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THE FUNCTION OF WITNESSES IN ATHENIAN LAW COURTS

Abstract: In this paper I challenge the view that the main function of Athenian witnesses was to show support for the litigant for whom they were testifying. I argue that (like today) witnesses were called to confirm facts in the case and there is no evidence that they only lent their support to the litigant. I also argue that witnesses were not required to use “formulaic” expressions in their testimony.

Keywords: witnesses, Athenian, law, formulaic, formalism

There are several very obvious differences between witnesses in the courts of classical Athens and witnesses in our own courts today.¹ First, because an Athenian litigant could not compel anyone to testify, he necessarily had to rely on witnesses who were either his supporters or disinterested observers. This means that most of the witnesses in Athenian courts are supporters of those for whom they testify. Litigants did occasionally call for a witness who was a supporter of his opponent to confirm a deposition that the litigant had prepared for him, but in such cases the person called to testify could, and usually did, swear an oath of exemption (*exōmosia*), allowing him to avoid testifying. Second, witnesses in Athenian courts were not cross-examined; they simply delivered a prepared statement orally in court or, after the first quarter of the fourth century, they simply confirmed the truth of a prepared statement that a clerk read out to the court.² Third, the Athenians made more use of formal witnesses – witnesses who testified to an event for which they were summoned beforehand – than we do today, when almost all witnesses are accidental witnesses – witnesses who just happened to be present at an event. The Athenians summoned formal witnesses for many events, such as births, weddings, or financial transactions, which today we generally confirm with written documents. In Athens, formal witnesses were normally friends or family members and would thus

¹ By “our own” I mean specifically the courts in the US common law system, though the function of witnesses does not differ much among all the modern Western legal systems. Thür 2005 provides a good survey of the main features of witness testimony in Athens, though I will challenge one of his points at the end of this paper.

² It appears that before 400 BCE a litigant could question his own witness (Andoc. 1.14), but we have no evidence that a litigant could question his opponent’s witness.

almost always be supporters of the litigant.³ Certain types of cases, such as those concerning inheritance, relied quite heavily on formal witnesses who were mostly family members, because they would be the ones who knew the relevant facts about family matters, such as births, marriages, and adoptions.

In addition to these differences, many scholars have argued that the main function of witnesses in Athens was different from today: whereas modern witnesses are called to establish the facts, “witnesses in Athenian lawsuits appear as supporters of the litigant rather than offering independent corroboration of his account of the facts of the case.”⁴ This approach has been disputed,⁵ but most scholars accept that it is at least partially valid. Todd claims, for example, that “Athenian witnesses fulfill two rôles. One of these roughly corresponds to that of a modern witness: his job is to tell the truth, and the court is interested in what he says. But the second rôle is to us a more alien one: the function of a witness is to support the litigant for whom he appears, and the court is interested in who he is.”⁶ And in the most recent discussion of witnesses Siron, like Todd, accepts that both functions are valid: “les témoins apparaissent à la fois pour confirmer une affirmation et pour soutenir l’un des deux plaignants.”⁷

My own view, as I shall argue in what follows, is that all Athenian witnesses, even formal witnesses, were summoned in order to confirm certain facts of the case as presented by the litigant for whom they were testifying. In no case was a witness summoned merely in order to provide support for the litigant. Litigants rarely show any interest in the identities of their witnesses except for information indicating that the witness was in a position to know the facts about which he was testifying, and in their depositions witnesses say little or nothing about the litigant for whom they are testifying. This makes it very unlikely that “the court is interested in who he is,” as Todd claims.

My argument depends in part on the witness depositions that are preserved in some of our manuscripts, the authenticity of which in many cases is uncertain. Most

³ See Isaeus 3.19: “You all know that whenever we are embarking on a matter which we are aware must take place in front of witnesses, we usually take our closest friends and most intimate acquaintances with us to business of this kind, whereas with unforeseen matters that occur on the spur of the moment we all procure as witnesses anybody we chance to meet.” (Translations of the orators are taken from *The Oratory of Classical Greece*, University of Texas Press, 1998-2017, with occasional modifications.)

⁴ Humphreys 1985: 322.

⁵ Carey comments that although “there is much of value” in an approach like Humphreys’, “it would be a mistake to conclude that the identity of the witness is more important than the testimony itself,” since “witnesses are always required to attest a fact” (1994: 183-84). Mirhady, whose main interest is showing how witnesses serve the needs of Athenian democracy, also asserts that the “function of Athenian witnesses ... was indeed to tell the truth, to report what they knew” (2002: 256).

⁶ Todd 1990: 27.

⁷ Siron 2019: 267.

scholars, however, accept that the depositions in Demosthenes 35, 43, 45, 46, 54, and 59 are likely to be authentic, and so I base my arguments on the evidence of these speeches together with three depositions that are quoted by the speaker in the course of his pleading and are thus almost certainly authentic (Aes. 2.67-68, Dem. 29.31 and 54.31). All these depositions are given in full in the Appendix (and referenced below by D followed by the number).

The first point to note is that litigants generally show little interest in who their witnesses are or whether they are formal or accidental. In introducing the depositions listed in the Appendix, litigants identify the witnesses by name in 40% of all depositions (16/40), but in introducing witnesses in other cases the percentage is far smaller (about 10%).⁸ In almost all the cases where litigants name their witness, moreover, they say nothing about them except for their name and often their patronymic and/or demotic.⁹ The one exception is Dem. 45.8 (D23) where the testimony of Stephanus from a previous trial is read to the court in a case in which Stephanus is the defendant, charged with giving false testimony in the earlier case; obviously much is said about him in the prosecution speech.¹⁰ In the other 60% of depositions listed in the Appendix the speaker only says something like “read the depositions,” occasionally adding some qualification such as “of those who were present” or “of those who were on the ship.” Moreover, we often cannot even tell whether a witness is formal or accidental. The words used to summon the witness are no sure guide,¹¹ and a witness may be both formal and accidental, if he testifies both about an event that he was asked to attend and then about another event that he accidentally happened to observe, as in Dem. 45.60 (D27).¹²

Of course, even if the litigant does not identify his witnesses, the jury would usually know their names because witnesses regularly state their names at the beginning of their testimony.¹³ In a few cases, such as the fellow envoys who testify

⁸ Much of this difference is due to the large number of named witnesses in Dem. 59 (see next note).

⁹ Most examples where the witness is named (10/16) come in Dem. 59 (59.23, 25, 28, 32, 34, 40, 47, 48, 54, 84); the others are Dem. 35.33, 35.34 (2x), 45.8, 45.19, 45.55.

¹⁰ This deposition should probably not be included since in this case Stephanus is not a witness but a litigant.

¹¹ Even when a litigant says “I will present those who were present as witnesses,” we cannot be certain that these are formal witnesses. The speaker of Lysias 3, for example, describes a fight that broke out between him and Simon and then adds (3.14), “I will provide those who were present as witnesses.” It seems very unlikely that the speaker brought formal witnesses with him to observe the fight, which according to his account was unanticipated.

¹² Even when we have the deposition, we may not know if the witness is formal or accidental. In Dem. 35.33 (D8), for example, it is possible that Apollonides learned of the loan accidentally, but more likely he was present at the transaction because he had been summoned as a witness.

¹³ Some of the preserved depositions (e.g. D11) begin with the verb “testify” (*martyrei*, *martyrousi*) with no subject expressed, but the original depositions almost certainly

for Aeschines and Demosthenes in the trial on the embassy (e.g. Aes. 2.107, Dem. 19.176), witnesses may have been public figures, known to many members of the jury. But in most cases, very few jurors would know anything about a witness after hearing just his name, patronymic, and demotic, and thus would have no basis for judging the value of his support for the litigant. If the litigant's purpose in calling a witness was to benefit from that witness's support, then one would expect the litigant to tell the jury as much as possible that would make his witness seem important and trustworthy to the jury. That litigants generally show little or no interest in the identity of their witnesses is a strong indication that they do not consider the identity of their witnesses important. Humphreys' analysis of the categories of witnesses in terms of more or less trustworthy is most interesting, but nothing in it suggests that any litigant considered it important to indicate which category of witness he was summoning.¹⁴

My second point is that witnesses never tell us anything about the litigant's character, except to the extent that by confirming the litigant's account of certain facts they may be indicating that he is the sort of person who tells the truth. Fewer than half (18/43) of all depositions even mention the litigant, and with one exception those that do mention him only do so because their testimony concerns events in which the litigant was directly involved.¹⁵ Witnesses certainly never say anything about the litigant's character or "the social context from which the litigant has been detached."¹⁶ Nor is there any evidence in the forensic speeches to show that the litigant's witnesses "had an important role to play in showing what kind of man he was."¹⁷ Humphreys cites a fragment from Euripides' *Phoenix* in support of this last claim, but these lines say only that the speaker (perhaps Chiron) has judged many arguments and has learned that witnesses often give conflicting testimony about the same incident; he himself reasons that to discover the truth one must examine a person's nature and the life he lives. Then after a gap of one or more lines the speaker adds that he has never questioned someone who keeps company with bad men because he knows that this person is like those whose company he enjoys.¹⁸

began with the name(s) of the witness(es). Presumably these were deleted by a copyist at some point in the manuscript tradition.

¹⁴ Humphreys 1985: 325-49.

¹⁵ The exception is trivial: in Aes. 2.67 (D1) the witness's first words are "Amyntor testifies for Aeschines" (the litigant).

¹⁶ Humphreys 1985: 316.

¹⁷ Humphreys 1985: 323.

¹⁸ ἤδη δὲ πολλῶν ἡρέθην λόγων κριτῆς
καὶ πόλλ' ἀμιλληθέντα μαρτύρων ὑπο
ἐναντί' ἔγνω συμφορᾶς μιᾶς πέρι.
κἀγὼ μὲν οὕτω χῶστις ἔστ' ἀνὴρ σοφὸς
λογίζομαι τάληθές, εἰς ἀνδρὸς φύσιν
σκοπῶν δίαιτάν θ' ἦντιν' ἐμπορεύεται
(one or more lines lost)

Nothing in these verses suggests that the litigant's witnesses provide information about him or the life he leads.¹⁹

Now, if litigants show little or no interest in the identity of their witnesses, and if witnesses say nothing about the character of the litigant or his social background, in what way could a witness lend his support to the litigant for whom he is testifying other than by confirming facts that the litigant has introduced in his pleading? Humphreys and others may mean that a witness indicates support for the litigant simply by agreeing to testify on the litigant's behalf. Humphreys notes that some litigants summon numerous witnesses to testify to the same facts again and again, and concludes from this that "what matters is to show that the litigant is solidly supported by a large body of kin."²⁰ She refers to examples like the five depositions in Dem. 43.35-37 (D12-D16), all of which emphasize the important facts that Polemon had a sister Phylomache with the same father and same mother and never had a brother. And the speaker's own explanation for calling so many witnesses (43.39) is that his opponents have claimed that Polemon never had a sister. Now that he has presented all these witnesses to the existence of Polemon's sister, he "knows" that no witness will be so reckless as to testify to the contrary (43.40-41). Despite this confident prediction, it is quite likely that Macartatus presented witnesses to the contrary, and that there would thus have been family members testifying on both sides, as was very likely the case in almost all inheritance cases, where one part of a family was usually set against another part of the family.

In fact, the five witnesses in Dem. 43.35-37 are all testifying to a crucial fact in the case, and this is what the speaker tells us is important. If the witnesses were testifying simply to show that the litigant had the support of many family members, we ought to see many examples of witnesses testifying to trivial matters, just to show their support for the speaker. For example, a witness could say "X is my neighbor" or "X is my uncle," and assuming that these statements were true, he would be showing his support for the speaker without being at risk of a *dikē pseudomartyriōn*. If the witness's support was so important, then we would expect many witnesses to testify to uncontroversial matters so as to show their support for the speaker. But in all the examples we have, the facts affirmed by a witness are facts that the speaker emphasizes in his pleading, many of which were likely disputed by his opponent. We never find a deposition affirming a trivial fact simply in order to show support for the litigant.

ὅστις δ' ὀμιλῶν ἴδεται κακοῖς ἀνὴρ,
οὐ πάποτ' ἠρώτησα, γινώσκων ὅτι
τοιούτος ἐστὶν οἷσπερ ἴδεται ζυνών.

(Fr. 812. Collard and Cropp 2008: 416-17.)

¹⁹ Euripides' verses are cited by Aeschines (1.152), who draws from them the lesson that a person should be judged by the company he keeps, a lesson he then applies to Timarchus.

²⁰ Humphreys 1985: 324.

My third point is that if witnesses were called to testify only or primarily in order to show their support for the speaker, litigants would call many more witnesses than they do, and if both sides called many witnesses in order to demonstrate their support, as they surely would do, then the net effect would be an equal advantage for both sides, which would be no advantage for either. One would also think that successful logographers would include many witnesses in the speeches they wrote, but Lysias, one of the most successful logographers (we are told) calls no witnesses at all in about half of his speeches (15/31). And Aeschines, after calling eleven witnesses in his winning plea in the case on the embassy (Aes. 2) calls no witnesses at all a few years later in his unsuccessful prosecution of Ctesiphon (Aes. 3). None of this makes any sense if the role of witnesses was to support the speaker.

Humphreys discusses only one specific example of a witness who, she argues, is called primarily to show that the litigant has the witness's support. This is Dem. 45.55 (D26) where Apollodorus summons his father-in-law Deinias, the uncle of the defendant Stephanus, to testify "to show that what I am saying is true." Humphreys argues that "as factual testimony this [Deinias' testimony] counted for little; but it was significant that Deinias was prepared to support his son-in-law against another member of his own family."²¹ Siron similarly argues that calling Deinias as a witness "viendrait seulement montrer qu'il appuie l'orateur plutôt que Stéphanos, un autre membre de la famille."²² In this case, however, Deinias did not actually testify but instead swore an oath of exemption, as Apollodorus tells us right after he has the clerk read out "Deinias' deposition": "How like Stephanus, men of the jury, is Deinias! Because of kinship he is unwilling to give even true testimony against this fellow on behalf of his daughter and his daughter's children and me his son-in-law" (45.56).²³

This statement has been interpreted in different ways. Humphreys argues that Deinias did deliver the fairly meaningless testimony presented in 45.55 but was unwilling to give some other "positive testimony" on Apollodorus' behalf,²⁴ and others have reached a similar conclusion.²⁵ But when Apollodorus says that Deinias "is unwilling to give even true testimony" against Stephanus, he must be referring to the testimony that he, Apollodorus, has prepared for him, which is true (according to Apollodorus' version of events). Thus, I think Apollodorus must mean exactly what he appears to mean, namely that Deinias refuses to testify even to the true statement that Apollodorus has written. I might add that if the important point about Deinias

²¹ Humphreys 1985: 324.

²² Siron 2019: 267.

²³ ὅμοιός γ' ὁ Δεινίας, ὃ ἄνδρες δικασταί, τούτω, ὃς ὑπὲρ τῆς θυγατρὸς καὶ τῶν θυγατριδῶν καὶ ἐμοῦ τοῦ κηδεστοῦ διὰ τὴν συγγένειαν οὐδὲ ἀληθῆ μαρτυρεῖν ἐθέλει κατὰ τούτου.

²⁴ Humphreys 1985: 359 n.36.

²⁵ E.g. Scafuro 2011: 255 n.112.

potential testimony was simply which side of the family he was supporting, then Apollodorus would be foolish to call him as a witness when he knew that by calling him and making clear to the jury that he refused to testify, he would be helping demonstrate Deinias' support for Stephanus. Even on Humphreys' interpretation, Apollodorus would be making clear that Deinias supports both sides – Apollodorus on some trivial matter and Stephanus on some other matter – and in this case Apollodorus would have no reason to call him as a witness.

One further point in Humphreys' article requires examination, namely her conclusion that “The Athenians preferred witnesses who had had many dealings with the litigants, in the course of which they had developed feelings of loyalty or hostility, to impartial witnesses who had only encountered the litigants occasionally. They also preferred a witness who had been deliberately invited to a meeting to observe and remember what took place, to the casual passer-by who arrives *in medias res* and puts his own interpretation on what he sees.”²⁶ I can find no evidence supporting this assertion, Rubinstein has questioned it with regard to public cases; in a comparison of witnesses in public cases and private cases, she concludes that “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.”²⁷ This conclusion can, in fact, be extended to private cases, as is clear from Demosthenes' speech against Conon when the speaker Ariston cites a deposition in which witnesses for his opponent Conon “testify that they were returning from dinner along with Conon and came across Ariston and Conon's son fighting, and Conon did not hit Ariston” (54.31, D30). Ariston then comments (54.31-32):

—as though you would simply believe them and would have no regard to the truth of the matter that first, Lysistratus and Paseas and Niceratus and Diodorus [Ariston's own witnesses], who have expressly testified that they saw me being beaten by Conon, stripped of my cloak, and suffering all the other forms of brutal outrage I experienced – men who were unknown to me and who happened on the affair by chance—that these men would never have been willing to give testimony which they knew to be false, if they had not seen me suffering these things.

Ariston's point is clear: his witnesses did not know him and had no reason to lie for his sake; thus they are telling the truth. It seems clear from this that even in private cases accidental witnesses previously unknown to the speaker were preferable to those who were his close friends and associates.

²⁶ Humphreys 1985: 353-54.

²⁷ Rubinstein 2005: 115.

Further support for this and other conclusions I have reached can be found in the *Rhetoric to Alexander*,²⁸ which begins its discussion of witnesses with a clear definition: “Witness testimony is the corroboration by someone who knows and is willing.”²⁹ Clearly this means that the witness is confirming what the litigant has just said on the basis of his knowledge of what happened, not simply because he knows the litigant. Shortly after this the author advises, “You must examine whether the witness is a friend of the person for whom he is testifying, or if he has some interest in the case somehow, or if he is an enemy of the person against whom he is testifying, or if he is poor. For some people are suspected of giving false testimony because of favor, others for revenge, and others because of profit.” The *Rhetoric to Alexander* thus confirms the conclusions we have reached, that the function of Athenian witnesses was to confirm the facts in the case, and that their relationship to the litigant was not an issue except that the testimony of a close friend might be suspect.

The view that Athenian witnesses testified in order to show support for the litigant rather than to confirm facts in the case reflects the theory that classical Athenian law developed out of an earlier system of so-called “irrational” proofs in which judgments were determined by, among other things, formal witnesses and “oath-helpers,” who swore their support for a litigant. I have argued elsewhere that this general view is mistaken,³⁰ and the theory that witnesses in classical Athens were not interested in the facts of the case is one more mistaken consequence of that general view.

Another supposed feature of classical witness depositions that has its origin in the same view of early law is that these depositions were constrained by formalistic requirements. This view has been advanced by Thür, who has argued that “almost throughout the wording [of depositions] adheres to a set formula,” and that witnesses presented a “formulaic statement” using “formulaic words.”³¹ It is true that many depositions begin with the name of the witness or witnesses followed by “testifies that he knows” for an accidental witness or “testifies that he was present” for a formal witness; a third possibility in cases of hearsay evidence, which was not allowed unless the source of the testimony was either deceased or unable to be in court, was “testifies that he heard.” This last expression is found only in Dem. 43, an

²⁸ Aristotle’s *Rhetoric* is unhelpful. He begins his discussion of witnesses (1.15.13-19) with ancient witnesses like Homer and then simply lists possible characteristics of witnesses who testify in person and their testimony: “some testimonies are about the speaker, others about his opponent, some are about facts others about character,” and so on. As usual, Aristotle’s analysis is driven by a logical schema and bears little or no relation to what witnesses in the forensic speeches actually say.

²⁹ [Aristotle] *Rhetoric to Alexander* 15.1: μαρτυρία δ’ ἐστὶν ὁμολογία συνειδότης ἐκόντος.

³⁰ E.g. Gagarin 1990: 219-23.

³¹ Thür 2005: 152-55. Quotations from pp. 153, 155.

inheritance case in which events of the distant past are at issue. Examples of these three categories can be found in D11, D12, and D14.

D11: ... testify *that they were present* before the arbitrator in the archonship of Nicophemus, when Phylomache the daughter of Eubulides prevailed against all the other claimants for Hagnias' estate.

D12: ... testify that they are fellow-demesmen of Philagrus the father of Eubulides and of Polemon the father of Hagnias and *that they know* that Phylomache the mother of Eubulides was considered to be the sister of Polemon the father of Hagnias by the same father and the same mother

D14: ... testifies that he is a relative and in the same phratry and deme as Hagnias and Eubulides, and *that he heard* from their father and other relatives that Polemon the father of Hagnias never had any brother but had a sister born of the same father and the same mother

Now, although these three expressions are used in a majority of the cases in the speeches collected in the Appendix, a substantial minority of witnesses in these speeches (17/43) do not use these expressions.³² Consider the following examples of witnesses (a) confirming a fact without using the verb "knows," (b) testifying that he was present without using the verb "was present," and (c) relating what he heard without using the verb "heard."

D3: Dem. 35.14: Archennomides son of Archedamas of Anagyrus testifies that a written agreement was deposited with him by Androcles of Sphettus, Nausicrates of Carystus, and Artemon and Apollodoros, both of Phaselis, and that the agreement is still in his keeping.

D22: Dem. 43.70: ... testify that they were summoned by Sositheus and accompanied him to the deme Araphen to the fields of Hagnias, after Theopompus was awarded Hagnias' estate, and that Sositheus showed them the olive trees being rooted up from Hagnias' land.

D16: Dem. 43.37: ... testifies that his wife's father Callistratus was a cousin of Polemon the father of Hagnias and of Charidemus the father of Theopompus, their fathers having been brothers, and that his mother was the daughter of a first cousin of Polemon, and that their mother often said to them that Phylomache the

³² Here a complete list of depositions by category. If a deposition includes both formulaic and non-formulaic expressions, I have listed them only in the formulaic category. Thus the imbalance is somewhat less than the total numbers might indicate.

A. Formulaic (26). "Knows" (9): Dem. 35.20, Dem. 35.20, Dem. 35.33, Dem. 35.34, Dem. 43.35, Dem. 43.43, Dem. 59.23, Dem. 59.24, Dem. 59.34. "Was present" (10): Dem. 29.31, Dem. 35.14, Dem. 43.31, Dem. 45.8, Dem. 45.24, Dem. 45.60, Dem. 45.61, Dem. 46.21, Dem. 59.32, Dem. 59.123. "Heard" (7): Dem. 43.36, Dem. 43.36, Dem. 43.37, Dem. 43.42, Dem. 43.44, Dem. 43.45, Dem. 43.46.

B. Non-formulaic (17). Knows without "knows" (15): Aes. 2.67-68, Dem. 35.14, Dem. 35.23, Dem. 35.34, Dem. 45.19, Dem. 45.55, Dem. 54.31, Dem. 59.28, Dem. 59.40, Dem. 59.47, Dem. 59.48, Dem. 59.54, Dem. 59.61, Dem. 59.71, Dem. 59.84. Was present without "was present" (1): Dem. 43.70. Heard without "heard" (1): Dem. 43.37.

mother of Eubulides was sister of Polemon the father of Hagnias born of the same father and the same mother

The significant number of depositions without a formulaic expression makes it clear that a witness could use whatever words he wished when testifying and that he was not required to use only certain words. Many witnesses did testify that they knew or had heard or were present because these were natural ways of expressing the information they were providing. But they could also give the exact same testimony using different words if they wished, and when testifying to something they knew, they were more likely (15/24) not to use the verb “knows.”

To conclude, I have argued that the function of witnesses in Athens was to confirm facts and events that the litigant had presented and that they could do so in whatever words they wanted. This means that despite the obvious differences mentioned at the beginning of this paper, Athenian witnesses were not so different from witnesses today. I would also argue more generally that attempts to introduce formal or “irrational” elements into the Athenian legal system should be resisted. Athenian law was different from modern Western law, but it was not nearly so different as some scholars have suggested.

APPENDIX OF DEPOSITIONS THAT ARE LIKELY TO BE GENUINE

Names in **bold face** are those of the litigant who summoned the witness.

D1. Aes. 2.67-8 (in the litigant’s speech): Amyntor testifies for **Aeschines**: when the people were deliberating about the alliance with Philip in accordance with the decree of Demosthenes in the second assembly meeting, when it was not allowed to address the people, but when the decrees concerning the peace and alliance were being put to a vote, at that meeting Demosthenes was sitting next to him and showed him a decree, drafted in Demosthenes’ name and asked him whether he should hand it to the presiding officers (*proedroi*) to put to a vote. This decree contained the terms on which Demosthenes proposed that peace and alliance be made, and these terms were identical with the terms that Philocrates had proposed.

D2. Dem. 29.31 (in the litigant’s speech): They were present before the arbitrator Notharchus when Aphobus acknowledged that Milyas was a freeman, having been set free by Demosthenes’ father.

D3. Dem. 35.14: Archenomides son of Archedamas of Anagyrus testifies that a written agreement was deposited with him by **Androcles** of Sphettus, Nausicrates of Carystus, and Artemon and Apollodorus, both of Phaselis, and that the agreement is still in his keeping.

D4. Dem. 35.14: Theodotus, a privileged alien (*isotelēs*), Charinus son of Epichares of Leuconoeum, Phormio son of Ctephisophon of Peiraeus, Cephisodotus of Boeotia and Heliodorus of Pithus testify that they were present when **Androcles**

lent three thousand drachmas in silver to Apollodorus and Artemon, and that they know they deposited the written agreement with Archenomides of Anagyrus.

D5. Dem. 35.20: Erasicles testifies that he was the pilot of the ship of which Hyblesius was the owner, and he knows that Apollodorus was conveying four hundred and fifty jars of Mendaeian wine in the ship and no more, and that Apollodorus conveyed no other cargo in the ship to the Pontus.

D6. Dem. 35.20: Hippias son of Athenippus of Halicarnassus testifies that he too sailed in Hyblesius' ship as commander (*diopouōn*) of the ship and that he knows that Apollodorus of Phaselis was conveying four hundred and fifty jars of Mendaeian wine and no other cargo in the ship from Mende to the Pontus.

D7. Dem. 35.23: Aratus of Halicarnassus testifies that he lent Apollodorus eleven minas in silver on the security of the merchandise which he was conveying in Hyblesius' ship to the Pontus, and of the goods purchased there as return cargo, and that he did not know that he had borrowed money from **Androcles**, or he would not have lent Apollodorus the money himself.

D8. Dem. 35.33: Apollonides of Halicarnassus testifies that he knows that Antipater, a Citian by birth, lent money to Hyblesius for a voyage to the Pontus on the ship that Hyblesius owned and on the freight to the Pontus, and that he himself was part-owner of the ship with Hyblesius, and that his own servants were passengers on the ship. When the ship was wrecked, his own servants were present and reported this to him, and also that the ship was empty when it was wrecked and was sailing along the coast to Theodosia from Panticapaeum.

D9. Dem. 35.34: Erasicles testifies that he sailed with Hyblesius as pilot of the ship to the Pontus, and when the ship was sailing along the coast to Theodosia from Panticapaeum he knows that the ship was empty and that Apollodorus, the man who is now defendant in this suit, had no wine on board the ship, but that about eighty jars of Coan wine were being conveyed for someone from Theodosia.

D10. Dem. 35.34: Hippias son of Athenippus of Halicarnassus testifies that he sailed with Hyblesius as commander (*diopouōn*) of the ship, and that when the ship was sailing along the coast to Theodosia from Panticapaeum, Apollodorus put on board the ship one or two bags of wool, eleven or twelve jars of salt fish, and some goat-skins—two or three bundles—but nothing else.

D11. Dem. 43.31: ... testify³³ that they were present before the arbitrator in the archonship of Nicophemus, when Phylomache the daughter of Eubulides prevailed against all the other claimants for Hagnias' estate.

D12. Dem. 43.35: ... testify that they are fellow-demesmen of Philagrus the father of Eubulides and of Polemon the father of Hagnias and that they know that Phylomache the mother of Eubulides was considered to be the sister of Polemon the father of Hagnias by the same father and the same mother, and that they never heard from anyone that Polemon, the son of Hagnias, had a brother.

³³ See above n.13.

D13. Dem. 43.36: ... testify that Oenanthe the mother of their grandfather Stratonides was the cousin of Polemon the father of Hagnias their fathers having been brothers, and that they heard from their own father that Polemon the father of Hagnias never had a brother but had a sister born of the same father and the same mother, Phylomache the mother of Eubulides who was the father of Phylomache wife of **Sositheus**.

D14. Dem. 43.36: ... testifies that he is a relative and in the same phratry and deme as Hagnias and Eubulides, and that he heard from their father and other relatives that Polemon the father of Hagnias never had a brother but had a sister born of the same father and the same mother, Phylomache the mother of Eubulides who was the father of Phylomache wife of **Sositheus**.

D15. Dem. 43.37: ... testifies that Archimachus was his grandfather and adopted him as his son, and that he was a relative of Polemon the father of Hagnias and that he heard from Archimachus and his other relatives that Polemon the father of Hagnias never had a brother but had a sister born of the same father and the same mother, Phylomache the mother of Eubulides, who was the father of Phylomache wife of **Sositheus**.

D16. Dem. 43.37: ... testifies that his wife's father Callistratus was a cousin of Polemon the father of Hagnias and of Charidemus the father of Theopompus, their fathers having been brothers, and that his mother was the daughter of a first cousin of Polemon, and that their mother often said to them that Phylomache the mother of Eubulides was sister of Polemon the father of Hagnias born of the same father and the same mother, and that Polemon the father of Hagnias never had a brother.

D17. Dem. 43.42: ... testifies that he is a relative of Polemon the father of Hagnias and that he heard from his father that Philagrus the father of Eubulides, and Phanostratus the father of Stratius, and Callistratus the father of the wife of Sosias, and Euctemon, who was king, and Charidemus the father of Theopompus and Stratocles were cousins of Polemon, their fathers all having been brothers, and that Eubulides with reference to his father Philagrus stood in the same degree of relationship as the sons of these men and Hagnias, while with reference to his mother Phylomache he was recognized as a cousin of Hagnias on his father's side, since he was the son of Hagnias' paternal aunt.

D18. Dem. 43.43: ... testify that they are relatives of Polemon the father of Hagnias and of Philagrus the father of Eubulides and of Euctemon, who was king, and that they know that Euctemon was a brother by the same father to Philagrus the father of Eubulides and that when Eubulides put in a claim against Glaucon in the adjudication of the estate of Hagnias, Euctemon was still alive, being a cousin of Polemon the father of Hagnias, their fathers having been brothers, and that Euctemon did not dispute with Eubulides his title to the estate of Hagnias, nor did anyone else on the basis of kinship on that occasion.

D19. Dem. 43.44: ... testify that their father Strato was a relative of Polemon the father of Hagnias, and of Charidemus the father of Theopompus, and of

Philagrus the father of Eubulides, and that they heard from their own father that Philagrus took for his first wife Phylomache the sister of Polemon the father of Hagnias, born of the same father and the same mother, and that Philagrus had a son Eubulides by Phylomache, and that after Phylomache's death Philagrus took a second wife Telesippe, and that a brother to Eubulides was born, Menestheus with the same father but not the same mother; and that when Eubulides made a claim to the estate of Hagnias by reason of kinship, Menestheus did not dispute the estate of Hagnias, nor did Euctemon the brother of Philagrus, nor did anyone else dispute the title of Eubulides by reason of kinship at that time.

D20. Dem. 43.45: ... testifies that his father Archimachus was a relative of Polemon the father of Hagnias, and of Charidemus the father of Theopompus, and of Philagrus the father of Eubulides, and that he heard from their father that Philagrus took for his first wife Phylomache the sister of Polemon the father of Hagnias, born of the same father and the same mother, and that he had a son Eubulides by Phylomache, and that after Phylomache's death Philagrus took a second wife Telesippe, and that Philagrus had a son by Telesippe, Menestheus a brother to Eubulides, of the same father but not of the same mother; and that when Eubulides made claim to the estate of Hagnias by reason of kinship, Menestheus did not dispute his claim to the estate, nor did Euctemon the brother of Philagrus, nor did anyone else dispute the title of Eubulides by reason of kinship at that time.

D21. Dem. 43.46: ... testifies that his mother's father Callistratus was the brother of Euctemon, the king archon, and of Philagrus the father of Eubulides, and that these men were cousins of Polemon the father of Hagnias, and of Charidemus the father of Theopompus, and that he heard from his mother that Polemon the father of Hagnias had no brother but had a sister Phylomache, born of the same father and the same mother, and that Philagrus married this Phylomache, and they had a son Eubulides the father of Phylomache the wife of **Sositheus**.

D22. Dem. 43.70: ... testify that they were summoned by **Sositheus** and accompanied him to the deme Araphen to the fields of Hagnias, after Theopompus was awarded Hagnias' estate, and that **Sositheus** showed them the olive trees being rooted up from Hagnias' land.

D23. Dem. 45.8: Stephanus son of Meneclis of Acharnae, Endius son of Epigenes of Lamprae, Scythes son of Harmateus of Cydathenaeum testify that they were present before the arbitrator Teisias of Acharnae when Phormio proposed to **Apollodorus** that if he denies that the document which Phormio put into the *echinos* was a copy of Pasio's will, he should open Pasio's will which Amphias the brother-in-law of Cephisophon submitted to the arbitrator; and that **Apollodorus** was unwilling to open it, and that this document is a copy of Pasio's will.

D24. Dem. 45.19: Cephisophon son of Cephalion of Aphidna testifies that a document was left him by his father, on which was written "Pasio's will."

D25. Dem. 45.24 (repeated in 45.25): ... testify that they were present before the arbitrator Teisias when Phormio proposed to **Apollodorus** that if he denies that the document is a copy of Pasio's will ...

D26. Dem. 45.55: Deinias son of Theomnestus of Athmonon testifies that he gave his own daughter to **Apollodorus** to have as his wife according to the laws, and that he was never present when **Apollodorus** released Phormio from all claims, nor did he even know that he had done so.

D27. Dem. 45.60 (followed by *exōmosia*): ... testify that they are close friends of Phormio, and that they were present before the arbitrator Teisias when his decision was revealed in **Apollodorus'** suit against Phormio, and that they know that Stephanus stole the deposition which **Apollodorus** charges him with having stolen.

D28. Dem. 45.61: ... testify that they were present when **Apollodorus** proposed that Stephanus hand over his slave attendant to be interrogated under torture concerning the theft of the document, and **Apollodorus** was ready to write down the terms under which the interrogation was to take place. And that when **Apollodorus** made this proposal, Stephanus refused to give up the slave, but replied to **Apollodorus** that he should sue him, if he wished, if he claimed that he was being wronged by him in any way.

D29. Dem. 46.21: ... testify that they were present when **Apollodorus** made a proposal to Phormio, asking him to hand over his female slaves for the interrogation under torture, if Phormio denied that he had seduced my mother before the time when he says that he married her after having been betrothed to her by Pasion. And when **Apollodorus** made this proposal, Phormio refused to surrender his female slaves.

D30. Dem. 54.31 (in the litigant's speech, quoted as testimony of his opponent's witnesses): "Diotimus son of Diotimus of the deme Icaria, Archebiades son of Demoeles of the deme Halae, Chairētius son of Chairimenes of the deme Pithus testify that they were returning from dinner along with **Conon** and came across Ariston and **Conon's** son fighting, and **Conon** did not hit Ariston."

D31. Dem. 59.23: Philostratus son of Dionysius of Colonus testifies that he knows that Neaira was a slave of Nicarete, who also owned Metaneira, that they lived in Corinth and stayed at his house when they came to Athens for the mysteries, and that a close friend of his, Lysias the son of Cephalus, established them in his house.

D32. Dem. 59.25: Euphiletus son of Simon of Aexone and Aristomachus son of Critodemus of Alopece testify that they know that Simus the Thessalian came to Athens for the great Panathenaea, and that Nicarete and Neaira, the present defendant came with him; and they stayed with Ctesippus son of Glauconides and Neaira drank with them as if she was a *hetaira*, and that many others were present and joined in the drinking at Ctesippus' house.

D33. Dem. 59.28: Hipparchus of Athmonon testifies that in Corinth Xenocleides and he hired Neaira, the present defendant, as a *hetaira* for hire, and that in Corinth Neaira would drink with him and Xenocleides the poet.

D34. Dem. 59.32: Philagrus of Melite testifies that he was present in Corinth when Demochares' brother Phrynion paid Timanoridas the Corinthian and Eucrates the Leucadian twenty minas for Neaira, the present defendant; and that when he had paid the money, he left for Athens taking Neaira with him.

D35. Dem. 59.34: Chionides of Xypete and Euthetion of Cydathenaeum testify that they were invited to dinner by Chabrias, when he celebrated his victory in the chariot race, and that the banquet was held at Colias; and they know that Phrynion was present at the banquet with Neaira, the present defendant and that they themselves and Phrynion and Neaira lay down to sleep; and they themselves observed that some men got up in the night and went to Neaira, including some of the attendants, who were slaves of Chabrias.

D36. Dem. 59.40: Aectes of Ceiriadae testifies that when he was polemarch, Neaira, the present defendant, was required by Demochares' brother Phrynion to post bonds, and that Neaira's sureties were Stephanus of Eroeadae, Glaucetes of Cephisia, and Aristocrates of Phalerum.

D37. Dem. 59.47: Satyrus of Alopece, Saurias of Lamptrae, and Diogeiton of Acharnae testify that when they were arbitrators in the dispute over Neaira, the present defendant, they reconciled Stephanus and Phrynion, and that the terms on which they reconciled were as **Apollodorus** presents them.

D38. Dem. 59.48: Eubulus of Probalinthus, Diopieithes of Melite, and Cteson of Cerameis testify that when Phrynion and Stephanus were reconciled in their dispute over Neaira, they frequently ate and drank together with Neaira, the present defendant, both when she was at Stephanus' house and when she was at house Phrynion's house.

D39. Dem. 59.54: Phrastor of Aegilia testifies that, when he learned that Stephanus had given him Neaira's daughter in marriage, representing her as his own daughter, he indicted him before the Thesmothetai in accordance with the law and drove the woman from his house, and ceased to live with her any longer; and that after Stephanus had brought suit against him in the Odeum for support, he reconciled with him, he withdrawing his indictment before the Thesmothetai and Stephanus also withdrawing his suit for support.

D40. Dem. 59.61: Timostratus of Hecale, Xanthippus of Eroeadae, Evalces of Phalerum, Anytus of Laciadae, Euphranor of Aegilia, and Nicippus of Cephale testify that they and Phrastor of Aegilia are members of the clan called Brytidae and that when Phrastor asked to introduce a son of his into the clan, since they knew for themselves that Phrastor's son was born of the daughter of Neaira, they prevented Phrastor from introducing his son.

D41. Dem. 59.71: Nausiphilus of Cephale and Aristomachus of Cephale testify that they became sureties for Epaenetus of Andros, when Stephanus claimed that he

had caught Epaeetus committing unlawful sex (*moichos*); and that when Epaeetus left Stephanus' house and regained his autonomy, he brought an indictment against Stephanus before the Thesmothetai for entrapment; that they were appointed as arbitrators, and reconciled Epaeetus and Stephanus, and that the terms of the reconciliation were those that **Apollodorus** presented.

D42. Dem. 59.84: Theogenes of Erchia testifies that when he was archon basileus, he married Phano believing that she was the daughter of Stephanus, and that when he found out that he had been deceived, he threw the woman out and ceased to live with her, and that he removed Stephanus from his board of assessors and no longer allowed him to serve as an assessor.

D43. Dem. 59.123: Hippocrates son of Hippocrates of Probalinthus, Demosthenes son of Demosthenes of Paeania, Diophanes son of Diophanes of Alopece, Deinomenes son of Archelaus of Cydathenaeum, Deinias son of Phormides of Cydantidae, and Lysimachus son of Lysippus of Aegilia, testify that they were present in the agora, when **Apollodorus** made a proposal, asking Stephanus to hand over his slave women for interrogation under torture about Stephanus' accusations against **Apollodorus** concerning Neaira, and that Stephanus refused to hand over the slave women: and that the proposal was the one that **Apollodorus** presents.

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