

Edward M. Harris

## THE PENALTY FOR FRIVOLOUS PROSECUTIONS IN ATHENIAN LAW

The Athenians intended their courts to enforce the laws and to render justice. Lycurgus (*Leocr.* 4) succinctly describes the aims of the legal system: «It is the function of law to indicate what must not be done, the task of the accuser to denounce those who are subject to the penalties set forth in the laws, and the duty of the judge to punish those whom both of these have brought before him». In his speech against Aristogeiton, Demosthenes (25.6) reminds the court that it is their duty to show their anger by punishing crime and urges them to fulfil their role as guardians of the law (φύλακες τῶν νόμων. Cf. Dem. 24.36; Din. 3.16). The courts were not designed to be just another arena for citizens to pursue private feuds or to harass their enemies with suits lacking any legal merit.

In *graphāi* and other public suits, the aim of the courts was to punish those who had broken the law. As Lycurgus (*Leocr.* 6) puts it, «it is the duty of the just citizen therefore not to bring to public trial for the sake of private quarrels people who have done the city no wrong, but to regard those who have broken the law as his own enemies and to view crimes that affect the common welfare as providing public grounds for his enmity against them»<sup>1</sup>. Demosthenes

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<sup>1</sup> Compare Lys. 31.2: ποιήσομαι κατηγορίαν, οὐ μέντοι γε ἰδίαν ἔχθραν οὐδεμίαν μεταπορευόμενος, and Dem. 23.1: νομίση μήτ' ἰδίας ἔχθρας ἐμὲ μηδεμίως ἔνεχ' ἤκειν Ἄ-

(18.123) takes it for granted that «our ancestors set up these courts not for us to have you meet here to hear us pour foul insults on each other for personal reasons, but for us to examine whether someone has done the city an injustice». The charge an accuser brings should be directed at the wrongs for which the laws provide penalties (ἀδικήματα ... ὧν ἐν τοῖς νόμοις εἰσὶν αἱ τιμωρίαι). The kind of slanders that personal enemies make against each other have no place in court. Demosthenes (18.278) says «the respectable citizen should not ask judges who meet to decide public cases to lend their support to his grudge or personal feud»<sup>2</sup>.

The Athenians enacted several measures to prevent litigants from abusing the legal system for personal gain<sup>3</sup>. To prevent litigants from prolonging disputes and tying up the courts with endless wrangling, the Athenians recognized the principle of *res iudicata* and made it illegal to bring a case to court once a verdict had been rendered<sup>4</sup>. The laws of Athens also encouraged out-of-court settlements by recognizing such agreements as legally binding (Dem. 36.25, 37.1). If a litigant brought a case that had already been judged by a court or settled by private agreement, the defendant could bring

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ριστοκράτους κατηγορήσονται τουτουί. Cf. 190, and Lys. 26.15. When accusers admit that they have previously quarrelled with the defendant, they are careful to justify their charges by claiming that their case follows the laws and serves the public good. See especially Aeschin. 1.1-2 (αἱ γὰρ ἴδιαι ἔχθραι πολλὰ πάνυ τῶν κοινῶν ἐπανορθοῦσι). D. Cohen, *Law, Violence, and Community in Classical Athens*, Cambridge 1995, p. 83, states that litigants «advance vengeance as a respectable motivation for litigation» but the passages cited here show that Cohen's generalization is simplistic and misleading.

<sup>2</sup> See also Dem. 18.283-284, 290-293, 306-309. Demosthenes (18.281) claims that he himself pursues only the public interest, not his own.

<sup>3</sup> The account of measures against legal abuse found in M. Christ, *The Litigious Athenian*, Baltimore-London 1998, pp. 28-32, is incomplete and unreliable.

<sup>4</sup> The only way to overturn a verdict was for a litigant to bring an action for false testimony against one of his opponent's witnesses. Cohen, *Law, Violence, and Community in Classical Athens* cit., p. 92, claims that in Demosthenes' litigation with his guardians «legal judgments are by no means binding, nor do they serve to terminate or resolve the conflict», but fails to draw a distinction between «dispute» and «conflict». The Athenian courts, like most legal systems, aimed at resolving disputes by their verdicts, but could only regulate conflict. For the distinction between dispute and conflict, see L. Nader - H.F. Todd, *The Disputing Process-Law in Ten Societies*, New York 1978, pp. 6, 14-15.

a *paragraphe* action to stop the case from going to trial <sup>5</sup>. For many types of private cases there existed a statute of limitations requiring that the accuser bring his charge before a certain date (e.g. Dem. 36.26-7, 38.17) <sup>6</sup>. Demosthenes (36.27) interprets this measure as a means of forcing litigants to make their charges without a long delay to ensure that there will be witnesses to the relevant facts of the case. And litigants could not bring a case without legal justification. If the plaint submitted by an accuser did not conform to the terms of the law under which it was brought, the magistrate to whom it was presented might reject it <sup>7</sup>. For instance, when Dionysodorus charged Agoratus with murder before the Eleven, these magistrates refused to accept the case until he expressed his charge with the correct language so that his case fell under their jurisdiction (Lys. 13.85-87) <sup>8</sup>. The ultimate deterrent to frivolous litigation is found in the *diapséphisis* procedure: if a deme voted to revoke the citizenship of one of its members, and that person appealed the decision to a court in Athens, then lost his case, he was sold into slavery (*Ath. Pol.* 42.1).

The courts also required payment of fees called *prytanéia* by the plaintiff and defendant to discourage frivolous litigation in private cases. If the amount in dispute was more than 1,000 drachmas, each litigant paid thirty drachmas each. If the amount was less than 1,000 drachmas, but more than 100, each paid three drachmas. After the trial the loser reimbursed the winner for his fee <sup>9</sup>. In some private suits the unsuccessful plaintiff had to pay a fine of one-sixth of the amount claimed <sup>10</sup>. In cases where someone claimed that a person

<sup>5</sup> A.R.W. Harrison, *The Law of Athens*, II, Oxford 1971, pp. 106-124.

<sup>6</sup> Harrison, *The Law of Athens*, II, cit., pp. 116-120. There was no statute of limitations for cases of homicide: Lys. 13.83.

<sup>7</sup> R.J. Bonner - G. Smith, *The Administration of Justice from Homer to Aristotle*, II, Chicago 1938, p. 75 n. 2.

<sup>8</sup> The Eleven required him to add the phrase ἐπ' αὐτοφώρῳ. For the meaning of this phrase, see E.M. Harris, *In the Act or Red-Handed? «Furtum Manifestum» and «Apagoge» to the Eleven*, in G. Thür (hrsg.), *Symposion 1993*, Koeln-Wien 1994, pp. 129-46. For the power of the magistrate to reject a case that contravened the laws see also Antiphon, 6.37, 42.

<sup>9</sup> For the *prytanéia*, see Poll. 8.38 with Harrison, *The Law of Athens*, II, cit., pp. 92-94. The fee was waived in cases involving less than 100 drachmas.

<sup>10</sup> On the *epobelía*, see Harrison, *The Law of Athens*, II, cit., pp. 181-183.

being held as a slave was actually free but failed to prove his case, he had to pay the owner of the slave five hundred drachmas and in addition pay a fine of an equal amount to the treasury ([Dem.] 58.19-20).

With a few exceptions Athenian Law did not require the citizen who brought a public case to pay court fees<sup>11</sup>. But there were severe penalties for the prosecutor who brought a charge that was so weak that it failed to gain at least one-fifth of the votes cast by the court. According to Theophrastus (fr. 4b Szegedy-Maszak):

Ἐπίδησιν οὖν ἐν τοῖς δημοσίοις ἀγῶσιν, ἐὰν μὴ μεταλάβῃ τις τὸ πέμπτον μέρος, χιλίας ἀποτίνει καὶ ἔτι πρόσεστί τις ἀτιμία οἷον τὸ ἐξεῖναι μῆτε γράψασθαι παρανόμον μῆτε φαίνειν μῆτε ἐφηγεῖσθαι.<sup>12</sup>

At Athens in public cases, if someone does not gain a share of one-fifth (of the votes), he owes fine of 1,000 drachmas and in addition he loses certain rights such as the ability to bring a *graphé* or a *phásis* or an *ephégesis* against an illegal action.

The evidence of Theophrastus is confirmed by several passages in the orators. Many texts refer to the penalty of 1,000 drachmas<sup>13</sup>, and several mention the loss of the right to prosecute<sup>14</sup>. Demosthenes (26.9) states that when the prosecutor fails to gain one-fifth of the votes, he permanently loses the right to bring a *graphé* or use the *apagogé* or *ephégesis* procedures (τὸ λοιπὸν μὴ γράφεσθαι μηδ' ἀπάγειν μηδ' ἐφηγεῖσθαι). When bringing his *apographé* against Nicostratus, Apollodorus ([Dem.] 53.1) states that if he loses the case, he risks a fine of 1,000 drachmas and loss of the right to bring public

<sup>11</sup> For the exceptions, see *Ath. Pol.* 59.3 with Harrison, *The Law of Athens*, II, cit., p. 94.

<sup>12</sup> Similar information can be found in Poll. 8.52-53. Reiske proposed emending παρανόμον to παρανόμων and was followed by Harrison, *The Law of Athens*, II, cit., p. 83 n. 2, and MacDowell, *Demosthenes Against Meidias*, Oxford 1990, p. 327. But the emendation is unnecessary and vulnerable to several objections. See E.M. Harris, «Classical Philology» 87 (1992), p. 79. The conclusion reached in that article is accepted by R.W. Wallace, *Unconvicted or Potential «Atimoi» in Ancient Athens*, «Dike» 1 (1998), p. 66 n. 5.

<sup>13</sup> [And.] 4.18; Dem. 23.80, 24.7; [Dem] 58.6.

<sup>14</sup> Cohen, *Law, Violence, and Community in Classical Athens* cit., pp. 102-103, 117 appears to believe there was only a fine for not receiving one-fifth of the votes; he does not mention the *atimía* even though he discusses [Dem.] 53.1-2, where this penalty is explicitly mentioned.

charges again<sup>15</sup>. Hyperides (*Eux.* 34) says that the court did not give Tisis of Agryle one fifth of the votes when he brought his *apographé* against Euthykrates and penalized him with *atimía* (ἡτίμωσαν). In his speech for Ctesiphon, Demosthenes (18.266. Cf. 82) says that Aeschines is in danger of losing his right to bring charges if he receives less than one-fifth of the votes<sup>16</sup>. These penalties also applied when a prosecutor brought a public charge, then failed to bring the case to trial. Demosthenes (58.6) states explicitly that if a prosecutor initiates a *graphé, phásis* or another public action and does not follow through with his case (μὴ ἐπεξίη), he will pay a fine of 1,000 drachmas. Demosthenes (21.103) tells the court how Euctemon brought a charge of desertion against him (Ἐυκτῆμων Λουσιεὺς ἐγράψατο Δημοσθένην Παιανιέα λιποταξίου). When Euctemon failed to follow through on his prosecution, he suffered *atimía*, that is, he lost his right to prosecute (ἡτίμωκεν αὐτὸν οὐκ ἐπεξεληθῶν). The evidence of Theophrastus and the orators is clear: the accuser who brought a public charge, then failed to follow through his prosecution or to win at least one-fifth of the votes at the trial had to pay a fine of 1,000 drachmas and lost his right to bring all public charges in the future<sup>17</sup>.

Despite the ancient evidence, M.H. Hansen has argued that the prosecutor subject to this penalty only lost his right to bring a case of the same type in the future, not his entire right to prosecute on public charges<sup>18</sup>. He points first to Demosthenes, *Against Euboulides*

<sup>15</sup> Apollodorus exaggerates for rhetorical purposes by neglecting to add that these penalties would apply only if he failed to gain one-fifth of the votes.

<sup>16</sup> Cf. And. 1.33; Dem. 26.9.

<sup>17</sup> According to Poll. 8.5-3 there was only a penalty of 1,000 drachmas and no *atimía* for the prosecutor who did not gain one-fifth of the votes in an *eisangelía*. M.H. Hansen, *Eisangelía: The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians*, Odense 1975, pp. 29-31, argues that this penalty was introduced between 333 and 330 and that there was no penalty at all in an *eisangelía* before this.

<sup>18</sup> M.H. Hansen, *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi and Pheugontes*, Odense 1974, pp. 63-65. For references to the opinions of earlier scholars, see H. Wankel, *Demosthenes: Rede für Ktesiphon über den Kranz*, I, Heidelberg 1976, p. 562. Hansen is followed by S.C. Todd, *The Shape of Athenian Law*, Oxford 1993, p. 143, and D.M. MacDowell, *Demosthenes Against Meidias*, Oxford 1990, pp. 327-328. MacDowell rightly rejects the proposal of U.E. Paoli, *Studi di diritto attico*, Firenze 1930, pp. 322-323, followed by Harrison, *The Law of Athens*, II, cit., p. 83 that the only kind

(57) «where the defendant Euxitheos relates that Euboulides once, as prosecutor in a γραφή ἀσεβείας, had obtained less than one-fifth of the votes of the jurors. In the trial of Euxitheos Euboulides nevertheless appears before the jurors as one of the prosecutors appointed by the deme». There are three objections to Hansen's use of this evidence. First, the speaker provides no evidence to prove his charge. One might just as easily argue that the allegation must be false because Euboulides later appeared as a prosecutor. Second, there is no indication that the trial that resulted when a candidate rejected at a *diapséphis* appealed the deme's decision to a court in Athens was one of those covered by the law. In this procedure there was no formal accusation made by an accuser. The person who was in danger of losing his citizenship was appealing the decision of the deme, not defending himself against a charge brought by an individual. Although the advocates who spoke in favor of the deme were called accusers (κατήγοροι), they are not the ones who bring a charge against the defendant. They were appointed by the deme to argue its case against the rejected candidate<sup>19</sup>. They are thus not like accusers in a *graphé*, *éndeixis*, or *ephégesis*, but similar to the prosecutors whom the *pólis* elected in certain important cases<sup>20</sup>.

Hansen next points to Dem. 21.103 and 139 where he claims «Demosthenes refers to a γραφή λιποταξίου which Euktemon had brought against him but withdrawn before the trial<sup>21</sup>. Euktemon incurred *atimía* but a few paragraphs later Demosthenes refers to him

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of *atimía* suffered by frivolous prosecutors was the same one that applied to all citizens condemned to pay a fine, that is, total disenfranchisement that ended when the fine was paid.

<sup>19</sup> For appeal against a deme's decision about citizenship, see *Ath. Pol.* 42.1 with P.J. Rhodes, *A Commentary on the Aristotelian Athenaiion Politeia*, Oxford 1981, p. 501: «The κατήγοροι are accusers, who in opposition to the candidate will state the deme's case for rejecting him». Note that *Ath. Pol.* 59.4 does not group these cases with *dikai* and *graphái*, but with *dokimasiai* for magistrates and appeals from verdicts of the Council.

<sup>20</sup> For prosecutors elected or appointed by the *pólis*, see Dem. 20.146; Aeschin. 1.19, and Harrison, *The Law of Athens*, II, cit., pp. 34-5 with note 2. There is no indication they were subject to the penalties for frivolous prosecution. Indeed, it would be unfair for them to suffer for losing a case that the *pólis* had brought against the defendant.

<sup>21</sup> To be precise, Euktemon did not withdraw the *graphé*, but failed to follow through on his prosecution. For the distinction see below.

once more as a sycophant who habitually gave evidence in court for pay». These passages do not support Hansen's argument either. Demosthenes (21.139) says that Meidias is protected (προβέβληται) by Polyeuctus, Timocrates, and Euctemon, but does not describe what kind of protection they afford him. Demosthenes adds that there is another group (πρὸς ἕτι ἕτεροι τούτοις), a «cabal composed of witnesses ... who easily nod in silent assent at his lies». Demosthenes' language clearly indicates that this is a second group, distinct from the one containing Euctemon. Even if Euctemon were in this group, Demosthenes never says that they brought public charges against Meidias' opponents.

MacDowell has observed that Diodorus in the speech Demosthenes (24.7, 14) wrote for him to deliver against Timocrates alleges that Androtion brought a *graphé asebéias* against him, but failed to gain one-fifth of the votes at the trial and was fined one thousand drachmas<sup>22</sup>. Later in the same speech Diodorus (Dem. 24.14) reports that Androtion brought a *graphé paranómon* against Euctemon. But Diodorus presents no evidence to support his allegation, and his testimony is suspect since Diodorus had every reason to exaggerate the extent of Androtion's defeat. One can just as easily argue that Diodorus misrepresented the court's vote in an attempt to portray his opponent as sycophant. That is why he mentions only the fine of one thousand drachmas and not the *atimía*. If he had mentioned the *atimía*, the court would have easily been able to detect the inconsistency in his account of Androtion's actions<sup>23</sup>. A careful examination of the evidence cited by Hansen and MacDowell reveals that there is no reason to doubt Theophrastus and the orators when they say that the prosecutor who failed to gain one fifth of the votes at the trial or to follow through his case lost the right to bring public charges in the future.

<sup>22</sup> MacDowell, *Demosthenes Against Meidias* cit., pp. 327-328.

<sup>23</sup> Wallace, *Unconvicted or Potential «Atimoi» in Ancient Athens* cit., p. 68, suggests that in cases of impiety «failed prosecutors were subject only to a fine, not partial *atimía*», but cites no evidence to support his argument. We should also question Aeschines' charge (2.93) that Demosthenes did not follow through on his *graphé* against Demomeles before the Areopagus, which imposed a fine on him (ἐπιβολήν). Moreover it is not certain that the charge was actually a *graphé*: see M.H. Hansen, *Graphé or dike traumatos?* «GRBS» 24 (1983), pp. 307-320.

Hansen has also argued that the ban on those subject to these penalties was not strictly enforced «a blind eye was often turned to *átimoi* who behaved as *epítimoi*». He points to «at least fifteen cases where the prosecutor withdrew a public action with impunity, as against only four examples of the prosecutor being fined and punished with partial *atimía*»<sup>24</sup>. If this is true, it has major implications for our view of Athenian Law for it would give the impression that the Athenians did not take the enforcement of the penalties for frivolous prosecution very seriously.

Several of the passages cited by Hansen, however, are so vague or give so little information that it would be unsafe to conclude that the prosecutors in these cases actually violated the law. Hansen draws attention to Plato, *Crito* (45e), where Crito says that he is afraid that the fact that Socrates' case came to court when it was possible to avoid a trial will make people think that he and his friends failed because of their cowardice and poor character. But Crito does not specify what means he would have used to prevent the case from coming to trial. In any event, Meletus did not withdraw his charge, and the case went to trial. Hansen claims that Demosthenes (21.36-39) describes a case where «a *próedros* withdraws a public action against Polyzelos for having assaulted a public official», but Demosthenes does not say that the official ever summoned Polyzelus or lodged a formal charge against him before a magistrate. On the contrary, Demosthenes states that the official agreed to a private settlement (*ιδία διαλυσάμενος*) and did not bring Polyzelus to court (*οὐδ' εἰσήγαγε τὸν Πολύζηλον*)<sup>25</sup>.

In another case listed by Hansen the prosecutor did not withdraw the charge, but actually brought his case to trial. Hansen believes that at Andocides, 1.122 we find a case «where the prosecutor probably withdrew a public action with impunity». The incident described by Andocides took place as part of his feud with Callias. Andocides (1.120-21) says he put in a claim to marry his cousin, the daughter of Epilycus, who had become an *epíkleros* after the death

<sup>24</sup> Hansen, *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi and Pheugontes* cit., pp. 59-60, followed by Christ, *The Litigious Athenian* cit., p. 29.

<sup>25</sup> The phrase *ἔρρωσθαι πολλὰ τοῖς νόμοις εἰπὼν* also implies that the official chose not to have recourse to a legal procedure.

of her father. Callias also wanted her and put in a claim under his son's name. To thwart Andocides, he paid Cephisius 1,000 drachmas to bring an *éndeixis* against him. When Callias saw that Andocides was not about to desist, he told three of his friends that he was prepared to convince Cephisius to come to an agreement. Andocides does not specify the form of the agreement, but since Andocides says that he refused to settle and invited him to proceed with his prosecution (εἶπον αὐτῷ ... κατηγορεῖν), it appears that Callias intended to persuade Cephisius to drop his suit. Andocides did not come to an agreement, and Cephisius therefore was forced to bring his case to court. Since Cephisius did not actually withdraw the suit, he was not subject to the penalties for frivolous prosecution.

Hansen also claims that Timarchus violated the law regarding frivolous prosecutions during the *diapséphisis* of 346. Aeschines (1.114) relates that Timarchus claimed that Philotades was a former slave of his and persuaded the members of his deme to revoke his citizenship (ἀποψηφίσασθαι). Philotades then appealed his case to a court. Timarchus was one of the five accusers appointed by the deme to conduct the case (ἐπιστάς τῆ κατηγορία) and swore an oath that he would not take a bribe, but accepted twenty minai from Leuconides the brother of Philotades and betrayed the case (προῦδωκεν). First of all, this trial took place as part of *diapséphisis*, not one of the procedures covered under the law which penalized those who brought *graphé*, *phásis*, *apographé*, *ephégesis*. Second, it is not clear what Aeschines meant by «betrayed». There is no indication that this latter type of prosecutor was subject to the same penalties that applied to volunteer prosecutors. Second, when Aeschines criticizes Timarchus' conduct in the case, he blames him for violating his oath not to accept gifts, not for violating the law about frivolous prosecution (114-115: ὁμόσας μὴ λαβεῖν δῶρα μηδὲ λήψεσθαι ... τὸν ὄρκον ἐπιώρκησεν). Third, there is no reason to think Timarchus was in a position to have the suit dropped, because the deme has passed the vote against Philotades, and Philotades was the one who initiated the appeal. Finally, if Philotades agreed to have the case dropped, the vote to exclude him from citizenship would have remained in effect. For him to regain his citizenship Philotades had to have the case go forward. As a result, Philotades would therefore not have paid Timarchus to make sure the case did not go to trial. It is more likely that what Aeschines means by «betrayed» was that Timarchus

presented a weak case at the appeal and persuaded his fellow prosecutors to do the same so that the court would vote in Philotades' favor<sup>26</sup>.

In several other cases Hansen believes the prosecutor withdrew a public action with impunity. In these cases, however, which we will examine below, the speaker never says that the prosecutor did not «follow through» (ἐπεξελεθεῖν) or that the prosecutor suffered any penalty for withdrawing his action. Hansen's interpretation of these cases depends on his implicit assumption that the verb ἐπεξελεθεῖν, «to follow through», must have a narrow meaning and can only refer to the action of bringing a case to trial. The verb certainly does cover this action: for instance, the speaker at Antiphon, 6.37 says that he could not follow through his case and denounce his opponents' crime to the court (μηδὲ ... οἷός τε γενοίμην ἐπεξελεθεῖν μηδ' ἐνδειξομαι τῷ δικαστήριῳ τὰ δικάσιμα) after they brought a charge of homicide against him. In this passage the speaker cannot follow through (ἐπεξελεθεῖν) because he cannot bring his case to court (ἐνδειξομαι τῷ δικαστήριῳ). On the other hand, Hansen rules out the possibility that the verb could have a broader meaning and that bringing a case to court was only one way of «following through». This means that the law could have allowed the prosecutor to «follow through» either by bringing the case to court or by formally withdrawing the charge at the *anákrisis*. What was illegal was to summon a defendant and present a formal charge against him before the magistrate, then fail to follow through on the charge by not appearing at the *anákrisis* or by failing to prosecute the case in court after attending the *anákrisis*.

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<sup>26</sup> Aristophanes, *Wasps*, 691-695 provides an example of this kind of scheme. See D.M. MacDowell, *Aristophanes Wasps*, Oxford 1971, p. 227. Hansen (followed by Cohen, *Law, Violence, and Community in Classical Athens* cit., pp. 99-100, interprets Aeschin. 3.52 to mean that Demosthenes withdrew his *graphḗ hýbreos* against Meidias, but it is more likely that Aeschines alludes to the kind of scheme mentioned by Aristophanes. I owe this point to Lene Rubenstein. There is no reason to accept the interpretation made by Plutarch (*Demosthenes*, 12) of Aeschines' charge. Plutarch's idea that Demosthenes never brought the case to court has led several scholars to look for signs of incompleteness in Dem. 21, but there is no reason to believe that Aeschines' charge is reliable as evidence or that the speech is an unfinished draft – see H. Erbse, «Hermes» 84 (1956), pp. 135-151; E.M. Harris, *Demosthenes' Speech against Meidias*, «Harvard Studies in Classical Philology» 92 (1989), pp. 117-136, and E.M. Harris, «Classical Philology» 87 (1992), pp. 74-75. The arguments in these articles are ignored by Cohen, who uncritically accepts Aeschines' story and Plutarch's interpretation of it.

Two passages confirm this inference. Demosthenes (21.103) reports that Meidias convinced Euctemon to accuse Demosthenes of desertion (Εὐκτῆμων Λουσιεὺς ἐγράψετο Δημοσθένην Παιανιέα λιποταξίου). But after bringing the charge Euctemon did not attend the *anákrisis* (οὐτ' ἀνεκρίνετο). As a result, he did suffer *atimía*, that is, lost his right to bring public cases (ἤτιμωκεν αὐτόν) because he did not follow through his prosecution (οὐκ ἐπεξεληθών). Epichares (Dem. 58.8) states that Theocrines brought a *phásis* against Micon and summoned him to appear (ταύτην τὴν φάσιν ... ἔδωκε μὲν οὗτος προσκαλεσάμενος Μίκωνα). He presented the charge to the secretary of the Market Supervisors, who displayed it in front of their office. When the magistrates summoned Theocrines to the *anákrisis*, (εἰς τὴν ἀνακρίσιν καλούμενος. Cf. 8: καλούντων αὐτόν εἰς τὴν ἀνακρίσιν τῶν ἀρχόντων), however, he did not obey their orders nor «follow through» (οὐκ ὑπήκουσεν οὐδ' ἐπεξῆλθεν)<sup>27</sup>. Because of his failure to show up at the *anákrisis*, Theocrines is subject to the penalty of 1,000 drachmas (ταῖς χιλίαις ... ἔνοχός ἐστιν), which is the penalty for violating the law about bringing frivolous charges<sup>28</sup>. In both these cases failure to follow through a prosecution is equated with failure to appear at the *anákrisis*.

These two cases are markedly different from several other cases cited by Hansen. In these other cases, the prosecutor came to an agreement with his opponent and formally withdrew his indictment, an action which must have taken place at the *anákrisis*. Two of these cases occur in Apollodorus' speech *Against Neaira* ([Dem.] 59). Apollodorus ([Dem.] 59.64-70) relates how Stephanus plotted with Neaira against Epaenetus, who had been her lover in the past. Stephanus lured Epaenetus to the countryside, caught him having sex with Neaira's daughter, and charged him with *moichéia*<sup>29</sup>. Epaenetus

<sup>27</sup> The speaker claims that Theocrines bribed the secretary of the Supervisors of the Port to cancel his charge. This would indicate that if one were to withdraw the charge, one had to do it at the *anákrisis*. One could not try to withdraw the charge before appearing at the *anákrisis*.

<sup>28</sup> The speaker says Theocrines is also subject to arrest for bringing baseless charges against merchants, but this is a separate charge.

<sup>29</sup> The view advanced by D. Cohen, *The Athenian Law of Adultery*, «RIDA» 31 (1984), pp. 147-65, that *moichéia* is equivalent to the modern concept of adultery is anachronistic and is disproved by this passage as has now been recognized by many scholars

promised to pay him thirty minai and named two men as sureties. After Stephanus released him, Epaenetus brought a charge of wrongful confinement against him before the Thesmothetae (γράφεται πρὸς τοὺς θεσμοθέτας γραφὴν Στέφανον τουτονὶ ἀδίκως εἰρχθῆναι ὑπ' αὐτοῦ). Before the case went any further, Stephanus, fearing conviction, invited Epaenetus to settle the dispute by arbitration. Epaenetus consented and withdrew his charges (69: ἀνελομένου τὴν γραφὴν ἣν ἐδίωκε Στέφανον)<sup>30</sup>. There is no reason to question Apollodorus' account since he provides both the sureties and the arbitrators as witnesses (70-71)<sup>31</sup>. Here the accuser appears to have dropped the charge immediately after presenting it to the magistrate and before the case proceeded to the *anákrisis*. For this reason Apollodorus does not criticize Epaenetus for his decision and never says his withdrawing the charges made him subject to punishment.

Apollodorus ([Dem.] 59.52-54) also recounts how Phrastor brought a *graphé* against Stephanus before the Thesmothetai charging him with pledging the daughter of a foreigner in marriage as if she were the daughter of a citizen. Stephanus and Phrastor came to a settlement by which each agreed to drop his suit against the other (τὴν δίκην τοῦ σίτου ἀνείλετο, καὶ ὁ Φράστωρ τὴν γραφὴν παρὰ τῶν θεσμοθετῶν [*scil.* ἀνείλετο])<sup>32</sup>. Once again Apollodorus does not say Phrastor did anything illegal or was subject to a fine or *atimía*. It is also striking that in each case the prosecutor who withdrew the case was willing to testify that he did so. If withdrawing a case were illegal, it is hard to believe that Epaenetus and Phrastor would have admitted that they had broken the law in front of the court.

There are several other similar cases. Epichares (Dem. 58.32) reports that Theocrines summoned Polyuctus and brought a *graphé* for maltreatment of an orphan against him before the archon (προσ-

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beginning with E. Cantarella, «*Moicheia*». *Reconsidering a Problem*, and L. Foxhall, *Response to Eva Cantarella*, in M. Gagarin (hrsg.), *Symposium 1990*, Koeln-Wien 1991, pp. 289-304.

<sup>30</sup> K.A. Kapparis, *Apollodoros «Against Neaira» [D.59]*, Berlin - New York 1999, p. 314, does not comment on Epaenetus' withdrawal of his charge.

<sup>31</sup> For guidelines to evaluating the reliability of statements found in the orators, see E.M. Harris, *Aeschines and Athenian Politics*, New York - Oxford 1995, pp. 7-16.

<sup>32</sup> Kapparis, *Apollodoros «Against Neaira» [D.59]* cit., p. 275 does not comment on Phrastor's withdrawal of his charge.

καλεσάμενος τὸν Πολύευκτον ἀποφέρει γραφὴν κατ' αὐτοῦ κακώσεως πρὸς τὸν ἄρχοντα). After he received two hundred drachmas from Polyeuctus, he withdrew his charge (τὴν γραφὴν ἀνείλετο). Epichares criticizes Theocrines for abandoning the orphan (προδοὺς τὸν ὄρφανόν) but not for violating law about frivolous prosecutions. Earlier in the speech Epichares states that Theocrines has summoned and indicted several others on the *graphé paranómon* (24: προσκαλεσάμενος καὶ γραψάμενος), then settled with the defendants in return for money (μικρὸν ἀργύριον λαμβάνων ἀπαλλάττεται). The speaker attacks the practice of using the *graphé paranómon* for this purpose, calling it detrimental to the democracy, yet never says it is illegal or that Theocrines should have suffered a penalty for withdrawing these indictments. Epichares also says that Theocrines would have withdrawn (ἂν ἀνείλετο) his *graphé paranómon* against his father if he had been willing to pay him a thousand drachmas (Dem. 58.33-34). Although the speaker is quick to accuse Theocrines of every imaginable crime, he does not say that his proposal was illegal.

Dinarchus (1.94) provides another example of a prosecutor withdrawing an indictment. The speaker accuses Demosthenes of inconsistency (μεταβαλλόμενος) and gives three examples of how Demosthenes changed his mind. First, he proposed that no one should worship any but the traditional gods, then declared that the people should not dispute the divine honors granted to Alexander. Second, he indicted Callimedon by *eisangelía* for conspiring with exiles in Megara to overthrow the democracy, then withdrew the indictment (τὴν εἰσαγγελίαν ... ἀναιρούμενος). Third, he claimed there was a plot against the dockyards, then made no proposal to deal with the threat. The speaker does not criticize Demosthenes for breaking the law in the first and third examples; his complaint is that Demosthenes says one thing, then does something else. This indicates that there was also nothing illegal about withdrawing his indictment against Callimedon. Moreover, the speaker never says that it was illegal for Demosthenes to withdraw his indictment or that he incurred a penalty for doing so<sup>33</sup>.

<sup>33</sup> One could also explain the absence of any penalty in this case by arguing that there was no penalty for withdrawing an *eisangelia* before trial. See Hansen, *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians* cit., pp. 30-31.

Demosthenes (20.145) mentions three *grapháí paranómon* brought against Leptines. The first never went to trial because the prosecutor died, and the third was somehow compromised (παρεσκευάσθη), though Demosthenes is rather vague about the details. In the second case, however, Demosthenes says the prosecutor came to an agreement with and withdrew the case (πεισθεὶς ὑπὸ σοῦ διεγράψατο). Once again there is no indication that the prosecutor broke the terms of the law against frivolous prosecutions or was subject to a fine <sup>34</sup>.

These cases are very different from those involving Theocrines' *phásis* and Euctemon's *graphé lipotaxíou*. Neither Theocrines nor Euctemon showed up for the *anákrisis* or formally withdrew his case; Theocrines was brought to trial for violating the law, and Euctemon was punished with *atimía*. In each of these cases by contrast the speaker never says the person who dropped the suit violated the terms of the law (that is, never uses the phrase οὐκ ἐπεξεληθεῖν), did anything illegal, or was subject to a fine or loss of rights. Epichares (58.32) does criticize Theocrines for betraying the orphan, but not for breaking the law about frivolous prosecutions. What is important to note is that in all these examples, the speaker says that the charge was formally withdrawn (Din. 1.94: ἀναιρούμενος; [Dem.] 59.53: ἀνείλετο, 69: ἀνελομένου; Dem. 58.32: ἀνείλετο, 34: ἀνείλετο, ἀναιρεθῶσιν; Dem. 20.145: διεγράψατο). This must mean that when the parties met at the *anákrisis*, the prosecutor informed the magistrate that he wished to cancel his indictment, thus formally ending the procedure. This in turn indicates that the prosecutor could «follow through» (ἐπεξεληθεῖν) on his charge by either of two means: he could bring the case to trial, or alternatively he could withdraw his charge at the *anákrisis*. What the prosecutor could not do was simply to let the case drop after making his initial indictment as Theocrines and Euctemon did. He had to «follow through» in one way or another. If he did not, he was in violation of the law and subject to a fine and loss of the right to prosecute <sup>35</sup>.

<sup>34</sup> Demosthenes reports that Leptines claims these three prosecutors broke the law (οὐκ ἐπεξήλθον), but Demosthenes obviously disagrees with him and puts forward his own account of what happened to contradict his claim.

<sup>35</sup> A prosecutor who attended the *anákrisis*, then did not show up at the trial, was probably also subject to the penalties imposed by the law.

This analysis of the law against frivolous prosecutions allows us to explain several cases where an agreement was reached between the litigants and as a result their dispute never went to trial. The first example is described in Lysias, *Against Andocides*, 6.11-12. The speaker claims that Andocides, soon after returning to Athens from exile, summoned Archippus before the archon Basileus on a charge of impiety (προσεκαλέσατο δίκην ἀσεβείας πρὸς τὸν βασιλέα)<sup>36</sup>. When they met before the magistrate, Andocides claimed Archippus committed sacrilege against his ancestral Herm and applied for an *anákrisis* (ἔλαχεν ... φάσκων τὸν Ἄρχιππον ἀσεβεῖν περὶ τὸν Ἑρμῆν τὸν αὐτοῦ πατρῶον). Archippus denied the charge, but preferred to settle by offering payment. The settlement evidently included a promise on the part of Andocides to withdraw his charge at the *anákrisis*, which had not yet taken place. This would explain why the speaker never says Andocides broke the law or was subject to a fine of 1,000 drachmas and loss of the right to bring public charges<sup>37</sup>. A similar type of agreement may have also taken place between the Thesmothete and the man who beat him mentioned at Dem. 21.36-39. Demosthenes says that the Thesmothete settled the dispute in return for payment (21.39: ἰδίᾳ πεισθεὶς ὀπόσω δῆποτ' ἄργυρίῳ). Although Demosthenes does not explicitly say whether the Thesmothete had already initiated proceedings or not, the phrase καθυφεῖς τὸν ἀγῶνα, «dropping the case», appears to indicate he had. If this is the case, it

<sup>36</sup> The charge must be a *graphé asebeías* because it was brought before the *árchon basiléus*. See *Ath. Pol.* 57.2; Hyp. 4.6; Dem. 35.48. The fact that the speaker uses the term *díke* does not mean this must have been a private suit – see Poll. 8.41 (ἐκαλοῦντο αἱ γραφαὶ δίκαι, οὐ μέντοι αἱ δίκαι καὶ γραφαί). There is no reason to think Andocides brought a *díke asebeías* on the basis Dem. 22.27, which mentions the possibility of making a charge of *asébeia* by *δικάζεσθαι πρὸς Εὐμολπίδας*. We know too little about the judicial competence of the Eumolpidai to know what this means. For a suggestion, see R. Parker, *Athenian Religion: A History*, Oxford 1996, p. 296 («this tribunal doubtless adjudicated on offences against the Mysteries alone, and could perhaps only impose such penalties as exclusion from a shrine»). On the other hand, even if one could bring a *díke asebeías* before the Eumolpidai, the speaker in Lys. 6 says Andocides brought his case before the *árchon basiléus*, not the Eumolpidai.

<sup>37</sup> The speaker criticizes Andocides not for breaking the law but for his hypocrisy in accusing someone else of the very crime he is now on trial for. He adds that if Andocides thought it right to punish someone else for impiety, the judges should now punish him for the same crime. This argument appears to take for granted the legality of Andocides' actions against Archippus.

is important to observe that Demosthenes only criticizes him for failing to use the remedies provided by the legal system and does not say the settlement violated the law. Apollodorus ([Dem.] 45.4-5) may also allude to this kind of agreement. Apollodorus says he brought a *graphé hýbreos* against Phormion for marrying his mother. At first, the case did not go to court because no trials were taking place. Later his mother and Phormion's relatives asked him to desist. Apollodorus then skips over what follows (ἵνα συντέμω), saying only that Phormion did not think he had to do what he had agreed to (ὡμολόγησε). This implies there was an agreement, in which Apollodorus probably agreed to withdraw his case against Phormion<sup>38</sup>.

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The message conveyed by the penalties for frivolous prosecution should be clear: the Athenians did not want litigants to view the procedures created to prosecute public cases as just another means of pursuing private vendettas. The right to bring *grapháí* and other public charges was a valuable privilege, one so important that the Athenians considered just one serious abuse of the right as grounds for permanently revoking it. And there is no reason to think that the Athenians did not enforce the *atimía* that was imposed as a penalty for frivolous prosecution or that «a blind eye was often turned to *átimoi* who behaved as *epítimoi*». The procedures for public cases were created to protect the community's interest. If someone used these procedures merely to pursue his own vendetta, the Athenians believed he could not be trusted to use the courts to look after the public interest. When Aeschines brought a *graphé paranómon* without legal merit against Ctesiphon just to slander Demosthenes, the court put an end to his career as a prosecutor<sup>39</sup>.

<sup>38</sup> Aeschines (2.148) alleges that Nicodemus of Aphidna indicted Demosthenes for desertion (ἐγράφης λιποταξίου), but Demosthenes was «saved» (ἐσώθης) by paying off Nicodemus (τὸν γραψάμενον Νικόδημον τὸν Ἀφιδναῖον χρήμασιν πείσας). Aeschines does not say that Nicodemus withdrew that case, and it is possible that Aeschines may allude to the kind of arrangement discussed in note 26. Demosthenes, 25.47 may also allude to this kind of arrangement between Aristogeiton and Demades (τὰς κατὰ Δημάδου γραφὰς ... ἐξέλιπεν).

<sup>39</sup> For discussion of the trial and Aeschines' motives, see Harris, *Aeschines and Athenian Politics* cit., pp. 139-148, 173-74, and *Law and Oratory*, in I. Worthington

It is interesting to compare the Athenian approach to the problem of frivolous prosecutions with the approach taken by English Law in the eighteenth and nineteenth centuries. During this period most prosecutions on criminal charges were made by private individuals or corporations<sup>40</sup>. The English courts recognized that litigants might use the system to harass opponents with baseless accusations, but did not penalize prosecutors who failed to win their cases by a wide margin. By the early eighteenth century the courts created a tort of malicious prosecution. To recover damages, the victim had to prove that there was no reasonable cause for the accusation. There were also criminal charges for perjury or conspiracy to prefer a malicious indictment, but these could not be used in capital cases out of fear that they would discourage prosecution. As Douglas Hay has observed, however, «a prosecution for perjury was both expensive and difficult, as it entailed the technicalities and costs associated with trials for serious misdemeanour, and perhaps also required (as a criminal proceeding) a higher standard of proof»<sup>41</sup>. This meant that the best way for a victim to proceed was the action for malicious prosecution, but litigants often found it difficult to recover damages with this action. Hay notes that «the records of lawsuits in the courts at Westminster suggest that few victims of malicious prosecutions began actions. The rolls of the three common law courts for four sample years between 1740 and 1815, covering over 3,000 civil cases, do not identify a single suit for malicious prosecution. The fuller information extant for one court, Common Pleas, shows one case out of a total of 710 actions in six sample years between the interregnum and 1840»<sup>42</sup>. By contrast, the punishment for frivolous prosecution in Athens was automatic and far more severe. The vic-

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(ed.), *Persuasion: Greek Rhetoric in Action*, London - New York 1994, pp. 140-148. Note that a certain Lycinus, who brought a *graphē paranómōn* against Philocrates and failed to gain one-fifth of the votes (Aeschin. 2.14; cf. 3.62), is never again attested in our sources, presumably because the resulting *atimía* put an end to his political career.

<sup>40</sup> My account relies on D. Hay, *Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850*, in D. Hay - F. Snyder (eds.), *Policing and Prosecution in Britain 1750-1850*, Oxford 1989, pp. 343-395.

<sup>41</sup> Hay, *Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850* cit., p. 350.

<sup>42</sup> *Ivi*, p. 353.

tim did not have to prove that the prosecution lacked reasonable cause or knowingly made false statements. All he had to do was to gain acquittal by a wide margin.

At the same time, the Athenians wished to encourage out-of-court settlements by allowing a prosecutor to withdraw his charge after indicting the defendant without suffering a penalty. By allowing litigants to end a dispute by private settlement, the Athenians helped to reduce the case-load of the courts and to prevent their legal system from becoming overburdened. If they did not permit a prosecutor to withdraw an indictment after lodging it, this would have meant that every time a magistrate received a public charge, the case would have had to be tried in court. We do not know how many public charges were made every month, but our sources inform us that a public case took up an entire day and required at least 501 judges, each of whom had to be paid three obols<sup>43</sup>. Although convictions were often very lucrative for the *pólis*, acquittals brought no money into the treasury<sup>44</sup>. Requiring prosecutors to try every case they brought would not only have been time-consuming, but also expensive.

This approach certainly had advantages and permitted litigants to use the threat of a public charge to force their opponents to agree to private settlements in cases where the victim had suffered a serious violation of his rights. This is what happened in the two cases described by Apollodorus in his speech *Against Neaira* ([Dem.] 59.50-54, 64-70). Phrastor claimed that Stephanus had betrothed Phano to

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<sup>43</sup> For the trial of a *graphé* taking an entire day, see Aeschin. 3.197-198 with Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* cit., pp. 723-728. For the size of courts in a public suit, see *Ath. Pol.* 68.1; Dem.24.9, and *scholia ad loc.* with Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* cit., p. 729.

<sup>44</sup> If the prosecutor failed to gain one-fifth of the votes cast, however, the *pólis* would collect the fine of 1,000 drachmas. The most profitable case we know about was Lycurgus' conviction of Diphilus, which brought in 160 talents (*Plu. Mor.* 843d). Christ, *The Litigious Athenian* cit., p. 29 claims «Athenians were lax about the collection of state debts», but ignores the fine paid by Diphilus, passages like Dem. 20.63 (Satyrus collects 34 talents), and the abundant records of the *poletái* (see IG I<sup>3</sup> 421-430; G.V. Lalonde - M.K. Langdon - M.B. Walbank, *The Athenian Agora XIX: Inscriptions*, Princeton 1991, pp. 53-144). Christ cites Dem. 25.85-91, where Aristogeiton is reported to claim there are many men in debt to the treasury. He appears not to have observed that the speaker agrees with Aristogeiton only if one considers only two debtors «many».

him under false pretenses and divorced her without returning her dowry. When Stephanus brought a suit to recover the dowry, Phrastor replied by bringing a *graphé* against him on the grounds that he had given in marriage the daughter of a foreigner. The threat of prosecution encouraged Stephanus to withdraw his claim against Phrastor in return for having the case against him dropped. Epaeuetus thought Stephanus had extorted money from him by claiming he had seduced his daughter and used the threat of a *graphé* to compel him to submit their dispute to arbitration <sup>45</sup>.

But the approach also had its disadvantages. In cases where the defendant had committed an offense not against an individual, but against the entire community, it permitted the defendant to buy off his prosecutor and avoid paying a fine to the *pólis*. For example, when Theocrines brought his *phásis* against Mikon, if he had convicted him, half of the price of the goods confiscated would have been sold by the state <sup>46</sup>. By withdrawing the charge in exchange for payment by the defendant, Theocrines might have deprived the *pólis* of a considerable sum of money. For this reason the law about frivolous prosecutions appears to have forbidden some kinds of settlements, especially those designed to cheat the treasury of fines or other payments ([Dem.] 58.5: τὸν νόμον ... τὸν περὶ τῶν φαινόντων καὶ οὐκ ἐπεξιόντων, ἀλλὰ διαλυομένων παρὰ τοὺς νόμους) <sup>47</sup>. According to Epicrates the rule was that in private matters litigants could make whatever agreement they could persuade each other to accept, but in matters involving the treasury, the settlement could not violate the law ([Dem.] 58.20: προσήκει τοὺς ἀντιδίκους ὑπὲρ μὲν τῶν ἰδίων, ὅπως ἂν αὐτοὺς πείθωσι, διοικεῖσθαι πρὸς ἀλλήλους, ὑπὲρ δὲ τῶν πρὸς τὸ δημόσιον, ὅπως οἱ νόμοι κελεύωσιν). For instance, Theocrines had claimed that the slave woman of Cephisodorus was a free person ([Dem.] 58.19-20). If the prosecutor in such a case did not prove his charge, he had to pay the owner of the slave five hundred drachmas and in addition pay a fine of an equal amount to the trea-

<sup>45</sup> This strategy is forbidden in the American legal system, where it is illegal to use a criminal charge, or the threat of one, to force a settlement in a civil case.

<sup>46</sup> On the procedure of *phásis*, see D.M. MacDowell, *The Athenian Procedure of Phasis*, in M. Gagarin (hrsg.), *Symposion 1990*, Koeln-Wien 1991, pp. 187-198.

<sup>47</sup> The law clearly did not forbid all settlements, but only those that violated the laws.

surey. The speechwriter Ctesicles, however, brokered a settlement between the two opponents, which allowed Theocrines to avoid paying the fine to the treasury, a settlement that Epicrates says was illegal. By requiring the prosecutor who came to an agreement with the defendant to formally withdraw his charge at the *anákrisis*, the law made it possible for a magistrate to question the litigants and to ensure that they had not conspired to deprive the *pólis* of a fine.

Another drawback in allowing settlements for public charges was the possibility that a skilled speaker, who enjoyed influence with the courts, could bring a specious charge against an average citizen, who would prefer to pay off his prosecutor rather than risk conviction in court. This is not a theoretical possibility; our sources reveal that it was a common problem<sup>48</sup>. The Athenians could have prevented this abuse by requiring that all public charges had to go to trial, but this would have brought the disadvantages we noted above. To solve this problem, the Athenians created the *graphé sycophantías*<sup>49</sup>. This charge was made not against men who withdrew public suits, but sycophants who brought false charges for the sole purpose of extorting money from defendants<sup>50</sup>. In these ways, the Athenians were able to retain the advantages of allowing prosecutors to withdraw a case after making an indictment while at the same time providing a means of punishing those who abused the right of withdrawing a case.

<sup>48</sup> D. Harvey, *The Sycophant and Sycophancy: Vexatious Redefinition?*, in P. Cartledge - P. Millett - S. Todd, *Nomos: Essays in Athenian Law, Politics, and Society*, Cambridge 1990, p. 111 n. 27, lists thirty-four examples of this practice. Todd, *The Shape of Athenian Law* cit., p. 93 n. 18, claims that accusations of blackmail were rare and calls the numerous examples cited by Harvey «the few exceptions»!

<sup>49</sup> For the *graphé sycophantías*, see Harvey, *The Sycophant and Sycophancy: Vexatious Redefinition?* cit., pp. 106-107, who argues the procedure applied in cases where «the prosecutor could provide no proper evidence, witnesses or proofs, so that it became clear that he had either hoped that his victim would pay him not to go to law, or that he was bringing his case solely in order to obtain the prosecutor's share of the fine». Todd, *The Shape of Athenian Law* cit., p. 93, followed by Christ, *The Litigious Athenian* cit., p. 238 n. 114, believes that Harvey claims «the word must have been legally defined» but Harvey makes no such claim. He merely attempts to provide a definition of the term that accounts for the way it is used in our sources.

<sup>50</sup> Epichares (Dem. 58.12-13) makes a distinction between bringing a serious charge, then making an illegal settlement with the defendant out of court, and bringing a false charge. Only the latter is considered *sycophantía*.