial. However, there is only one attestation of a possible *dike pseudomartyrion* brought by a defendant in the wake of a public action. In spite of his acquittal in what was probably a *dokimasia rhetoron* Theomnestos, who had been accused of throwing away his shield, prosecuted a key witness who incurred *atimia* as a result (Lys. 10.22-24). This may have gratified Theomnestos; but there is no indication that he achieved any financial gain from this action.

It is in any case astonishing that there are no other attestations of *dikai pseudomartyrion* of that kind, and the explanation is probably either that the financial incentives were low or that the outcomes of most public actions were not perceived to have depended on witness statements to the same extent that private actions did. As Scafuro (1994: 174-178) has shown, the *dike pseudomartyrion* appears to have been used by far the most frequently in the wake of cases in which evidence, particularly related to kin identity, could be represented as central to the judges' decision. The importance of individual witness statements for the outcome of a public action may have been harder to assert, and the incentives to take the witnesses to task correspondingly lower.

The third factor, that in public actions 'neutral' *ex officio* witnesses and witnesses belonging to the opponent's circle were the most attractive from a strategic point of view, may, however, be the most important. As noted earlier, the number of statements attributed to these two types of witnesses outnumber even the statements for which we are wholly ignorant of the witnesses' identity. Why this preference for witnesses who were either 'neutral' or connected with the opponent for better or for worse? The answer may be found in the differences in the type of evidence that witnesses were asked to confirm in different types of procedure, and these variations may, in turn, be explained with reference to the different nature of the pre-trial proceedings in public and private actions respectively.

The intimate link between the proceedings leading up to a private action and the statements corroborated by witnesses in court has been made clear by Thür (1977). The pattern he observed for the *proklesis* to *basanos*, as a rule made during the *diaita* or *anakrisis*, is replicated for other types of challenges such as that to oath-swearing or to the opening of sealed documents claimed by the challenger to be central to the dispute. The close connection between the pre-trial proceedings and the contents of witness statements in private actions is borne out by the fact that no fewer than twenty-five statements relate directly to *proklesis* of various types, and that a further seven confirm declarations made by the speaker's opponent during the *diaita* or *anakrisis*.²⁴ Another eighteen statements confirm claims that the parties had attempted to reach an out-of-court settlement through arbitration, including confirmation of *aphesis* and *apallage* agreed through that kind of procedure. Thus, a cautious calculation is that 50 of the 271 witness statements in private actions were

²⁴ Statements relating to *proklesis* (*basanos*, evidentiary oaths, opening of sealed documents): Lys. 23.14, Isokr. 17.16, Isaios 6.16, 8.11, Dem. 27.42, 29.12, 29.21, 29.26, 29.50-53, 29.54, 30.30, 32.19, 33.13, 36.40, 40.44, 45.61, [46].21, 47.10, 47.17, 48.47, 48.49, 52.19, 54.29, 55.27, 55.35 (total 25). Statements relating to declarations made during *anakrisis/diaita*: Dem. 27.14-17, 27.39, 28.10, 28.11, 28.13b, 30.24, 33.18 (total 7). Evidence relating to attempted out-of-court settlements, *aphesis*, and *apallage*: Isokr. 18.10, Isaios 1.16, 12.11, Dem. 33.12, 33.20, 34.20, 36.10, 36.16, 36.24, 37.13, 37.17a, 38.3, 40.18, 41.28, 45.55, 45.59-61, 48.3, 52.31 (total 18).

specifically connected with the preliminary procedural stages leading up to the court hearing rather than with the ‘facts’ with which the dispute itself was concerned. Hence the frequent appearance of friendly ‘inner circle’ witnesses in private actions: when preparing himself for any transaction, especially one involving his opponent at law, an Athenian would arm himself with witnesses in advance, and such witnesses would quite naturally be people with whom he was personally connected.

By contrast, we know very little about the preliminary procedures leading up to a public action. There was an *anakrisis* which the parties were obliged to attend; but it is interesting to know that only very few witness statements relate to that part of the procedure.²⁵ Whatever the reason, it can be concluded with reasonable certainty that far less seems to have hinged on the *anakrisis* or on the litigants’ decision to explore the rhetorical potential of pre-trial manoeuvres such as *proklesis*, to which friends and relatives would be ideally suited as witnesses. As for arbitration, this was not a legal option in public actions (although some people did allegedly make illegal settlements out of court), and there was thus very little scope for friends and relatives to come forward in a role corresponding to the one they often took on prior to a *dike* or a *diadikasia*.

Instead, a litigant fighting a public action may have relied to a far greater extent on the other types of witnesses, named individuals and officials, whose positions were perceived to enable them to confirm specific ‘facts’, which could be represented as relating more or less directly to the charge itself. The persons in a position to testify to such facts were likely to be, not the speaker’s personal allies, but precisely those individuals who had had personal dealings with the opponent whether in a private or an *ex officio* capacity. Among potential witnesses of that type, the ones most easily persuaded into testifying would undoubtedly be those who had fallen out with the opponent. As for the alternatives, *ex officio* witnesses and the opponent’s kin and friends, the former would undoubtedly have been more easily persuaded to testify than the latter, as long as the evidence was reasonably uncontroversial and did not incriminate the witnesses themselves. This may well be the most important factor determining the preference for *ex officio* witnesses in public actions.

The most important conclusions that can be drawn from this survey, however, are that 1) friends, relatives, and private connections of the speakers were not *automatically* perceived as the most obvious supporters. The statement that most

²⁵ Testimony in public action relating to pre-trial proceedings and manoeuvres is found in Ant. 5.28 (probably testimony relating to note found in boat), Ant. 5.30 (testimony relating to *basanos*), Ant. 5.35 (testimony relating to prosecutor’s killing of slave), Ant. 5.56 (testimony relating to discrepancy between slave’s allegations and note ‘found in boat’), Aisch. 2.19 (Aristodemos’ *ekmartyria* confirmed by unidentified witnesses), Aisch. 2.154-155 (confirmation that Aristophanes has declined to act as witness for Demosthenes), [Dem.] 53.25 (Apollodoros’ counter-challenge to a *proklesis* to *basanos* issued during *anakrisis*), [Dem.] 59.123 (Apollodoros’ *proklesis* to *basanos* issued to Stephanos).

witnesses were personal connections of the principal can be legitimately made only in regard to private actions. 2) The choice of particular individuals as the witnesses most likely to carry weight with the audience does not seem to have been made with a view to presenting the court with the the widest possible range of personal supporters. It seems rather to have depended on the kind of evidence that the witnesses were required to give and that, in turn, depended to a considerable degree on the type of legal action in which the litigant appeared. In public actions in general, it seems to have been perceived as a positive advantage that the witnesses introduced could be represented as individuals only distantly connected or indeed wholly *unconnected* with the main litigant, and whose duty it was to confirm what they knew rather than to offer him their personal support.

APPENDIX

Category of witness/witnesses as identified in main text of the speeches:

Bold type face indicates that one or several of the witnesses are named

Italics indicates that the witness is connected with the speaker's opponent, whether by friendly or hostile personal ties

Underlined italics indicates that the witness is expected to testify for the opponent

* indicates that the identified witnesses appear with other witnesses whose identities are not revealed

PRIVATE ACTIONS

Unidentified: Lys. 10.5, 17.3, 23.11, 23.14, 23.15, 32.18, 32.27; Isokr. 17.12, 17.14, 17.16, 18.10, 18.54; Isaios 1.16a, 1.16b, 1.32, 2.5, 2.34b, 2.37, 3.14, 3.15, 3.37, 3.43, 3.53, 3.56, 3.76b, 5.2, 5.13, 5.18, 5.24, 5.33, 5.38, 6.16 (perhaps including the speaker himself, who acted as *synegoros*), 6.26, 6.34, 6.42, 6.46, 7.10, 7.17, 7.25, 7.28, 7.32, 7.36, 8.11, 8.20, 8.24, 8.27, 8.46, 9.6, 9.20, 9.28b, 9.29, 9.33 (perhaps *phratores* and *thiasotai*), 10.7, 12.11, Dem. 27.8, 27.22, 27.26, 27.28, 27.33, 27.39, 27.41, 27.46, 28.10, 28.11b, 28.12a, 28.12b, 28.13a, 28.13b, 29.12, 29.18, 29.21, 29.26, 29.39, 29.50-53, 29.54, 30.17a, 30.17b, 30.18, 30.24, 30.30, 30.32, 31.4, 32.13, 32.19, 33.8, 33.12, 33.13, 33.15, 33.18, 33.26, 34.7, 34.9, 34.10, 34.11, 34.20, 34.38, 34.39, 35.14a, 36.4, 36.10, 36.21, 36.22, 36.24, 36.35, 36.40, 36.48, 36.55, 36.56a, 36.56b, 36.56c, 36.62, 37.9, 37.13, 37.30, 37.31, 37.54, 38.3, 38.13, 39.5, 39.19, 39.20, 39.36, 40.7, 40.15, 40.18, 40.33, 40.35, 40.44, 40.52, 41.6, 41.18, 41.24, 41.26, 42.9, 42.16, 42.23, 42.25, {[43].35 (*demotai* not identified in main text), [43].36a (relatives not identified in main text), [43].36b (relatives not identified in main text), [43].37a (relatives not identified in main text), [43].37b (relatives not identified in main text), [43].42 (relatives not identified in main text), [43].43 (relatives not identified in main text),

[43].44 (relatives not identified in main text), [43].45 (relative not identified in main text), [43].46 (relative not identified in main text)}, [44].14, [44].30, 45.61, [46].21, 47.10, 47.17, 47.32, 47.40, 47.51, 47.66, 47.67, 47.77, 48.3, 48.33, 48.34, 48.49, [49].33b, [49].43, [49].61, [50].13, [50].28, [50].37, [50].40, [50].42, [50].56, [50].68, 52.19, 52.31, 54.6, 54.29, 54.36, 55.14, 55.27, 55.34, 55.35, [57].19, [57].25, [57].27, [57].28, [57].46. TOTAL: 177 (187 with the testimonies in [Dem.] 43)), **61% (64%)**

Relatives: Isaios 2.34a? (speakers indicates that witnesses may refuse to testify), 3.12, **5.27** (Protarchides Potamios, husband of speaker's aunt), 6.10-11, 8.13, 8.17, 9.9-10, 9.18 (*exomosia*), 9.19, 9.30b, Dem. 27.14 * (Demosthenes' *epitropoi* Demophon and Therippides, allegedly in cahoots with Aphobos, and Demochares Leukonoeus, husband of Demosthenes' aunt), **27.42** (Aphobos' own statement during *anakrisis*), 28.11a (Aphobos' fellow *epitropoi*), 30.9* (Timokrates, ex-husband of opponent's sister, allegedly cooperating with Onetor and Aphobos and expected to testify for them (cf. 30.38)), **41.10** (Aristogenes, probably brother of Polyeuktos' wife), 45.55 (Deinias, Apollodoros' father-in-law and relative of A.'s opponent; *exomosia*?), 48.55 (relatives of both speaker and of his opponent), **[49].42** (Pasikles, brother of speaker), **52.7*** (Phormion and others), **54.10a*** (Euxitheos Cholleides), **[57].20-21** (Thoukritides, Charisiades, Nikiades, Nikostratos, all relatives of speaker's father), [57].22 (father's maternal kin), [57].23b, **[57].38** (Damostratos and Apollodoros, maternal kin), **[57].39** (Euxitheos and his three sons, maternal kin), **[57].43** (sons of Protomachos and Eunikos Cholargeus, half-sister's husband, and the latter's son), *Hyp. 5 Ath. 34* (relative by marriage, *kedestes*, of Athenogenes). TOTAL: 27 of who 8 are connected with opponent (13 named) (**9%**)

Friends: *Isokr. 17.32* (Agyrrhios, friend of both parties), Isaios 8.13, 9.4, 9.9-10, 9.25, 9.30b, **Dem. 54.10a*** (Meidias, who housed speaker after assault). TOTAL: 7 of whom 1 is connected with opponent (2 named) (**2.5%**)

Thiasotai, gennetai, phratores, demotai: Isaios 2.16 (*orgeones, phratores, demotai*), 3.76a (*phratores*), 3.80 (*demotai*), 6.10-11 (*phratores, demotai*), 9.9-10 (*phratores, demotai*), 9.21 (*demotai*), 9.30a (*thiasotai*), *Dem. 39.24* (*phyletai* of Hippothontis, i.e. allegedly Boiotos' original *phyle*), [44].44* (*phratores, demotai*), [57].14 (*demotai*, allegedly the opponent's fellow conspirators), [57].23a (*phratores, gennetai*), [57].23b (*demotai*), [57].40 (*phratores, demotai* of mother's kin and those who share burial plot), [57].43 (*phratores*). TOTAL: 14 of whom 2 are connected with opponent (**5%**)

Neighbours: *Lys. 17.8-9*, Isaios 3.12, [Dem.] 43.70* (neighbours to Hagnias' estate), 47.61*, 55.21. TOTAL: 5 (**1.5%**)

Fellow soldiers: 0

Business partners, debtors, creditors, vendors, buyers, lessees: Lys. 17.2 (people familiar with financial affairs of Eraton), 17.8-9 (lessees), Isokr. 17.41*, Dem. 35.23 (defrauded creditor of opponent), 36.13 (lessees of Pasion's bank), 37.17b (buyers of mine), **41.11** (Demophilos, Spoudias' creditor), **42.29** (Aiantides and Theoteles, former creditors of Phainippos), **[49].33a** (banking staff and Timosthenes who received compensation from bank). TOTAL: 9 of whom 3 are connected with opponent (3 named) (3%)

Witnesses identified only as bystanders / those present: Isaios 2.34a (default witnesses), 3.56, 5.6, 6.7, 6.37, Dem. 33.19 (originally selected by Parmenon), 35.14b, 36.16, 37.17a, [43].31, 45.60 (persons present at arbitration, *exomosia*), 52.16 (people present at arbitration), 54.9, [57].43 (persons present at *engye*). TOTAL: 14 (5%)

Officials (including trierarchs, ambassadors): Lys. 17.8-9 (unspecified *archontes* and *naudodikai*), **Isokr. 18.8** (Rhinon and his *synarchontes, bouleutai*), Dem. 47.24 (*archontes* in charge of collection of naval equipment), 47.27b (*apostoleis, epimeletai ton neorion*), 47.44 (*bouleutai*), 47.48 (*trierarchs*), 47.51 (*syntrierarch*), [50].10 (collectors of *ta stratiotika, apostoleis*). TOTAL: 8 (1 named) (2.5%)

Other: Lys. 23.4 (Dekeleians and people who have sued opponent), **23.8** (the Plataians Euthykritos and Nikomedes and other Plataians), *Isaios 8.42* (the husbands of Diokles' defrauded sisters called to testify to D.'s wickedness – speaker suggests that they may be too scared to come forward), 9.28a* (teachers), **Dem. 30.34** (Pasiphon, probably a doctor, who looked after Aphobos), 34.15 (*kleteres* to speaker's summons of Phormion), 35.20 (Artemon's fellow voyagers on ship), **35.33-34** (Apollonides, Erasikles, Hippias: Artemon's fellow voyagers), 36.7 (persons with whom Pasion's will was deposited), 40.37 (pro-Athenian citizens of Mytilene), 41.28 (arbitrators in dispute between Polyeuktos and Leokrates), 47.27a (*kleteres* to speaker's summons of Theophemos), *Dem. 47.82* (other victims of opponent's evil deeds), **48.11** (Androkleides Acharneus with whom document was deposited), **48.47** (Androkleides Acharneus), **52.21** (Megakleides Eleusinius, once involved in *dike* against Lykon), 54.10b (doctor who looked after speaker), 54.12 (doctor who looked after speaker), **[57].45** (Kleinias, nursling of speaker's mother, and his relatives), Hyp. 5 *Ath.* 31-33 (Troizenian refugees). TOTAL: 20 of whom 6 are connected with opponent (7 named) (7%)

PUBLIC ACTIONS

Unidentified: Ant. 5.20, 5.22, 5.24, 5.28, 5.30, 5.56, 5.61, 5.83; And. 1.28, 1.123, 1.127, Lys. 12.42, 12.47 ('those who have heard from opponent himself'), 12.61, 13.28, 13.42, 13.64, 13.66, 13.68, 13.81, Lys. 19.23b, 19.27, 19.41, 19.58,

19.59, [20].25, [20].26, 30.20, Isaios 11.43, 11.46, Dem. 18.135, 18.137, 18.267, 19.165, 19.170, 19.213-214, 19.233, 19.236, 21.93, 21.107, 21.167, 21.174, 23.151, [53].18, [53].19, [53].20a, [53].20b, [53].21, [53].25, [58].9a, [58].32, [59].123, Lyk. 1.23, Dein.1.27. TOTAL: 54 (**42.5%**)

Relatives: And. 1.69 (Andokides' relatives released from prison through Andokides' denunciations), [*Dem.*] 59.53-54 (Phrastor Aigilieus, former husband of Phano, 'forced' to testify), [59].84 (Theogenes Erchieus, former husband of Phano, 'forced' to testify), *Aisch.* 1.104 (Timarchos' uncle Arignotos). TOTAL: 4 (3 named, all of whom are or have been connected with the speaker's opponent) (**3%**)

Friends: Ant. 5.35, *Aisch.* 2.64-68 (Amyntor Erchieus, Demosthenes' acquaintance to whom Demosthenes had shown draft of decree proposal in Assembly, 'forced' to testify). TOTAL: 2 (1 named, who is connected with the speaker's opponent) (**1.5%**)

Gennetai, phratores, demotai, phyletai, thiasotai: [*Dem.*] 58.15 (Theokrines' *phyletai*), [59].55-61 (Phrastor's *gennetai*). TOTAL: 2 (of whom 1 is connected with the speaker's opponent) (**1.5%**)

Neighbours: Lyk. 1.19-20 (Leokrates' neighbours, 'forced' to testify, *exomosia*). TOTAL: 1 (connected with speaker's opponent) (**0.5%**)

Fellow soldiers: [Lys.] 20.28, 20.29, *Aisch.* 2.167-170 (Aischines' fellow soldiers in battle of Tamynai). TOTAL: 3 (**2%**)

Business partners, debtors, creditors, vendors, buyers, lessees: *Aisch.* 1.100 (Timarchos' debtor, Metagenes Sphettios; buyers of Timarchos' landed property, Nausikrates, Kleainetos, Mnesitheos Myrrhinosios), Lyk. 1.24a (Leokrates' former creditors: Philomenos Cholargeus and Menelaos envoy to Persian King), 1.24b (Timochares, who bought Leokrates' slaves). TOTAL: 3 (all named, all connected with speaker's opponent) (**2.5%**)

Witnesses identified only as bystanders: Dem. 19.162a, 19.168 (people present at Pella), 21.119-121, [59].34 (people present at party), Lyk. 1.19-20 (people present in Rhodes). TOTAL: 5 (**4%**)

Officials (including trierarchs, ambassadors): And. 1.14 (Diognetos, *zetetes*), 1.46 (*prytaneis*, one of whom is Philokrates), 1.112 (Eukles, *keryx*), Lys. 13.79 (*taxiarchos*), 19.23a (Eunomos, ambassador), 21.10 (Nausimachos, trierarch), 22.9 (Anytos, *sitophylax*), Dem. 19.31-32 (*bouleutes* who had proposed *probouleuma*), 19.129-130 (ambassadors), 19.162b (Eukleides, ambassador), 19.176 (ambassadors, expected to appear for Aischines, supplemented with Demosthenes himself, 'forced' to testify, *exomosia*), 19.198* (Diophantos 'forced'

to testify to his own report in Assembly), 23.168 (trierarchs), 25.58 (*poletai*), [58].8 (Euthyphemos, *grammateus ton tou emporiou epimeleton*), [58].9b (*hoi tou emporiou epimeletai*), [59].40 (Aietes Keiriades, *polemarchos*), Aisch. 2.46 (ambassadors), 2.54 (ambassadors), 2.55 (ambassadors), **2.85** (Aleximachos Peles and his *symproedroi*), 2.86 (*strategoï* and *synedroi* of allies), **2.108** (ambassadors, including Aglaokreon of Tenedos and Iatrokles Pasiphontos), **2.134** (*spondophoroi* and the ambassadors Kallistrates and Metagenes), **2.167-170** (Temenides, *taxiarchos*; Phokion, *strategos*), Dein. 1.51-52 (*Areiopagitai*).
TOTAL: 26 (14 named) (**20.5%**)

Other: **And. 1.18** (Kallias, Stephanos, Philippos, Alexippos. Two of these witnesses are relatives of persons exiled as a result of the Mystery affair), Dem. 19.146 (Olynthian witnesses on the effect of the peace on their community), **19.168** (Apollophanes, present at Pella), 21.21 (goldsmith), 25.58 (unidentified man who buried Aristogeiton's father), 25.58 (*Zobia's prostates*), 25.62 (Tanagraian man whose nose was bitten off by Aristogeiton), [58].9b (Mikon against whom Theokrines had brought *phasis*), [58].21 (Kephisodoros whose slave woman Theokrines had sought to claim as free through *aphairesis eis eleutherian*), [58].33* (Philippides Paianieus, to whom Theokrines had said that he would drop action against speaker's father), [58].35a (Aristodemos Kritodemou Alopekethen in whose house bribe was paid to Theokrines), [58].35b* (Hypereides and Demosthenes, from whom Theokrines had asked for bribes), [58].42-43 (Kleinomachos and Euboulides who had acted as mediators between Theokrines and Demosthenes), [59].23 (Philostratos Kolonethen who had housed Nikarete and her girls), [59].25 (Euphiletos Simonos Aixoneus and Aristomachou Kritodemou Alopekethen), [59].28 (Hipparchos, Neira's customer, 'forced' to testify, *exomosia*), [59].32 (Philagros Meliteus, present when Phrynion bought Neira's freedom from Eukrates and Temanoridas), [59].47 (Satyros Alopekethen, *Saurias Lamptreus*, Diogeiton Acharneus, arbitrators between Stephanos and Phrynion), [59].48 (Euboulos Probalisios and Diopetheis Meliteus, present at post-arbitration party), [59].70-71 (Nausiphilos Kephalethen and Aristomachos Kephalethen, guarantors for Epainetos of Andros), **Aisch. 1.50*** (Phaidros, Misgolas who was Timarchos' lover, 'forced' to testify, *exomosia*), **1.65** (Glaukon Cholargeus, who opposed Hegestratos' claim on the slave Pittalakos), **1.67** (Hegestratos, Timarchos' lover, 'forced' to testify), **Aisch. 1.115** (Leukonides who had bribed Timarchos in *graphe xenias*), **2.19*** (Aristodemos' *ekmartyria*, supported by unidentified witnesses), **2.154-155** (Aristophanes of Olynthos, Derkylos Autokleous Hagnousios, Aristeides Euphiletou Kephisieus), **Lyk. 1.19-20** (Phyrkinos who had spoken against Leokrates in Assembly, 'forced' to testify)

TOTAL: 27 of whom 17 are connected with opponent (22 named) (**21%**)

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