

The Function of Witnesses in Athenian Law
Michael Gagarin, CAMWS, Lincoln NE, April 5,2019

1. Depositions are likely to be authentic in Dem. 35, 43, 45, 46, 54, and 59. Also Dem. 29.31, Dem. 54.31-32 (**#6 below**), and Aes. 2.68 are quoted by the speaker but are not preserved as a separate document.

2. **Dem. 59.71**: Nausiphilus of the deme Cephale, and Aristomachus of the deme Cephale testify that they were guarantors for Epainetus of Andros when Stephanus declared that he had seized Epainetus in an act of illicit sex. Subsequently, when Epainetus left Stephanus' house and resumed control of his person he brought a *graphē* against Stephanus before the Thesmothetai, charging him with false arrest. Later, as arbitrators, they reconciled Epainetus and Stephanus. The terms of reconciliation are the ones presented by Apollodorus. (Ναυσίφιλος Κεφαλήθεν, Ἀριστόμαχος Κεφαλήθεν μαρτυροῦσιν ἐγγυηταὶ γενέσθαι Ἐπαίνετου τοῦ Ἀνδρίου, ὅτ' ἔφη Στέφανος μοιχὸν εἰληφέναι Ἐπαίνετον· καὶ ἐπειδὴ ἐξῆλθεν Ἐπαίνετος παρὰ Στεφάνου καὶ κύριος ἐγένετο αὐτοῦ, γράψασθαι γραφὴν Στέφανον πρὸς τοὺς θεσμοθέτας, ὅτι αὐτὸν ἀδίκως εἴρξε· καὶ αὐτοὶ διαλλακταὶ γινόμενοι διαλλάξαι Ἐπαίνετον καὶ Στέφανον· τὰς δὲ διαλλαγὰς εἶναι ἃς παρέχεται Ἀπολλόδωρος.)

3. **Dem. 59.123**: Hippocrates the son of Hippocrates, of the deme Probalinthus, Demosthenes son of Demosthenes, of the deme Paiania, Diophanes son of Diophanes, of the deme Alopece, Deinomenes son of Archelaus, of the deme Cydathenaeum, Deinias son of Phormos, of the deme Cydantidae, and Lysimachus son of Lysippus, of the deme Aigilia testify that they were present in the agora when Apollodorus challenged Stephanus and demanded that he hand over his slave women for interrogation concerning the charges Apollodorus has brought against Stephanus concerning Neaira. Stephanus refused to hand over the slave women. This is the challenge that Apollodorus made. (Ἴπποκράτης Ἴπποκράτους Προβαλίσιος, Δημοσθένης Δημοσθένους Παιανιεύς, Διοφάνης Διοφάνους Ἀλωπεκῆθεν, Δεινομένης Ἀρχελάου Κυδαθηναίου, Δεινίας Φορμίδου Κυδαντίδης, Λυσίμαχος Λυσίππου Αἰγίλιεὺς μαρτυροῦσι παρεῖναι ἐν ἀγορᾷ, ὅτ' Ἀπολλόδωρος προῦκαλεῖτο Στέφανον, ἀξιῶν παραδοῦναι εἰς βάσανον τὰς θεραπαίνας περὶ ὧν ἠτιάτο Ἀπολλόδωρος Στέφανον περὶ Νεαίρας· Στέφανον δ' οὐκ ἐθέλησαι παραδοῦναι τὰς θεραπαίνας· τὴν δὲ πρόκλησιν εἶναι ἣν παρέχεται Ἀπολλόδωρος.)

4. **Dem. 43.70**: They testify that upon summons from Sositheus they followed him to the deme Araphen to the fields of Hagnias after Theopompus was awarded Hagnias' estate and that Sositheus showed them the olive trees that were being rooted out from Hagnias' land. (μαρτυροῦσιν ἀκολουθήσαι Ἀραφήνῃδε παρακληθέντες ὑπὸ Σωσιθέου εἰς τοὺς Ἀγνίου ἀγρούς, ἐπειδὴ Θεόπομπος ἐπεδικάσατο τοῦ κλήρου τοῦ Ἀγνίου, καὶ ἐπιδεικνύναι αὐτοῖς Σωσίθεον τὰς ἐλάας πρεμνιζομένας ἐκ τοῦ Ἀγνίου ἀγροῦ.)

5. **Dem. 43.36**: He testifies that he a kinsman and is registered in the same phratry and deme as Hagnias and Ebulides and that he used to hear from their own father and from other kinsmen that Polemon the father of Hagnias never had a brother but a sister born of the same father and mother, Phylomache the mother of Ebulides who was the father of Phylomache, Sositheus' wife. (μαρτυρεῖ συγγενὴς εἶναι καὶ φράτηρ καὶ δημότης Ἀγνίου καὶ Εὐβουλίδη, καὶ ἀκούειν τοῦ πατρὸς τοῦ ἑαυτῶν καὶ τῶν ἄλλων συγγενῶν, ὅτι

ἀδελφὸς οὐδεὶς ἐγένετο Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, ἀδελφὴ δ' ὁμοπατρία καὶ ὁμομητρία Φυλομάχη ἢ μήτηρ ἢ Εὐβουλίδου τοῦ πατρὸς τοῦ Φυλομάχης τῆς Σωσιθέου γυναικός.)

Dem. 43.36: They testify that Oenanthe, the mother of their grandfather Stratonides, was the cousin of Polemon the father of Hagnias since their fathers were siblings, and that they used to hear from their own father that Polemon the father of Hagnias never had a brother, but he did have a sister Phylomache born of the same father and mother, the mother of Eubulides who was the father of Phylomache, Sositheus' wife. (μαρτυροῦσιν Οἰνάνθην, τὴν μητέρα τοῦ πάππου τοῦ ἑαυτῶν Στρατωνίδου, ἀνεμιὰν εἶναι ἐκ πατραδέλφων Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, καὶ ἀκούειν τοῦ πατρὸς τοῦ ἑαυτῶν, ὅτι Πολέμωνι ἀδελφὸς οὐδεὶς γένοιτο πρόποτε τῷ πατρὶ τῷ Ἀγνίου, ἀδελφὴ δὲ Φυλομάχη ὁμοπατρία καὶ ὁμομητρία, ἢ μήτηρ ἢ Εὐβουλίδου τοῦ πατρὸς τοῦ Φυλομάχης τῆς Σωσιθέου γυναικός.)

Dem. 43.37: He testifies that Archimachus was his grandfather and adopted him as his own son, and that he was a kinsman to Polemon the father of Hagnias, and that he used to hear from Archimachus and other kinsmen that Polemon the father of Hagnias never had a brother, but a sister born of the same father and mother, Phylomache, the mother of Eubulides who was the father of Phylomache, Sositheus' wife. (μαρτυρεῖ πάππον εἶναι ἑαυτοῦ Ἀρχίμαχον καὶ ποιήσασθαι ἑαυτὸν υἱόν, καὶ εἶναι αὐτὸν συγγενῆ Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, καὶ ἀκούειν Ἀρχιμάχου καὶ τῶν ἄλλων συγγενῶν, ὅτι ἀδελφὸς οὐδεὶς πρόποτ' ἐγένετο Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, ἀδελφὴ δ' ὁμοπατρία καὶ ὁμομητρία Φυλομάχη ἢ μήτηρ ἢ Εὐβουλίδου τοῦ πατρὸς τοῦ Φυλομάχης τῆς Σωσιθέου γυναικός.)

Dem. 43.46: He testifies that his mother's father, Callistratus, was the brother of Euctemon, the former King Archon, and of Philagrus, the father of Eubulides, and that they were cousins of Polemon the father of Hagnias and of Charidemus the father of Theopompus and that he used to hear from his mother that Polemon the father of Hagnias had no brother, but that he did have a sister born of the same father and same mother, Phylomache, and that Philagrus took this Phylomache as wife, and that from them was born Eubulides the father of Phylomache, who is the wife of Sositheus. (Μαρτυρεῖ τὸν πατέρα τῆς ἑαυτοῦ μητρὸς Καλλίστρατον ἀδελφὸν εἶναι Εὐκτήμονι τῷ βασιλεύσαντι καὶ Φιλάργῳ τῷ πατρὶ τῷ Εὐβουλίδου, ἀνεμιούς δ' εἶναι τούτους Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου καὶ Χαιριδήμῳ τῷ πατρὶ τῷ Θεοπόμπου, καὶ ἀκούειν τῆς μητρὸς τῆς ἑαυτοῦ, ὅτι ἀδελφὸς οὐ γένοιτο Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, ἀδελφὴ δὲ γένοιτο ὁμοπατρία καὶ ὁμομητρία Φυλομάχη, καὶ ταύτην λάβοι τὴν Φυλομάχην Φίλαργος, καὶ γένοιτο ἐξ αὐτῶν Εὐβουλίδης ὁ πατὴρ ὁ Φυλομάχης τῆς Σωσιθέου γυναικός.)

6. Dem. 54.31-32: “Diotimus son of Diotimus of the deme Icaria, Archebiades son of Demoteles of the deme Halae, Chairētius son of Chairimenes of the deme Pithus testify that while returning from dinner along with Conon, in the agora they came across Ariston and Conon's son fighting, and Conon did not hit Ariston”— as if you will immediately believe them, and not take account of the truth, first that Lysistratus, Paseas, Niceratus and Diodorus, who have explicitly testified that they saw me being struck by Conon, having my cloak ripped off, and all the other abusive acts that I suffered, are men who did not know me and were present only by chance; they would not have been willing to perjure themselves, unless they saw me suffering those insults. (“Διότιμος Διοτίμου Ἰκαριεύς, Ἀρχεβιάδης Δημοτέλους Ἀλαιεύς, Χαιρέτιμος Χαιριμένους Πιθεὺς μαρτυροῦσιν ἀπιέναι ἀπὸ δείπνου μετὰ Κόνωνος, καὶ προσελθεῖν ἐν ἀγορᾷ μαχομένοις Ἀρίστωνι καὶ τῷ υἱεὶ τῷ Κόνωνος, καὶ μὴ πατάξαι Κόνωνα Ἀρίστωνα,” ὡς ὑμᾶς εὐθέως πιστεύσοντας, τὸ δ' ἀληθὲς οὐ λογιούμενους, ὅτι πρῶτον μὲν οὐδέποτ' ἂν οὐθ'

ὁ Λυσίστρατος οὐθ' ὁ Πασέας οὐθ' ὁ Νικήρατος οὐθ' ὁ Διόδωρος, οἱ διαρρήδην μεμαρτυρήκασιν ὄραν ὑπὸ Κόνωνος τυπτόμενόν με καὶ θοιμάτιον ἐκδυόμενον καὶ τᾶλλ' ὅσ' ἔπασχον ὑβριζόμενον, ἀγνώτες ὄντες κάπὸ ταύτομάτου παραγενόμενοι τῷ πράγματι τὰ ψευδῆ μαρτυρεῖν ἠθέλησαν, εἰ μὴ ταῦθ' ἑώρων πεπονθότα).

7. Dem. 43.35: They testify that they are fellow demesmen of Philagrus the father of Eubulides and of Polemon the father of Hagnias, and that they know that Phylomache, the mother of Eubulides, was thought to be sister to Polemon the father of Hagnias, born of the same father and mother. (μαρτυροῦσι δημόται εἶναι Φιλάγρω τῷ Εὐβουλίδου πατρὶ καὶ Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, καὶ εἰδέναι Φυλομάχην τὴν μητέρα τὴν Εὐβουλίδου νομιζομένην ἀδελφὴν εἶναι Πολέμωνος τοῦ πατρὸς τοῦ Ἀγνίου ὁμοπατρίαν καὶ ὁμομητρίαν.)

Dem. 43.31: They testify that they were present before the arbitrator in the archonship of Nicophemus when Phylomache the daughter of Eubulides prevailed over all the claimants for Hagnias' estate. (μαρτυροῦσι παρεῖναι πρὸς τῷ διαιτητῇ ἐπὶ Νικοφήμου ἄρχοντος, ὅτε ἐνίκησε Φυλομάχη ἡ Εὐβουλίδου θυγάτηρ τοῦ κλήρου τοῦ Ἀγνίου τοὺς ἀμφισβητοῦντας αὐτῇ πάντα.)

Dem. 43.36: He testifies that he a kinsman and is registered in the same phratry and deme as Hagnias and Eubulides and that he used to hear from their own father and from other kinsmen that Polemon the father of Hagnias never had a brother but a sister born of the same father and mother, Phylomache the mother of Eubulides who was the father of Phylomache, Sositheus' wife. (μαρτυρεῖ συγγενὴς εἶναι καὶ φράτηρ καὶ δημότης Ἀγνία καὶ Εὐβουλίδη, καὶ ἀκούειν τοῦ πατρὸς τοῦ ἑαυτῶν καὶ τῶν ἄλλων συγγενῶν, ὅτι ἀδελφὸς οὐδεὶς ἐγένετο Πολέμωνι τῷ πατρὶ τῷ Ἀγνίου, ἀδελφὴ δ' ὁμοπατρία καὶ ὁμομητρία Φυλομάχη ἡ μήτηρ ἡ Εὐβουλίδου τοῦ πατρὸς τοῦ Φυλομάχης τῆς Σωσιθέου γυναικός.)

8. Dem. 45.60: They testify that they are friends and associates of Phormion, and that they were present before the arbitrator Teisias when there was a decision in the arbitration of Apollodorus' case against Phormion, and that they know that Stephanus stole the testimony that Apollodorus charges him with having stolen. (μαρτυροῦσι φίλοι εἶναι καὶ ἐπιτήδειοι Φορμίῳ, καὶ παρεῖναι πρὸς τῷ διαιτητῇ Τεισία, ὅτε ἦν ἀπόφασις τῆς διαίτης Ἀπολλοδώρῳ πρὸς Φορμίωνα, καὶ εἰδέναι τὴν μαρτυρίαν ὑψηρημένον Στέφανον, ἣν αἰτιᾶται αὐτὸν Ἀπολλόδωρος ὑφελέσθαι.)

9. Dem. 35.14: Archenomides son of Archedamas of Anagyrus testifies that written terms were deposited with him by Androcles of Sphettus, Nausicrates of Carystus, and Artemon and Apollodorus of Phaselis, and the agreement is in his keeping still. (Ἀρχενομίδης Ἀρχεδάμαντος Ἀναγυράσιος μαρτυρεῖ συνθήκας παρ' ἑαυτῷ καταθέσθαι Ἀνδροκλέα Σφήτιον, Ναυσικράτην Καρύστιον, Ἀρτέμωνα, Ἀπολλόδωρον Φασηλίτας, καὶ εἶναι παρ' ἑαυτῷ ἔτι κειμένην τὴν συγγραφὴν.)

Dem. 43.70: They testify that upon summons from Sositheus they followed him to the deme Araphen to the fields of Hagnias after Theopompus was awarded Hagnias' estate and that Sositheus showed them the olive trees that were being rooted out from Hagnias' land. (μαρτυροῦσιν ἀκολουθήσαι Ἀραφήνῳδε παρακληθέντες ὑπὸ Σωσιθέου εἰς τοὺς Ἀγνίου ἀγρούς, ἐπειδὴ Θεόπομπος ἐπεδικάσατο τοῦ κλήρου τοῦ Ἀγνίου, καὶ ἐπιδεικνύναι αὐτοῖς Σωσίθεον τὰς ἐλάας πρεμνιζόμενας ἐκ τοῦ Ἀγνίου ἀγροῦ.)

Dem. 43.37: He testifies that his wife's father Callistratus was a cousin of Polemon the father of Hagnias and of Charidemus the father of Theopompus since their fathers were brothers, and also that his mother was the daughter of a cousin to Polemon and that she

often used to tell them that Phylomache the mother of Eubulides was sister of Polemon, the father of Hagnias, born of the same father and mother, and that Polemon the father of Hagnias never had a brother. (μαρτυρεῖ τὸν πατέρα τῆς ἑαυτοῦ γυναικὸς Καλλίστρατον ἀνεψιὸν εἶναι ἐκ πατραδέλφων Πολέμωνι τῷ πατρὶ τῷ Ἄγνιου καὶ Χαριδήμῳ τῷ πατρὶ τῷ Θεοπόμπου, τὴν δὲ μητέρα τὴν ἑαυτοῦ ἀνεψιοῦ παῖδα εἶναι Πολέμωνι, καὶ λέγειν τὴν μητέρα τὴν αὐτῶν πρὸς αὐτοὺς πολλάκις, ὅτι Φυλομάχη ἢ μήτηρ ἢ Εὐβουλίδου ἀδελφὴ ἦν Πολέμωνος τοῦ πατρὸς τοῦ Ἄγνιου ὁμοπατρία καὶ ὁμομητρία, καὶ ὅτι ἀδελφὸς οὐδεὶς πώποτε γένοιτο Πολέμωνι τῷ πατρὶ τῷ Ἄγνιου.)

10. Dem. 43.36: They testify that Oenante, the mother of their grandfather Stratonides, was the cousin of Polemon the father of Hagnias since their fathers were siblings, and that they used to hear from their own father that Polemon the father of Hagnias never had a brother, but he did have a sister Phylomache born of the same father and mother, the mother of Eubulides who was the father of Phylomache, Sositheus' wife. (μαρτυροῦσιν Οἰνάνθην, τὴν μητέρα τοῦ πάππου τοῦ ἑαυτῶν Στρατωνίδου, ἀνεψιὰν εἶναι ἐκ πατραδέλφων Πολέμωνι τῷ πατρὶ τῷ Ἄγνιου, καὶ ἀκούειν τοῦ πατρὸς τοῦ ἑαυτῶν, ὅτι Πολέμωνι ἀδελφὸς οὐδεὶς γένοιτο πώποτε τῷ πατρὶ τῷ Ἄγνιου, ἀδελφὴ δὲ Φυλομάχη ὁμοπατρία καὶ ὁμομητρία, ἢ μήτηρ ἢ Εὐβουλίδου τοῦ πατρὸς τοῦ Φυλομάχης τῆς Σωσιθέου γυναικός.)

11. Categorization of all reliable witness depositions from speeches listed above #1. Note that some sections contain more than one deposition and thus may be listed twice or in more than one category.

A.1 Knows (8): Dem. 35.20, Dem. 35.20, Dem. 35.33, Dem. 35.34, Dem. 43.35, Dem. 43.43, Dem. 59.23, Dem. 59.24.

A.2 Was present (8): Dem. 29.31, Dem. 43.31, Dem. 45.8, Dem. 45.24, Dem. 45.61, Dem. 46.21, Dem. 59.32, Dem. 59.123.

A.3 Heard (6): Dem. 43.36, Dem. 43.37, Dem. 43.42, Dem. 43.44, Dem. 43.45, Dem. 43.46.

A.4 Was present and Knows (2): Dem. 35.14, Dem. 45.60

B.1 Knows without “knows” (13): Aes. 2.67-68, Dem. 35.14, Dem. 35.34, Dem. 45.19, Dem. 54.31-32, Dem. 59.28, Dem. 59.40, Dem. 59.47, Dem. 59.48, Dem. 59.54, Dem. 59.61, Dem. 59.71, Dem. 59.84.

B.2 Was present without “was present” (1): Dem. 43.70.

B.3 Heard without “heard” (1): Dem. 43.37.

C. Mixed (3): 35.23, Dem. 43.36, Dem. 45.55, Dem. 59.34

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