Hyperides and *Epopteia*:
A New Fragment of the *Defense of Phryne*

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THE TRIAL of the Athenian *hetaira* Phryne on the charge of *asebeia*, impiety, was by all accounts one of the most sensational trials of the fourth century BCE. Phryne is said to have been one of the most beautiful women in Athens. The orator and politician Hyperides, who spoke in her defense, and Euthias, who prosecuted her, are said to have been rivals for her love.[1] Furthermore, according to late antique accounts, Phryne was acquitted only because Hyperides tore open her *khiton* and showed her breasts to the jurors while he made his final plea;[2] in superstitious fear, says Athenaeus, the jurors took pity on this "interpreter of Aphrodite's oracle and her temple attendant" (τὴν ὑποφῆτιν καὶ ζάκορον Ἀφροδίτης). Phryne must have been grateful to her advocate as well as to her physical charms. Hyperides' speech in her defense was one of his most admired speeches in antiquity. Longinus says that Demosthenes could not have written a speech like it if he had tried,[3] and Quintilian praises its *subtilitas*.[4] Like most of Hyperides' works, however, the speech survives in only a hand-

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[1] Hyp. frr.171 and 172, with C. Cooper, "Hyperides and the Trial of Phryne," *Phoenix* 49 (1995) 303–318, at 309–310; Alciphron 4.3–5.

[2] Ath. 13.590D–F; [Plut.] *X orat.* 849D–E. Cf. Quint. *Inst.* 2.15.9; Sext. Emp. *Math.* 2.4. The information ultimately depends on either Idomeneus of Lampsacus, *FGrHist* 338 F 14, or Hermippus of Smyrna, 1026 F 46 with J. Bollansée's comments, pp.383–390, and Cooper, *Phoenix* 49 (1995) 304–309.

[3] [Longinus] *Subl.* 34.3–4; cf. Quint. *Inst.* 10.1.77.

[4] Quint. *Instit.* 10.5.2; cf. 1.5.61 = Corvinus fr.22 Malcovati.

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ful of fragments culled from late antique lexicographers and grammarians.[5] Many of the fragments of the *Defense of Phryne* consist of single words, and they give no sense of the "grace," "apparent simplicity," and "light touch" admired by Dionysius of Halicarnassus or "sarcasm," "irony," and "ability to invoke pity" admired by Longinus.[6] In the last 150 years sizable parts of eight speeches by Hyperides have been discovered in papyri and, most recently, the Archimedes palimpsest. These discoveries have helped to restore him to his rightful place in the canon of Attic oratory. Until now, however, no additional scraps of the *Defense of Phryne* have turned up, and we remain in ignorance of why Longinus considered this speech a prime example of Hyperides' art.

This article proposes that the description of legal procedure in cases involving the Eleusinian Mysteries in section 8.123–124 of Pollux's *Onomasticon* is an unacknowledged fragment of the *Defense of Phryne*. My argument has three parts. First, I analyze the context of the proposed fragment and assess its historical accuracy, concluding that it is a quotation or near paraphrase of a single, reliable source. Second, I present the evidence for its coming from the *Defense of Phryne*, beginning with an analysis of two words, ἀνεπόπτευτος and ἐπωπτευκότων, which Hyperides is known to have used in that speech. Third, I show that the content of the fragment would have been consistent with what we know of Hyperides' rhetorical strategy in the *Defense of Phryne*. The new fragment gives us an example of Hyperides' famous sarcasm and a hint of how he won his case.

[5] C. Jensen, *Hyperidis Orationes sex* (Leipzig 1917), prints ten fragments (frr.171–180), including Ath. 13.590E (fr.178) and Alciphron 4.5.3 and 4.3.1 (fr.179). M. Marzi, "Iperide," in Marzi et al. (eds.), *Oratori Attici minori* I (Turin 1977) 9–328, excludes these and prints only eight, maintaining Jensen's numbering.

[6] Dion. Hal. *De imit.* 5.6; [Longinus] *Subl.* 34.2. On Hyperides' style see D. Whitehead, *Hypereides: The Forensic Speeches* (Oxford 2000) 10–18. The translations of the Greek terms are his.

Pollux and litigation involving the Eleusinian Mysteries

Pollux's *Onomasticon* is a compilation of synonyms and en-
cyclopedic data written in the second half of the second century
CE. It is arranged by topic, and the topics are usually grouped
in a logical manner.[7] Under each topic, Pollux lists synonyms
that illustrate correct Attic usage. By the nature of his project,
all of these words must have been found in one or more of the
authors he considered appropriate models. Our text lacks cita-
tions of most of these authors. Since the *Onomasticon* survives
only as an epitome, we do not know to what extent this reflects
Pollux's own practice. In a note at the beginning of Book 1, the
epitomizer explains that he omitted some references.[8] It is
frequently possible, however, to determine the authors whom
Pollux quotes,[9] although he tends to adjust the texts to suit the
context.[10]

[7] For a summary of the contents of each book see E. Bethe, "Julius
Pollux," *RE* 10 (1917) 773–779, at 776–777, and *Pollucis Onomasticon* (Leip-
zig 1900–1937) II 249–256.

[8] I 1 Bethe: ἰστέον ὅτι τὰ ἐν τοῖς πέντε βιβλίοις ἐμφερόμενα πάντα
ὀνόματα συναγήοχεν ὁ Πολυδεύκης ἀπό τε τῶν παλαιῶν ῥητόρων καὶ
σοφῶν καὶ ποιητῶν καὶ ἑτέρων· τὰ πλείω δὲ καὶ ἀφ' ἑαυτοῦ ἐξέθετο. οἱ δέ
γε παλαιοὶ οἱ εὑρισκόμενοι ἐν τοῖς πέντε βιβλίοις εἰσὶν οὗτοι· Θουκυδίδης,
Πλάτων, Ἰσαῖος, Ὅμηρος, Σοφοκλῆς, Εὐριπίδης, Ἰσοκράτης· καὶ ἕτεροι
πολλοί, οὓς ἐγὼ κατέλιπον διὰ τὸ συνοπτικὸν καὶ τὸ εὐληπτότερον. E.
Bethe, "Die Ueberlieferung des Onomastikon des Julius Pollux," *NAkG*
(1895) 322–348, at 332–335, explains that all ten books of our *Onomasticon*,
and not just the first five, are epitomes.

[9] Besides the text and apparatus of Bethe, *Pollucis Onomasticon*, see C. The-
orididis, "Bemerkungen zum Onomastikon des Pollux," in I. Vassis et al.
(eds.), *Lesarten. Festschrift für Athanasios Kambylis* (Berlin 1998) 45–52, "Weitere
Bemerkungen zum Onomastikon des Julius Pollux," *ZPE* 143 (2003) 71–78,
and "Ährenlese aus dem Onomastikon des Julius Pollux," in A. Vasileiades
et al. (eds.), *Demetrio stephanos. Timetikos tomos gia ton kathegete Demetre Lypourle*
(Thessalonica 2004) 375–380.

[10] R. Tosi, *Studi sulla tradizione indiretta dei classici greci* (Bologne 1988) 91–
92, and "Polluce: struttura onomastica e tradizione lessicografica," in C.
Bearzot et al. (eds.), *L'Onomasticon di Giulio Polluce: Tra lessicografia e antiquaria*
(Milan 2007) 3–16, at 8–13. C. Strobel, "The Lexicographer of the Second
Sophistic as Collector of Words, Quotations and Knowledge," in R. M.

Besides lists of synonyms, Pollux's *Onomasticon* also features encyclopedic sections on various aspects of Classical Athenian society. The two longest and most important are the section on the theater in Book 4 and that on the government and legal system in Book 8. As in his synonym lists, Pollux, or his epitomizer, rarely refers to his sources, especially in Book 8.[11] It is likely, however, that Pollux relies on the Aristotelian *Constitution of the Athenians* for most of this book.[12] He also seems to have relied heavily on the orators and sources similar to Harpocration's, whose definitions frequently resemble the definitions in the *Onomasticon*.[13] Since legal language is formulaic and conservative, verbal parallels between the *Onomasticon* and other works known to us need not indicate that Pollux himself directly consulted them. He had access to many works now lost,

Piccione and M. Perkams (eds.), *Selecta Colligere* II *Beiträge zur Technik des Sammelns und Kompilierens griechischer Texte* (Alessandria 2005) 131–157, at 144–146, suggests that lack of citations and verbatim quotations may have been an intentional way for Pollux to give an "impression of extreme learnedness."

[11] On the lack of citations in Book 8 see C. Strobel, "The Lexica of the Second Sophistic: Safeguarding Atticism," in A. Georgakopoulou and M. Silk (eds.), *Standard Languages and Language Standards: Greek, Past and Present* (Farnham 2009) 93–107, at 103.

[12] Besides the apparatus in Bethe, see R. Michaelis, *Quae ratio intercedat inter Julii Pollucis onomasticon et Aristotelis de republica Atheniensium libri partem alteram* (Berlin 1902) 1–19, and Bethe, *RE* 10 (1917) 778. Many parallels remain unacknowledged. The text of the *Onomasticon* has been used to defend the transmitted text of the *Constitution of the Athenians*. On *Ath.Pol.* 59.2 see A. R. W. Harrison, *The Law of Athens* II (Oxford 1971) 14 n.1; P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia*[2] (Oxford 1985) 658. It is of course possible that Pollux used a work or works based on the *Constitution of the Athenians* and not the *Constitution* itself.

[13] On Pollux's sources for Book 8 see F. von Stojentin, *De Iulii Pollucis in publicis Atheniensium antiquitatibus enarrandis auctoritate* (Bratislaw 1875), and J. Stoewer, *In quibus nitantur auctoribus Iulii Pollucis rerum iudicialium enarrationes* (Münster 1888), both of which predate the discovery of the London papyrus of the *Constitution of the Athenians*. Cf. A. Maffi, "L'*Onomasticon* di Polluce come fonte di diritto attico," in *L'Onomasticon di Giulio Polluce* 29–42, at 35.

perhaps including fuller collections of the Attic orators and the Atthidographers, epitomes, commentaries and glossaries of Classical texts, and compendia of Attic law, institutions, and procedure. These may have been his most important sources. Verbal parallels to extant works of the fifth and fourth centuries BCE are significant, however, because they indicate that Pollux is working in a tradition whose information ultimately derives from the Classical Athenians themselves. Even where Book 8 preserves information which is attested nowhere else, therefore, it is safe to conclude that it is based on sources knowledgeable about Athenian government, law, and procedure. Handbooks of Classical Athenian law consider Pollux's testimony reliable.[14] The *Onomasticon* contains errors, of course, but the errors seem to derive from Pollux's sources and not his own incompetence. He dependably transmits information based on compendious reading about the arcana of life in Classical Athens.

In chapters 123 and 124 of Book 8, Pollux provides unique[15] information about trial procedure in cases involving the Eleusinian Mysteries. The brief section on Mysteries trials comes in the middle of a longer section about courtroom furnishings and personnel:

(8.122) ἐδίκαζον δ' οἱ ὑπὲρ τριάκοντα ἔτη ἐκ τῶν ἐπιτίμων καὶ μὴ ὀφειλόντων τῷ δημοσίῳ. ὤμνυσαν δὲ ἐν Ἀρδήττῳ δικαστηρίῳ Ἀπόλλω πατρῷον καὶ Δήμητρα καὶ Δία βασιλέα· ὁ δὲ Ἄρδηττος Ἰλισσοῦ μέν ἐστι πλησίον, ὠνόμασται δὲ ἀπό τινος ἥρωος, ὃς στασιάζοντα τὸν δῆμον ὑπὲρ ὁμονοίας ὥρκισεν. ὁ δ' ὅρκος ἦν τῶν δικαστῶν, περὶ μὲν ὧν νόμοι εἰσί, κατὰ τοὺς νόμους ψηφιεῖσθαι, περὶ δὲ ὧν μὴ εἰσί, γνώμῃ τῇ δικαιοτάτῃ·

[14] For some examples of Pollux as a generally reliable source see Harrison, *Law of Athens* II 180 n.2, 186 n.6, 198 n.1; D. MacDowell, *The Law in Classical Athens* (Ithaca 1978) 27–28 with n.15; G. Thür, "The Role of the Witness in Athenian Law," in M. Gagarin and D. Cohen (eds.), *Cambridge Companion to Ancient Greek Law* (Cambridge 2005) 146–169, at 157; R. Wallace, "Law, Attic Comedy, and the Regulation of Comic Speech," in *Cambridge Companion* 357–373, at 371. Pollux is not infallible, however: see Harrison II 72 n.2, 104.

[15] Cf. Stojentin, *De Iulii Pollucis auctoritate* 73.

ὁμοσάντων δὲ καὶ τῶν δικαζομένων, τὸ πᾶν ἐκαλεῖτο ἀμφιορκία. ἡ Ἡλιαία πεντακοσίων· (123) εἰ δὲ χιλίων δέοι δικαστῶν, συνίστατο δύο δικαστήρια, εἰ δὲ πεντακοσίων καὶ χιλίων, τρία. ψήφους δ᾽ εἶχον χαλκᾶς δύο, τετρυπημένην καὶ ἀτρύπητον, καὶ κάδον, ᾧ κημὸς ἐπέκειτο, δι᾽ οὗ καθίετο ἡ ψῆφος. αὖθις δὲ δύο ἀμφορεῖς, ὁ μὲν χαλκοῦς ὁ δὲ ξύλινος, ὁ μὲν κύριος ὁ δ᾽ ἄκυρος· τῷ δὲ χαλκῷ ἐπῆν ἐπίθημα μιᾷ ψήφῳ χώραν ἔχον ... οὗ ὕστερον μυστικῶς δικάζοντες ἦσαν ἐκ τῶν ἐπωπτευκότων. τὸ δὲ δικαστήριον περιεσχοινίζετο, τοῦ μὲν βασιλέως παραγγείλαντος, τῶν δὲ θεσμοθετῶν πληρούντων τὸ δικαστήριον. τὸ δὲ περισχοίνισμα ἀπὸ πεντήκοντα ποδῶν ἐγίνετο· (124) καὶ οἱ ὑπηρέται ὑφειστήκεισαν, ὅπως μηδεὶς ἀνεπόπτευτος προσίῃ. αἱ μὲν οὖν τῶν δικαστηρίων θύραι κιγκλίδες ἐκαλοῦντο, ἃς οἱ Ῥωμαῖοι καγκελλωτὰς λέγουσιν· ἀνίστατο δὲ τὰ δικαστήρια, εἰ γένοιτο διοσημεῖα· ἐξηγηταὶ δ᾽ ἐκαλοῦντο οἱ τὰ περὶ τῶν διοσημειῶν καὶ τὰ τῶν ἄλλων ἱερῶν διδάσκοντες.

(122) Those who were older than thirty years, in possession of full citizen rights, and not in debt to the state used to act as jurors. They swore an oath in the Ardettus *dikasterion* by Apollo *patroios*, Demeter, and Zeus *Basileus*. The Ardettus is near the Ilissus, and it is named for a certain hero who administered an oath of *homonoia* to the *demos* when they were riven by factions. And this was the oath of the jurors: to vote according to the laws concerning things there are laws about, and to vote with the most just opinion concerning things there are not laws about. And after the litigants had also sworn it, the entire thing was called the *amphiorkia*. The Heliaia consisted of 500 men. (123) And if 1000 jurors were needed, they set up two *dikasteria*. If 1500 jurors, three. They had two bronze voting tokens, one with a hole and one without, and a jar, on top of which was set a funnel, through which the voting token was dropped. There also were two amphorae, one bronze and one wooden: one was *kurios* and the other was *akuros*. There was a lid on the bronze amphora having space for a single voting token … Later than this, the jurors in Mysteries trials were chosen from those who had experienced the *epopteia* [*epopteukoton*]. The *dikasterion* used to be roped off, after the *basileus* had requested a trial and the *thesmothetai* filled the *dikasterion* with jurors. The roped-off area extended fifty feet, (124) and guards were posted so that no one

who had not experienced the *epopteia* [*anepopteutos*] might approach. The doors of the *dikasteria* were called *kinklides*, which the Romans call *kankellotai*. And the *dikasteria* were dismissed if there were omens. The ones who pronounced on omens and other sacred matters were called *exegetai*.

The change in topic from the voting amphorae to the procedure in Mysteries trials is abrupt, and Bethe follows Kuehn in positing a lacuna before οὗ, which lacks an antecedent.[16] The adverb μυστικῶς and the periphrasis δικάζοντες ἦσαν are poor Greek, and the original may have begun with something like οὗ ὕστερον οἱ περὶ μυστικῶν δικάζοντες… I follow this reconstruction in my translation.

The section on Mysteries litigation stands out from the other material in chapters 122–124 for other reasons besides the abrupt change in topic. First, it is not related to other extant works of Greek literature, either through verbal parallels or through an overlap in content. The sentences about juror qualifications, the voting tokens, and the amphorae all closely resemble sentences in the *Constitution of the Athenians* and may even be paraphrases.[17] The content of the jurors' oath and the gods by whom they swore are similar to passages in Demosthenes and Dinarchus.[18] Finally, the information about the

[16] For discussion of Kuehn's lacuna and other early attempts to make sense of the text see W. Dindorf, *Iulii Pollucis Onomasticon* V.2 (Leipzig 1824) 796–799. On the gaps in the manuscripts of the *Onomasticon* see Bethe, *NAkG* (1895) 324.

[17] *Ath.Pol.* 63.3: δικάζειν δ᾽ ἔξεστιν τοῖς ὑπὲρ λ᾽ ἔτη γεγονόσιν, ὅσοι αὐτῶν μὴ ὀφείλουσιν τῷ δημοσίῳ ἢ ἄτιμοί εἰσιν. Bethe, *Pollucis Onomasticon* II 139, does not mention this parallel. 68.3: εἰσὶ δὲ ἀμφ[ο]ρεῖς [δύο κεί]μενοι ἐν τῷ δικαστηρίῳ, ὁ μὲν χαλκοῦς, [ὁ δὲ ξύ]λινος, διαιρετοὶ [ὅ]πως μὴ λ[άθ]ῃ ὑποβάλλων [τις ψή]φους, εἰς οὓς ψηφίζονται οἱ δικαστα[ί], ὁ μὲν [χαλκοῦ]ς κύριος, ὁ δὲ ξύλινος ἄκυρος, ἔχω[ν] ὁ χαλ[κοῦς] ἐπίθημα διερρινημένο[ν], ὥστ᾽ αὐτὴν [μόνη]ν χωρεῖν τὴν ψῆφον, ἵνα μὴ δύο ὁ αὐτὸς [ἐμβάλ]λῃ (Bethe cites this as column 37, an error for 36). Citations of the *Constitution of the Athenians* are from M. Chambers, *Aristoteles: Athenaion Politeia* (Leipzig 1994).

[18] Dem. 20.118 with D. Mirhady, "The Dikast's Oath and the Question of Fact," in A. H. Sommerstein and J. Fletcher (eds.), *Horkos: The Oath in*

Ardettus,[19] the *amphiorkia*,[20] the number of jurors,[21] the *kinklides*,[22] and the *exegetai*[23] is closely related to information preserved by the lexicographers and other technical authors. The adjournment of the *dikasteria* if there were adverse omens is unattested outside of the *Onomasticon*, but Pollux seems to be relying on a good source. We know that the assembly could be adjourned on this basis,[24] and Pollux uses *aniemi*, the proper term for dissolving courts, and not *luo*, the proper term for dissolving the assembly.[25] This bricolage of information from sources related to the orators and lexicographic tradition

Greek Society (Exeter 2007) 48–59, at 50 with 229 n.12; Dem. 39.40; Din. fr. incert. 29 Conomis = schol. Aeschin. 1.114 Dilts. On the oath and its reconstruction see Mirhady, who, at 51 and 231 n.31, gives further parallels for the oath formula but does not mention the Dinarchus fragment. Aristophanes' use of prose for the oath by Apollo, Demeter, and Zeus in *Eq.* 941 suggests that it was part of formulaic language; cf. A. H. Sommerstein, *Aristophanes: Knights* (Warminster 1981) 194.

[19] Harp. 57.3–8 Dindorf = α 229 Keaney; Hesychius α 7098; *Suda* α 3807; *Anecd.Bekk.* 207.2–5; *Anecd.Bach.* 142.12–19. The ultimate source may be Theophrastus' *Laws*, which Harpocration, the *Suda*, and *Anecd.Bach.* mention.

[20] Ps.-Zonaras α 151.20–21 Tittman; Hesych. α 4077; Phot. *Lex.* α 1357 Theodoridis; *Suda* α 1750; Gregory of Corinth *On Hermogenes* Walz VII.2 1121.1–2; *Anecd.Bekk.* 311.23–25.

[21] Harp. 146.17–147.6 Dindorf = η 9 Keaney; *Suda* η 219; Phot. *Lex.* η 118. This may also be a paraphrase of *Ath.Pol.* 68.1, which is lacunose but clearly discusses numbers of jurors.

[22] Harp. 177.10–12 Dindorf = κ 57 Keaney; Hesychius κ 2606; schol. Ar. *Vesp.* 124b–c; Phot. *Lex.* κ 697; *Suda* κ 1583; *Etym.Mag.* 518.23–24 Gaisford. Stojentin, *De Iulii Pollucis auctoritate* 74, attributes the *kinklis* definition ultimately to Didymus.

[23] Hesychius ε 3830; Phot. *Lex.* ε 1205. Bethe, *Pollucis Onomasticon* II 139, cites Harpocration as a parallel, but his definition of *exegetes* is not very similar to Pollux's.

[24] Ar. *Ach.* 169–172, Thuc. 5.45.4.

[25] Cf. D. Olson, *Aristophanes: Acharnians* (Oxford 2002) 125. The implied connection between the *exegetai* and the lawcourts is controversial, however: see R. Parker, *Polytheism and Society at Athens* (Oxford 2005) 100–101 n.39.

against a backbone of material from the *Constitution of the Athenians* characterizes much of Book 8. In this passage, the information from these sources is not stylistically integrated; the topics change abruptly, usually marked simple by *de*, but sometimes without even a particle, as in the case of the sentence about the Heliaia.

Second, the section on Mysteries litigation is not arranged in a summarized way that makes information clear to the curious reader. Admittedly, it tells us that guards were stationed at a distance of fifty feet to keep the uninitiated away. But there is no explanation of any of the obscure terms. One could argue that the terminology of the Mysteries was familiar in the second century,[26] but the absence of definitions is striking, especially coming after a section which has defined Ardettus, Heliaia, and *amphiorkia*. Furthermore, there are no verbs of defining, which appear three times in the following statements on the *kinklides* and *exegetai*.

Third, the section on Mysteries litigation is stylistically more elaborate than what precedes it and what follows it. Its syntactic integration and clear articulation by particles, including the two genitive absolutes connected by *men* and *de*, suggest that it closely follows a single source and is not a poorly integrated combination of sources. Furthermore, Pollux repeats the same information a few pages later, in summarized form but using almost identical language, under the heading *Pariskhoinisai*. This word is unattested elsewhere in Greek and is probably a copyist's error for *periskhoinisai*, 'to rope off', which Pollux then uses:

(8.141) Παρισχοινίσαι τὰ ἱερὰ ἔλεγον ἐν ταῖς ἀποφράσι τὸ παραφράξαι, οἷον Πλυντηρίοις καὶ ταῖς τοιαύταις ἡμέραις· περισχοινίσαι δὲ τὸ δικαστήριον, ὁπότε περὶ μυστικῶν δικάζοιεν, ἵνα μὴ προσίῃ μηδεὶς ἀνεπόπτευτος ὤν.

It is said [*elegon*] that they roped off [*pariskhoinisai*], that is, barricaded [*paraphraxai*], the temples on unlucky days, like the Plynteria and days like that, and that they roped off the *dikasterion*, whenever they held trials concerning the Mysteries, so that no

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[26] Poll. *Onom.* 1.36 does not define the Mystery terminology he cites.

one who had not experienced the *epopteia* [*anepopteutos*] might approach.

The overlap in content, vocabulary, and syntax between the two passages indicates that Pollux is using a single source and following that source very closely. In chapter 141, however, he seems to be paraphrasing more freely than in 123–124. He glosses *pariskhoinisai* with *paraphraxai*, 'to barricade', and he makes the construction dependent on the verb *elegon*.[27] He then makes the clause about roping off the *dikasterion* parallel to the preceding clause about roping off the temples. If, as seems likely, the clause about roping off temples comes from a different source, this passage exemplifies Pollux's usual technique of combining multiple unreferenced sources, paraphrasing them, and juxtaposing them. The longer passage in 123–124, on the other hand, appears to be a verbatim quotation or close paraphrase of a single source.

The account of legal procedure and security safeguards seems accurate, which indicates that Pollux's source is reliable. We know from Andocides that jury panels in Mysteries trials consisted only of initiates, since the details of the Mysteries were secret. Andocides says that the jurors in his trial had to have experienced only the *muesis*, the first stage of initiation.[28] If trials involved testimony about the second stage, the *epopteia*, however, jurors who had experienced it would surely have been necessary.[29] As spectators were common at Athenian

[27] The combination obscure word/*elegon*/more familiar word as an articular infinitive or neuter noun with *to* is Pollux's regular practice. See e.g. *Onom.* 2.35, 194, 3.10, 58.

[28] Andoc. 1.29 (ὑμεῖς οἱ μεμυημένοι εἰσεληλύθατε), 31 (μεμύησθε καὶ ἑοράκατε τοῖν θεοῖν τὰ ἱερά), cf. 32.

[29] On the stages of initiation see W. Burkert, *Homo Necans* (Berkeley 1983) 275; Parker, *Polytheism and Society* 350–361. K. Clinton, "Stages of Initiation in the Eleusinian and Samothracian Mysteries," in M. B. Cosmopoulos (ed.), *Greek Mysteries: The Archaeology and Ritual of Ancient Greek Secret Cults* (London 2003) 50–78, at 60, discusses the tense and aspect of the verbs used to describe the stages of initiation. On *epopteia* see also G. Mylonas, *Eleusis and the Eleusinian Mysteries* (Princeton 1961) 274–278.

trials, there must have been a system to keep uninitiated on-lookers away.[30] Demosthenes states that the Athenians used a rope to provide privacy for the Areopagites when they deliberated in the Stoa Basileios;[31] like this section of the *Onomasticon*, he uses the rare verb *periskhoinizo*. The armed guards would have added another level of security. We also know from Andocides that the *basileus* played a formal role in Mysteries trials.[32] The Athenian law on silver coinage from 375/4[33] demonstrates what it means for him to 'request a trial' (8.123, *parangello*): if an Athenian merchant refuses to accept coins which have been approved as legal tender, the prospective buyer can complain to a magistrate. The verb for the complaint is *phaino*, which literally means 'to point out' and is often translated as 'to bring a *phasis*'. If the disputed amount is more than ten drachmas, the magistrate must ask the *thesmothetai* to allot a lawcourt for the trial, and they are obliged to do so or to pay a fine. The verb used for the magistrate's request is *parangello*.[34] This section of Pollux describes a similar procedure in Mysteries trials: the *basileus*, as the relevant magistrate in impiety suits (*Ath.Pol.* 57.2), requests that a lawcourt be allotted to him. "The *thesmothetai* filled the *dikasterion* with jurors" is a

[30] On spectators see A. Lanni, "Spectator Sport or Serious Politics? οἱ περιεστηκότες and the Athenian Lawcourts," *JHS* 107 (1997) 183–189, esp. 185.

[31] Dem. 25.23: τὸ τὴν ἐξ Ἀρείου πάγου βουλήν, ὅταν ἐν τῇ βασιλείῳ στοᾷ καθεζομένη περισχοινίσηται, κατὰ πολλὴν ἡσυχίαν ἐφ' ἑαυτῆς εἶναι, καὶ ἅπαντας ἐκποδὼν ἀποχωρεῖν.

[32] Andoc. 1.111. Cf. D. MacDowell, *Andokides: On the Mysteries* (Oxford 1962) 142, and *The Law in Classical Athens* 75 with 265 n.132; M. H. Hansen, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 28–29.

[33] Rhodes/Osborne, *GHI* 25.

[34] Lines 26–28: οἱ δὲ θε[σμ]οθ[έται π]ιαρεχόντων αὐτοῖς ἐπικληρôντες δικα[στήριον ὅ]ιταμ παραγγέλλωσιν ἢ εὐθυνέσθω[ν .] δραχ[μαῖς. See the commentary of R. Stroud, "An Athenian Law on Silver Coinage," *Hesperia* 43 (1974) 157–188, at 179–180. Cf. *IG* II³ 429.31, which G. Thür supplemented παραγ[γέλλωσιν following this text.

familiar formula beginning in the late fourth century,[35] and here it must refer to the *thesmothetai*'s obligation to assign a panel of the correct number of jurors to the *basileus*. At the time of the *Constitution of the Athenians*, the *thesmothetai* and the other archons supervised the allotment of individual jurors to panels.[36] A *phasis* to the *basileus*, which is attested in Demosthenes 22.27 as a procedural option for plaintiffs in impiety suits, must have preceded the *basileus*' request.

A fragmentary portion of the mid-fourth-century law concerning the Mysteries found in the City Eleusinion may refer to a similar legal procedure.[37] It does not use the word *parangello*, but, in successive lines, mentions the *thesmothetai*, "those who have undergone the *muesis*," and "those who have undergone the *epopteia*."[38] The law regulates numerous ritual and legal aspects of the Mysteries, and this section appears to be discussing trials, since other sentences near it mention various persons acting contrary to things written down, and the preceding sentence even begins with the word *endeixis*.

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[35] The earliest appearance, in the nominal form τῶν δικαστηρίωˈν τῆς πληρώσεως, is in *Agora* XVI 86.8–9 (327/6 BCE). In *IG* II² 1629.204–217 = *GHI* 100 (325/4) the *thesmothetai* "fill the *dikasteria* with 201 men" for "the *strategos* elected over the symmories" to try appeals from trierarchs who have sought exemptions: ὅπω[ς] δ' ἂν ǀ [καὶ] αἱ σκήψεις εἰσαχθῶσι, ǀ [τοὺ]ς θεσμοθέτας παραǀ[πλ]ηρῶσαι δικαστήρια εἰς ǀ [ἕν]α καὶ διακοσίους τῶι ǀ [στ]ρατηγῶι τῶι ἐπὶ τὰς συμǀ[μ]ορίας ǀ ἡιρημένωι ἐν τῶι ǀ [Μ]ουνιχιῶνι μηνὶ τῆι δευǀ[τ]έραι ἱσταμένου καὶ τῆι ǀ [π]έμπτηι ἱσταμένου, τὸν ǀ δὲ μισθὸν διδόναι τοῖς ǀ δικαστηρίοις τοὺς ταμίǀ[α]ς τῶν τῆς θεοῦ κατὰ τὸν ǀ [νό]μον. The phrase "the *dikasterion* was filled" is common in earlier Attic oratory, where the role of the *thesmothetai* seems to be understood: Lys. 26.6; Isae. 6.37; Dem. 21.209, 24.58, 92, 25.20. Cf. Pl. *Leg.* 956E1; *Ath.Pol.* 63.2, 64.5, 66.1.

[36] On the role of the *thesmothetai* see *Ath.Pol.* 59.1, 5, 7, 66.1, with Rhodes, *Commentary* 657, 666, 668, 714–715. Cf. G. Busolt and H. Swoboda, *Griechische Staatskunde* II (Munich 1926) 1096.

[37] *Agora* XVI 56 = *I.Eleusis* 138 = Clinton, "A Law in the City Eleusinion Concerning the Mysteries," *Hesperia* 49 (1980) 258–288.

[38] 46–47: οἱ δὲ θεσμοθέται [– – – τὸς μ]ε̣μυημένος καὶ τὸς ἐπωπτευκότας δέκα ἡμ̣[ερ– – –.

To the extent that we can check the information, therefore, the description of Mysteries trials in Pollux 8.123–124 agrees with what we know and what we would expect. The passage is rarely discussed, but its accuracy has never been questioned.

The textual evidence that Pollux 8.123–124 is from Hyperides' Defense of Phryne

As we have seen, the information about Mysteries litigation in Pollux 8.123–124 and 141 seems to come from a single reliable source. In this section I argue that that source is probably Hyperides' *Defense of Phryne*. Two single-word fragments of the *Defense of Phryne* attest both that Hyperides used the words *epopteukoton* and *anepopteutos* in that speech and that these uses were familiar to lexicographers. Since both words also appear in 8.123–124, this section of the *Onomasticon* might actually be a quotation or close paraphrase of the part of the speech to which the lexicographers refer. Pollux quotes the *Defense of Phryne* in other parts of the *Onomasticon*, and he certainly had access either to the speech itself or an epitome or a glossary based on it. Furthermore, the style and vocabulary of the section on Mysteries litigation in 8.123–124 are consistent with Classical Attic idiom. The two relevant fragments of the *Defense of Phryne* are 174 and 175.

1. Hyperides fr.174 = Harp. p.36.7–8 Dindorf = α 136 Keaney:

ἀνεπόπτευτος· Ὑπερείδης ἐν τῷ ὑπὲρ Φρύνης. ὁ μὴ ἐποπτεύσας. τί δὲ τὸ ἐποπτεῦσαι, δηλοῖ Φιλόχορος ἐν τῇ ι′· "τὰ ἱερὰ οὗτος ἀδικεῖ πάντα, τά τε μυστικὰ καὶ τὰ ἐποπτικά," καὶ πάλιν "Δημητρίῳ μὲν οὖν ἴδιόν τι ἐγένετο παρὰ τοὺς ἄλλους τὸ μόνον μυηθῆναί τε ἅμα καὶ ἐποπτεῦσαι καὶ τοὺς χρόνους τῆς τελετῆς τοὺς πατρίους μετακινηθῆναι."

anepopteutos: Hyperides uses it in the *Defense of Phryne*. Someone who has not experienced the *epopteia*. What it means "to experience the *epopteia*" Philochorus [*FGrHist* 328 F 69–70] makes clear in the tenth book: "This man treats all the sacred things unjustly, both the *mustika* and the *epoptika*," and later, "It was unique to Demetrius among other men that he alone experienced both the *muesis* and the *epopteia* at the same time and that the ancestral schedule of the initiation was changed."

A similar definition appears in Photius' *Lexicon*, Bekker's *Anecdota Graeca*, Bachmann's *Anecdota Graeca*, and the *Suda*, which all cite Hyperides as the source.[39] Pollux himself also directly attributes the word to Hyperides in a list of words related to sight (2.58).[40]

2. Hyperides fr.175 = Harp. p.133.5–8 Dindorf = ε 128 Keaney:

> ἐπωπτευκότων· Ὑπερείδης ἐν τῷ ὑπὲρ Φρύνης. οἱ μυηθέντες ἐν Ἐλευσῖνι ἐν τῇ δευτέρᾳ μυήσει ἐποπτεύειν λέγονται, ὡς δῆλόν ἐστιν ἔκ τε τοῦ Δημοσθένους λόγου καὶ ἐκ τῆς δεκάτης Φιλοχόρου.

> *epopteukoton*: Hyperides uses it in the *Defense of Phryne*. Those who had already experienced the *muesis* at Eleusis are said to experience the *epopteia* in the second *muesis*, as is clear from the speech of Demosthenes and from the tenth book of Philochorus.

The same definition, but without the attribution to Hyperides, appears in Photius' *Lexicon* and the *Suda*.[41]

Anepopteutos is a very rare word. Besides the citations in the lexica and Pollux 2.58, it appears nowhere else in all of Greek literature except in the two passages on Mysteries litigation at Pollux 8.123–124 and 141.[42] These two sections, in other

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[39] Phot. *Lex.* α 1862, *Anecd.Bekk.* 398.11–17, *Anecd.Bach.* 91.11–17, *Suda* α 2303.

[40] παρῶπται, παρόψονται, καὶ ὡς Ἰσοκράτης περιόπτους καὶ περιβλέπτους, καὶ ἀπόβλεπτος καὶ ἀποβλεπόμενος, καὶ αὐτόπτης, καὶ ὡς Ἀνδοκίδης σύνοπτον καὶ σύνοπτα, καὶ ὡς Ἰσαῖος εὐσύνοπτα, καὶ ὡς Δημοσθένης ἐπόπτας, καὶ ἐποπτεῦσαι δ' ἐν μυστηρίοις. καὶ ἀνεπόπτευτον Ὑπερείδης φησίν, καὶ διοπτεύειν Κριτίας καὶ Ἀντιφῶν, Ἀντιφῶν δὲ καὶ εἴσοπτοι, Δημοσθένης δὲ προῦπτον, Ἡρόδοτος δὲ κατόπτας, Ξενοφῶν δὲ ὀπτῆρας.

[41] Phot. *Lex.* ε 1876, *Suda* ε 2845. Slightly different punctuation in Poll. 2.58 would have Pollux attributing both *epopteuo* and *anepopteutos* to Hyperides.

[42] Gromska, *De sermone Hyperidis* (Lviv 1927) 77, lists *anepopteutos* among the words or word usages which are unattested outside of Hyperides. He was apparently unaware of the word's appearance in Poll. 8.123–124 and 141. Cf. H. Hager, "De grecitate hyperidea," in G. Curtius (ed.), *Studien zur griechischen und lateinischen Grammatik* III (Leipzig 1870) 100–112, at 102; S. Kayser, "Etude sur la langue d'Hyperide," *Musée Belge* 3 (1900) 201–222, at

words, are the only places where *anepopteutos* appears in actual sentences and not in a definition or a word list. Significantly, both of these sentences appear in Pollux, and one of them is a paraphrase of the other. We know, therefore, only three things about *anepopteutos*: (1) it was used by Hyperides in the *Defense of Phryne*, (2) the passage in the *Defense of Phryne* where it was used was known to ancient lexicographers, including Pollux, and (3) the only times it appears outside of definitions or word lists are in two nearly identical sections in the *Onomasticon* about safeguarding secrecy in trials involving testimony about the Eleusinian Mysteries. Taken as a whole, these three facts suggest that the two nearly identical sections in Pollux, 8.123–124 and 141, are probably quotations or paraphrases of the passage in the *Defense of Phryne* to which Pollux, Harpocration, and the other lexicographers refer.

The use of *epopteukoton* strengthens this conclusion. While *epopteuo* is not an uncommon word,[43] its only attested use in the genitive plural perfect active participle is in the *Defense of Phryne* and in Pollux 8.123–124. As we have seen, the use of *anepopteutos* makes it likely that this passage is a quotation or close paraphrase of a part of the *Defense of Phryne* well known to the lexicographic tradition. The fact that another lexical form which the lexicographers attribute to the *Defense of Phryne* also appears in this passage makes it even more likely that it is the passage to which they refer and that 8.141 is an abridged paraphrase of the same passage.

We should not be surprised that Pollux would not identify Hyperides as the source for 8.123–124 and 141, since he, or his epitomizer, rarely cites his sources or acknowledges his quotations and paraphrases, especially in Book 8. We know,

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213. U. Pohle, *Die Sprache des Redners Hypereides in ihren Beziehungen zur Koine* (Leipzig 1928) 3, lists it among new and non-Attic words in Hyperides, but he cites its use in Pollux.

[43] Misleadingly, Pohle, *Die Sprache* 72, lists *epopteuo* among the words in Hyperides which are first attested in comedy. While it is correct that its first attested use is in Ar. *Ran.* 745, *epopteuo* is surely not a comic word.

however, that Pollux had access to a text of Hyperides or to a glossary or compendium of Hyperides passages, as he cites him by name 83 times in the *Onomasticon*. Three of these are references to the *Defense of Phryne*.[44] There is therefore no reason to doubt that he could have used the *Defense of Phryne* as a source for procedure in Mysteries trials. Certainty is of course impossible on issues like this, and we can speak only in terms of likelihood. We know that the sections of the *Defense of Phryne* that used *epopteukoton* and *anepopteutos* were well known to lexicographers, whether through the speech itself, an epitome, or a glossary, and that at least the passage that used *anepopteutos* was familiar to Pollux. We may reasonably conclude, therefore, that Pollux quoted or paraphrased this familiar passage when he wished to give information about litigation involving the Mysteries.

It is of course possible that Pollux relied on another source, but this is the less likely solution. Hyperides may not have been the only author to use *anepopteutos* and *epopteukoton*, but his use was evidently the most familiar to lexicographers. It is unlikely, however, that another author well-known enough for Pollux to use as a source for the *Onomasticon* would have used both *anepopteutos* and *epopteukoton* in successive sentences and escaped the notice of the lexicographers, who we know were interested in the terms. It is even less likely that Pollux, who specifically states that Hyperides uses the word *anepopteutos*, would have known another author who used the word and not mentioned him in 2.58 along with Hyperides, especially since he attributes the word *diopteuein* to both Critias and Antiphon immediately after attributing *anepopteutos* to Hyperides alone.

It is most reasonable to conclude, then, that Hyperides' *Defense of Phryne* is the source for Pollux's account of Mysteries litigation in 8.123–124 and 141. As we have seen, 141 appears to be an abridged paraphrase of 123–124. Analysis of the style

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[44] 2.58 = fr.174, 2.124 = fr.171, 5.93 = fr.171. Note that fr.171 is not certainly from the *Defense of Phryne*: see Cooper, *Phoenix* 49 (1995) 309.

and vocabulary of the longer passage suggests that it is probably a verbatim quotation or very close paraphrase of Hyperides' words.

We noted that the style and articulation of 8.123–124 indicate that Pollux is quoting, or very nearly quoting, a single source and not paraphrasing material from various sources in simple constructions and linking them with the particle *de*, as he does in the rest of 122–124. The technical vocabulary of 123–124 is characteristic of Classical Attic usage, which also indicates that this is a quotation or close paraphrase. *Epopteuo*, *periskhoinizo*, *huperetai*, and *anepopteutos* are all technical terms of the Mysteries and the lawcourts, and *pleroo* and *parangello* are used here with their legal meanings. Pollux, an antiquarian and an Atticist, could surely have imitated this Classical Athenian technical terminology.[45] In fact *epopteuo*, *periskhoinizo*, *huperetai*, and *anepopteutos*, as well as the procedural sense of *pleroo*, appear in other parts of the *Onomasticon* besides 8.123–124 and 141.[46] However, all these occurrences, except *periskhoinizo* in 8.20, are in word lists or definitions and are not unglossed elements of sentences. To have so many technical terms used without comment in a passage whose style stands out from its immediate context is unusual in the *Onomasticon*. Rather than write pastiches of Classical Attic prose, Pollux tends to simplify the sentence structure of his sources and gloss technical words. The lack of glosses, the technical vocabulary, and the stylistic elaboration therefore support the conclusion that 8.123–124 is a quotation or near paraphrase of Hyperides and not a rewriting by Pollux in Classical idiom.

It is contrary to Pollux's practice, however, to quote a long section of text verbatim or nearly verbatim. He tends to adjust the words of his sources to fit their new context, as we saw in 8.141. If the longer passage in 8.123–124 is in fact a verbatim quotation or close paraphrase, we need to explain why Pollux

[45] Even Philostratus would probably grant this, despite criticizing Pollux's style in *VS* 2.12.

[46] Poll. 2.58; 8.20, 131, 145.

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would break with his usual practice.

It is possible that such quotations or paraphrases may have been common in the original *Onomasticon*, and that the epitomizer removed them for the sake of economy. The scholium at the beginning of the epitome shows that he often summarized and omitted references.[47] For some reason, perhaps an interest in Mysteries litigation, the epitomizer may have kept this one. He may not even have realized that this was a quotation or close paraphrase, either because Pollux failed to identify it or because a missing page or a damaged section hid the reference to Hyperides. The grammatical inconsistency between this passage and the preceding one lends some support to this conclusion, but it remains entirely speculative.

A more likely explanation is that this section was not part of Pollux's original text at all, but rather a scholium meant to complement the word *kinklides*, which appears in the next sentence. Our text of the *Onomasticon* is equipped with marginal scholia, and some of them are transmitted as part of the text in certain manuscripts.[48] Here, the scholiast would have quoted the Hyperides passage to illustrate the *periskhoinisma* as another way of controlling access to the Athenian lawcourts, and, at some point, the quotation would have been accidentally inserted into the text. The annotation and insertion could have happened at any point in the transmission of the *Onomasticon*. Indeed, the manuscript of Hyperides preserved in the Archimedes palimpsest proves that complete texts of Hyperides' orations were known into the Byzantine period, and the annotator of our exemplar, who may have been Arethas, could have had a text of the *Defense of Phryne* in his library.[49] If the

[47] See n.8 above.

[48] Bethe, *NAkG* (1895) 337–338. There is a good example in 8.26, where the comment δικάσιμον εἰ καὶ μὴν ὡς παρὰ Πλάτωνι [*Leg.* 958ʙ] οἶδεν εἰκότως, which is meant to explain the phrase δικάσιμοι ἡμέραι, is written as part of the text in Bethe's F and S manuscripts only.

[49] Bethe, *NAkG* (1895) 335–338. On Arethas and his library see N. Wilson, *Scholars of Byzantium*² (London 1996) 120–135; P. Lemerle, *Byzantine*

passage is removed, we would have an internally more consistent section about courtroom paraphernalia and personnel—the jars, the voting tokens, the amphorae, the *kinklides*, the jurors, and the *exegetai*. Furthermore, if the passage is in fact a marginal note which has intruded into the text, it helps to explain why 8.123–124 and 141 are so similar. The annotator may have been prompted by the paraphrase of Hyperides in 8.141 to look up the full text and copy it next to the section on the *kinklides*.

The scholia hypothesis may also shed light on the puzzling *hou husteron* which begins this section. As we have seen, there is no antecedent for *hou*. Furthermore, the usual way to say "later than this" with *husteron* is with a anaphoric genitive plural pronoun rather than a genitive singular relative pronoun. In fact, *hou husteron* in this sense is unattested elsewhere in Greek. When the two words appear in sequence, *hou* is almost always the object of a preposition like *peri*, and a verb of speaking follows in the relative clause. This suggests that the transmitted text is likely based on a misunderstanding, and that neither Hyperides nor Pollux qualified his description of Mysteries litigation with a temporal reference.

It is possible to imagine many original meanings for *hou husteron*. If, however, we assume both that there is relatively little textual corruption and that the fragment of the *Defense of Phryne* was originally a scholium, three possibilities are the most plausible. First, *peri hou husteron*, "[he talks/will talk] about this later," may have been written in the margin next to *kinklides* or in the space above it to refer the reader to the paraphrase that follows in 8.141. The antecedent of *hou* would have been the entire sentence about the *kinklides*. The use of *peri hou husteron*

and a verb of speaking as a cross-reference or signpost to some-thing that comes later in a text is common from the fourth century BCE to the early modern era.[50] In the scholia, *peri hou* and a third-person verb of speaking[51] and *husteron* with a third-person verb of speaking[52] are both ways to refer the reader to a parallel in another author or in another part of the text under discussion. The scholia also contain examples of *peri hou*, a verb of speaking or writing, and either an adverb or a prepositional phrase to refer to things that come earlier or later in a text or in the scholia themselves.[53] There may have originally been a verb of speaking or writing here too, although the sense would be clear without it.[54] At some point in the transmission of the *Onomasticon*, the text of the *Defense of Phryne* may have been written in the margin underneath *peri hou husteron*, or next to it if it were written over *kinklides*, to save the reader the trouble of flipping ahead. When the reference and the quotation were moved into the text as though they were grammatically con-sistent, *peri* was removed as nonsensical. Second, *husteron* may have been a type of verbal siglum written over the word *kinklides*, or in the margin next to it, alerting the reader to the quotation of Hyperides that would have been written on the bottom of the page. We may compare the use of *ano* and *kato* in Greek papyri directing the reader to additional information

[50] For examples from a range of periods and genres see Arist. *Gen.an.* 3.1 749a24; Diod. 20.10.4; Jos. *BJ* 4.353; Epiph. *Adv.haeres.* 43.1.1 (II 187 Holl/Dummer); Theodosius Gram. *Περὶ κλίσεως βαρ.* p.17.8–9 Hilberg; Ps.-Dionys. Areop. *De coel. hier.* 13.4 (*PG* 3.304D; 47.12 Heil/Ritter); Xan-thopulus *HE* 3.2 (*PG* 145.893B).

[51] Schol. Soph. *OC* 472, *Aj.* 190; schol. Pind. *Pyth.* 1.153; D schol. Hom. *Il.* 11.62; schol. Ar. *Vesp.* 1207. Cf. schol. Dem. 24.20 (56 Dilts), where a first-person verb of knowing is used with a reference to Dem. 22.

[52] E.g. schol. Hom. *Il.* 3.348.

[53] Schol. Aratus 239 (193.17–18 Martin), περὶ οὗ ἐν τοῖς ἑξῆς ἐρεῖ; schol. Ar. *Eq.* 886b, περὶ οὗ ἄνω ἐγράφη.

[54] Cf. schol. rec. Ar. *Plut.* 589c, περὶ οὗ καὶ ἐν τῇ Ἰλιάδι.

written at the top or bottom of the page or column.[55] As in the prior hypothesis, when the scholium entered the main text, *husteron* would have been copied along with it; *hou* would then have been added in an attempt to fit the context. Third, the annotator may have made a note to himself in the margin that meant something like "come back to this later," and then filled in the relevant Hyperides passage after he consulted another text. And, once again, the note and the quotation would have been copied as a unit into the text with either *peri* dropping out, if the original note were *peri hou husteron*, or *hou* being added, if the original note were simply *husteron*.

Whether it is a scholium or part of the original text of the *Onomasticon*, the section on procedure and security in trials involving the Mysteries is very likely a quotation of Hyperides' lost *Defense of Phryne* or a close paraphrase of it. Why would Hyperides have mentioned these details in that speech?

The role of the proposed fragment in Hyperides' rhetorical strategy

Scholars have long been puzzled about why Hyperides would have mentioned "someone who has not experienced the *epopteia*" and "the people who have experienced the *epopteia*" in the *Defense of Phryne*. Mystery terminology, outside of the speeches of Andocides and Lysias that specifically refer to the profanation of the Mysteries in 415, is uncommon in Attic oratory, and, as far as we know, Phryne's trial had nothing to do with the Eleusinian Mysteries. Euthias charged her with *asebeia* for going on a *komos* in the Lyceum, introducing the new god Isodaites, and bringing together *thiasoi* of men and women,[56] not for profaning the Mysteries. Paul Foucart, Mario

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[55] K. McNamee, *Sigla and Select Marginalia in Greek Literary Papyri* (Brussels 1992) 13–14. Cf. the use of *ano* in schol. to Ar. *Eq.* 886b (n.53 above).

[56] Anonymus Seguerianus 215 = Euthias fr.2 Sauppe; Hyp. fr.177. On the date (late second or early third century), sources, and authorship of Anon.Seg. see M. R. Dilts and G. A. Kennedy, *Two Greek Rhetorical Treatises from the Roman Empire* (Leiden 1997) ix–xv; D. Vottero, *Anonimo Segueriano: Arte del discorso politico* (Alessandria 2004) 1–96; M. Patillon, *Anonyme de Séguier: Art du discours politique* (Paris 2005) v–xc. On Isodaites see H. S. Versnel, *In-*

Marzi, and A. E. Raubitschek have published the most sig-
nificant hypotheses on the role that *anepopteutos* and *epopteukoton*
may have played in the *Defense of Phryne*. All three focus on their
ritual significance. The proposed new fragment, however,
offers a radically different solution: Hyperides used the terms in
a straightforward description of trial procedure in litigation
involving the Mysteries. Before I address the place of this de-
scription in Hyperides' rhetorical strategy, I will briefly analyze
the theories of Foucart, Marzi, and Raubitschek and show that
they raise more questions than they answer.

Foucart and Marzi speculated that Hyperides used the terms
anepopteutos and *epopteukoton* to refer to the participants in the
rites in honor of Isodaites.[57] This is almost certainly incorrect.
The words are technical terms of the Eleusinian and Samo-
thracian Mysteries, not of every mystery cult.[58] Furthermore,
Hyperides would probably not have focused on the details of
Phryne's mystery cult, which had unsavory connotations.
Harpocration calls Isodaites "some foreign god into whose
mysteries common women, and indeed not very good ones,
used to perform initiations" (163.3–4 Dindorf = I 23 Keaney).
Even if this definition is biased by later information, there is no
question that a connection with private mystery cults was a
liability in fourth-century Athens.[59] Athenian forensic speeches
tend to suppress potentially detrimental information, and, in a
defense for *asebeia*, it is hard to see what benefit could come
from describing the details of the allegedly impious cult. Hy-
perides may have drawn a parallel between Phryne's cult and
the Eleusinian Mysteries to try to establish its legitimacy, but
the high level of respect accorded to the Mysteries makes this
unlikely. Jurors who had experienced the actual *epopteia* would

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consistencies in Greek and Roman Religion I *Ter Unus* (Leiden 1990) 118–119.

[57] P. Foucart, *Des associations religieuses chez les Grecs* (Paris 1873) 81–82;
Marzi, in *Oratori Attici* 306–307 nn.3–4.

[58] Cf. Clinton, in *Greek Mysteries* 50.

[59] Dem. 18.259–260; 19.199, 249, 281. Parker, *Athenian Religion: A History*
(Oxford 1996) 162–163.

hardly have liked being compared to Isodaites' initiates, and forensic speakers always try to avoid alienating their judges.

Raubitschek suggested that the terms need to be understood in the context of Athenaeus' account of Phryne's reticence about bathing in public.[60] Athenaeus (13.590ꜰ) says that Phryne did not visit the public baths, and the only time she was ever seen naked was when she went into the ocean at the "Eleusinia" (he must mean the Mysteries) and the Poseidonia. Raubitschek speculates that a similar ritual bath was required in the cult of Isodaites and that Hyperides would have argued that Phryne would not have taken part in it because she never bathed in public except at those two festivals. According to Raubitschek, Hyperides would have used *anepopteutos* and *epopteukoton* to describe the participants in this ritual bathing; *anepopteutos* would probably have referred to Phryne herself. Unlike Foucart and Marzi, Raubitschek does not use the terms to refer to initiates in the cult of Isodaites. His explanation, however, requires three assumptions for which there is no evidence: that there was ritual bathing in Isodaites' cult, that Athenaeus' reference to Phryne's refusal to bathe in public is actually based on Hyperides' speech, and that *anepopteutos* and *epopteukoton* occurred in the original section that Athenaeus is said to be summarizing, even though they do not occur in Athenaeus. Raubitschek's special pleading testifies to how difficult it is to reconcile Hyperides' use of the terms with what we know of the contents of his speech and the nature of Phryne's crime.

The new fragment shows that elaborate explanations are unnecessary. Hyperides was not using the terms to discuss the participants in the cult of Isodaites or the ritual bathers at Eleusis. He was simply giving information about Mysteries litigation. Surviving forensic speeches rarely discuss basic procedural matters like juror selection and courtroom security, however, as these issues were rarely relevant to the speakers' arguments, and probably too well known to their listeners to

[60] A. E. Raubitschek, "Phryne," *RE* 20 (1941) 893–907, at 905.

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merit attention anyway. It is therefore a little surprising to find a description of procedural issues, and specifically procedural issues in Mysteries trials, in Hyperides' *Defense of Phryne*. The rules and safeguards that he mentions cannot refer to the conditions of Phryne's trial. Therefore, since Hyperides' was not describing the circumstances of his own speech, the reference to Mysteries litigation must have had a rhetorical purpose.

Everything we know of Phryne's trial suggests that showmanship and insinuation played a prominent role in Hyperides' rhetorical strategy. Indeed, Phryne's torn *khiton* is the most famous example of forensic showmanship from Classical Athens. Even if the story is an exaggeration and Phryne did not really disrobe, Hyperides probably did take advantage of her presence and call her to the *bema* to excite the jurors' pity.[61] The earliest source to mention the trial, a fragment of Posidippus' *Ephesia*, makes no mention of the disrobing but does say that Phryne took each of the jurors' hands in turn.[62] Such personal attention to hundreds of jurors would have been impossible, but Posidippus' reference to the trial suggests that Hyperides and Phryne made some kind of emotional appeal which was unusual enough to merit a comic parody.

There was a late antique tradition that Euthias' *asebeia* charge was based on personal animosity rather than on real knowledge of Phryne's impiety, and this tradition probably stemmed from insinuations in the *Defense of Phryne*. Two excerpts of Alciphron's *Letters of Hetairai*, which Blass, followed by Kenyon and Jensen, printed as a fragment of Hyperides' speech, illustrate this best. In one excerpt, the *hetaira* Bacchis writes to Hyperides that Euthias' suit threatens all *hetairai* who have trouble collecting their fees or find themselves facing trials for *asebeia* even when they do find paying customers.[63] In the other, Bacchis repri-

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[61] Cooper, *Phoenix* 49 (1995) 312–316. Cf. G. Colin, *Hyperides. Discours* (Paris 1946) 11–12. F. S. Naiden, *Ancient Supplication* (Oxford 2006) 102, maintains that the breast-baring actually occurred.

[62] Posidippus fr.13 K.-A. = Ath. 13.590E–F.

[63] Alciphron 4.3.1 = Hyp. fr.179: ὁ μὲν γὰρ ἀγὼν μόνης Φρύνης, ὃν ὁ

mands Myrrhina for revenging herself on her old lover Hyperides by taking up with Euthias. She writes that if Myrrhina asks Euthias for a favor, he will accuse her of setting fire to the shipyards or plotting to overthrow the democracy.[64] On the basis of these excerpts, Raubitschek has suggested that Euthias brought the charge of impiety against Phryne as a way to avoid paying her fee.[65] Raubitschek's reconstruction of Euthias' motives can be no more than tentative. It is plausible, however, that Euthias may have had personal or political reasons for bringing the case,[66] and that Hyperides would have exaggerated these motives to insinuate that the prosecution was frivolous. Athenian prosecutors often faced allegations that they brought suits to settle scores with their opponents or for financial gain. In this context, it is not insignificant that Harpocration says that Euthias was accused of being a sycophant.[67]

The reference to Mysteries litigation in the new fragment ought therefore to be consistent with a speech characterized by insinuation and emotional manipulation. Two plausible possibilities meet these criteria.

First, the fragment may come from a part of the speech that belittles the seriousness of Euthias' allegations by comparing them to allegations of impiety towards the Mysteries. Craig Cooper and Gianfranco Bartolini have suggested that the

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παμπόνηρος Εὐθίας ἐπανείλετο, ὁ δὲ κίνδυνος ἁπασῶν. εἰ γὰρ αἰτοῦσαι παρὰ τῶν ἐραστῶν ἀργύριον οὐ τυγχάνομεν ἢ τοῖς διδοῦσιν [αἱ] τυγχάνουσαι ἀσεβείας κριθησόμεθα, πεπαῦσθαι κρεῖττον ἡμῖν τοῦ βίου τούτου καὶ μηκέτι ἔχειν πράγματα μηδὲ τοῖς ὁμιλοῦσι παρέχειν.

[64] Alciphron 4.5.3 = Hyp. fr.179: αἴτησόν τι παρ' αὐτοῦ, καὶ ὄψει σεαυτὴν ἢ τὰ νεώρια ἐμπεπρηκυῖαν ἢ τοὺς νόμους καταλύουσαν.

[65] Raubitschek, *RE* 20 (1941) 904. Colin, *Hyperides* 10, similarly suggests that Euthias brought the case to take revenge on Phryne after a lovers' quarrel.

[66] On personal and political motives for litigation, see J. Kucharski, "Vindictive Prosecution in Classical Athens: On Some Recent Theories," *GRBS* 52 (2012) 167–197, esp. 179–184.

[67] Harp. 140.3–5 Dindorf = ε 157 Keaney. Cf. Cooper, *Phoenix* 49 (1995) 306–307 n.10.

Defense of Phryne, like other extant speeches of Hyperides, was characterized by irony and ridicule.[68] Their arguments, like Raubitschek's interpretation of the Alciphron passages, are necessarily speculative. It is hard, however, to interpret fr.180 = Quin. *Inst.* 1.5.61, *bene fecit Euthia*, "Euthias has done well," as anything other than ironic. Furthermore, Longinus (*Subl.* 34.2) specially praises Hyperides' irony and ability to ridicule, and Hyperides trivializes his opponent's case in *On Behalf of Euxenippus*, suggesting that *eisangelia* is too serious a charge to bring against Euxenippus for merely having a dream.[69] The reference to Mysteries litigation could have played a similar role in the *Defense of Phryne*. Hyperides could have suggested that Euthias was making much ado about nothing by charging Phryne with impiety because of the cult of Isodaites. Perhaps he asked what impiety she had committed and talked about how, when people committed impiety against the Eleusinian Mysteries, they were tried by a jury of *epopteukotes* and precautions were taken so that the *anepopteutoi* could not overhear the testimony. The lack of such precautions in Phryne's trial could have indicated the triviality of Euthias' claims. Euthias may even have hinted that the ritual in honor of Isodaites was a profanation of the Mysteries, which Hyperides would have mocked by describing proper procedure in real profanation trials. If *hou husteron* is authentic, Hyperides may have given a list of past *asebeia* trials and contrasted them with Euthias' trivial case against Phryne.

Second, and much more speculatively, Hyperides may have alleged some impiety against the Mysteries on Euthias' part. The speech almost surely featured character attacks against him. Moreover, in an unplaced fragment of Hyperides the speaker declares that he does "not have the daughter of a *da-*

[68] Cooper, *Phoenix* 49 (1995) 310–312; G. Bartolini, *Iperide: Rassegna di problemi e di studi* (Padua 1977) 118.

[69] Hyp. *Eux.* 1–3; cf. Cooper, *Phoenix* 49 (1995) 311. For further details see Whitehead, *Hypereides* 170–183; M. H. Hansen, *Eisangelia: The Sovereignty of the People's Court* (Odense 1975) 109, no. 124.

douchos or a hierophant,"[70] which implies that someone else was having an affair with them. The fragment may come from the *Defense of Phryne*. If it does, Hyperides could have alluded to Euthias' scandalous behavior with these two women and suggested that, rather than trying Phryne for impiety, he should have been tried himself. The reference to Mysteries litigation would have been part of an insinuation that Euthias' behavior with the daughters of the Eleusinian personnel was not just improper but involved actual revelation of the Mysteries ritual and should have been tried accordingly.

Conclusion

Until we find more of the *Defense of Phryne*, there is no way to determine if the section on Mysteries litigation in Pollux 8.123–124 is in fact part of the speech. This article shows, however, that this is a strong possibility. Indeed, the section from the *Onomasticon* is as strong a candidate for inclusion among the fragments of the *Defense of Phryne* as either of the excerpts from Alciphron which Jensen includes as fr.179 and which Raubitschek uses as the basis for his interpretation of the trial. As we have seen, the simplest and most plausible interpretation of the fragment is as an example of Hyperides' famously ironic wit. His mention of the *anepopteutoi* and the *epopteukotes* does not come in a reference to ritual actions, but merely in a description of trial procedure which he uses to show the triviality of Euthias' charges.[71]

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[70] Fr.198: ἐγὼ δὲ οὔτε δᾳδούχου θυγατέρα ἔχω οὔτε ἱεροφάντου.