

NEAERA'S DAUGHTER: A CASE OF ATHENIAN IDENTITY THEFT?

Apollodorus' speech against the *hetaera* Neaera, [Demosthenes] 59, has been the object of much recent study, and the nature of some of Apollodorus' distortions and the likely counter-arguments of Stephanus are now better understood. This paper looks at one small aspect of the speech where Apollodorus may have been more informative, perhaps unwittingly, than is usually thought.

According to the speech, Neaera had a daughter, usually referred to as Phano, whose two marriages and one extramarital relationship are the subject of much moral outrage from Apollodorus. He makes an odd comment about Phano: she was originally called Strybele. In §50 he states that Neaera brought with her to Athens a little child 'whom then they used to call Strybele, but now Phano' (ἣν τότε μὲν Στρυβήλην ἐκάλουν, νυνὶ δὲ Φανώ). In §121 he also refers to her as 'Phano who was called Strybele' (Φανὼ τὴν Στρυβήλην καλουμένην)¹ and in §38, without mentioning the original name, he calls her 'the daughter whom they now call Phano' (θυγατέρα, ἣν νυνὶ Φανὼ καλοῦσιν). He does not say when her name was changed, only that she was Strybele as a little child and Phano now.² Athenaeus' version of the story,³ which he says comes from Demosthenes, gives the name slightly differently: 'Strymbele, who was later named Phano' (Στρυμβήλην τὴν ὕστερον Φανὼ κληθεῖσαν), but this form appears to be a mistake and there are no other examples in the *Lexicon of Greek Personal Names*.

Scholars have generally accepted Apollodorus' account of the change of name as factual, despite their suspicions about most of his statements and even if they do not believe him about Phano's parentage, but they have come to different conclusions about the reason behind it. Carey thinks that Phano was an inappropriate name for a respectable woman because of the 'connotations of visibility' implied by the verb φαίνω, 'to show',⁴ although in fact names such as Phanostrate and Phaenarete are well attested at Athens. Kapparis (following Reiske) suggests that Strybele was a servile name related to στρέφομαι, 'to twist and turn', which was replaced by a more respectable name when Phano was passed off as a citizen.⁵ Cox argues that the possession of alternative names was in itself intended by Apollodorus to suggest

¹ K.A. Kapparis, *Apollodorus Against Neaera: [Demosthenes] 59* (Berlin, 1999), 421–2, deletes τὴν Στρυβήλην καλουμένην here as a gloss, arguing that such an informal designation would not be used here, where the speech paraphrases the question to be put to Neaera's slaves in a legal challenge. However, it will be argued here that the name would be a material part of the question.

² According to the chronology of D. Hamel, *Trying Neaira* (New Haven, 2003), xviii–xx, following C. Carey, *Apollodorus Against Neaera: [Demosthenes] 59* (Warminster, 1992), 3, Neaera came to Athens with Stephanus in 371 B.C. and the trial took place in 343–340 (agreeing with Kapparis [n. 1], 28). C. Patterson, 'The case against Neaera and the public ideology of the Athenian family', in A.L. Boegehold and A. Scafuro (edd.), *Athenian Identity and Civic Ideology* (Baltimore, 1994), 199–216, at 206, puts the trial in 'ca.340'. This puts it in the immediate aftermath of the decree of 346/5 instructing demes to check their members' citizenship qualifications, which resulted in many ejections (Carey, 12).

³ Ath. *Deip.* 13.65K.

⁴ Carey (n. 2), 112.

⁵ Kapparis (n. 1), 266.

Phano's *hetaera* status, since only non-respectable women went by nicknames and there are many examples of *hetaerae* being known by pseudonyms – the famous Phryne was really called Mnesarete according to one source, and Melitta came to be known as Mania because of the madness she inspired in her lovers.⁶

The Attica volume of *LPGN* provides a partial answer to the question of the names' connotations. *LPGN* 2 has seven other occurrences of the name Phano in Attica, of which five come from *IG* II².⁷ All are funerary and dated to approximately the fourth century B.C. In 12876 two females called Phano and Callippis are commemorated. In 12666 there are three individuals: Straton, Phano and Pausanias. 12876a is for Phano daughter of Oenanthia (i.e. a metronymic) and 12877/8 for Phano daughter of Eucrates. Most significant are two where the deceased Phano is undoubtedly a member of an Athenian citizen family. 6443, a marble lekythos from the mid fourth century, depicts a seated woman with a female slave standing. The epitaph reads 'Phano, daughter of Epichares of the deme Cephisia'. A plain marble slab dated to the fourth or third century reads 'Phano, daughter of Aristoteles of the deme Lamprae'.⁸ Thus, *contra* Carey, there is unambiguous evidence that the name Phano was used by respectable Athenians in the fourth century.

There are two other occurrences of the name Strybele at Athens in *LPGN* 2. Both are on marble stelae. One, probably from the first half of the fourth century B.C., depicts a woman, but is partly broken (*IG* II² 12672). The other is dated to the second century B.C. by the lettering (12672a). Both give only the name, Strybele. This does not show that the females commemorated were not from Athenian citizen families, since epitaphs consisting of a simple name with no further details are the commonest sort, but neither is there any firm evidence that the name was used by such families. It is therefore theoretically possible that someone born outside Athens with the name Strybele might use the name Phano when passing herself off as an Athenian, but there is no strong reason to think that Strybele was an un-Athenian name.

For most purposes outside the family, Neaera's daughter in her role as a respectable Athenian would be referred to not as Strybele or Phano but simply as 'the daughter of Stephanus'.⁹ It seems likely, although there is no compelling evidence either way, that someone would invite a man to marry 'his daughter' not 'his daughter Phano'.¹⁰ It is therefore not clear what advantage would be gained simply by calling oneself Phano instead of Strybele; it was legitimate paternity which determined respectability or the lack of it. A speaker in another case specifically argues that it was not a woman's name but evidence of her status which mattered.¹¹ There is in fact no evidence that Athenians of either gender used alternative names in an official context.

⁶ C.A. Cox, *Household Interests: Property, Marriage Strategies, and Family Dynamics in Ancient Athens* (Princeton, 1998), 176–7; Ath. *Deip.* 13.60, 41K (quoting Aristogiton and Machon).

⁷ In one case, not discussed here, the initial phi is restored.

⁸ *Athenian Agora* XVII 213. The final omega of the name Phano is restored, but the photograph shows that there is only room for one letter, and no other known name would fit.

⁹ See D. Schaps, 'The woman least mentioned: etiquette and women's names', *CQ* NS 27 (1977), 323–30, at 330.

¹⁰ Law court speeches describing how marriages were arranged never use the girl's name, according to the conventions of the genre. In a betrothal ceremony dramatized by Menander (*Pk.* 435), the father says 'I give you this girl' without using her personal name, whereas Herodotus (6.130) makes Cleisthenes of Sicyon say 'I betroth my child Agariste ...'. In any case, these two scenes only represent the end of the process of marriage arrangement, not the way in which earlier negotiations would be done.

¹¹ Isaеus 6.64.

A survey of a selection of dedications and epitaphs in *IG* II.3 did not produce a single example of a woman being given an alternative name, for example with the formula ἡ καί (Phano ἡ καί Strybele) which is often found in inscriptions from the Hellenistic period.¹² Much is made in one speech (admittedly tendentiously) of people being expected to keep the names given them by their parents.¹³ The nicknames mentioned in literature are usually derogatory ones rather than genuine names, such as the three which Aeschines says Demosthenes was known by at different times – Batalus (probably a reference to stammering or sexual practices), Argas (a venomous snake) and Sycophantes¹⁴ – or the unknown politician whose nickname was Cobius, a sort of fish.¹⁵ Hellenistic writers erroneously thought that Plato was a nickname rather than a given name,¹⁶ probably misled by the naming practices of their own day. There is no evidence for fourth-century Athenian men becoming generally known by a nickname rather than a given name, and it is very unlikely that a respectable woman whose personal name was kept within the family would have alternative names. It will be suggested here that scholars have not questioned Apollodorus' reliability on the change of name as much as they have in the rest of the speech, and that something more fundamental was involved for Neaera's daughter: not just a cosmetic change of name which would have brought no real advantage, but a fundamental change of identity.

Apollodorus claims that Stephanus passed off Neaera's three sons and one daughter as his own. No specific evidence is offered for the sons, and their existence seems to be part of the 'facts' about Neaera's career which Apollodorus recounted to the jury on his own authority. He gives their names as Proxenus, Ariston and Antidorides (§121; Antidorides is omitted in §38, presumably because Apollodorus claimed that he was born at Athens rather than coming with Neaera from Megara¹⁷). Their names were known as they would have been declared when Stephanus stated publicly, as he must have done (see below, p. 403), that they were his sons; they were therefore not such easy targets as the daughter.¹⁸ Apollodorus deals at length with the daughter, saying that Stephanus twice married her off as if she was his own legitimate daughter and an Athenian citizen. This issue is tangential to the main point of the speech (to show that Neaera was not an Athenian or Stephanus' legitimate wife, but had been falsely pretending to be such), but was clearly intended to discredit Stephanus. Stephanus argued that Phano was his daughter by a marriage to a relative which ended before his relationship with Neaera (§119), and some recent studies have tended to the view that he rather than Apollodorus was being truthful here, or at least that his claim was not convincingly refuted by Apollodorus.¹⁹ Apollodorus

¹² The sample consisted of 199 dedications to gods (1422–620), 300 epitaphs referring to Athenian citizens (1682–981), 300 referring to foreigners (2735–3034) and 300 referring to people of uncertain status (3425–724). No definite case of a male or female using an alternative name was found.

¹³ Demosthenes 39.39; cf. Cox (n. 6), 177. An explanation of the alternative name attributed to Phile in Isaeus 3 is offered below (p. 408).

¹⁴ Aeschin. 2.99.

¹⁵ A. Petrides, 'Machon fr. 5, 44–5, Gow: a fish with a ψῆφος', *CQ* 55 (2005), 121–9; he also mentions other nicknames based on food. See also E. Harris, 'The names of Aeschines' brothers-in-law', *AJPh* 107 (1986), 99–102.

¹⁶ J. Notopoulos, 'The name of Plato', *CPh* 34 (1939), 135–45.

¹⁷ Kapparis (n. 1), 421.

¹⁸ Patterson (n. 2), 208; Kapparis (n. 1), 34.

¹⁹ e.g. Hamel (n. 2), 82–93 and Patterson (n. 2), 208–9, *contra* E. Keuls, *The Reign of the Phallus* (Berkeley, 1985), 158, 272 and Carey (n. 2), 9.

deliberately clouded the issue, portraying Phano as a *hetaera* like her mother (for example by referring to her by name) to prejudice the jury against her, and therefore against Stephanus and Neaera. Her alleged change of name is not one of the points which he concentrated on, since he had the testimonies of various witnesses to adduce on matters of greater relevance to his case and the name was only a side issue in the attack on Phano's citizen status. It will be argued here that, whether or not Apollodorus himself was aware of it, the change of name was not just an attempt to achieve greater respectability but a fundamental part of providing the daughter of a *hetaera* with a legitimate Athenian identity.

Both Phano's husbands had a vested interest in bringing her status into doubt, as did her lover. Her first husband Phrastor divorced her, according to Apollodorus' own statement, primarily for personal incompatibility, but used the issue of her status to prevent Stephanus from recovering her dowry, since he found out 'for certain' that she was Neaera's daughter, not, as he previously believed, Stephanus' (§§50–3).²⁰ This was presumably the first time the possibility of Phano being Neaera's daughter and therefore not an Athenian was brought into the public domain. Phrastor's argument would have been that, as Phano was married to him under false pretences because she was not really the daughter of Athenian citizens, the 3,000 dr.²¹ given as her dowry did not come under the normal dotal rules and did not have to be returned when he expelled her from his house. This caused the difficulties which Phrastor had in subsequently getting their child accepted by his *genos* and *phratry* after he changed his mind about Phano's status (§§58–60), but, as has been noted, Apollodorus does not say that the child was *not* ultimately accepted, something which he might be expected to emphasize if it really was the outcome.²² Stephanus and Phrastor eventually made an out-of-court settlement about the dowry, so the issue did not come to trial (§53). Apollodorus does not explain how Phrastor came to know 'for certain' about Phano's parentage, but one possibility would be that he found out directly from her, as a result of living with her, that she was not really Phano daughter of Stephanus as he had been told, but Strybele daughter of Neaera.

Phano's second husband Theogenes in his capacity as *archon basileus* was expected to be married to a woman who was previously a virgin. According to Apollodorus, Stephanus persuaded him to marry Phano but the Areopagus found out that she was not a suitable *basilinna* (§§80–3). In this situation, portraying himself as the dupe of Stephanus may have saved Theogenes from more serious punishment than a fine.²³ Apollodorus claims to know about the secret deliberations of the Areopagus, but while Phano's parentage may or may not have been an issue which they discussed, her non-virgin status certainly must have been.²⁴ If they really knew that a non-Athenian

²⁰ Carey (n. 2), 118 argues that Phano was Phrastor's mistress rather than his wife. However, it is difficult to see why Apollodorus would have bothered to invent the accusation that Phano was married to Phrastor when it was her second marriage to Theogenes which was so much more significant for his case.

²¹ The size of the dowry seems to be fairly average (Kapparis [n. 1], 269) rather than suspiciously large to compensate for any doubts about Phano's status.

²² Kapparis (n. 1), 35–6, 282–4; Hamel (n. 2), 90, 93; A. Glazebrook, 'The making of a prostitute: Apollodoros's portrait of Neaira', *Arethusa* 38 (2005), 161–87, at 174; ead., 'The bad girls of Athens: the image and function of hetairai in judicial oratory', in C. Faraone and L. McClure (edd.), *Prostitutes and Courtesans in the Ancient World* (Madison, 2006), 125–38, at 131; *contra* Cox (n. 6), 189.

²³ Hamel (n. 2), 110.

²⁴ Carey (n. 2), 128 suggests, because of the lack of corroborative evidence and the evident non-prosecution of Phano, that the whole episode of Theogenes and Phano may have been an

woman had usurped the function of *basilinna*, they would surely have taken more direct action against her.

Epaenetus, caught by Stephanus *in flagrante* with Phano in an incident which took place between the two marriages, claimed that she was Neaera's daughter and the house was technically a brothel (§67) in order to escape punishment for *moicheia*. Lacey interprets the arrangement made between Epaenetus and Stephanus as establishing Phano as Epaenetus' concubine, 'with the maximum endowment [1,000 dr.] permitted by law for one who was not a legitimate wife'.²⁵ Even if this is so, it would not in itself prove Phano's non-citizen status, since Epaenetus was not an Athenian himself but came from Andros. Epaenetus is described as an old friend of Neaera, so he would presumably have known about her family circumstances before she came to Athens. He would therefore assume that the girl living with her was her daughter Strybele who was sexually available, only to be told later that she was in fact Stephanus' daughter Phano and a respectable Athenian.

Three men are said to have made a mistake about Phano's identity, and, while there is strong reason to be suspicious of Apollodorus' version of each episode, he did not invent the underlying point that her identity (and therefore her legal status) could be disputed. Scafuro states, correctly enough, that 'Apollodorus, after all, gives no positive evidence which proves that Neaera is Phano's mother'.²⁶ How was the parentage and identity of an Athenian girl proved? It will be necessary to look at the evidence for this in some detail before returning to the question of Phano's identity. The issue would normally only arise when a girl married, although evidence might also be required later when her son was presented to his father's *genos* (as with Phrastor and Phano's son), *phratry* or *deme*.²⁷ The basic assumption was that she was who her father said she was, i.e. if he presented her as his legitimate daughter and went through the appropriate forms of betrothal and marriage, it was usually accepted that she really was his legitimate daughter. There were heavy penalties to deter him from misrepresentation of the facts: loss of Athenian citizenship and confiscation of property (§52). In view of the Athenian preference for endogamy, the husband would often have known his wife before marriage through family connections anyway, or at least known her background in detail. There are no stories of bridegrooms rejecting their brides on the wedding day because of sudden doubts about the girl's status or identity; presumably a potential groom who did have doubts would have broken off negotiations much earlier. There are, however, more accounts than Apollodorus' of husbands who claimed to have doubts about their wives' status after they were married, or (more likely) of such doubts being raised by the next

invention of Apollodorus, but the identity of people who had recently served as *basileus* and *basilinna* must surely have been well known.

²⁵ W.K. Lacey, *The Family in Classical Greece* (London, 1968), 116.

²⁶ A. Scafuro, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy* (Cambridge, 1997), 75.

²⁷ A. Scafuro, 'Witnessing and false witnessing: proving citizenship and kin identity in fourth-century Athens,' in A.L. Boegehold and A. Scafuro (edd.), *Athenian Identity and Civic Ideology* (Baltimore, 1994), 156–98, at 162. According to her interpretation of *IG II² 1237*, 117–25, one *phratry* may have required the names and patronyms of mothers of young boys to be displayed publicly before the boys took part in the *koureion* ceremony, a sacrifice offered in the *phratry* on behalf of boys approaching puberty (R. Sealey, *Women and Law in Classical Greece* (Chapel Hill, 1990), 21–2; Scafuro, 159). In some *phratries* this was the point at which a boy was formally introduced. S.D. Lambert, *The Phratryes of Attica* (Ann Arbor, 1993), 37, believes that the *deme* did not normally take any interest in a new member's matrilineal descent but accepted the *phratry*'s endorsement.

generation. For example, in Isaeus 3, Nicodemus is accused of falsely claiming to have married his sister to Pyrrhus, an event which must have happened some thirty years earlier.²⁸

When it became necessary to provide evidence in court of a woman's status or identity, something beyond a father's declaration had to be sought. Male identity was a public issue when a man presented his (usually) baby son to his *genos* (if he belonged to one) and *phratry*, taking an oath about the child's legitimacy,²⁹ as Phrastor attempted to do with his son by Phano (§59), and when a father enrolled his son (or the son enrolled himself) at the age of eighteen in his *deme*.³⁰ Even so, doubts could emerge: Euxitheus called relatives and members of *genos*, *phratry* and *deme* to vouch for his father's status,³¹ and Callias allegedly denied the legitimacy of his wife's baby and then later introduced him to the *genos* as his own son, both on oath.³² These public statements of identity and legitimacy did not take place for females. It is possible that a female baby was enrolled in the *phratry* in some circumstances, since individual *phratries* appear to have had their own rules, but it was certainly not normal.³³ Declaring (or at least implying) a daughter's status when she married did not present the same opportunities for challenge as presenting a son to the *genos*, *phratry* or *deme*, and did not involve the recording of a name on an official register as happened for males.

Male relatives (including cousins, even a first cousin once removed) could testify to a woman's identity in court.³⁴ Although some semi-public information could be available (the naming ceremony called the *dekatê* is discussed below, p. 407), in many cases the evidence might be no more than what people had heard from their parents about relationships or even just about the existence or non-existence of a family member: 'The deponent testifies that his wife's father Callistratus was first cousin to Polemon, the father of Hagnias, and to Charidemus, the father of Theopompus, their fathers having been brothers, and that his mother was daughter of a first cousin to Polemon, and that their mother often said to them that Phylomache, the mother of Eubulides, was sister of Polemon, the father of Hagnias, born of the same father and the same mother, and that Polemon, the father of Hagnias, never had any brother.'³⁵ Neighbours and *phrateres* or *demesmen* could provide similar information: 'They [members of the *deme*] know that Phylomache, the mother of Eubulides, was considered to be the sister of Polemon, the father of Hagnias, by the same father and the same mother'.³⁶ When Euxitheus' mother's status was called into question, he

²⁸ See C. Patterson, 'Those Athenian bastards', *CA* 9 (1990), 40–73, at 70–2.

²⁹ Dem. 39.30, 57.54; Isae. 8.14.

³⁰ [Arist.], *Ath. Pol.* 42.1–2.

³¹ Dem. 57.20–4.

³² Andoc. 1.126–7.

³³ J. Gould, 'Law, custom and myth: aspects of the social position of women in Classical Athens', *JHS* 100 (1980), 38–59, at 41–2, denies that they were presented to *phratries* at all, pointing out that in Demosthenes 57.67 it is the *phrateres/demesmen* of *male* relatives who are called to prove the mother's identity. In Isaeus 3.73 (discussed below), the possibility of presenting a daughter may be raised because she would be an *epiklêros*. Lambert (n. 27), 180–1, argues that different *phratries* had different practices, and *some* may have had the custom of presenting potential *epiklêroi*. Sealey (n. 27), 24 suggests that the possibility raised in Isaeus 3 was not formally presenting the daughter to the *phratry* but simply taking her to events involving the *phratry*, and Kapparis (n. 1), 193 believes that a sacrifice could be offered to inform the *phratry* about the birth of a daughter.

³⁴ Dem. 57.68.

³⁵ Dem. 43.37.

³⁶ Dem. 43.35.

called for evidence from members of 'her' (i.e. her father's³⁷) *genos*, *phratry* and *deme* and those with the right of burial in the same tomb, as well as from relatives.³⁸ He does not specify what the evidence was, but it must again have been that they had always understood that she was acknowledged as her father's legitimate daughter.

Such evidence was very different from producing a birth certificate or some other official written record. Rather than 'prove' someone's status, the aim was to create a strong enough impression for the jury to be convinced by one side's claim about status rather than the other side's, as one speaker makes clear: 'They [the other side] had the audacity to assert that Polemon, the father of Hagnias, had no sister at all born of the same father and the same mother; so abominably impudent were they, seeking to mislead the jurymen in a matter of such importance and so well-known, and they spent all their efforts and strove beyond all else to establish this.'³⁹ In reality, showing that a man had had a daughter many years ago was not exactly the same thing as showing that a woman who was now an adult with the daughter's identity was actually the same person, a difference which, it will be argued below, was crucial in Phano's case. It would, however, normally be enough to convince a jury.

According to the speaker in Isaeus 6.10, 'The real sons of Euctemon, the father of Philoctemon, namely, Philoctemon himself, Ergamenes and Hegemon, and his two daughters and their mother, Euctemon's wife, the daughter of Meixiades of the deme Cephisia, are well known to all their relatives and to the *phrateres* and to most of the *demesmen*, and they shall testify to you.' What this actually means in the case of the women is not entirely clear. As respectable women, their personal names are not used. The identity of Euctemon's wife would be known outside the family, since it was normal to invite *phrateres* to the *gamêlia*, a sacrifice and wedding feast whose purpose was at least partly for the *phratry* to accept the new wife of a member.⁴⁰ Whether or not this was legally required by a particular *phratry*, it would be a sensible move, since the *phrateres* would later be required to accept the legitimate sons of the marriage, and they might 'enquire carefully into such matters',⁴¹ or the absence of the *gamêlia* might be taken as absence of marriage.⁴² Later on, Euctemon's treatment of the woman identified as his wife is also mentioned as evidence: did he carry out liturgies on her behalf? Did he carry out funerary rites for her?⁴³ This is understood as what a husband would do for his wife.

However, what would be known by *phrateres* or *demesmen* about the two daughters of Euctemon? Their names? The fact that two daughters had been born? Or just that Euctemon said he had two daughters? The convention of not naming respectable women in public could presumably create ambiguity.⁴⁴ One speaker states that his grandfather had 'two sons, Cyronides and Demochares, and two daughters,

³⁷ In 57.40 he refers to 'his mother's *demesmen*' (τῶν τῆς μητρὸς ... δημοτῶν) whereas in 57.69 they are 'her relatives' *phrateres* and *demesmen*' (φράτερες τῶν οἰκείων αὐτῆς καὶ δημόται).

³⁸ Dem. 57.39–40.

³⁹ Dem.43.39. People could be prosecuted for suborning witnesses or giving false evidence, which might lead to retrials or reversed verdicts: Scafuro (n.27), 170–81.

⁴⁰ e.g. Isae. 8.18, Dem. 57.69. See Lambert (n. 27), 36, 178–85. He thinks that only the *phratry* and not the *deme* would take an interest in members' wives.

⁴¹ Dem. 57.69.

⁴² Isae. 3.79.

⁴³ Isae. 6.64–5.

⁴⁴ Schaps (n. 9), 324–5, gives examples of elaborate circumlocutions to avoid using a woman's name, but does not point out the potential confusion between sisters.

one of whom was my mother', and another discusses how he and another man planned to marry the two daughters of Epilycus.⁴⁵ In these cases there does not appear to have been any dispute about which daughter was which as one of them died in each case, but since they are never named there might have been doubt about which one was still alive; people outside the family would presumably have known both sisters only as 'the daughter of Aristarchus/Epilycus'.

This potential ambiguity within families may shed some light on one surprising aspect of Phano's second marriage. Could Theogenes have been unaware that Phano was a divorcee not, as is usually supposed, because he was so out of touch that he was unaware of the scandalous circumstances of her divorce, but because he did not realize that he was marrying the ex-wife of Phrastor? Presumably the *archon basileus*, once chosen by lot, had to equip himself with a suitable wife immediately if he was not already married, as the *dokimasia* which took place after he was chosen and before he was able to take office must have involved asking him if he had a wife eligible to be *basilinna*. Theogenes did not have time for the sort of enquiries which would normally be made for an exogamous Athenian marriage. It is perhaps possible that he agreed to marry Stephanus' daughter but thought that he was not marrying Phrastor's ex-wife but a previously unmarried daughter. Even if the divorce was known outside Phrastor's phratry, presumably it would only have been known that he had divorced 'the (alleged) daughter of Stephanus', not that he had divorced 'Phano, daughter of Stephanus'. Nothing in the speech indicates how many daughters Stephanus may have had (or claimed to have), and, since Phano's marriage to Phrastor only lasted 'about a year' (§51), she was probably still a teenager when the chance arose to marry Theogenes, and could plausibly be presented as a virgin bride.

Two forms of evidence are mentioned beyond what relatives, phrateres and demesmen said: deposition by slaves under torture in the process called *basanos*, and declaration on oath. Both these procedures would be part of a legal challenge; i.e. one party in a dispute would challenge the other to hand over slaves for torture or to swear an oath. The facts which the torture or oath were intended to confirm or deny would be stated in the challenge, and no more than confirmation or denial was required. Household slaves could attest that a child had, for example, been treated by the head of the household as his legitimate child.⁴⁶ Apollodorus challenged Stephanus that the two female slaves who came with Neaera from Megara and two others who were bought at Athens should be tortured for evidence about Neaera's children. In this case, the question about which the slaves had knowledge was whether the children came with Neaera from Megara and were therefore not Stephanus' children by his earlier marriage (§§120–5).⁴⁷ Apollodorus offered to abandon the case if the slaves' evidence went against him, but Stephanus refused to hand the slaves over, as Apollodorus no doubt expected. Even if Stephanus had nothing to hide, he can hardly have wanted his case to rely on the slaves' resistance to torture which could presumably go on until they said what Apollodorus wanted, Stephanus withdrew them or they suffered serious injury.⁴⁸ In fact, challenges to *basanos* never seem to

⁴⁵ Isae. 10.4; Andoc. 1.119–21.

⁴⁶ e.g. Isae. 8.10.

⁴⁷ G. Thür, *Beweisführung vor den Schwurgerichtshöfen Athens. Die Proklesis zur Basanos* (Vienna, 1977), 95–8.

⁴⁸ M. Gagarin, 'The torture of slaves in Athenian law', *CPh* 91 (1996), 1–18, at 15–16, shows that there is no evidence for exactly when in the proceedings it was agreed that torture for evidence had produced the truth. Thür (n. 47), 302 points out that the jurors would only receive the confir-

have been taken up by the person challenged, and Gagarin argues that their real point was to introduce into the court proceedings the evidence contained in the unaccepted challenge.⁴⁹ In this case, even if the jurors were not surprised at Stephanus' refusal of the challenge, they had it put clearly to them by Apollodorus that the children had been brought by Neaera from Megara.

In some circumstances, an oath could be sworn about parentage or identity. For example, in Isaeus 12.9, where the legitimacy and therefore citizenship of Euphiletus is at issue, the speaker says that Euphiletus' mother was willing to swear an oath in the Delphinion that he was the child of herself and her husband. A dispute about the paternity of the two sons of Plangon was settled by the woman declaring on oath in the Delphinion that they were her sons by Mantias; according to the speaker, this was a well-known act of perjury, but Mantias had to accept it as he had agreed to it as part of an arbitration (expecting her to swear differently), acknowledge them as his sons and introduce them to his phratry.⁵⁰ Phrastor was challenged in this way by members of the Brytidae genos to swear an oath that his son by Phano was legitimate (§§60, 63) but refused. Apollodorus does not, however, say exactly how the oath was worded.⁵¹ If the challenge was not accepted (as appears to have been the usual result⁵²), or not offered in the first place, the more usual depositions of relatives and neighbours had to suffice; resorting to a challenge in itself might suggest a lack of other evidence.⁵³

Two speeches of Isaeus illustrate some of the issues which also arose in the dispute about Phano's identity. In Isaeus 8, the crucial question is whether the speaker's mother was Ciron's legitimate daughter. The speaker argues that she was Ciron's daughter through his marriage to his first cousin, who died after four years, after which he remarried. Presumably the other side argued that she was his daughter by a non-matrimonial liaison. In this case, since the speaker is arguing *for* legitimacy, it is positive evidence which is mentioned: there were two betrothals, two dowries and two wedding feasts (her first husband died); the woman officiated at the Thesmophoria; her sons were introduced to the phratry and their father swore that they were his legitimate sons by an Athenian mother. Evidence from relatives of her two husbands is called about the weddings, and the speaker demands the evidence of Ciron's slaves that she was brought up as his legitimate daughter, but the other side refuses to surrender the slaves for *basanos*. The speaker says that Ciron did not recover his daughter's dowry of 2,500 dr. after her first husband died because of the deceased husband's embarrassed affairs, but the other side would presumably argue that the failure to recover the dowry indicated that the relationship was not a real marriage (as Apollodorus implies for the dowry from Phano's first marriage, and as is argued in Isaeus 3.9).

Isaeus 3 similarly revolves around the question of whether Phile was the legitimate daughter of Pyrrhus or his daughter by a concubine. This determines a matter of

mation or denial of the statement in the challenge, without any indication of how it had been arrived at.

⁴⁹ D.C. Mirhady, 'Torture and rhetoric in Athens', *JHS* 116 (1996), 119–31, at 109; Gagarin (n. 48), 4, 14.

⁵⁰ Dem. 39.3–4, 40.10–11. The speaker does not explain how the oath compelled Mantias to accept them as his *legitimate* sons, but most scholars agree that Mantias and Plangon had been married and divorced, e.g. Sealey (n. 27), 22–3; Cox (n. 6), 86; Glazebrook 2005 (n. 22), 175.

⁵¹ Kapparis (n. 1), 35 suggests that the oath would have been that an Athenian woman and not Phano was the boy's mother.

⁵² Kapparis (n. 1), 426–7.

⁵³ Kapparis (n. 1), 427–30.

inheritance, rather than citizenship as in Phano's case. In both cases, biological paternity is not the issue, i.e. legally it would make no difference if Phano was the daughter of Neaera by Stephanus (as Apollodorus takes for granted) or someone else,⁵⁴ or if Phile was the concubine's daughter by Pyrrhus or someone else, since the lack of valid marriage would rule out legitimacy anyway. The evidence adduced to show that Pyrrhus was not married to Phile's mother and did not recognize her as his legitimate daughter is mainly negative (unlike Isaeus 8): he did not give a wedding feast to his phrateres or treat the mother as his wife for the purposes of the Thesmophoria; he adopted his nephew and did not introduce Phile to his phratry as an *epiklêros*; Phile was married off by her cousin/adoptive brother with only a small dowry, as an illegitimate child rather than an *epiklêros*.⁵⁵ Elsewhere, absence of dowry is used as evidence of absence of marriage.⁵⁶

It was the Athenian custom to name a baby on the tenth day after birth at a ceremony known as the *dekatê*. Bestowing a name at this point marked the baby's acceptance by its father into his family.⁵⁷ The *dekatê* seems primarily to have been an event for family and close friends. One speaker says that two witnesses to an alleged *dekatê* were not friends or relatives of the father, with the implication that they would not therefore have been invited.⁵⁸ Such ceremonies are mentioned in a number of law court speeches where a child's acknowledgment by its father is a point at issue, although they were not a legal requirement or a matter of official public record. Of course Apollodorus does not mention such a ceremony for Phano, since according to his argument she was not an Athenian baby and would never have had an Athenian *dekatê*. However, it seems very likely that Stephanus would have produced witnesses to Phano's *dekatê* if any were available, perhaps something which Apollodorus did not expect if he did not know that Stephanus really had a legitimate daughter. Such witnesses would testify to being present at a ceremony held some decades earlier; they would not be able to attest for certain that the woman who now had the baby's name actually had been that baby, and there were no state records of deaths which could be checked for information about whether the baby survived or not. Stephanus may have presented other evidence as well that he had a legitimate daughter named Phano. Apollodorus did not call for evidence from Stephanus' slaves who had lived with him before he set up home with Neaera, perhaps simply because he did not know their identities or because none were still available, but also perhaps because he thought they would know that Stephanus *did* have a legitimate daughter called Phano. It would then be much harder for Apollodorus to convince the jury that the woman who now called herself Phano was not the same person as the child Phano.

In Isaeus 3 the tenth-day naming of a girl is a point of some importance. The speaker mentions one piece of evidence offered by the other side to show that Phile was a legitimate daughter. Pyrrhus' uncles stated that they were present at the *dekatê* of his daughter. However, they also stated that the child was named Cleitarete not Phile. The issue raised by the two different names is not expanded in the speech,

⁵⁴ Thür (n. 47), 95–8.

⁵⁵ Scafuro (n. 26), 287–8 discusses various scenarios which may lie behind the details in the speech.

⁵⁶ e.g. Dem. 40.20.

⁵⁷ e.g. Dem. 39.20, 22. Scafuro (n. 27), 159, lists various other life-course events which might also provide evidence of status, but rituals such as the *amphidromia* do not seem to be mentioned in legal disputes.

⁵⁸ Dem. 40.28.

except for the speaker to say sarcastically that he would expect a man (Phile's husband was his opponent in the case) to know his wife's name after eight years of marriage. Patterson suggests that 'Phile could have been a familiar or childhood name',⁵⁹ which is unlikely in view of the lack of evidence for alternative names discussed above (p. 400). There may be, as Cox argues, a deliberate hint at the woman being of *hetaera* status in the apparent use of alternative names.⁶⁰ It is not clear what the speaker expected the jurors to make of the discrepancy, although it was certainly intended to undermine the uncles' evidence. The fact that Phile's personal name was used in court also discredited her in itself. A possible explanation of how the confusion originally arose might be that Cleitarete and Phile were not actually the same person, but Pyrrhus had two daughters, and the uncles were only present at the naming ceremony of one, who presumably died in infancy. It seems to have been normal at Athens to bury infants with minimal ceremony, probably daughters even more so than sons,⁶¹ so that relatives who attended the *dekatê* would not necessarily attend the same baby's funeral, or even be aware of it if they were not in close contact with the family.

A child whose existence could be attested by witnesses to the *dekatê* or other evidence and who died young created a potential loophole into Athenian citizenship. One of the methods used for modern identity theft is to take over the identity of someone who died young. The identity theft is then based on a perfectly genuine birth certificate.⁶² People can sometimes use the identity of someone they knew: Karl Hackett took on the identity of his deceased friend Lee Simon in order to get rid of his own record of being convicted for indecent assault, and lived under his new name for twenty years; he was only found out when, as Lee Simon, he claimed that Karl Hackett had been killed in the Paddington train crash.⁶³ A different sort of case of disputed identity has recently been reported in France, where two women both claimed to be Madeleine Mores, born 6th November 1924.⁶⁴ Their dispute arose because one returned to France from Algeria and claimed a pension which it was found was already being paid to the other. A comparable case is debated at length in Demosthenes 39: two half-brothers claimed the right to designate themselves as Mantisheus, son of Mantias of the deme Thoricus. The speaker gives various examples of confusion caused by the fact that they both claimed the name, and this could still happen despite the fact that they had both been through the process of presentation to the phratry and registration in the deme. However, they were clearly two separate individuals and the dispute was about the status of eldest legitimate son which went with the name.

If male identity could sometimes be disputed at Athens, it was much easier to steal the identity of a female, where no public declarations were involved. It has usually been accepted that Strybele became known as Phano in order to achieve greater respectability or simply because a nickname replaced a given name, but this would be a highly unusual change and would have no relevance to her real claim to respectability, her position as Stephanus' legitimate daughter. A more plausible solution to

⁵⁹ Patterson (n. 28), n. 111.

⁶⁰ Cox (n. 6), 177.

⁶¹ R. Garland, *The Greek Way of Death* (London, 1985), 77–86; M. Golden, *Children and Childhood in Classical Athens* (Baltimore, 1990), 83, 94.

⁶² This type of identity theft is known as ghosting: see <[http://en.wikipedia.org/wiki/Ghosting_\(identity_theft\)](http://en.wikipedia.org/wiki/Ghosting_(identity_theft))>. Only the creation of computerized databases has enabled the cross-checking of birth and death registration which makes this more difficult.

⁶³ *The Observer*, 18/6/2000, Review p. 2; *Sunday Times*, 29/12/2002, News Review p. 8.

⁶⁴ *Sunday Telegraph*, 10/9/2006, p. 31; *Independent on Sunday*, 17/9/2006, p. 56.

the question of why Strybele/Phano had two names would be that she was really two people. When Neaera came to Athens with Stephanus, she brought with her a daughter Strybele, whose existence and name may have been known to some people who frequented the 'little house alongside the Whispering Hermes' where the family lived (§39), and to people like Epaeetus who had known Neaera before. Stephanus already had a daughter Phano, whose existence could be demonstrated by witnesses to her *dekatê* or by other people who knew his family. If Phano died young, it would not be difficult for Strybele to take over her name and identity as Stephanus' legitimate daughter, especially as Neaera's children and Stephanus' must all have lived in the same house if it was the only one he owned at the time, as Apollodorus says. Hamel suggests that by the time of the trial 'Neaera had been in Stephanus' household long enough that the suggestion that she was in fact Phano's mother might be readily believed by strangers.'⁶⁵ Equally, she had been in the household long enough that suggestions that Stephanus was really her daughter's father might be readily believed. If Apollodorus was aware that Neaera once had a daughter called Strybele, he could make the link with the girl who was married off as Stephanus' daughter Phano, and say that Strybele became known as Phano. He may well have been right, but he missed the point, or at least did not expand on it. An explanation which fits the 'facts' as they are presented and explains them more satisfactorily than before is that Neaera's daughter Strybele, whose existence was known to some of Neaera's old associates, took over the identity of Stephanus' daughter Phano, whose existence and legitimacy could be attested by witnesses.

The child of a *hetaera* at Athens had no hope of acquiring citizen status legitimately. The *ex-hetaera* Alce allegedly persuaded her lover Euctemon (mentioned above) to pass off her sons as his legitimate sons, i.e. as the children of a marriage to an Athenian woman.⁶⁶ While there is every reason to doubt the veracity of what the speaker says, if Alce really had a son then this would have been the only way to raise him above the status of a metic. The Solonian law which invalidated anything done 'under the influence of a woman'⁶⁷ could be invoked in such cases; the supposed susceptibility of men to the charms of *hetaerae* at the expense of their legitimate families was an issue worth stressing to a jury.⁶⁸ If Neaera brought her daughter with her to Athens, there would have been no prospect of the daughter doing anything but follow the same profession as her mother. There is plenty of anecdotal evidence of *hetaerae* who were too old to work effectively turning themselves into their daughters' pimps.⁶⁹ Security could only be achieved by marriage to an Athenian, and marriage could only be achieved by someone of citizen status; therefore the only way for a *hetaera* to provide her daughter with a more secure existence than her own was to pass her off as a citizen and get her married. This was an extremely dangerous strategy, but, with a cooperative Athenian male and an identity ready to be taken over, a risk which must have seemed worth taking. As the outcome of Neaera's case is not known,

⁶⁵ Hamel (n. 2), 85. Cf Kapparis' comment ([n.1], 42) that Neaera treated Stephanus' children as her own.

⁶⁶ Isae. 6.21–3. Cox (n. 6), 140 suggests that the confusion about the sons' parentage arose because Euctemon spent so much time with Alce instead of his wife.

⁶⁷ Dem. 48.56.

⁶⁸ Cf. Andoc. 1.127, where the woman was an Athenian wife, but one who had allegedly lived a *hetaera*-style life, and Hyp. 3, where the *ex-hetaera* Antigone is said to have been involved in various acts of financial deception. Other examples in Cox (n. 6), 188.

⁶⁹ e.g. Xen. *Mem.* 3.11.4: Theodote and her mother; Machon fr.17 (Gow): Gnathaena and her daughter Gnathaenion.

it is not possible to say whether she and her daughter succeeded, although the weakness of Apollodorus' case and shortcomings of his presentation have regularly been noted. In any event, the details recorded by Apollodorus suggest that their attempt was Europe's first recorded case of identity theft.

University of Wales Lampeter

DAVID NOY
d.noy@lamp.ac.uk