

The Function of Witnesses in Athenian Law

This paper addresses two aspects of witness testimony in Athens.

First, a long-held view holds that in some cases litigants summon a witness to demonstrate the witness's personal support for the litigant, and what the witness says is irrelevant. So Todd (1990: 27): "Athenian witnesses fulfill two *rôles*. One of these roughly corresponds to that of a modern witness: his job is to tell the truth, and the court is interested in what he says. But the second *rôle* is to us a more alien one: the function of a witness is to support the litigant for whom he appears, and the court is interested in who he is." I argue against this conclusion by showing that when litigants summon a witness to testify, they never show any interest in who the witness is except to the extent that the witness's identity may confirm that he was in a position to know the facts to which he will testify. The witness's identity in itself is of no interest.

Second, in a recent study of witness depositions Thür concludes (2005: 152-55) that "almost throughout the wording adheres to a set formula"; he adds that witnesses presented a "formulaic statement" using "formulaic words." The deposition begins with the name of the witness or witnesses (though these are sometimes omitted), followed by "testifies that he knows" or "testifies that he was present"; a third possibility in cases of hearsay evidence, which was not allowed unless the source of the testimony was either deceased or unavailable, was "testifies that he heard." An examination of all those depositions preserved in our mss. that are most likely to be authentic, however, shows that although these three expressions are used in a slight majority of cases, a substantial minority of depositions in these speeches do not use them. I conclude that witnesses

could use whatever words they wished, but they often used the same or similar wording because the content of their testimony was often similar in some respects.

These two conclusions point to the same overall conclusion: despite significant differences in the methods of testifying, notably the absence of cross-examination, the function of witnesses in Athens was quite similar to that of witnesses today. They were primarily called to confirm facts and events that the speaker was recounting and they could do so in whatever words they wished.

A substantial handout with passages from the forensic speeches and a few statistics will be provided.

Bibliography

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