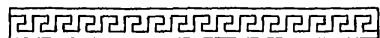


Witnessing and False Witnessing: Proving Citizenship and Kin Identity in Fourth-Century Athens



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It is a well-known phenomenon of Attic life that no central or local archive preserved a written record of the births of polis inhabitants. The absence of such a record appears from a modern perspective all the more startling in view of the strict requirements for citizenship that were set out in Perikles' famous enactment of 451/0. According to that law as cited by [Aristotle] *AP* 26.4, "whoever has not been born of two *astoi* parents has no share in the polis."¹ Plutarch refers to the same legislation as a *nomos* (law) about *nothoi* (bastards) and reports that in accordance with it "only those born from two Athenians were Athenians."² The law was either annulled or simply disregarded toward the end of the Peloponnesian War.³ But it was reinstated in 403/2 in the same terms by a decree proposed by Nikomenes, with a proviso adding that it should not be enforced against individuals born before 403/2.⁴ Another law is recorded as having been proposed in the same year by a person named Aristophon; by that law, "whoever was not born from an *aste* was to be a *nothos*.⁵" The effect of these laws appears to be clear: children born of mixed unions would lack both *politeia* (citizenship) and *ankhisteia* (membership in the group of *ankhisteis*, or kinsmen).⁶ Further legislation, passed sometime around the middle of the fourth century, made the pretense of a (citizen) marital union between a citizen and foreigner illegal.⁷ The law that provides the penalties for such conduct are recorded in [Demosthenes] 59 *Neaera*.⁸ "If an alien man is dwelling together in marriage (*οὐνοικήν*) with an *aste* under any circumstance whatsoever, let any Athenian for whom it is lawful bring an indictment before the *thesmoothetai*; if he is convicted, let him and his property be sold and a third part be given to him who secured conviction. And if an alien woman is dwelling together

with an *astos*, let it be in the same way, and let him who is dwelling with the alien woman be liable for 1,000 *drakhmai*" (16).⁹ As Harrison has observed, before the "new" laws, "mixed marriages had been discouraged indirectly by the disabilities falling on the children; now the parties to any such marriage are to be subject to heavy fines if convicted of a γραφή before the court of the thesmothetai."¹⁰

An individual's descent and his or her ability to prove it would be of the utmost importance in any situation in which his or her political status or relationship to kin could be called into question by the law. A candidate for deme enrollment might be rejected in the first instance and then make an appeal to a *dikasterion*;¹¹ a demesman might be struck off the register by his fellow demesmen in an extraordinary general scrutiny as happened in 346/5;¹² or the *demarkhos* might claim to have lost the register.¹³ A *graphe xenias* could be brought against a person alleged to be masquerading as a citizen. The issue in these cases would depend on the dubious person's ability to prove his birth from two Athenian parents—perhaps decades after their deaths. The more specific *graphe xenes engues* could be brought against a man who had allegedly given away an alien woman in marriage as if she were his kinswoman. The issue in such a case would depend on the precise identification of the woman's parents.¹⁴ Prosecutions for these last two offenses (*graphai xenias* and *xenes engues*) would probably arise out of personal or political animosities, or from a desire for self-enrichment; the polis employed no public prosecutors.¹⁵ But disputes over polis status could arise in other ways as well. A citizen or freedman who had been wrongfully enslaved might be haled into freedom (*aphairesis eis eleutherian*) by the extrajuridical action of a sympathetic assertor. But if the alleged owner denied the validity of that removal, he could ensure a court hearing by demanding sureties and lodging a *dike exaireseos* against the assertor.¹⁶ The issue in the case would depend on the ability of the wrongfully enslaved citizen to prove the identity of his parents or of the freedman to prove his nonslave status. Or a question of status might arise in an inheritance dispute: a more distant relation might claim that the putative heir was a *nothos* and so ineligible to inherit.¹⁷ Once again, the ability to prove the identity of parents is essential.

This essay examines the ways in which Athenian society and institutions during the fourth century compensated for the absence of archival birth records. In the citizenship and inheritance disputes that we find in the orators, the most important evidence for proving identity is that supplied by live witnesses who were present at communal events of personal significance to the individual whose status is questioned. The personal significance of these communal events is that they all demand acknowl-

edgment of the celebrated person's descent and of his or her participation in the witnessed event. In the first part of this essay, I provide a survey of such events; these are fairly well-known and so may be quickly reviewed.¹⁸ John K. Davies has drawn attention to many of them in order to show how Athenian institutions and administrative or legal decisions buttressed and reinforced the descent group.¹⁹ Jean Rudhardt has called attention to the fact that a father's acknowledgment of his son combines a number of civic and religious acts, none of which, in isolation, can be pointed to as the definitive act that confirms a child's identity as his father's son.²⁰ Sally C. Humphreys has shown how important it was for Athenians to have witnesses to all sorts of events (including those discussed here) and transactions that might be of legal import in the future.²¹ Using, heuristically, the valuable work of these and other scholars, I draw out the implications especially for the scenario of citizen identification in the courts of Athens. Because citizen identity does not depend on a simple proof of the legal qualification of being born from two parents, but rather on the production of a broad array of witnesses who testify to an individual's descent and participation in a variety of kin and communal events, then having such witnesses and participation in such events must be seen as important qualifications for being Athenian.

In the second part of this essay, I briefly examine proofs of citizenship and kin relationships in the orators. The use of witnesses for identification as exemplified there is not a foolproof system. Often the best witnesses—relatives and friends who had been present at communal events that took place long ago—are dead; or these same witnesses, if alive, are open to the sometimes well-grounded suspicion of lying in the interest of kin and friendship, or even payment. In the third part of this essay, I examine the *dike pseudomarturion* (suit for false witnessing) and argue that it was used as a remedy for the deficiencies and abuses of the system of status identification in fourth-century Athens. The remedy, alas, appears no better than the illness. Such a flat-out assessment, however, while true from a modern perspective familiar with impersonal bureaucratic procedures of documentation, overlooks an essential feature of the system of identification in Athens: that witnessed participation in communal events as a function of being born Athenian was perceived by Athenians as tantamount to “being Athenian.”²²

...in, calling names at the epiphany.

Communal Events

Numerous events in the biological and political life cycles of Athenian males were celebrated or formally acknowledged by kin, community, or civic groups. Long before a boy became a citizen, indeed, on the

fifth day after his birth, the *amphidromia*, a purification ritual, would be celebrated.²² On the seventh (*hebdome*) or tenth day (*dekate*) after birth, there would be another celebration, when the infant was given a name.²³ These celebrations marked the father's acceptance of the infant into his *oikos*. The father's acknowledgment of paternity, witnessed by friends and relatives who attended the ceremonies, could later be used as evidence that in disputes concerning inheritance or citizenship the son is not a *nothos*.²⁴ Other kin and community groups would likewise have the opportunity to witness a father's acknowledgment of an infant or child's paternity and birth from a lawful marriage.²⁵ A father might, for example, introduce his son to his *gennetai*. He would take hold of the altar and swear that the child was his own son born from a wedded wife; the *gennetai* would thereby become witnesses to the son's parentage.²⁶

Local phratries performed three ceremonies on the third day (called *Koureotis*) of the Apatouria.²⁷ The first was the offering of the *meion*, a sacrifice that was apparently made by fathers to whom sons had been born during the previous year.²⁸ The second offering, the *koureion*, was another sacrifice presented by the father that may have coincided with the adolescent's formal (second?) entry and enrollment into the phratry.²⁹ The third offering was the *gamelia*, a sacrifice presented to his fellow *phrateres* by a young man at the time of his marriage.³⁰ Sons appear to have been introduced to their fathers' phratries on two occasions, once as infants or young children, and later, perhaps before they became *ephebes*.³¹ Because some of our evidence connects phratry introductions with sacrifices or with the timing of the third day of the Apatouria, modern writers sometimes say imprecisely, or at least without warrant, that sons were introduced into the phratry at the *meion* and *koureion*.³² Isaeus 8 *Ciron* 19 provides the form of words presumably used at the first introduction: "Our father, after we were born, introduced us to the *phrateres*, having sworn in accordance with established laws, that he was introducing [children born] of an *aste* and pledged woman."³³ The formula appears elsewhere, with slight alteration.³⁴ Occasionally, *gennetai* and *phrateres* are mentioned together as the groups to whom a son is introduced—whether in one ceremony or two is not always clear.³⁵ Most frequently, however, we hear that a son is introduced to *phrateres* alone.³⁶ Phratry members, if called upon at some later time, could testify to the parentage of the infant, boy, or man whose ceremony—the *meion*, *koureion*, *gamelia*, and introductions (if different from the *meion* and *koureion*)—they had attended.³⁷ While phratry membership was not legally required of citizens, the converse was true: birth from Athenian parents was a prerequisite for membership in a phratry.³⁸

Athenian males were formally enrolled by their deme as citizens at

the age of eighteen. [Aristotle] *AP* 42.1–2 describes procedure and requirements:

It is men born of citizens on both sides who share in citizen rights and they are enrolled among the demesmen when they have reached the age of eighteen. Whenever they are being enrolled, the demesmen decide by vote under oath, first, whether they appear to have reached the age which the law prescribes—and if they do not so appear, they return to being “boys” once again—and secondly, whether [each one] is free and was born in accordance with the laws. Then, should they vote against him as being *not* free, he appeals to the jury-court, and the demesmen choose five of their number as accusers; if it is decided [by the court] that he has no right to be enrolled, the polis sells him [into slavery], but if he wins the demesmen are obliged to enroll him. After this the *boule* scrutinizes those who have been enrolled, or if it is decided that someone is younger than eighteen, the demesmen who enrolled him are fined.³⁹

While the account here may be incomplete and not accurate in every respect,⁴⁰ I shall only single out for brief comments three features—none of them unambiguous—of the requirements for citizenship: (1) that boys are required to be a certain age at the time of enrollment,⁴¹ (2) that they need to be free, and (3) that they must be born in accordance with the laws. As for (1) age, it should be noted that because Athenians kept no birth records, evidence of age might be difficult to establish.⁴² That the boys be (2) free, I have understood as referring to their status (i.e., free as opposed to slave);⁴³ that they be born in accordance with (3) the laws, I have with hesitation accepted as referring to the laws that require both mother and father to be Athenians.⁴⁴ Presumably, witnesses to the boy’s parentage would have to be present at his enrollment to testify to the three criteria.⁴⁵ Attestation of age, status, and Athenian birth are interrelated in an important way: the assertion that a boy was born free eighteen years ago to a particular Athenian couple (XY) could, for example, be countered by a statement that X was living with *xene* Z at that time, not *aste* Y. A candidate rejected by his demesmen in the fourth century could appeal their decision before a *dikasterion*. In such an appeal, the rejected candidate would be the defendant against the deme’s claim as presented by five prosecutors. Presumably, the defendant would call in witnesses to his parentage and to his parents’ participation in communal events. We have no certain reports of such cases.⁴⁶ On the other hand, we do have reports of appeals arising from the extraordinary general scrutiny that was set in motion by the decree of Demophilos in 346/5.⁴⁷ The next section of this essay briefly examines some of the proofs put forward by Euxitheos (Demosthenes 57 *Eubulides*) in his appeal at

the time of that scrutiny. The procedure offered the defendant the opportunity to present his case before a panel of *dikasts* that was representative of the entire body of citizens; local prejudice would be far less pervasive. But the method of identification would be the same: dependence on witnesses to kin and communal events.

It is a justifiable inference from available evidence that each deme kept a register of its members (*lexiarkhikon grammateion* or *koinon grammateion*) and that such lists were therefore constitutive of deme members and, collectively, of the citizen body.⁴⁸ The lists are mentioned numerous times in the orators, sometimes as a *lexiarkhikon grammateion*, less frequently as a *koinon grammateion*; usually, a man's name is said to be written up in them when he is enrolled in a deme.⁴⁹ We shall consider below what use might have been made of such documents for the purpose of identifying citizens.

Descent is again a matter of importance at the scrutinies of officials before their entry into public office. [Aristotle] *AP* 55.3 describes the questions asked of each man chosen to one of the nine archonships:

“Who is your father and to what deme does he belong? And who is your father's father, and your mother, and your mother's father, and to what deme does he belong?” Then they ask whether he has an ancestral Apollo and a household Zeus, where their sanctuaries are, whether he has family tombs and where they are, whether he treats his parents well and pays his taxes, and whether he has served on the military expeditions. Having asked these questions, [the examiner] says: “Call the witnesses to this statement.” Then, when he has presented his witnesses, [the examiner asks]: “Does anyone wish to bring a charge against this man?”

One interesting feature of scrutiny for public office is the use of live witnesses. Although the candidate would certainly have passed the age of deme enrollment and his name would be included in his deme list, that list is not mentioned and does not appear to serve any documentary function. Live witnesses are preferred. The successful candidate not only passes scrutiny, he also acquires another “credential.” The witnesses at his scrutiny may be used as witnesses of descent, if ever his citizen status comes into dispute at a later time. In that case, they will be witnesses both of descent and of the successful acceptance of their testimony at the scrutiny.

All these communal events—the *amphidromia*, *dekate*, introduction to *gennetai*, the phratry ceremonies (*meion*, *koureion*, enrollment, *gamelia*), as well as deme enrollment and scrutiny for public office—required an acknowledgment of a male's descent from two Athenian parents. Such communal events therefore provided the opportunity for numerous men (and women, at least at the *amphidromia* and *dekate*) to witness that

acknowledgment. Witnesses to an earlier communal event would be useful at the next such event: e.g., a witness to the name-giving ceremony would be useful at the meion, and a witness at the meion would be useful at the koureion. Once the youth is registered in a phratry, and then in his deme, he has safely secured his civic identity: his membership in phratry and deme would be written down; his descent from two Athenian parents would appear to be duly authenticated—yet live witnesses are required once again at scrutinies for public office.

Women were not citizens as men were. They were not registered in demes, and probably were not registered in phratries, either.⁵⁰ Yet by Perikles' citizenship law of 451/0 B.C. and its re-enactment in 403/2, a son was required to be born of two Athenian parents in order to be a citizen. And according to a law attested for the mid-fourth century, pretense of marriage between a citizen and a xene was liable to severe penalties. How, then, did a woman acquire her Athenian identity?⁵¹ In a way similar to that used by men—by witnesses to her descent at kin and communal events and by participation in some of those events. Purification rituals (*amphidromia*) would be offered after the birth of a female infant. Her name-giving day would be celebrated on the seventh or tenth day. Her own descent would be directly acknowledged and affirmed when her son was introduced into a *genos*, phratry, and deme, or if he underwent scrutiny for public office. If a phratry required that a son be born of a woman who had been “pledged” to her husband by engue, then presumably witnesses of that transaction would have to be present.⁵² One phratry appears to have required that the name of a son with his patronymic and demotic, together with his mother's name with patronym and father's demotic, be inscribed and posted at a common meeting place. Another copy, written on a white-washed board, was to be displayed by the priest in a sanctuary; this was to take place in the son's first year or the year in which he celebrates the koureion, in order that the phrateres may know those who are going to be introduced.⁵³ If this is a proper interpretation of *IG 2² 1237, 117–25*, then we have an instance of the actual publication of a woman's name and descent group that would be open to public scrutiny, at least temporarily.⁵⁴

There would be other occasions when a woman's descent would be implicitly acknowledged. Her marriage would be celebrated at the gamelia when her husband offered a sacrifice to his phrateres. Although she probably would neither become a member of the phratry nor be present at the phratry celebration, her husband would want his phrateres to know her name (or more importantly, her descent) and to be aware that she was Athenian—that is, he would lay the groundwork for their sons' acceptance into the phratry at a later time. The marriage of a son or

daughter to another Athenian would be another implicit acknowledgement of a woman's own descent. When her husband pledged their daughter in marriage to a son-in-law, he may have used some variation of the formula that we find repeated in plays of New Comedy: "I give [so-and-so] to you for the ploughing of *legitimate* children."⁵⁵ If she took some prominent role in the celebration of public sacrifices or other religious ceremonies reserved for astai, her participation as an *aste* might be observed. If she took part in the funeral rites for the dead in her natal oikos, her participation might be noted and her relationship observed. There was ample occasion, then, for a woman's descent to be acknowledged and witnessed, and for her *aste* status and relationship to a particular oikos to be confirmed. At many of these communal events (her son's enrollment in phratry and deme and his scrutiny for public office), she herself would probably not be present. But her name would be mentioned, and her descent would be open to public examination. Acceptance of the son into one of these groups was, after all, an acceptance of both his mother's and father's Athenian descent.

The importance of marriage for providing opportunities for the confirmation of a woman's status and descent is exemplified by a reverse scenario: the case of a divorced woman. In the fourth century, divorce was required if a man discovered that his wife had been unfaithful and if the *moikhos* was successfully prosecuted; and divorce would naturally happen if a woman were convicted of *xenia* (because the marriage would not have been legal, "divorce" can only be used in a nontechnical sense).⁵⁶ The latter woman would be sold into slavery, and her 'cohabitor' would be fined a thousand drakhmai. A "seduced woman" would have no easy time finding a second husband, unless, perhaps, she were provided with a very large dowry.⁵⁷ Divorced and remaining unmarried, such a woman would lose the qualification of being Athenian—not by any law, but by the practical circumstance that she would lose the opportunities for the acknowledgment of her descent and the recognition of her oikos. If she already had children, their descent from an identifiable husband could be questioned at any enrollment or scrutiny; she would be excluded from participation in public religious sacrifices (her attendance was proscribed by law: [Dem.] 59.87); she would lose, in effect, the opportunity for the communal confirmation of her descent and status.

Women who were divorced for innocent reasons might easily come under suspicion of infidelity (her husband had divorced her to avoid prosecuting the *moikhos* and suffering infamous publicity) or alien birth (her husband had divorced her to avoid the thousand drakhmai penalty if the true status of his alien "wife" were discovered); the reiteration of reasons for divorce in the orators supports this thesis. It would be best for

the divorced woman both to have witnesses to account for the divorce (e.g., that her husband was required to marry an *epikleros*) and to remarry as soon as she could.⁵⁸ Marriage, participation in an oikos, and participation in all permissible kin and communal events that stemmed from membership and that conferred recognition and acknowledgment were desirable—and necessary for identity as an Athenian woman.

Living witnesses to kin and communal events were invaluable for constructing proofs of descent. Athenians in the fourth century still viewed witnesses as superior to “archival documents.” If a deme register is said to be lost (a circumstance reported in Dem. 57 *Eubulides* 26, 60–61), or if a man’s name has been struck from the register (Dem. 57 and Is. 12 *Euphiletus*), then that document can be of no value in those cases. But other circumstances under which we might think that “archival documents” would be of assistance demonstrate that Athenians routinely preferred witnesses:

1. A man who has been struck from a deme list might use the inclusion of his name in a phratry list as evidence of his citizenship.
2. A man undergoing scrutiny for public office might advert to a phratry or deme list as evidence of his citizenship.
3. A woman whose identity is being established in an inheritance dispute might use a deme list or phratry list that included her son’s name, to demonstrate that her son had passed these earlier scrutinies that had “certified” her own *aste* status. The list would only have been useful evidence, of course, if we knew for certain—and we do not—whether any deme or phratry ever recorded the son’s name as X son of Y (father) and Z (mother) and not simply X son of Y.⁵⁹

Litigants in cases that require status identification never bring such documents into court—at least as far as we can tell without having the witness testimonies available. Instead, a man struck from a deme list brings live witnesses, among whom are included his phrateres and demesmen.⁶⁰ Live witnesses testify to a candidate’s identity at a scrutiny for public office. Women’s identifications are likewise made without advertising to any documents.⁶¹ It is easy to postulate reasons why this should be so: the deme list would probably be in the hands of the demarkhos; any copy of a deme list would have to be authenticated by the demarkhos as a genuine document or copy; and so the appearance of the demarkhos or other demesmen as witnesses would supersede the importance of the list itself. The preference for live witnesses noted here is in accordance with fourth-century practice in regard to other kinds of documents such as contracts and wills.⁶²

Witnesses to the kin and communal events discussed above therefore served important functions—not only to confirm a person’s descent at a

tenth-day celebration or phratriy enrollment but also to provide testimony of that event if it were ever required in the future. That second function is surely not merely a *post facto* one.⁶³ That the types of event witnessed in citizenship cases and inheritance disputes are so similar, that is, that they appear to follow a pattern, suggests that the polis recognized and expected that a *polites* and *politis* would provide just such testimonies as credentials. The selected events seem natural and pertinent enough for such use: this is what a *polites* does, this is what a *politis* or *aste* does—he or she becomes known to the community and acknowledged by it. Being observed and collecting witnesses are part of that process. This is not to say that Athenians were by practice cynical, paranoid, deceitful, or quintessentially busybodies—although the orators and writers of New Comedy provide us with examples enough of these characteristics. Rather, a life that is celebrated, that is oriented toward membership in kin and communal groups, and that is scrutinized on so many different occasions creates witnesses. Everyone knew that, and everyone gathered witnesses.

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Proving Citizenship and Kin Identity in the Orators

A brief consideration of arguments of citizen and status identity in the orators will show the prominent position given to witnesses of kin and communal events. Demosthenes 57 *Eubulides* is an appeal before a dikasterion against the decision of the demesmen of Halimous to reject the speaker (Euxitheos); the case occurred during the general scrutiny of deme lists that was decreed by Demophilus in 346/5.⁶⁴ We do not know the precise grounds for the Halimousians' rejection of Euxitheos, but the latter's arguments indicate that the demesmen had probably claimed that his parents were not citizens: his father spoke with a foreign accent, and his mother sold ribbons in the marketplace and had hired herself out as a wet-nurse. In the final sections of the speech, Euxitheos summarizes his defense by putting it all neatly into the question and answer form, as it were, of a scrutiny for public office. The artifice of the form deserves comment: it creates an aura of authority as a scrutiny is staged in a trial, which is, in essence, the ultimate scrutiny—a scrutiny, then, within a scrutiny, a scenario well-known to the audience, who will recognize their dual role as dikasts sitting in judgment and as witnesses of Euxitheos' descent. I quote it here at length because it is the fullest account of a citizen's proof of status and identity that I know of:

Recall the following points and see with how many just arguments I have come before you. For just as you examine the thesmothetai, I in the same way shall examine myself before you. "Sir, who was your father?" "My

father? Thoukritos.” “Do any relatives testify that you are his son?” “Yes, indeed. First of all, four cousins, then, a son of a cousin, then the husbands of his female cousins, then the phrateres, then the gennetai of Apollo Patroios and Zeus Herkeios, then those who share the same tombs, then the demesmen who testify that he frequently passed scrutiny and entered office and those who manifestly voted for him.” As for the facts, then, that pertain to my father, how could I prove them to you more justly or more clearly? I shall call my relatives before you, if you like. And now hear the facts that pertain to my mother. My mother is Nikarete, the daughter of Damostratos of Melite. What relatives of hers give testimony? First of all, a nephew; then two sons of another nephew; then a son of a cousin, then the sons of Protomakhos, who was my mother’s former husband; then Eunikos of Kholargos, who is the husband of my sister, the daughter of Protomakhos; then my sister’s son. Above all, the phrateres and the demesmen of her kin have given testimony. What more, accordingly, could you require? For, as to the fact that my father married my mother according to the laws and that he offered a gamelia for the phrateres—this has been testified to. And in addition to this evidence, I have demonstrated that I myself have shared in all those privileges that befit free men (*ἐλευθέρους*). Therefore, if you altogether justly and fitly give your verdict in my behalf, you will keep your oaths.⁶⁵

Because the status of Euxitheos’ parents has been called into question, he must prove that both his father and mother were citizens. To prove his father’s civic identity, he calls upon living individuals of various relation to his father, Thoukritos, to testify that he was in fact his father. The order of relationship is important: he begins with those associated with him in the private and smaller realm of the *oikos*, then gradually branches out to include his father’s fellow phrateres, gennetai, and those who share the same places of burial, and finally he comes to the civic realm of fellow demesmen who testify to his father’s passing scrutiny and holding public office. The witnesses in behalf of Thoukritos had testified earlier in the speech, almost exactly in the order as reported in the summary—except that there he had reserved the final testimony for the gennetai who share common burial ground.⁶⁶ We do not have the depositions of these witnesses, but it appears from Euxitheos’ description that they testified to the scrutinies passed (*ἔξητασμένος* 24) by Thoukritos and Euxitheos before gennetai, phrateres, and deme, and to the fact that Thoukritos had passed scrutiny for public office (*ἢ οξεῖ δοκιμασθείς* 25). Thoukritos’ foreign accent had been explained by an account—duly testified to by prepared depositions—that he had been taken prisoner during the Decelean War, sold into slavery, taken to Leukas, and brought back to

Athens and ransomed after a long lapse of time. Upon arrival in Athens, he received his share of property from his uncles (18–19).⁶⁷ All traces of this account have been omitted from the summation, undoubtedly because the speaker considers that he has already refuted the arguments of his opponents and because it was more effective not to remind the dikasts at the end of his speech of the specific charge that had been made against his father.

Euxitheos follows the same order in reporting witnesses of his mother's status, beginning with witnesses to her natal oikos and then gradually branching out to include witnesses to her marital oikoi and finally mentioning the phrateres and demotai of his mother's male kin. Thus, first the surviving relatives on the male side, and then the surviving male relatives on the female side, represent the natal oikos.⁶⁸ Next the male offspring of Protomakhos, Nikarete's former husband, testify to the earlier marital oikos.⁶⁹ Then comes Eunikos of Kholargos, the man who married the daughter of Protomakhos and Nikarete, and then his son. Finally, the speaker cites the testimony of the phrateres and demotai of his mother's male relatives. The phrasing is of interest: the phrateres and demotai cannot give testimony directly about her; she is neither a member of the phratry or deme—but they give testimony that her kinsmen are members. The speaker then tags on the information that his father had married her mother according to the laws and had offered a gamelia for the phrateres in behalf of his wife. That important information had been set out in more detail earlier in the speech (40–43): that Nikarete's brother, Timokrates, had given her in marriage to Protomakhos; that Protomakhos, when he had divorced her in order to marry an epikleros, had persuaded his friend Thoukritos to take her; and that Thoukritos had received her through engue from Timokrates in the presence of his own uncles and other witnesses who will give testimony. Moreover, Protomakhos had by Nikarete a son and daughter, the latter of whom he had given away in marriage (to Eunikos); though Timokrates is now dead, his deeds bear witness that she was an *aste* and *politis*.

The information in the earlier sections (40–43) focusing upon the mother's marriage corresponds with the information that had been given about Thoukritos' participation in phratry and deme life. Marriage—legally sanctioned marriage effected through engue—is the proof that can be offered that a woman is an *aste* and a *politis*. The speaker is careful to show on what grounds Protomakhos had divorced Nikarete—the divorce had nothing to do with either the woman's status or moral character. That argument is further supported by Protomakhos' treatment of his daughter, that is, the fact that he gave her away in marriage. Witnesses to betrothal and to the gamelia thus become witnesses to a woman's *aste*

status. Everything depends on the credibility of the witnesses—and the discrediting of the motives of the opponent.

All the witnesses to the mother's status had testified earlier in the speech—in slightly different order from that in the summation.⁷⁰ The order in the summation is again for rhetorical effect. Notable here is the absence of all mention of the earlier testimony about the legality of selling ribbons in the market or employment as a wet-nurse. Like the omission of the account of his father's foreign accent, it is more effective not to recall the specific charges at the end of the speech.

The major portion of Euxitheos' defense—and his summary of it—had to do with proving the citizen status of his father and mother. If they were both citizens (or citizen and *aste*), then he has the right to citizenship. Only a small segment of defense and summary deals directly with himself—in the summary (69), the statement that he has had a share in everything that befits free men (*eleutheroi*), and in the narrative (46), that he has the witnesses to prove this, that is, that he was introduced into phratry, enrolled among demesmen, chosen by the latter to draw lots for the priesthood of Herakles, and scrutinized successfully for public office. The weak point in this case, as Sally C. Humphreys has suggested, may have been the lack of attestation to Euxitheos' birth: no relatives come forward to testify to the *amphidromia* or *dekate*. The omission might have been noticeable; the chronology of Thoukritos' absence during the war and its relation to the date of Euxitheos' birth remain vague.⁷¹

The same type of proof appears in speeches concerning disputed estates. Indeed, the resemblances are so close that it appears almost as if there were a set formula. There are many circumstances under which an inheritance might be disputed and that would require the precise identification of kin. We shall single out one here: claimant X objects to claimant Y's claim on the grounds that claimant Y is illegitimate. Both Isaeus 3 *Pyrrhus* and Isaeus 6 *Philoctemon* are cases of this sort. In the former, claimant Y (son of Phile, grandson of Pyrrhos) had maintained that the estate of his mother's father should be his, because his mother was an *epikleros*; claimant X (the alleged sister of Pyrrhos, who is represented by her son, the speaker) argues in the oration that Phile's mother had not been legitimately married to Pyrrhos, and therefore both Phile and her son are illegitimate. Against Phile's status, he argues:

And do not forget about the marriage feast for the phratry. This proof is the most important for his evidence. For it is self-evident that, if he [Pyrrhos] had been persuaded to marry this woman by *engue*, he also would have been persuaded to give a marriage feast for her to the members of the phratry and to introduce to them the child, who has been

declared to be this woman's daughter, as his legitimate offspring. And in his deme, since he was in possession of a household worth three talents, if he had been married, he would have been compelled in behalf of his wedded wife to entertain the wives at the Thesmophoria, and to perform for her all the other fitting public duties in the deme from the rather considerable substance of his property. (3.79–80)⁷²

In Isaeus 6, we hear another claimant X objecting that claimants Y are illegitimate, again attacking the status of the mother:

That these children are in fact legitimate (*γνήσιοι*), let him [Androkles] prove, just as each of you would do. For they are not legitimate if he mentions the mother's name, but if he proves that he is telling the truth—by providing kin who know that she was married to Euktemon, and demesmen and phrateres, if they have ever heard or have any knowledge that Euktemon carried out public services on her behalf, and where she has been buried, in what sort of tomb, and who has ever seen Euktemon performing the customary rites over her, and whether her sons still go to offer sacrifices and libations, and who of the citizens or of the slaves of Euktemon has ever seen these rites being performed. All these details constitute a proof—and not mere invective. (6.64–65)

The format of the proof of a woman's identity and status (here, as legitimate wife) is well-established in Isaeus 6 and 3: witnesses to betrothal or to the marriage feast for the phrateres, the deme's and phratry's knowledge of her husband's public service on her behalf, her participation in public cults, her place of burial.⁷³

Although the polis gives no formal civic identity to a woman, nevertheless it is in her interest to establish one. She does this through her father and husband, through their phrateres and fellow demesmen, by their testimony to her betrothal and marriage and to her participation in public cults and by their acceptance of her husband's oaths on various occasions that his children are born from an *aste* and *engueute*. Of interest is the claim made by the speaker of Isaeus 6 *Philoctemon* that the name of the mother is not enough to make her children legitimate (64). He refers to his opponent's earlier identification of the woman as a Lemnian named Kallipe, the daughter of Pistoxenos, and scoffs, "as though it were enough for them merely to produce the name of Pistoxenos" (13). The speaker here argues that the names must be backed up by evidence and the testimony of relatives. We may assume that a name on a list would not be sufficient for this litigant: witnesses to kin and communal events constitute the best proof of a woman's status.

It is difficult to prove that witnessing in inheritance and citizenship

disputes was of greater significance than witnessing in other sorts of case. Witness testimony *was* important in all cases that came before a *dikasterion*. Stephen Todd has calculated the frequency with which witnesses are called for testimony in Attic orations and has observed “a striking difference between the use of witnesses in public and private disputes.”⁷⁴ The greatest frequency occurs in the twenty-five speeches concerned with private property where it reaches 13.8 per 100 sections; in the one preserved speech in a prosecution for *xenia*, there are 13 depositions in 124 sections.⁷⁵ The frequency with which witnesses appear in these particular cases does suggest that witness testimony may have been of greater service in them than in other sorts of cases.

Moreover, there is something qualitatively different about witnesses to status identity and witnesses to other sorts of “facts,” events, or business transactions. Witnesses to status identity are providing an individual with the credentials that will constitute his or her civic identity. It is conceivable that Attic law recognized the weightiness of this responsibility by allowing convictions for false witnessing that arose out of inheritance and *xenia* cases to provide grounds for retrial. There is some evidence, moreover, that suggests that retrial was permitted after successful false witnessing trials *only* in cases that arose out of inheritance disputes, trials for *xenia*, and false witnessing. That evidence is discussed in the next section of this essay. Whether that evidence is conclusive and so could support a claim that Athenians felt that witnesses to status and identification were a distinctive set of witnesses or were witnesses to particularly distinctive facts and events, we can still say the following: Athenians of the fourth century had established a procedure for identifying citizenship and status in which the inscribing of a name on a deme list played a part, but the whole picture—and the ability to re-create it—was more important than the part in isolation. Being “Athenian” was of the utmost importance for the inhabitant of Athens. Therefore witnesses to one’s Athenian status were the most important witnesses an individual could have.

The Dike Pseudomarturion

The system was obviously fallible. It put at a disadvantage those who were unable to amass witnesses after the lapse of years and favored those who could produce a plethora of kin, phrateres, and fellow demesmen to produce a “documentary picture” of longstanding communal acceptance. In the fourth century, legal measures tried to ensure the integrity of witnesses. A *dike kakotekhnion* could be brought against a litigant who had suborned a witness.⁷⁶ A *dike pseudomarturion* could be brought against

witnesses who were alleged to have given false testimony, or to have provided testimony contrary to the laws (e.g., the use of hearsay evidence was contrary to the laws except in clearly articulated, permissible circumstances such as reporting the views of a dead man).⁷⁷ The dike pseudomarturion was an *agon timetos*; the penalty was a fine; a person convicted three times would be disfranchised (And. 1.74; Hyp. 2.12). Because the dike pseudomarturion would be directed against the opponent's witnesses and not against the opponent himself, the penalty can hardly be thought of as a compensation. Some scholars have therefore hypothesized that the dike kakotekhnion may have served this purpose.⁷⁸ In certain cases, a plaintiff who had successfully convicted someone of false witnessing would be allowed a retrial (*anadikia*). Theophrastus tells us that retrial was permitted after successful convictions of false witnessing in cases arising from xenia, false witnessing, and disputed estates.⁷⁹ Theophrastus' evidence will be presented briefly below. Although I have taken a position on how that evidence should be treated, the issues are too complex for detailed argumentation in this essay.⁸⁰

In discussing the procedure for initiating a dike pseudomarturion and the effect of a conviction on the original case, we must distinguish generally between (A) false witnessing suits arising from a procedure called *diamarturia*, a "formal assertion of a fact by a witness who was in a position to know it,"⁸¹ and (B) false witnessing suits arising from trials. In the fourth century, most of the cases of diamarturia about which we have specific information arise out of inheritance disputes. In these cases, a person (X) who claimed he was the heir to an estate (a descendant of the deceased or son adopted *inter vivos* or by testament) could protest the claim of any other person (Y) who had applied to the *arkhon* for *epidikasia* (an adjudication hearing in an inheritance dispute); he (X) would make his protest by a *diamarturia*, a declaration that the estate was not adjudicable, and would himself provide testimony to support his claim or provide witnesses to do this for him. A dike pseudomarturion could arise out of this situation if the second claimant (Y) challenged X's deposition by an *episkepsis* (an objection), claiming that the testimony was false (e.g., Y could assert that X or X's witness had lied that Y is illegitimate, or that X or X's witness has fabricated an adoption into the family of the deceased); claimant X or his witness(es) would then be charged with false witnessing and brought to trial.⁸² False witnessing suits belonging to this category (A) disrupted the adjudication hearing and were decided first. The verdict in such cases might affect the original hearing: for example, if the defendant were acquitted and his statements about claimant X's relationship to the deceased were proven true, then the plaintiff (if he were a competing claimant) would probably lose his claim to the estate.⁸³

Litigants involved in false witnessing cases belonging to category B (cases arising from trials) followed a different procedure. Before the verdict was given in the original trial (e.g., for assault or impiety), either litigant could make an episkepsis to the testimony of his opponent's witnesses.⁸⁴ By making such an objection, the litigant appears to have reserved the right to proceed against his opponent's witnesses with a dike pseudomarturion. The original trial would not be disrupted, and the verdict would be delivered.⁸⁵ If the penalty were monetary, it would probably have to be paid before the trial for false witnessing took place.⁸⁶ Where the penalty was death, we are less certain. No evidence conclusively indicates that a death penalty would be postponed.⁸⁷ However, because it appears that an individual convicted of xenia would be imprisoned rather than enslaved before the false witnessing trial, some scholars have extrapolated that a death penalty would likewise be postponed.⁸⁸

False witnessing suits could be brought against alleged false witnesses in any trial (with the possible exception of homicide cases) and in adjudication hearings in inheritance disputes. Given that fact, we might expect witnesses to be charged with lying about all sorts of things in all sorts of cases. While that expectation is to some degree borne out by imputations of false witnessing in the orators, we also find that one type of alleged lie appears rather frequently: that about the status of an individual. Moreover, the evidence suggests that such allegations emerged most frequently in two kinds of dispute: about inheritance and xenia. In this final section of my essay, I shall argue that trials for false witnessing became a specific remedy or even normal procedure for dealing with the deficiencies of the identification system. The preponderance of false witnessing suits arising out of inheritance and xenia disputes is symptomatic of the special importance attached to witnessing in cases of identifying a person's status and relationship to kin. My argument will take the following route: (1) an examination of false witnessing suits that demonstrates the statistical prevalence of such suits that arise out of inheritance disputes, (2) the evidence that connects xenia disputes with false witnessing, and (3) conclusions.

False Witnessing and Inheritance Disputes

There are eight extant speeches (belonging to seven trials) in which alleged false witnesses are prosecuted or defended (see table 1). Four trials (Is. 2 *Meneclles*, 3 *Pyrrhus*, 6 *Philoctemon*, and [Dem.] 44 *Leochares*) arise from diamarturiai concerning an inheritance dispute.⁸⁹ One trial (Dem. 29 *Aphobus*) arises from a guardianship case and is ultimately connected with an inheritance dispute; one ([Dem.] 46 and 47 *Stephanus*,

both speeches belonging to the prosecution in the same trial) arises (probably) from a *dike blabes* but is ultimately concerned with the speaker's attempt to recover money that he believed his former guardian had embezzled from his father's estate;⁹⁰ and one ([Dem.] 47 *Evergus*) arises from a suit for assault. Of six other dikai pseudomarturion that are specifically mentioned in Attic orations (as having taken place, or as having been dropped, or as being still undecided), five arise from inheritance disputes (three from the same disputed estate: Is. 5 *Dicaeogenes*) and one from an action for slander (Lys. 10 *Theomnestus* 22–25).

On the basis of this catalogue of fourth-century dikai pseudomarturion, it is easy to see that far the greatest number arise out of diamarturiai that are a part of inheritance disputes: there are nine such cases (Is. 2; 3; 6; [Dem.] 44; the allusions to earlier or pending suits in Is. 5.9, 12, 17; Is. 3.2–4; Is. 11.45–46). Two arise from cases in which the treatment of a will or an estate is a central issue (Dem. 29, [Dem.] 45/46),⁹¹ and two arise from other suits (assault and slander). Why do so many false witnessing cases arise out of inheritance disputes? The most obvious answer is this: within the legal structure that developed to settle such disputes, the only *procedural* way for claimant X to demonstrate either that claimant Y has made a false claim of relationship to the deceased or that Y has based a claim on an inauthentic will was to issue a diamarturia and then defend that assertion if Y objected and initiated a *dike pseudomarturion* against him. What is a *remedy* for false witnessing in other kinds of dispute is *standard procedure* in inheritance disputes.

The answer that has just been given to the question, “Why do so many false witnessing cases arise out of inheritance disputes?” begs that very question—or at least conceals a deeper one: Why should this procedure (diamarturia followed by episkepsis and a *dike pseudomarturion*) have been established in the first place? The answer is again obvious: while witness testimony was important in all trials, it had a privileged position in trials that demanded the identification of kin and status. As the speaker in Isaeus 4 *Nicostratus* 17 says—tendentiously, but no doubt in harmony with the gut feelings of the dikasts: “And apart from these matters, you must put your trust in wills through the agency of witnesses—by whom one can also be deceived (for otherwise there would be no denunciations of false witnesses (*pseudomarturion episkepeis*)), whereas you put your trust in kinship relationships (*ankhisteiai*) through your own witnessing. For kin make their claims in accordance with the laws which you have set down.”

Disputes that depend on the precise identification of a person's status (legitimate or illegitimate) and of his or her relationship to kin require a documentation that the Attic bureaucracy (and I use that term loosely),

particularly in regard to the female members of the community, had not established; without an archival mechanism to record births, adoptions, and marriages, the testimony of living witnesses would be heavily relied upon and distorted easily—either by the ravages of time or by more corrupt motivation. The institution of birth, adoption, and marriage records would have put an end to many of these disputes before they reached court. However, such a solution did not materialize—the use of live witnesses was too firmly entrenched a part of the system to allow for substitution or innovation. The remedy—which became normal procedure in inheritance disputes—appears to be a protraction of the illness.

Were status or kin identifications crucial issues in these trials? A presentation of false witnessing suits in tabular form, identifying both the original case out of which the false witnessing trial developed, as well as the subject of the disputed testimony in the later trial, will help clarify the issues. An (S) in the third column indicates that status identification plays a significant role in the side of the case represented in the extant speech; in the case of “references to specific false witnessing trials,” (S) indicates that status identification is likely to have played a significant role.

In half the trials that originate out of disputes over estates (and I include here Dem. 29 and [Dem.] 45/46), the plaintiff, defendant, or *sunegoros* (advocate) must prove or disprove his own or someone else's status or relationship to the deceased (Is. 2; Is. 3; Is. 6; [Dem.] 44; Is. 3.2–4; Is. 11.45–46 [cf. Ps.-Dem. 43.29], Dem. 29). “Status identification” is obviously an important issue in the trial against Philonides (Is. 2); his *sunegoros* (the alleged adopted son of Menekles) must prove the truth of the defendant's statement that he (the *sunegoros*) had been adopted legitimately by Menekles twenty-three years ago (see the summary of proofs in cc. 44–45).⁹² Status identification is again an important issue in the trials against Nikodemos (Is. 3) and Xenokles (Is. 3.2–4), where Phile's legitimacy (and hence the legality of her mother's marriage to Pyrrhos) are crucial to the two cases. The plaintiff in Isaeus 6 must disprove the legitimacy of the heirs brought forward by Androkles. The plaintiff against Theopompos' witnesses (Is. 11.45–46 and [Dem.] 43.29) probably must prove that Phylomakhe I was the full sister of Polemon.⁹³ The plaintiff in [Dem.] 44 must disprove the legality of Leokhares' postmortem adoption into the family of Arkhiades and demonstrate his father's relationship to that family. In each of these cases, testimony of status or relationship to the deceased must be established.

Demosthenes 29 *Aphobus* III is somewhat different. In that trial, Demosthenes speaks in behalf of Phanos, who had testified in his behalf in an earlier successful trial against Aphobos for misconduct of the guardianship of the estate left to Demosthenes. Apparently, before that earlier

suit had been decided, Aphobos had asked Demosthenes to hand over Milyas, foreman of his deceased father's sword factory, for examination under torture, and Demosthenes apparently had refused, on the grounds that Milyas was not a slave (Dem. 27.19–22 and 29.20). Phanos is then alleged to have given false testimony when he said that Aphobos had admitted before the public arbitrator that Milyas was a free man. This last case involves a question of status in a much different way from the other *dikai pseudomarturion* arising from inheritance disputes. Disputes over the status of a person offered or demanded for purposes of examination under torture appear occasionally in the orators.⁹⁴ One instance in which a speaker envisions a scenario from which a false witnessing suit could have arisen involves such a dispute. In [Demosthenes] 49 *Timotheus* 55–56, the speaker, who is seeking repayment of a debt, claims that Timotheos refused to provide a deposition that Aiskhrion was free and not a slave (and so could not be subjected to examination under torture); the speaker conjectures that Timotheos feared that if he did so depose, then he (i.e., the speaker) would bring a suit for false witnessing and afterward proceed against Timotheos for subornation (*kakotekhnia*).⁹⁵ Suits for false witnessing in such cases as Demosthenes 29 *Aphobus* may have been used as a tactic to win back compensation for a penalty that had been assessed at the original trial or else as a pretext (not sanctioned by law) to postpone that payment. It is conceivable that the speaker of [Demosthenes] 49 *Timotheus* may have had some such strategy in mind for the future but had been obstructed from its deployment by his clever adversary. The availability of the *dike pseudomarturion* as the means by which to implement these ulterior motives, *through an examination of status*, is established.

That half the number of false witnessing trials involve issues of status is a significant statistic. It supports the thesis articulated above that the *dike pseudomarturion* was especially relevant to trials in which the identification of kin and status is important. An answer to an objection to this thesis will clarify my argument. The objection is this: the predominance of false witnessing suits that emerge out of inheritance disputes is due to the accidental preservation of so many inheritance speeches by Isaeus; there were probably many other false witnessing trials that arose out of all sorts of court actions. The false witnessing/inheritance trials may only have been preserved because they were of greater interest to contemporary readers (as displaying the lives of the rich and quarrelsome) than, for example, false witnessing trials that arose out of suits for assault. It is therefore incorrect to infer that false witnessing trials became a special remedy for trials that involved issues of status and identity. The rebuttal is a reiteration of a point made earlier: it is true that what is a remedy for

TABLE I. False Witnessing Trials in the Orators

<i>Orations Belonging to False Witnessing Trials</i>		
<i>Oration and Speaker</i>	<i>Original Dispute or Trial</i>	<i>Disputed Statement of Defendant in False Witnessing Trial</i>
Is. 2 <i>Meneclēs</i> defense of Philonides speaker: son of Eponymos (= son-in-law of defendant) plaintiff: Menekles' brother	Diamarturia/inheritance	Son of Eponymos was adopted legally by Menekles I (who had been legally married to the daughter of Eponymos) (S)
Is. 3 <i>Pyrrhus</i> plaintiff's speech vs. Nikodemos speaker: nephew of Pyrrhos in behalf of Pyrrhos' sister (= speaker's mother)	Diamarturia/inheritance	Nikodemos had given his sister (Phile's mother) to Pyrrhos in marriage (S)
Is. 6 <i>Philoctemon</i> plaintiff's speech vs. Androkles speaker: advocate for Khairestratos	Diamarturia/inheritance	Euktemon had legitimate sons, and Philoktemon made no will (S)
[Dem.] 44 <i>Leokhares</i> plaintiff's speech vs. Leokhares speaker: advocate for Aristodemos (= son of plaintiff)	Diamarturia/inheritance	Arkhiares had children whose legitimacy was rightfully established according to statute (chap. 46) (S)
Dem. 29 <i>Aphobus III</i> defense of Phanos speaker: Demosthenes plaintiff: Aphobos	Guardianship/will	Aphobos admitted before arbitrators that Miliyas was free (Aphobos had demanded Miliyas for torture, chap. 14) (S)
[Dem.] 45/46 <i>Stephanus</i> plaintiff's sp. vs. Stephanos speaker: Apollodoros	A <i>paragraphe</i> instituted by Phormion to block the <i>dike blabes</i> that Apollodoros had initiated vs. Phormion; Ap. had claimed that Phormion embezzled money owed to his father's estate	Apollodoros refused Phormion's challenge before the arbitrator to identify an alleged copy of his father's will (chap. 8)

Continued on next page

TABLE I—Continued

Orations Belonging to False Witnessing Trials

<i>Oration and Speaker</i>	<i>Original Dispute or Trial</i>	<i>Disputed Statement of Defendant in False Witnessing Trial</i>
[Dem.] 47 <i>Evergus</i> plaintiff's sp. vs. Euergos and Mnesiboulos speaker: Anon. plaintiff	<i>Dike aikeias</i> (won by Theophemos who used testimony of Euergos and Mnesiboulos)	Anon. plaintiff had refused to admit as a witness a female slave whom Theophemos had offered to deliver up before the arbitrator

References to Specific False Witnessing Trials

<i>Oration and Litigants in False Witnessing Trial</i>	<i>Original Dispute or Trial</i>	<i>Disputed Statement of Defendant in False Witnessing Trial</i>
Is. 3 <i>Pyrrhus</i> 2–4 nephew of Pyrrhos vs. Xenokles	Inheritance	Phile was the legitimate daughter of Pyrrhos (S)
Is. 5 <i>Dicaeogenes</i> 9 Polyaratos vs. witnesses for Dikaiogenes III	Inheritance	Probable statement: Dikaiogenes III was adopted as sole heir to Dikaiogenes II
Is. 5 <i>Dicaeogenes</i> 12 Menexenos II vs. Lykon	Inheritance	Dikaiogenes III was adopted as sole heir to Dikaiogenes II
Is. 5 <i>Dicaeogenes</i> 17 Menexenos II and III vs. Leokhares	Inheritance	Probable statement: Dikaiogenes III was adopted as sole heir in authentic will
Is. 11 <i>Hagnias</i> 45–46 Sositheos (?) vs. witnesses of Theopompos (cf. [Dem.] 43.29)	Inheritance	Probable statement: Polemon, the father of Hagias II, had no full sister Phylomakhe I (S)
Lys. 10 <i>Theomn.</i> 22 and 25 Theomnestos vs. witness of Lysitheos, Dionysios	Slander (<i>kakegoria</i>)	Testimony about shield
<i>Total:</i> 13	Inheritance: 9 “ultimately inheritance”: 2 (Dem. 29; and [Dem.] 45/46)	

false witnessing in other trials is standard procedure in inheritance disputes and that therefore the standard procedure will inevitably appear as a special category in our record over and over again. But that such a procedure became standard attests to the deficiency in the system; birth, adoption, and marriage records would have put an end to many of these disputes; but witnessing was so firmly established as the method of identification that only claims of false witnessing could undo the identifications of witnesses.

In sum, the link that I have posited between false witnessing trials and inheritance disputes is not a phenomenon that can be explained only by the accidental preservation of certain orations rather than others. Rather, the link is symptomatic of the dependence upon witnesses in disputes of identity and status. I am not claiming that the dike pseudomarturion was instituted in the first place to handle such disputes; but I am claiming that the suit, as it was used, came to be recognized as the method to establish disputed identity before the law. This claim is further supported by its links with prosecutions for xenia.

False Witnessing and Xenia

Our one fully preserved speech that belongs to a prosecution for xenia ([Demosthenes] 59 *Neaera*) yields no evidence for a connection with a dike pseudomarturion. But we should not expect the prosecution in such a case to be making claims of false witness against the defendant's witnesses whose depositions have not yet been delivered. Nor do we find evidence for false witnessing suits arising out of status disputes in allusions elsewhere to *specific* trials for xenia; however, much of this evidence is very fragmentary.⁹⁶ But in Demosthenes 57 *Eubulides* and Isaeus 12 *Euphiletus*, both appeals from the decision of demesmen to strike a man from the deme register, the speakers make allusions to the possibility of false witnessing suits arising from these trials (Dem. 57.53 and Is. 12. 4, 6, and 8). Furthermore, that indictments and trials for false witnessing actually arose from citizenship disputes rather frequently is suggested by two sources:

First, an off-hand statement by the speaker of Demosthenes 24 *Timocrates* 131, who is arguing that the horrors of imprisonment for being a state debtor should not be exaggerated to such a degree that punishment should then be withheld when it is fully warranted: "And do not allow them to be overly upset about going to prison while they have your money, but make them subject to the laws. For men convicted of xenia are not overly upset about staying in that place until the trials for pseudomarturia are over, but they remain there and do not think it necessary to go about at large by appointing sureties [as bailsmen]."

Second, a scholiast to Plato *Laws* (937 c--d) adduces a citation from book 7 of Theophrastus' *Nomoi* in the course of discussing Plato's (problematic) measure that a dike pseudomarturion justified the reopening of the original suit when over half the evidence given by the witnesses had been successfully overturned.⁹⁷ The scholiast, who appears to treat Plato's measure as if it were a real one, cites Theophrastus, who provides a more restrictive list of cases that allowed retrial: "A judgment that is retried (*anadikos krisis*). If either all the witnesses or more than half were convicted of giving false testimony, the case was tried over again. Not in the case of all actions are retrials allowed, but, as Theophrastus says in book 7 of *Nomoi*, only in cases of xenia, pseudomarturia, and *kleroi* (estates)."

The second passage is much debated;⁹⁸ the issue that concerns us here is whether Theophrastus' restricted list of types of case that are allowed retrial in the event of a successful dike pseudomarturion is correct. Those who claim that it is not argue that Theophrastus has given us, as a selective list, examples of types of case that could be penalized by enslavement or loss of family or of full citizen rights.⁹⁹ Those who argue that it is correct have the direct text of Theophrastus to support them, as well as evidence of *anadikia* from the orators in cases of citizenship and inheritance.¹⁰⁰ Moreover, the statistical evidence of false witnessing cases corroborates the justifiable expectation that cases in which successful prosecution allows retrial would be more frequent than those that do not. The second view of Theophrastus' evidence is to be preferred, although it cannot be conclusively demonstrated.¹⁰¹

At the very least, Demosthenes 24.131, by itself, allows us to conclude that successful prosecutions for xenia were not infrequent, that unsuccessful defendants in such cases initiated dikai pseudomarturion against the prosecution's witnesses and that the successful conclusions of such suits allowed retrials for the original charge of xenia. In such cases, the dike pseudomarturion was a remedy—even if it appears to be a protraction of the illness. Decisions on xenia were democratic in the sense that they were made by dikasts representative of the citizen population. But those decisions were at the same time accompanied by all of the disadvantages of that democracy, most relevantly, its bureaucratic incapacity to record the births, adoptions, and marriages of its citizens. If the "preferred view" of Theophrastus' text is accepted, we could go further and claim that Athenians thought that disputes concerning the identification of citizen and familial status were so significant—and so liable to error—that they warranted the privilege of retrial.¹⁰²

A man convicted of xenia would thus be likely to resort to a dike pseudomarturion. A conviction of his opponent in that trial would give

him the chance to stand trial again for xenia. Presumably, he would be in a better position this time around. But if he lost in the second try, he could keep his case alive and go after his opponent's witnesses once again. If he lost the false witnessing trial and if he were tenacious, he could sue his opponent's witnesses from the false witnessing trial—for false witnessing. It is logically conceivable that such a case could go on for years in the courts—provided enough witnesses remained alive to give their true or false accounts. The dike pseudomarturion was not a weapon that could guarantee the testimony of truthful witnesses, but it could guarantee a stage for witness testimony. Successful acquittal on a charge of xenia at a retrial (or first trial) may not have been the end of the matter, however: a charge for *doroxenia*, for winning acquittal for xenia through bribery, could be brought against such a defendant.¹⁰³ Such a charge most likely entailed impugning the testimony of the defendant's witnesses, on the ground that it was suborned. If so, then we have another instance of the overlapping of procedures that are a regular feature of the Athenian legal system: doroxenia would cover the same ground as a dike kakotekhnion, but it would be specifically tailored for cases of xenia—and it was a graphe, not a dike—anybody could bring the indictment.¹⁰⁴ Its very existence attests to the special concern of Athenians to establish citizen status through witnessing techniques.

As an addendum to the evidence from the orators that links false witnessing with status and kin identifications, it can be pointed out that the most frequent scenario of false witnessing in New Comedy has to do with the same sorts of identifications. In two plays, *Sikyonios* and *Poenulus* (5.2), characters approach potential witnesses in an attempt to suborn them to give false testimony about a woman's birth.¹⁰⁵ In the *Andria*, a character suspects that a witness has been suborned to give this same kind of information. In both *Sikyonios* and *Andria*, the “false testimony” would enable women of dubious status to be identified as Athenian women, and, in the *Andria*, would enable the woman's son to have Athenian citizen status, too.¹⁰⁶ In the *Phormio*, the background for the dramatic action of the play is a trial at which one character presented false testimony (which will turn out, fortuitously, to have been true) about a young man's proximity of relationship to an alleged epikleros.¹⁰⁷ In *Poenulus* (3.1), a scene is rehearsed and dramatized: a pimp is trapped into harboring a slave (rather than a foreigner, as he had thought) and accepting a great sum of money from him; he is then charged with theft. In this last situation, the pimp's false impression of his client's status is the basis of his alleged crime. Moreover, witnesses had been rehearsed on-stage to observe his treatment of the client.

In all these plays, the status or identity of the person who is testified

about is of crucial significance for determining (1) whether the witness' testimony is false (*Sikyonios*, *Poenulus* 5.2, *Andria*, *Phormio*), or (2) whether the act they have witnessed is criminal (*Poenulus* 3.2). That witnesses are called upon to give testimony so frequently about status or identity is not so surprising in the context of New Comedy in which so many plots depend upon the identification of citizen status for the happy citizen marriages that so frequently conclude them. Indeed, witnesses to citizenship and status appear in far more plays than those listed here. What is surprising is that the scenarios of false witnessing (in *Sikyonios*, *Poenulus*, *Andria*, *Phormio*) should conform so well with the significant constellation of false witnessing in fourth-century orations that was identified earlier.

Conclusions

The foregoing examination of the types of trial from which dikai pseudomarturion emerged in the fourth century led us first to focus on the preponderance of such dikai that arose out of inheritance disputes. Further examination of the type of alleged falsifications revealed that, in half the cases, testimony about the identification of a person's status or relationship to the deceased was impugned. An interesting exception to this evidence was the case of Demosthenes 29 *Aphobus* III, in which testimony about the status of an alleged free man whom one party had asserted was a slave and demanded for examination under torture was impugned. The appearance of this case suggested that cases of pseudomarturia might be categorized under some other principle; for example, rather than clustering together cases that emerged from inheritance disputes, it might be useful to constellate those cases that arose from impugning statements about the status of individuals. Suits that dealt with citizenship were an obvious quarry. Although our sources did not yield references to specific false witnessing suits arising from prosecutions for xenia, enough evidence appeared to support a view that such suits were numerous in the fourth century. This evidence came from the scenarios of false witnessing suits envisioned by the speakers in Isaeus 12 *Euphiletus* and Demosthenes 57 *Eubulides*; from the speaker's remark in Demosthenes 24 *Timocrates* 131 about the men convicted for xenia awaiting the outcome of false witnessing trials while in prison; from Theophrastus' instancing of the rule by which successful false witnessing suits allowed retrial in cases about citizenship, false witnessing, and estates; and from the supplementary evidence of New Comedy. If, then, we are right in thinking that there were numerous trials for false witnessing arising from citizenship disputes in the fourth century, then we can note their connection with those false witnessing cases arising from inheritance disputes

over status or kin identification: that litigants are able to impugn testimony on these related issues so frequently points clearly to the functional incapacity of the Attic bureaucracy to identify its polis inhabitants. On the basis of the evidence collected here, we may hypothesize that the dike pseudomarturion developed in such a way as to remedy that incapacity and that the courts themselves became a stage for identifying the status and kin identities of polis inhabitants. The courts became, in a sense, a live archival recording session that could create such identities through trials and that could have such identities erased through retrials. Witnesses to status and kin identity, then, played an extraordinary role on that Attic stage.¹

Notes

I thank Alan L. Boegehold, C. Patterson, W. F. Wyatt, and, esp., E. Stehle, for reading and offering suggestions on earlier versions of this essay.

1. [Aristotle] *AP* 26.4: καὶ τρίτῳ μετὰ τοῦτον ἐπὶ Ἀντιδότου διὰ τὸ πλῆθος τῶν πολιτῶν Περικλέους εἰπόντος ἔγνωσαν μὴ μετέχειν τῆς πόλεως ὃς ἀν μὴ ἐξ ἀμφοῖν ἀστοῖν ἦι γεγονώς.

2. Plutarch *Pericles* 37.2–5: νόμον ἔγραψε [Περικλῆς] μόνους Ἀθηναίους εἶναι τοὺς ἐκ δυεῖν Ἀθηναίων γεγονότας. The two reports (Plutarch's and [Aristotle's]) may represent two independent traditions, with [Aristotle] representing an annalistic source. See Patterson 1981, 2.

3. The law of 451/0 was still in force in 414 (Ar. *An.* 1646–70). The basis for the argument in favor of annulment comes from D. L. 2.26 (which depends on [Aristotle]), where it is reported that “the Athenians because of the shortage of men passed a vote (*ψηφίσασθαι*), with a view to increasing the population, that a man might marry one *aste* and have children from another (*γαμεῖν μὲν ἀστὴν μίαν, παιδοποιεῖσθαι δὲ καὶ ἐξ ἑτέρας*). Although the decree is not dated, Müller 1899, 786–811 suggested that it belongs soon after the Sicilian disaster. He is followed by Wolff 1944, 85–86 and by Jacoby (*FGrHist* 3b, Suppl. 2, 381 n. 35), who thinks it “more likely” than an annulment in 429. For a different view, that there was neither annulment nor lapse, and that the legislation of 403/2 was part of the codification of Athenian law that began in 411, see Walters 1983, 325–27.

4. Nikomenes' proposal is reported by Eumeles *FGrHist* 77 F 2 (= scholiast to Aeschin. 1 *Timarchus* 39): Εὔμηλος ὁ Περιπατητικὸς ἐν τῷ τρίτῳ Περὶ τῆς ἀρχαίας κωμωδίας φησὶ Νικομένη τινὰ ψήφισμα θέσθαι μηδένα τῶν μετ' Εὐκλείδην ἄρχοντα μετέχειν τῆς πόλεως, ἀν μὴ ἀμφω τοὺς γονέας ἀστοὺς ἐπιδείξηται, τοὺς δὲ πρὸ Εὐκλείδου ἀνεξετάστως ἀφεῖσθαι.

5. Athenaeus 13.577C mentions the law (*νόμος*) of Aristophon, citing it from book 3 of Karystios' *Hypomnemata* (= Karystios fr. 11 Mueller *FHG* 4.358): ὃς ἀν μὴ ἐξ ἀστῆς γένηται νόθον εἶναι. Some scholars appear to assume that Nikomenes' *psephisma* and Aristophon's *nomos* are the same (e.g., MacDowell 1978, 66); others distinguish the two (e.g., Sealey 1987, 23 and n.

52; Walters 1983, 322; Jacoby *FGrHist* 3b, Suppl. 1, 161 and Suppl. 2, 144 nn. 27–28). Harrison 1968, 26 n. 1 suggests that “possibly Aristophon’s law made the rule retrospective and Nikomenes’ decree simply reversed this particular clause.”

6. I am deliberately sidestepping the controversial issue whether Perikles’ law envisioned that only children born of legitimate marriages (as opposed to less formal unions) were to be citizens. A recent discussion of that question, with a full survey of earlier scholarly views, is Patterson 1990, 40–73.

7. Sealey 1984, 126 suggests that the laws cited in [Dem.] 59. 16 and 52 would have been passed after Isaeus 6, which was delivered in 364 (6, 14). In the latter speech, “no penalties were invoked against Euktemon, although he treated his union with Alke as marital cohabitation when he introduced her son to his phratry.” Sealey further suggests that “the revision of the list of citizens in 346/45 may provide the context in which the law was passed.” But Sealey rightly remains tentative: “Alternatively, perhaps the law was already in existence but no one came forward to prosecute Euktemon.”

8. For the date of the oration (ca. 340 B.C.), see Schaefer 1858, 179–84. On the authenticity of the laws cited at [Dem.] 59. 16 and 52, see Lipsius 1905–15, 419 n. 163.

9. The Greek text of the law appears in Patterson’s essay in this volume, n. 16. Any translation of the law calls for an interpretation of its meaning; particularly troublesome are the meanings of the verb συνοικήναι and the phrase τέχνηι ἡ μηχανῆ ήτινούν. For a discussion of different scholarly opinions of this Skylla and Kharybdis, see Harrison 1968, 26–28. I have translated the law according to my interpretation, which is similar to Walters 1983, 321 and n. 21, that “what the law penalizes is the fraudulent pretense of Athenian marriage.” All translations in this essay are my own, unless otherwise indicated.

10. Harrison 1968, 26.

11. [Aristotle] *AP* 42.1–2. We do not know when the appeal was instituted; *AP* 42 reports contemporary conditions, ca. 333–25. It is possible that several lost speeches for which we have only the titles arose out of appeals to a diasterion from a deme decision (Is. [Thalheim frag. 6] Πρὸς Βοιωτὸν ἐκ δημοτῶν ἔφεσις and Din. Κατὰ Κηρύκων [λόγος περὶ τινος ἀποψηφισθέντος] and Κατὰ Μοσχίονος ἀπογραφαμένου αὐτὸν Νικοδίκου).

12. Harpocration s.v. διαψήφισις cites Androton (*FGrHist* 324 F 52) and Philochoros (*FGrHist* 328 F 52) for the fact that the scrutinies took place in the archonship of Arkhias (346/5); also schol. Aeschin. 1 *Timarchus* 77 and *argum.* Dem. 57 *Eubulides*; contemporary allusions in Aeschines 1. 77, 86, 114–15; 2 *Embassy* 182; allusions to universal scrutinies as a recent event: Dem. 57. 2, 15, 49, 58, (in chap. 7, the scrutinies are said to have arisen from a *psephisma*). For discussion, see Jacoby *FGrHist* 3b, Suppl. 1, 157–58, 161–62, and the debate between Diller 1932 and 1935 and Gomme 1934 concerning whether there was a standing law that enabled the Assembly to decree a general scrutiny. We do not know whether other general scrutinies occurred in the fourth century. Jacoby’s open-minded observation (158) is worth remembering: “Tradition in regard to an examination of the whole citizens’ list (i.e., of the registers of all

demes) is poor, or rather (with the exception of the year 346/5 B.C.) it is non-existent."

Concerning Isaeus 12 *Euphiletus*: while some scholars (e.g., Diller 1932) think that Dionysius of Halikarnassos (*Isaeus* 17) has mistakenly attributed the speech to a trial that resulted from a general scrutiny, there is no certain way to determine the circumstances that led to the court action (whatever it was) for which the speech was written; however, the issue is clearly citizenship. For detailed discussion, see Diller 1932 and Wyse 1904, 714–17.

13. Dem. 57 *Eubulides* 26. 60–61. We do not know whether such abuses of the system happened frequently.

14. The law is cited at [Dem.] 59 *Neaera* 52: "If any man give away an alien woman to an Athenian man as if she were his kinswoman, let him be disfranchised and his property be given to the state, and a third part be given to him who secured conviction." The Greek text of the law is given in Patterson's essay in this volume, n. 20.

15. Charges of alien citizenship or illegitimacy were frequently made against politicians in comedy and public speeches; see Connor 1971, 168–70, who views such charges as challenges to political leadership. For personal animosity as a motive in bringing a charge of alien citizenship, see the opening of [Dem.] 59 *Neaera* and Patterson's essay in this volume. The graphe xenias is considered in more detail later in my essay.

16. On aphairesis and subsequent court action, see: Harrison 1968, 178–80; Lipsius 1905–15, 636–43; Thalheim 1958, 1548. There appears to be no difference in meaning whether the term δίκη ἀφαιρέσεως or δίκη ἐξαιρέσεως is used. Harpocration discusses the suit under ἐξαιρέσεως δίκη and refers to a lost speech by Isaeus ('Ισαῖος ἐν τῇ ὑπὲρ Εὐμάθους εἰς ἐλευθερίαν ἀφαιρέσει). There are five references to aphairesis in the orators (including one intended case): Lys. 23 *Pancleon* 9–11; Aeschin. 1 *Timarchus* 62–63; [Dem.] 58 *Theocrines* 19; Isaeus frs. 15–17 (Thalheim) *Eumathes*; and [Dem.] 59 *Neaera* 40. Two further references in Isocrates (17 *Trapeziticus* 13 and 49 and 12 *Panathenaikos* 97) are problematic and may represent abuses of the procedure; see Thalheim 1958, 1548.

17. Isaeus 6 *Philoctemon* 47: ἐκεῖ μὲν γὰρ ἔστι νόθωι μηδὲ νόθηι (μὴ) εἶναι ἀγχιστείαν μήθ' ιερῶν μήθ' ὁσίων ἀπ' Εὐκλείδου ἄρχοντος.

18. Although these events are much discussed and frequently cited, many of them are problematic because of vague or scanty ancient testimony and the suspiciousness of some of the later testimony. Among the authors I cite below, I single out Ledl, Deubner, Wyse, Rudhardt, Labarbe, Gould, Cole, and Hedrick as scholars who treat the evidence judiciously. Much of it is too exiguous to allow for safe conclusions, and readers should be wary of descriptions of these events (esp. of phratriy celebrations) in secondary literature.

19. Davies 1977–78, 105–21.

20. Rudhardt 1962, 39–61, esp. 58–60.

21. Humphreys 1985, 313–69.

22. For the ancient and late lexicographical sources that allude to the *amphidromia*, see Stengel 1958, 1901–2. For the confusion of ancient and lex-

icographical sources over the celebrations on the fifth, seventh, and tenth day after birth, see Deubner 1952, 374–77. For recent interpretations, see Garland 1990, 93–94 and Golden 1990, 23–24.

23. For the ancient and lexicographical sources, see Deubner 1952, 374–77.

24. Evidence from the tenth-day ceremony had been given for a claimant in an inheritance dispute (*Isaeus 3 Pyrrhus 6*, 30, 33–34) and for one party in two arbitrations (*Dem. 39 Boeotus 22* and [*Dem.*] 40 *Boeotus 28*). The first arbitration probably involved a dispute about the rightful use of a name and so involved the issue of paternity, and the second arbitration concerned the recovery of a mother's dowry.

25. The *Xoai* appears to be another celebration for children, which Deubner 1932, 115 calls “eine Art *confirmatio*.” Participation in this festival is not attested in reports of witness depositions.

26. And. 1 *Mysteries 127* reports that Kallias, “when the boy was already a grown child, introduced him to the Kerykes, saying he was his own son.” When one member objected, the Kerykes voted according to their law, “that a father who has sworn that he is introducing his own son can introduce him. Kallias took hold of the altar and swore that the boy was his legitimate (γνήσιον) son born from Khrysilla.” That Andocides reports that “the boy was already a grown child” (*τὸν παῖδα ἥδη μέγαν ὄντα*) is probably meant to cast suspicion on the introduction (so MacDowell 1962); probably it was more usual (and therefore freer from suspicion) to introduce an infant (cf. Lys. 30.2, which, however, concerns an introduction to a phratry). It is possible that in the introduction to the gennetai at And. 1.127, we are to see the gennetai acting for the phratry, whose ceremony at the Apatouria is mentioned in the preceding chapter; Andrewes 1961, 6 offers this as a tentative suggestion.

27. For a collection of the evidence and interpretation of these three sacrifices, see Deubner 1932, 232–34; for the specific celebrations, see nn. 28–32 below.

28. Attested only at *IG 2² 1237.5*, 60 and in later lexicographical sources: e.g., Harpocration s.v. *meion*; *Etymologicum Magnum* s.v. *κούρεον*. Hedrick 1984, 169–73 collects citations of scholiasts and lexicographers. Hedrick 1990, 26 n. 24 points out that “it is nowhere explicitly stated that the *meion* was offered for children in their first year.” For interpretation and survey of scholarly views, see Labarbe 1953, 361–62.

29. Hedrick 1984, 169–74 collects citations of scholiasts and lexicographers on the *koureion*.

30. On the *gamelia*, see esp. Hruza 1892, 133–45; Wyse 1904, 363–64; Ledl 1907, 217–18; both Wyse and Ledl offer salutary criticisms of Hruza. On the related question concerning whether women were introduced into the phratry, see n. 50 below.

31. On the problematic nature of the two introductions, see Rudhardt 1962, 57 n. 81. On the age of a son at the sacrifice of the *koureion*, see Deubner 1932, 234; on age and for interpretation in general, see Labarbe 1953, 358–94.

32. The phratry enrollment described at *Isaeus 6 Philoctemon 21–22* takes

place when the koureion is offered; in *IG 2² 1237*, 26–29, the candidate undergoes scrutiny (*diadikasia*) a year after the koureion is celebrated—but during the same celebration (i.e., the third day of the Apatouria, Koureotis). Elsewhere the orators mention sacrifices at the time of phratry introduction without specifying the name of the sacrifice: And. 1 *Mysteries* 126; [Dem.] 40 *Boeotus* II 11–15, 81–83; [Dem.] 43 *Macartatus* 11–14; Isaeus 7 *Apollodorus* 13–17; and Isaeus 8 *Ciron* 18–20.

33. ὅ τε πατήρ ήμῶν, ἐπειδὴ ἐγενόμεθα, εἰς τοὺς φοάτορας ήμᾶς εἰσῆγαγεν, δύμόσας κατὰ τοὺς νόμους τοὺς κειμένους ἢ μὴν ἔξ αστῆς καὶ ἐγγυητῆς γυναικὸς εἰσάγειν. For other instances of infant introduction, but to both phrateres and gennetai, see n. 36 below.

34. Dem. 57 *Eubulides* 54. Apparently, not all phratries had the same strict requirement concerning the limitation of admission to male children born of a woman who had been pledged by *engue* to her husband. The strongest pieces of evidence that phratries did not always contain the “strict requirement” are Isaeus 7 *Apollodorus* 16, and *IG 2² 109–11*. See Sealey 1984, 121–22.

35. [Dem.] 59 *Neaera* 59–61; and Isaeus 7 *Apollodorus* 15–17. In the latter passage, Thrasyllos claims he was adopted by Apollodoros after the death of the latter’s son. “At the time of the Thargelia,” he says, “he brought me to the altars and to the gennetai and the phrateres. They have a law, whenever anyone introduces someone—whether his own natural son or an adopted one—that [the introducer] must swear an oath upon a victim that he is introducing [an entrant] born from an aste and born in the right way; . . . even after he has done this, the others still must vote, and if the vote is favorable, then—and not before—they inscribe his name on the official register.” For an elucidation of the relations between phrateres and gennetai in this passage, see Andrewes 1961, 5.

36. It is often difficult to determine whether the “introduction” refers to that of an infant or of an older boy. Here I add an indication of the son’s age, if the text has provided one; the abbreviation “ad.” is appended if the child is being adopted: Isaeus 2 *Meneclēs* 14 (young man, see chap. 18; ad.); Isaeus 3 *Pyrrhus* 73–76 (witnesses depose that an epikleros was not introduced, see n. 50 below); Isaeus 6 *Philoctemon* 22 (a boy: ὁ πρεσβύτερος τοῖν παίδοιν, 21); Isaeus 10 *Aristarchus* 8 (ad.); Isaeus 12 *Euphiletus* 3; Dem. 39 *Boeotus* 4, 20; [Dem.] 43 *Macartatus* 12–14 (παῖς; ad.); and *POxy.* 2538 col. 2, 24–27 (at the age of three or four: restored text). Our fullest report of procedure for entry into a phratry is *IG 2² 1237*; at the preliminary inquiry (*anakrisis*), each candidate must be supported by three witnesses who are among his (father’s) thiasotai. These witnesses must give evidence, undergo questioning, and swear an oath by Zeus Phratrios (71 ff.). On the meaning of *anakrisis* in l. 72, see Hedrick 1990, 56–57, 70–71.

37. Testimony about “phratry events” by phrateres appears frequently. About the meion: see n. 28 above. Concerning introduction into phratry: Dem. 39 *Boeotus* 4–5, 20; [Dem.] 44 *Leochares* 44; Isaeus 2 *Meneclēs* 14–16; Isaeus 3 *Pyrrhus* 73–76 (phrateres testify that the alleged epikleros was never introduced to phratry); Isaeus 6 *Philoctemon* 22; Isaeus 7 *Apollodorus* 16–17; Isaeus 10 *Aristarchus* 8; Isaeus 12 *Euphiletus* 3; and *POxy.* 2538 col. 2, 24–27.

Concerning election of member as phratriarkhos: Dem. 57 *Eubulides* 23–24. Concerning gamelia: Isaeus 3 *Pyrrhus* 76 (witnesses depose that there was no gamelia); and Isaeus 8 *Ciron* 18–20.

38. According to Hedrick's 1990 interpretation of the decrees of the Demotionidai, if the Demontid phratry rejects a member during the extraordinary scrutiny, that individual may appeal to the deme Dekeleia. If so, then the deme is shown to be very interested in the qualifications of phrateres. The relationship between phratry and deme in regard to citizen identification deserves further study.

39. The translation is that of Whitehead 1986, 101–2.

40. E.g., it has been viewed as unlikely that the criteria of age tested by the *boule* and of status tested by the courts would have been tested separately—“both bodies would examine all relevant criteria” (Whitehead 1986, 102; so also Rhodes 1981, 500–502).

41. There has been some dispute whether men were registered after reaching their seventeenth or eighteenth birthday. Golden 1979, 35–38 persuasively argues the latter view, as does Rhodes 1986, 497–98.

42. Dem. 39 *Boeotus* 27 is pertinent here: Mantitheos is arguing that he, rather than his stepbrother (“Boiotos”), has the right to the name Mantitheos; the former’s case is stronger if he is the elder (or rather, if he was introduced to the phratry before “Boiotos”). Mantitheos attempts to argue that “Boiotos” was younger in this way: “I remember seeing him, before he became a relative of mine, casually, as one might see someone else, and thought him younger than I, to judge by appearance (ὅσ’ ἔξ ὄψεως), much younger; but I will not insist upon this, for it would be silly to do so.” Humphreys 1989, 182–85 has made a strong case that both “Boiotos” and Mantitheos were born ca. 378 (*contra* Rudhardt 1962, 41–43, who had argued that “Boiotos” was the elder).

43. ἐλεύθερος in the first of the two clauses εἰ ἐλεύθερός ἐστι καὶ γέγονε κατὰ τ[ο]ὺς νόμους is used in its “normal” meaning here, “free” as opposed to “slave.” While ἐλεύθερος sometimes does denote a man with citizenship, the requirement of citizenship is conveyed by the second clause (“[whether each one] was born in accordance with the laws”); so Rhodes 1981.

44. Following Rhodes 1981. The omission of a phrase “in marriage” (i.e., “born of parents in wedlock according to the laws”) has been taken by some to mean that children born out of wedlock to two Athenian parents would still be citizens. Others, however, understand the phrase κατὰ τ[ο]ὺς νόμους as referring to marriage. See Patterson 1990 for relevant bibliography.

45. Compare the requirement for three witnesses to attest a boy’s parentage for enrollment in a phratry at *IG* 2² 1237, 71 ff.

46. See n. 11 above, and, on Isaeus 12 *Euphiletus*, see n. 12 apud fin. There are indications that there were abuses in the system of deme enrollment (e.g., Dem. 57 *Eubulides* 26, 60–61, and [Dem.] 44 *Leochares* 44). See Whitehead 1986, 291–301.

47. On the decree of Demophilos, see n. 12 above and Whitehead 1986, 106–9.

48. We do not possess any of these grammateia and so must infer their

contents from other sources: (1) inscriptions: *IG* 1³ 138.6 dated by D. Lewis *ante 434*, which records that demarkhoi are to exact payment from hippeis and [hoplitai] “from [those written up] ἐς τὸ λεχσιαρχικὸν γρ(α)μματ[εῖον . . .]”; *SEG* 2.7, 20, a deme decree of the Halimousioi granting honors to a Khari-sandros orders that the decree be written up in the koina grammateia; (2) references in the orators, usually in the context of the enrollment of a demesman (*Dem.* 57.26; 44.35 and 37; *Isaeus* 7.1 and 27; and *Lycurgus* 76); and (3) more particular references in the orators: (a) *Dem.* 57.60: Euxitheos maintains that his opponent’s father, when he was demarkhos of the Halimousioi, claimed to have lost the koinon grammateion; a voting (διαψηφίσασθαι) on deme members followed; and (b) the deme scrutinies that attended the wholesale revision of deme lists in accordance with the decree of Demophilos in 346/5. For the evidence for the revision reported in the orators and later writers, see n. 12 above.

For a summary presentation of the knotty problems concerning when such grammateia were first created, the meaning of lexiarkhikon, and whether the thetes were included, see Whitehead 1986, 35 n. 130, and, more generally, Rhodes 1981, 497. Osborne 1985, 72–73, pointing to *SEG* 2.7, argues that the grammateion was the demarkhos’ “minute book”; he claims it was not a public document, and so “there was no public list of demesmen and no public list of citizens.” Such inferences are not justifiable.

49. *Dem.* 57.26; 44.35 and 37; *Isaeus* 7.1 and 27; and *Lycurgus* 76.

50. During the scrutiny of a man for public office, the name of his father’s deme is asked for, but his mother’s is not. As Sealey 1987, 19 points out, “she did not belong to a deme . . . a woman’s relation to the deme was the indirect connection through her husband.” If we define citizen status in Athens as “deme membership,” then women were not citizens. But the process of identification for both men and women shows that the criteria of “being Athenian” were broadly conceived and differed according to gender. To call the one a citizen, and the other not, is correct from a limited constitutional perspective, but otherwise misleading. On citizen terminology, see n. 51 below.

Concerning the question whether women were introduced into the phratriy, see the judicious presentation of ancient evidence by Wyse 1904, 363–64 with reference to earlier scholarship, and the detailed argument by Ledl 1907, 173–227, that women were not introduced except in a nontechnical way (223). Cole 1984, 235–38 reviews the evidence once again and offers sound criticism against more recent attempts to connect women with phratries. With one exception, only late lexicographers or commentators mention the introduction of women; the exception appears in a tricky passage of *Isaeus* (3 *Pyrrhus* 73), where the speaker argues that because a particular epikleros was not introduced by her father into phratriy, she was therefore not legitimate. The best explanation is found in Sealey 1987, 18.

51. I am not here offering a definition of *aste*, but an examination of the means that could be used to prove an Athenian woman’s descent and identity; nevertheless, the various criteria of identification—once recognized as such—do become part of the definition. Important studies of citizenship terminology

have been made by Patterson 1981, 151–74, and 1987, 49–67. On the important role that participation in ritual would play in an Athenian woman's life, see Cole 1984, 238–44, who focuses on the rite of *arkteia* at Brauron. Cole rightly sees such rituals as parallels to phratriy rituals performed for boys and young men: "At Athens a girl may not have been publicly recognized by her father's phratriy, but there were rituals associated with the maturation process of girls and young women" (238). However, a woman's participation in rituals is not without political significance for her identity as an Athenian woman and lawfully married wife; e.g., the speaker of Isaeus 8 *Ciron* 20 adduces as evidence of his mother's status the fact that she presided at the Thesmophoria. It is possible that participation even in the rituals for girls may also have had a similar political significance, i.e., marking the girls as "growing up Athenian."

52. Engue of mother required: Dem. 57 *Eubulides* 54; Isaeus 8 *Ciron* 19. Importance of witnesses at this transaction: Dem. 30 *Onetor* I 21 (Demosthenes is attempting to refute Aphobos' statement that Onetor had given Aphobos a talent as dowry for his sister): "For no one who concludes such a transaction—not only with such a man as this, but with anyone—would do so without witnesses. But this is why we celebrate marriages and summon our closest kin and friends, because it is not a trivial event, but because we are entrusting [to others] the lives of our sisters and daughters, in whose behalf we especially look for security."

53. *IG* 2² 1237, 114–26: Μενέξενος εἶπεν· δεδόχθαι τοῖς φράτερσι περὶ/ τῆς εἰσαγωγῆς τῶμ παιδῶν τὰ μὲν ἄλλα κα/τὰ τὰ πρότερα ψηφίσματα, ὅπως δ' ἂν εἰδῶσι οἱ/φράτερες τοὺς μέλλοντας εἰσάγεσθαι, ἀπο/γράφεσθαι τῷ πρώτῳ ἔτει ἡ ᾧ ἂν τὸ κούρεον ἄγει τὸ ὄνομα πατρόθεγ καὶ τὸ δήμου καὶ τῆς μητρὸς πατρόθεν καὶ τοῦ [δ]ήμου πρὸς τὸν/φρατρίαρχον, τὸν δὲ φρα- τρία[ρχον ἀπογραψ]/αμένων ἀναγράψαντα ἐκ[τιθέναι ὅπου ἂν Δεκ]/ελέες προσφοιτῶσι, ἐκτιθέναι δὲ καὶ τὸν ἰερέα]/διναγράψαντα ἐν σανιδίῳ λευ- κῶι ἐν τῷ ἰερῷ/ῷ τῇς Λητοῦς. τὸ δὲ φρ[ατερικὸν ψήφισμα ἀναγο]/[άψαι εἰς τὴν σ]τήλην [τὴν λιθίνην τὸν ἰερεα ——].

54. See n. 59 below.

55. For the occurrence of the formula in New Comedy, see Gomme and Sandbach 1973, 531.

56. Divorce required for infidelity after a successful prosecution of a moi-khos: [Dem.] 59 *Neaera* 87; marriage with a xene: [Dem.] 59 *Neaera* 16.

57. That Stephanos was able to marry off his alleged daughter Phano, first to Phrastor and then to Theogenes, is probably not unrelated to the amount of dowry he was able to offer ([Dem.] 59 *Neaera* 50, 71–72). Davies 1977–78, 113: "But for the political dimension Stephanos would very probably have got away with it, for he chose his sons-in-law with care. The position of each made it foolish for him to enquire too closely into the status and legitimacy of the woman being offered to him as a wife—Phrastor because he was a poor peasant being offered via the dowry a bribe to keep quiet, Theogenes because, though a poor man inexperienced with public affairs, he had suddenly become Basileus by the luck of the draw and needed a wife to perform the Basilinna's rituals on behalf of the State."

58. Examples of reasons for divorce in the orators: Isaeus 2 *Meneclēs* 8; and Dem. 57 *Eubulides* 40–41. Men in New Comedy who are considering divorce or withdrawal from an engagement usually express concern for the reputation of the woman involved: Menander *Epitreponēs* and *Fabula Incerta*; and Terence *Phormio* and *Hecyra* (based on originals by Apollodoros of Karystos).

59. It of course seems natural and logical that both parents' names should appear on a list of deme or phratry members if that list is to serve the function of identifying members, esp. because it is a requirement for admission that the boy be a son of two Athenians. (This is the same natural and logical rationale that leads Jacoby, *FGrHist* 325 F 17 Suppl. 2, 162 n. 4 to accept Didymus' report that women were introduced to the phratry at the gamelia.) But we simply have no authoritative evidence on this point. One unweighty report might support our natural and logical assumption: at Dem. 57.51, the speaker argues, as an absurdity, οὐ γὰρ ἀν ξένην καὶ ξένον τὸν ἐμαυτοῦ γονέας ἐπιγραψάμενος μετέχειν ἡξίουν τῆς πόλεως. But the inclusion of both parents here may simply be for rhetorical effect. Lists of names in deme documents cite the individual demesmen as X son of Y; but these lists are always designated for specific purposes; e.g., to acknowledge a payment (*SEG* 24, 197), or a number of honorands (*IG* 2² 1197). Ought we to assume that the deme register followed a different procedure? It is questionable whether we possess any full phratry lists; Flower 1985, 232–35, arguing against Premerstein 1910, 103–17, maintains that *IG* 2² 2344 is a full phratry list rather than a list of members of a *thiasos* within the phratry. In that list, members are cited as X son of Y; but perhaps not all phratries would follow the same procedure. The most interesting evidence appears in the “motion of Menexenos” that is affixed to the decrees of the Demotionidai (*IG* 2² 1237; see n. 53 above); here we definitely have evidence of lists that include the name of the mother, as well as the name of her father and his deme. But it is unclear whether these lists were preserved after the introduction; the nature of their explicit purpose “in order that the *phrateres* may know those who are going to be introduced” suggests they served a temporary function—like the publication of names required by the Catholic church before marriage. See Ledl 1907, 215–23 for a sound discussion of lists. He rightly sees in the motion of Menexenos strong circumstantial proof that there were no local marriage registries, and he cites (215) the daydreams of earlier scholars who have thought that women were registered on phratry lists.

60. See the discussion of Dem. 57 *Eubulides* later in this essay.

61. See esp. [Dem.] 43 *Macartatus* 35–37, where witness depositions are presented, attesting to the existence of Phylomakhe I as the sister of Polemon. The witnesses present hearsay evidence (to the effect that “so-and-so says that he heard from X [usually an older relation] that Polemon had a sister, Philomakhe, born of the same father and mother”). Documents would have been useful in such cases as these, where the individual whose status is questioned has been dead for some time. That documents were not so used does not mean that such documents did not exist; it means that they were not used for purposes of identification.

62. See Pringsheim 1961, 401–20; Harvey 1966; and Thomas 1989.

63. This important function of witnessing has been demonstrated by Humphreys 1985, 313–65, and esp. 325.

64. See n. 12 above. This speech has been the subject of many discussions; I single out the following (in addition to references cited in n. 12 above): Haussoullier 1884, 38–52; Ledl 1907, 175–90; Osborne 1985, 146–51; Humphreys 1986, 59–62; and Whitehead 1986, 296–301.

65. Dem. 57.66–70.

66. The order of testimony in the body of the speech is: male relatives (21) and husbands of female relatives (22) testify that Thoukritos was συγγενής to themselves (22), and ἀμφοτέρωθεν Ἀθηναῖος (23); then the phrateres and gennetai, and, after them, the demesmen along with kinsmen in regard to the phrateres to prove that Euxitheos had been elected phratriarch (23); later others testified that Thoukritos was allotted office and passed scrutiny (25); lastly, the members of the γένος sharing common burial ground (28). Osborne 1985, 148 speculates that Euxitheos “may have produced no demesmen who were not also kin.”

67. The relevance of the detail (18)—that at Leukas he fell in with Kleandros, the actor—is not transparent; possibly Kleandros was so famous that all in Athens knew of his stay and hence mention of his name confers verisimilitude to the story.

68. This slightly alters the order in 38–39: first, mother’s nephew; then, grandson of the sister of the speaker’s grandmother, whom the speaker designates a “cousin” in 68 (ἀνεψιαδοῦς = son of a first cousin); then, the mother’s nephew.

69. Because earlier the speaker said that his mother had one son by Protomakhos (43), the plural number in 68 might mean that Protomakhos’ son(s) by his second marriage are also bearing witness.

70. The depositions of phrateres and demotai (40) appeared before the depositions of Protomakhos’ family (43); following the latter were the depositions of those present at his mother’s betrothal to the speaker’s father and phrateres testifying to the marriage feast (43); then Eunikos of Kholargos and his son (43).

71. Humphreys 1986, 62.

72. See n. 50 above.

73. A similar pattern of proof is offered in Isaeus 8 *Ciron*, in which the speaker must refute his opponent’s claims that Kiron had no daughter (whom the speaker claims was his mother, cc. 1–2) and that the speaker’s mother did not even have citizen status (43). The speaker presents testimony concerning those who betrothed her and those present at the betrothal (17), and testimony that his father gave a marriage feast to three friends and relatives, that the father gave a marriage banquet (gamelia) to his phrateres, that the wives of the demesmen chose his mother to preside at the Thesmophoria, that his father had introduced his children to his phrateres, having declared on oath in accordance with the established laws that he was introducing children ἐξ ἀστῆς καὶ ἐγγυητῆς γυναικός (18–19, with summary at 29). These are all the right cre-

dentials for his "proof"; unfortunately, it looks as if he has no relatives as first-hand witnesses and must rely on hearsay (14, 29).

74. Todd 1990, 31–32, with a chart on 39; the quote appears on 31.

75. Todd 1990, 32 and 39 for the figure from speeches concerned with family property; the figure from [Dem.] 59 is mine. I have not broken down Todd's category of "family property" disputes into cases that required kin and status identification and cases that did not.

76. *Dike kakotekhnion*: mentioned at [Dem.] 46.10; 47.1; 49.56. See Leisi 1908, 139–41; Lipsius 1905–15, 783; MacDowell 1978, 245.

77. I have used the somewhat cumbrous phrase "false witnessing" in translating *dike pseudomarturion* rather than the misleading translation "perjury"; see Todd 1990, 36. For the two situations in which the dike could be applied: [Dem.] 47.1: "In my opinion the laws are good, oh dikasts, which permit to suits [i.e., to those already undertaken] another trial for pseudomarturia, in order that, if a person deceived the dikasts by having provided witnesses who testify falsely or by having invoked challenges that never took place or depositions contrary to the law, there may be no gain for him, but the wronged litigant, if he had put in a protest to the testimony and come to you and proven that the witnesses have testified falsely in the case, may exact a penalty from them and hold as liable to an action for kakotekhnia (subornation of testimony) the one who brought them forward." For the circumstances allowing the admission of hearsay: [Dem.] 46.6–9; 57.4; Isaeus 3.18–27; and Aeschin. 2.19. See further, on the dike, Leisi 1908, 121. For the possibility that there had formerly been a graphe in use for such charges, see MacDowell 1978, 244.

78. E.g., Leisi 1908, 141; Behrend 1975, 148–50.

79. Szegedy-Maszak 1987, F5 (= schol. Plato *Laws* 937d).

80. Behrend 1975, 131–56 is the best guide on these issues. As to the questions, what kind or how much evidence had to be overturned or how many witnesses had to be convicted of giving false testimony before a retrial of the original case became permissible, see n. 97 below.

81. MacDowell 1978, 212. For diamarturia, see Harrison 1971, 124–31; MacDowell 1978, 212–13, 217–18. In the fourth century, a diamarturia usually proceeds out of a *diadikasia* for an inheritance. It would be interesting to know more about the cases referred to by Harpocration (s.v. *diamarturia*) in lost speeches of Isaeus and Hyperides, a *dike apostasiou* and a *graphe aprostasiou*. For notice of a diamarturia from an *anakrisis*, see Boegehold 1982, 1–6.

82. For dikai pseudomarturion arising out of diamarturiai in inheritance cases, see Berneker 1972, 1372–73; Harrison 1971, 124–31.

83. This point is generally agreed upon (Harrison 1971, 129). However, there is much disagreement about the effect of a plaintiff's success; see Harrison 1971, 129–30, with summary of earlier views.

84. For discussion of the procedure and the function of episkepsis in it, see: Leisi 1908, 124–30; Lipsius 1905–15, 778–83; and Calhoun 1916, 365–87, with criticisms of earlier views.

85. According to AP 68.4, the herald first asks, as the dikasts are preparing to cast their votes, whether either adversary objects to the witness testimonies;

no objections can be made once the voting has begun. [Aristotle] immediately continues with the next stage in the trial's procedure, viz., the herald's directions for the casting of votes. Lipsius 1905–15, 781 understands this to mean that the original trial is not disrupted.

86. We do not have much evidence on this point, but [Dem.] 47 *Evergus* 49 clearly indicates that the speaker, who had lost the original trial for assault, was liable to pay the penalty before the false witnessing trial took place. Instead of paying the penalty, however, the speaker claims (49–51) to have made a private agreement with his successful adversary about its postponement; he also says he was "trusting in his claim of false witnessing." His opponent could presumably have pursued him with a *dike exoules*; instead, he is alleged to have retracted the private agreement by taking the law in his own hands and carrying off the speaker's household possessions.

87. Harrison 1971, 196 discusses the absence of *anadikia* for homicide cases without considering whether false witnessing charges could be brought. Possibly he thought that because no retrial was permitted, a false witnessing suit would be of no consequence.

88. E.g., Lipsius 1905–15, 781; MacDowell 1978, 244 assumes the death penalty would be postponed, but offers no grounds for the assumption. Dem. 24 *Timocrates* 131, which is discussed briefly later in this essay, provides the evidence for postponement of enslavement following conviction in a *xenia* trial.

89. It is not absolutely certain that [Dem.] 44 *Leochares* is a false witnessing suit (e.g., the speaker says in chap. 7: ἔστιν γὰρ ὁ μὲν ἀγών οὗτοι κλήρου διαδικασία); but the argument presented in chaps. 34–44 (and especially in chap. 42) makes it seem very likely that it was. See Harrison 1971, 129 n. 2.

90. That the original case was a *dike blabes* is argued by Harrison 1971, 116 n. 2 against Lipsius 1905–15, 725–26, who argues for a *dike aphormes*.

91. For the centrality of the will in the original dispute from which the false witnessing suit stems in Dem. 29, see esp. chaps. 6 and 44; the centrality of an inheritance dispute is evident throughout [Dem.] 45 and 46.

92. The plaintiff in this trial had not denied the existence of the will by which his adversary's sunegoros had been adopted *inter vivos* twenty-three years ago, but rather its validity (he claimed that it was made under the undue influence of a woman). In order to argue against this, the sunegoros tries to establish his status as the legitimate (adopted) son and adduces the testimony of phrateres, demotai, and orgeonai (16). The issue in the various false witnessing trials alluded to in Is. 5 is quite different; it is not a question of the existence or validity of one will, but of deciding the authenticity of competing wills.

93. See Humphreys 1986, 63–67.

94. Lys. 4 *Trauma* 14; Isocr. 17 *Trapez.* 14–17; and [Dem.] 49 *Timotheus* 55–56, discussed above.

95. It is not uncommon for a speaker (A) to claim that his adversary (B) is giving false testimony or for a speaker (A) to offer arguments in anticipation of his opponent's (B's) claim that his (A's) witnesses are testifying falsely (see, e.g., Dem. 41 *Spudias* 16). Two such anticipatory arguments are made in cases

involving disputed disfranchisements. In Dem. 57 *Eubulides* 53, the speaker argues that his relatives who are giving testimony about his identity would not have chosen to undergo the risk of perjuring themselves. Similarly, in Isaeus 12 *Euphiletus* 4–8, the speaker provides an extended argument from probability that neither he nor other kin are giving false testimony about Euphiletos' identity.

96. (1) *POxy.* 2538: This fragment may have been (a) part of the defense in a trial for xenia, or (b) part of an inheritance dispute, or (c) part of an appeal to the thesmothetai for re-enrollment on a deme list. (The first two suggestions were made by the editors [p. 38] of the fragment; the third suggestion appears to be Thompson's [1968, 149–50].) (2) *POxy.* 2537, which seems to be a list of hypotheses of Lysias' speeches, records (verso, 33–41) that there were three speeches for xenia. (3) Harpocration s.v. *notheia*, mentions a speech against Kalliphanes for xenia; he questions Lysias' authorship (= Lys. frag. 71 Thalheim). The editors of *POxy.* 2538 suggest that “from the title and the citation—νοθεῖα. τὰ τοῖς νόθοις ἐκ τῶν πατρῷων διδόμενα οὗτω καλεῖται. ἦν δὲ μεχρὶ χιλίων δραχμῶν.—[the speech against Kalliphanes] may be supposed to have concerned a man accused of ξενίας because his mother was not a citizen” [39]. The editors also suggest that this speech may be the one summarized in *POxy.* 2537, 39–41. (4) Hyp. (Jensen) frag. Or. 15 (title only): *kata Demeou xenias*. (5) References to other trials for xenia preserved in the orators: (a) Lys. 13 *Agoratus* 60: Certain individuals plead with Aristophanes not to run the risk of a trial for xenia; the circumstances are unclear as to why he would run this risk. (b) Isaeus 3 *Pyrrhus* 37: Speaker asks if his uncle (Pyrrhos) would have married the sister of a man (Nikodemos) “who, when he was charged with xenia by a member of the phratry to which he said he belonged, by four votes obtained his citizenship rights?” (c) Dem. *Ep.* 3.29: A politician named Pythias is said to have been prosecuted for xenia and barely escaped being sold into slavery.

97. As Szegedy-Maszak 1981, 28–29 points out, the scholiast does not reduplicate the wording of Plato's measure when he discusses retrial. Plato had said: “In the case of all those whose evidence has been convicted at trial, i.e., when it has been proven that they have given false testimony and provided the victory for the prosecutor, if some of such testimony, to the extent of more than half of it, be condemned, the trial that was lost on the basis of this testimony is to be retried” (937 c5–d2). On the other hand, the scholiast has quantified the number of witnesses rather than, as Plato does, the evidence as a whole. Harrison 1971, 192–95 discusses “whether there was any rule governing the number or character of the witnesses who had to be convicted in order to allow a reopening of the original case” (193–94) and is surely right to conclude (195) that we do not have enough evidence to decide.

98. For a full treatment of the passage and earlier scholarship, see Behrend 1975, 131–56.

99. So, e.g., Leisi 1908, 133; Lipsius 1905–15, 955–57; Bonner and Smith 1938, 265; and Berneker 1972, 1271. The general argument of these scholars is that *anadikia* protected the citizen who, because of false witnesses, was threat-

ened with enslavement or loss of citizen rights or of oikos, for none of which could there be financial compensation.

100. Behrend 1975, 139–48 has collected the evidence for retrials from the orators; retrials appear in cases of inheritance and xenia, but none originates from false witnessing trials.

101. Perhaps the riskiest business in using the scholiast or his citation of Theophrastus to support either view is the problem raised but not treated by Harrison 1971, 194 with n. 3, that neither the scholiast nor Theophrastus indicates that the rule applied to Athens. Szegedy-Maszak 1981, in his collection of Theophrastus' *Nomoi*, includes twenty-three fragments positively attributed to that work and three more whose attribution is almost certain. In only one fragment are the laws of other cities explicitly discussed (F 21, on laws of sale); in two others (FF 15 and 22), the customs of other cities are explicitly mentioned. For a work that originally consisted of twenty-four books, we are rather badly off to make a judgment on whether the fragment quoted in the text above is about Athenian law or belonged to a discussion of, let us say, Mytilenean law. My only contribution to the alleviation of this risky business is to suggest that the scholiast may not have been interested in non-Attic law.

102. This explanation of the limited extent of anadikia differs from earlier ones (see Behrend 1975) that view the causative factor as the suitability and availability of restitution: while a subsequent and successful dike katatekhnion might win compensation for an innocent man who had been convicted of a charge that entailed the payment of a monetary fine, that same dike could not compensate an innocent man who had been convicted of a charge that brought the loss of his estate or freedom—hence the allowance of anadikia. But that explanation does not tell us why other charges punishable by atimia were not included; nor does it offer an explanation of retrial for false witnessing. According to my suggestion (which is adumbrated by Lämmli 1938, 137), it was a recognition of the failure of the mechanism of identification that allowed for the exceptional cases of retrial. Regardless of the specific type of procedure or case from which a false witnessing charge arose, a great many would concern the identification of individuals. While this is obviously the concern (as demonstrated above) in false witnessing trials arising from inheritance disputes and trials for xenia, it would also be the concern in subsequent false witnessing trials that might arise out of false witnessing trials where the original case was an inheritance dispute or charge of xenia.

103. [Aristotle] AP 59.3 and Harpocration s.v. *parastasis* and *doroxenia*.

104. On the overlap of this graphe with the dike pseudomarturion and other procedures, see Rhodes 1981, 662.

105. Gratwick 1982, 101–3 has made the plausible suggestion that Plautus may have contaminated his play with the scene from *Sikyonios* or with some other similar scene.

106. For a convincing account of the citizenship scenario in Terence's *Andria* and in the Menandrian original, see Steidle 1973.

107. The best explanation of the procedure envisioned in *Phormio* can be found in Brown 1980, 195 and involves no discrepancy between the Greek

original and Terence's account of the events that led to the marriage: "In this play [Terence's *Phormio*] we have (according to Phormio's fiction) an 'heiress' who is poor and whose nearest male relative has to be forced by legal action to assume responsibility for her. We know about such cases from Dem. 43.54 ἀπογραφέτω δὲ τὸν μὴ ποιοῦντα ταῦτα ὁ βουλόμενος πρὸς τὸν ἀρχοντα. Phormio has acted as ὁ βουλόμενος, and we may assume that the archon referred the matter to a court after the usual preliminary hearing (*anakrisis*)."¹ At *Phormio* 399–401, the young man who was prosecuted by Phormio is said to have made no protest to the testimony at the trial; this is probably a reference to an episkepsis; no suit for false witnessing can arise.

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