Erotesis: Interrogation in the Courts of Fourth-Century Athens

Edwin M. Carawan

Τοῖν ἀντιδικοῖν ἐπάναγκες εἶναι ἀποκρίνασθαι ἀλλήλοις τὸ ἐρωτώμενον (Dem. 46.10): ἐρώτησις, interrogation of the adversary as Aristotle describes in the *Rhetoric* (1419a), has been regarded by authorities on Athenian law and judicial oratory as merely 'rhetorical questions' in the fourth century.[1] The formalization of legal procedure under the restored democracy and the development of artistic argumentation in written speeches seem to have left little opportunity for question-and-answer. It has been assumed that the speech writers who provided their clients with prepared texts of their arguments effectively put an end to extempore debate in the courts;[2] and it has been concluded that the statute requiring an answer to the speaker's questions (Dem. 46.10) had become a dead letter of the law.[3] Recent work on Athenian law has given us a clearer understanding of the legal principles in such important procedures as γραφὴ παρανόμων, παραγραφή, εἰσαγγελία, ἀπαγωγή, and ἔνδειξις, but it still remains unclear in some cases how these proceedings were initiated and what questions were left for the court to decide.[4] The

[1] This is the view of Ernst Leisi, *Der Zeuge im attischen Recht* (Frauenfeld 1907) 40–41; J. H. Lipsius, *Das attische Recht und Rechtsverfahren* III (Leipzig 1915) 876–77; and among commentators on the orators, W. Wyse, *The Speeches of Isaeus* (Cambridge 1904) 682. This view has been followed without question in later studies, with the result that D. M. MacDowell in his recent handbook, *The Law in Classical Athens* (London 1978) 241–50, discusses *erotesis* only in regard to the *anakrisis*.

[2] R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle* (Chicago 1930–1938) II 122, assume that *eroteseis* were abandoned in the era of logographic speeches. Writers on the Attic orators generally traced the development of artistic rhetoric from the end of the magisterial hearing and the growth of the democratic judiciary: *cf.* G. Kennedy, *The Art of Persuasion in Greece* (Princeton 1963) 42.

[3] *Cf.* Pl. *Ap.* 25D, καὶ γὰρ ὁ νόμος κελεύει ἀποκρίνεσθαι. On the authenticity of the law in Dem. 46.10 see n.7 *infra*. Kurt Latte, *Heiliges Recht* (Tübingen 1920) 16 n.27, regards the requirement to answer the adversary's questions as an obsolete relic of archaic procedure: the orators of the fourth century no longer understood the principle of these interrogatories to decide the issue, but continued to follow the form for "theatrical effect."

[4] The principle of the sovereignty of the people's court has been the focus of studies on the γραφὴ παρανόμων, H. J. Wolff, *"Normencontrolle" und Gesetzesbegriff in der attischen Demokratie* (*SitzHeidelberg* 1970); M. H. Hansen, *The Sovereignty of the Peo-*

eroteseis in the extant speeches, however, often indicate what positions the adversaries had taken at the ἀνάκρισις and what were the central issues at the trial. Those who have regarded *erotesis* as rhetorical ornamentation have ignored a key to the procedure and the argument.

Interrogation and debate were essential features of the earliest forms of legal process in Hellas: on the Homeric 'Shield of Achilles' (*Il.* 18.506) both sides argue the case in turn, ἀμοιβηδὶς δὲ δίκαζον;[5] the trial of Orestes in Aeschylus' *Eumenides* (585–610) suggests that *erotesis* was regarded as an ancient procedure; and in Aristophanes' *Acharnians* (687) the chorus protest against current abuses of this tactic by young prosecutors who harass their elders in cross-examination. The chapters on *erotesis* in Aristotle's *Rhetoric* and in the *Rhetoric* attributed to Anaximenes (1444b) suggest that interrogatories were still an effective tactic in judicial debate in the later fourth century. The democratization of legal process had led to greater reliance on prepared speeches, written out *verbatim* or in part, and although written speeches were meant to imitate extempore speech, the authors have left us few indications of the extempore techniques that were actually used.[6] There are, however, more than a dozen examples of *erotesis* in the extant speeches, and these passages in themselves are evidence that the most decisive issues were debated at the trial. In chronological sequence these passages fall into three groups that seem to coincide with changes in procedure: 403 to 378/7, from

---

ple's Court (Odense 1974); on παραγραφή, H. J. Wolff, *Die attische Paragraphe* (Weimar 1966), S. Isager and M. H. Hansen, *Aspects of Athenian Society in the Fourth Century B.C.* (Odense 1975) 123ff; on εἰσαγγελία and ἀπόφασις, M. H. Hansen, *Eisangelia* (Odense 1975); Hansen regards εἰσαγγελία and ἔνδειξις as exceptions to the principle of sovereignty of the courts (*Apagoge, Endeixis and Ephegesis* [Odense 1976]); but see the discussion *infra*.

[5] On the confrontation of the *antidikoi* and the origins of legal process in Hellas, see Bonner and Smith (*supra* n.2) II 26–62; H. J. Wolff, "The Origin of Judicial Litigation among the Greeks," *Traditio* 4 (1946) 31–87; and A. R. W. Harrison, *The Law of Athens* II (Oxford 1971) 69–76.

[6] Studies of extempore discourse, H. L. Brown, *Extemporary Speech in Antiquity* (Chicago 1914), and A. P. Dorjahn, *TAPA* 78 (1947) 69–76, *CP* 45 (1950) 9–16, and *TAPA* 83 (1952) 164–71, have given no account of *erotesis*. The evidence on the publication of rhetorical texts in antiquity leaves many questions unanswered, but it is essentially agreed that in logographic speeches the received text represents the prepared text without significant revision. The logographer may have advised his client on extempore techniques, but it is unlikely that the client emended his prepared text after the outcome to record the exact wording of such extempore tactics as *erotesis*: see M. Lavency, *Aspects de la logographie judiciaire attique* (Louvain 1964) 124–52, 183–91; K. J. Dover, *Lysias and the Corpus Lysiacum* (Berkeley 1968) 148–74. Against Dover's suggestion that the client in some cases made revisions (and thus confused the authorship), see S. Usher, "Lysias and His Clients," *GRBS* 17 (1976) 31–40.

the restoration through a period of reform when written depositions replaced oral evidence; 376 to the late 340's, during which the *παραγραφή* became an important procedure; late 340's to 324, in which the few extant examples are in speeches concerning the prosecution of *rhetores*. In each of the examples it will be necessary to determine the sequence of the argument from the preliminaries to the trial.

The law requiring answers in cross-examination[7] applied at the *anakrisis* as well as at the trial: at the *anakrisis* questions were directed by the archon to each of the *antidikoi*, and by each of the *antidikoi* to his adversary;[8] the archon had the responsibility to define the questions at issue and determine the legality of the charges, and the archon had the authority to demand that both parties "answer according to the law":[9] Isaeus 6.12, *ὅτε γὰρ αἱ ἀνακρίσεις ἦσαν ... ἐρωτώμενοι ὑφ' ἡμῶν ... οὐκ εἶχον ἀποδεῖξαι ... καὶ τοῦ ἄρχοντος κελεύοντος ἀποκρίνασθαι κατὰ τὸν νόμον* ... It is generally agreed that the archon's chief concern at the *anakrisis* was to determine whether the action was or was not admissible (*eisagogimos*),[10] but it is

[7] In the second speech *Against Stephanus* in the Demosthenic corpus we are told that the law requiring that the adversaries answer applied in all *graphai*, *dikai*, and *euthynai* (46.9). The same statute carries the restriction against testimony in one's own behalf (10): *τοῖν ἀντιδικοῖν ἐπάναγκες εἶναι ἀποκρίνασθαι ἀλλήλοις τὸ ἐρωτώμενον, μαρτυρεῖν δὲ μή*. We have every reason to believe that the law is genuine and the statute was well known to the *dikastai*. The speaker's purpose in citing the law is not to justify cross-examination—which seems to need no argument—but to show the illegality of Stephanus' testimony: he argues that Stephanus' *martyria* in the earlier action against Phormio was 'hearsay', on the word of Phormio himself, and thus amounts to testimony by the defendant in his own behalf. Since the clause concerning cross-examination is cited incidentally and is not relevant to the speaker's argument, we have all the more reason to accept its authenticity.

[8] The procedure for questioning by the archon or the *diaites* at the preliminary hearing is suggested by Isae. 5.32, *ἀνακρίναντες δὲ ἡμᾶς πολλάκις καὶ πυθόμενοι τὰ πραχθέντα οἱ διαιτηταί*, and in Dem. 48.31, *ὁ ἄρχων ἀνέκρινε πᾶσιν ἡμῖν τοῖς ἀμφισβητοῦσι καὶ ἀνακρίνας εἰσήγαγεν εἰς τὸ δικαστήριον*. Questioning by the *antidikoi* is evident in Isae. 6.12 (quoted *infra*).

[9] For the magistrate's authority to clarify the wording of the charges and of the counterpleas see Isae. 10.2, and *cf.* the discussion in Harrison (*supra* n.5) 95–96. In cases other than inheritance disputes we have little evidence for the magistrate's questions. Bonner and Smith (*supra* n.2) I 289 suggest the following line of inquiry: "Was the plaintiff eligible to appear in court? Was the defendant qualified to answer the charge or the claim? If the defendant failed to appear, had he been duly summoned? Were the documents—plaint or indictment—properly drawn? Was the matter at issue actionable? Was the proper form of action chosen? Did the magistrate have jurisdiction in the case?" *Cf.* Leisi (*supra* n.1) 83–84.

[10] In Athens under the radical democracy, *anakriseis* before the archons were the only vestige of the pre-Solonian magisterial trial. Such hearings had parallels in Laconian and Roman procedures. On Spartan *anakriseis* see Thuc. 1.95, 132; Arist. *Rh.* 1419a31–36; Plut. *Mor.* 217A–B; *cf.* J. Keaney, "Theophrastus on Judicial Procedure," *TAPA* 104 (1974) 179–94. At Rome preliminary hearings before the praetor *in iure* corresponded to *anakriseis* at Athens, and similarly represent a survival of the archaic

often assumed that all important legal issues, the evidence, and the facts of the case were decided at the *anakrisis* and that there were no new questions to answer at the trial;[11] the speeches at the trial were thus exercises in argumentation. The courts of the people, however, had become the supreme authority in the democratic judiciary.[12] In most cases the pre-judicial authorities who held the preliminary hearings—the archons, the *thesmothetai*, the Eleven, and the council—were reluctant to condemn or acquit on their own authority,[13] and thus in many cases the most convincing arguments may have been held in reserve for the trial.

It has been argued, however, that the procedure in 'denunciation' and 'summary arrest', *endeixis* and *apagoge*, was an exception to the principle of the sovereignty of the court: M. H. Hansen has suggested that the magistrates in charge—the Eleven, the *thesmothetai*, or the council, annual officials appointed by lot with no special qualifications—routinely disposed of such cases by execution without trial (*τὸ ἄκριτον ἀποκτεῖναι*).[14] This admittedly "pessimistic account" has provoked a great deal of discussion, but no one has disputed the

judicial power of the rulers. The purpose of the magistrate's questioning is "to define the issue juristically in such a way that a straight condemnation or acquittal of the defendant could be pronounced, in Rome by the *iudex*, in Athens by the dicastery" (Harrison [*supra* n.5] 95).

[11] F. Lämmli, *Das attische Prozessverfahren* (Paderborn 1938) 84, suggested that the requirement to answer allowed for investigation of the adversary's line of argument, and this view is often accepted.

[12] *Cf.* E. Ruschenbusch, "*Δικαστήριον πάντων κύριον*," *Historia* 6 (1957) 257–74; Wolff, *"Normencontrolle"* (*supra* n.4); Hansen, *Sovereignty*, and his "Initiative and Decision: The Separation of Powers in Fourth-Century Athens," *GRBS* 22 (1981) 338–57.

[13] *Cf.* Harrison (*supra* n.5) 91, "We can only suppose that the threat of proceedings by way of *euthyna* or *epikheirotonia* had the effect of making magistrates lean heavily in the direction of allowing suit." Hereafter it will be convenient to use the general term 'archon' of all those who administer an *arche* and thus conduct preliminary hearings within that jurisdiction, as opposed to the specific offices of *e.g.* the Eleven, the *thesmothetai*, or the archon *eponymos*; for the classification of the *boule* as an *arche*, see P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 13–14, and Hansen (*supra* n.12) 347–60.

[14] Hansen, *Apagoge* 119 *et passim*, and (*supra* n.12) 354. His argument on this point may be summarized as follows. (1) *Endeixis* and *apagoge* are two stages of the same procedure; the offender can be arrested *in flagrante delicto* (*apagoge*), or the prosecutor can make his denunciation (*endeixis*) before the archon, who in effect gives warrant for the arrest. But (2) even in *endeixis* it is the prosecutor who makes the arrest (not the Eleven or the *thesmothetai* as had been assumed). (3) In the *endeixis* of *atimoi* the prosecutor may leave the accused at liberty (as in the proceedings against Andocides), but in the arrest of felons or exiles for execution the prosecutor is safeguarded from *dike phonou* if he has made the denunciation to the archon. (4) Although a hearing before the people was guaranteed in the *endeixis* of *atimoi*, *apagoge* and *endeixis* of *kakourgoi* and *pheugontes* often led to execution without trial.

claim that "penalties were often inflicted without any hearing of the case."[15] If it is true, however, that these officials often exercised the power of life and death in *apagoge* and related procedures, we need to ask how the questions at issue were answered and the verdict determined at the *anakrisis*. If in similar cases *erotesis* and extempore debate were used to decide such questions at the trial, it is unlikely that the archons would have been willing to condemn the accused on their own authority.

The only clear case of *apagoge* leading to execution without trial occurred in the first year of the restoration: an unknown democrat was arrested by Archinos and brought before the *boule* for violation of the amnesty, and in that hearing he was condemned to death.[16] Our only source for this incident is Aristotle's *Ath. Pol.* 40.2, so that we have no indication what procedures were followed to decide the case in the *anakrisis*. We may assume that the accused was forced to confess to the facts of the case, that he had acted against members the other party, but it is unclear whether it was necessary for him to of confess to the crime, that he had acted in violation of the amnesty. Aristotle tells us only that the verdict was a very effective deterrent: *ἀποθανόντος γὰρ οὐδεὶς πώποτε ὕστερον ἐμνησικάκησεν*. We know of only two motions for summary execution in the latter half of the fourth century, both of which were dismissed as unconstitutional.[17] In the years immediately following Archinos' *apagoge* there were three cases of *endeixis* or *apagoge* for which the extant speeches indicate *erotesis* at the trial; these passages together with the *eroteseis* from similar cases of the same period suggest that the council and other pre-judicial authorities were reluctant to condemn without trial, if

[15] Hansen, *Apagoge* 118–19. D. M. MacDowell, *CR* 92 (1978) 175, accepts Hansen's argument on the prosecutor's arrest in *endeixis*, but disputes his interpretation of the term *ἐπ' αὐτοφώρῳ* with regard to the prosecution of *kakourgoi*; G. Lalonde, *AJP* 99 (1978) 132–33, finds the argument that the prosecutor must make the arrest in *endeixis* "plausible at best"; M. Gagarin, "The Prosecution of Homicide in Athens," *GRBS* 20 (1979) 318–22, argues against Hansen's explanation of *apagoge* in the prosecution of homicide, with regard to the case against Agoratus (Lys. 13); see Hansen's answer in *GRBS* 22 (1981), esp. 28–29; and the discussion of Lys. 13 *infra* (217f).

[16] The only other reference is found in Dem. 23.31: *οἱ θεσμοθέται τοὺς ἐπὶ φόνῳ φεύγοντας κύριοι θανάτῳ ζημῶσαι, καὶ τὸν ἐκ τῆς ἐκκλησίας πέρυσιν πάντες ἑωρᾶθ' ὑπ' ἐκείνων ἀπαχθέντα*. *Cf.* Hansen, *Apagoge* 134. The incident is mentioned among many procedures against which Charedemus would have had immunity under Aristocrates' proposal; if such summary executions were commonplace we should expect the speaker to attach greater importance to this procedure.

[17] Meidias proposed arrest and execution of Aristarchus (348), but the proposal was rejected by the council; Hansen argues *ex silentio* (*Apagoge* 135–36) that the proposal is not unconstitutional. The proposal of Pythangelos for the execution of Hierocles (332/1) is discussed *infra* 219.

indeed they retained the power to do so. In each case the *erotesis* reveals what questions had been answered at the *anakrisis* and what questions were left for the court to decide.

The earliest *erotesis* in the extant speeches is found in Lysias 12 *Against Eratosthenes*, from the same year as Archinos' *apagoge*. By provisions of the amnesty the former oligarch came to trial in a special accounting before a jury of qualified Athenians after a preliminary hearing before a committee of the council (*logistai*).[18] In principle the problem of pre-judicial authority is the same as in Archinos' *apagoge*; the facts of the case are not in question, but in this case the nature of the proceedings may have guaranteed a hearing before the special court. In the received text of Lysias 12, Eratosthenes' answers are recorded verbatim, and this is a probable sign that the issues had been clearly defined at the preliminary hearing. Although the extant speech may represent a version revised for publication, it is unlikely that Lysias would have misrepresented the actual proceedings.[19]

> ἀνάβηθι οὖν μοι καὶ ἀπόκριναι, ὅ τι ἄν σε ἐρωτῶ. ἀπήγαγες Πολέμαρχον ἢ οὔ; Τὰ ὑπὸ τῶν ἀρχόντων προσταχθέντα δεδιὼς ἐποίουν. Ἦσθα δ' ἐν τῷ βουλευτηρίῳ, ὅτε οἱ λόγοι ἐγίγνοντο περὶ ἡμῶν; Ἦν. Πότερον συνηγόρευες τοῖς κελεύουσιν ἀποκτεῖναι ἢ ἀντέλεγες; Ἀντέλεγον, ἵνα μὴ ἀποθάνητε. Ἡγούμενος ἡμᾶς ἄδικα πάσχειν ἢ δίκαια; Ἄδικα. Εἶτ', ὦ σχετλιώτατε πάντων, ἀντέλεγες μὲν ἵνα σώσειας, συνελάμβανες δὲ ἵνα ἀποκτείνῃς; καὶ ὅτε μὲν τὸ πλῆθος ἦν ὑμῶν κύριον τῆς σωτηρίας τῆς ἡμετέρας, ἀντιλέγειν φὴς τοῖς βουλομένοις ἡμᾶς ἀπολέσαι, ἐπειδὴ δὲ ἐπὶ σοὶ μόνῳ ἐγένετο καὶ σῶσαι Πολέμαρχον καὶ μή, εἰς τὸ δεσμωτήριον ἀπήγαγες; (12.24–26)

Eratosthenes has admitted the fact of the crime and the 'wrong' but denies the responsibility. Lysias must have been sure of the plea for he does not call witnesses of the events in question, but he later calls witnesses to verify Eratosthenes' rank in the oligarchic régime in order to refute his plea of intimidation. The preliminary hearing had established the basis for the cross-examination at the trial and enabled Lysias to anticipate his adversary's response.

[18] The legal status of Lysias, a privileged alien (*isoteles*), as prosecutor at the accounting of Eratosthenes has been the subject of some controversy. Friedrich Blass, *Die attische Beredsamkeit* I (Leipzig 1887) 540–42, suggested that under a special procedure for indictments against the Thirty, privileged aliens had the right to bring charges. Wilamowitz, *Aristoteles und Athen* II (Berlin 1893) 218–21, with reference to *Ath.Pol.* 39.6, followed the same line of reasoning. Dover (*supra* n.6) 8 n.9 accepts this explanation. The story of a special grant of citizenship (Plut. *Mor.* 835) is seldom given consideration.

[19] See Lavency (*supra* n.6) and Dover (*supra* n.6).

The *endeixis asebeias* against Andocides late in the year 400 is another instance of proceedings initiated before the *boule* that led to cross-examination at trial before the people. Once again the procedure is irregular, but it is a crucial piece of evidence in Hansen's analysis of *endeixis*; the sequence of events, however, tends to discredit the notion that the pre-judicial authority often exercised the power of execution without trial.[20] Kephisios had made every effort to convict Andocides in the preliminaries, alleging that Andocides confessed his guilt in his information against those who took part in the mutilation of the Hermae and the profanation of the Mysteries (Lys. 6.15, 51). Andocides' strongest arguments rely on the amnesty of 403/2 and Patrocleides' decree of 405 that restored civil rights to *atimoi*. Fully acquainted with the facts of the case, the council was unwilling either to interpret Andocides' admissions as a confession of guilt or to acquit him on their own authority, and Andocides was left at liberty until the trial. To judge from the extant speech the arguments at the *anakrisis* formed the basis of cross-examination at the trial. With reference to the laws rendered invalid by the amnesty, Andocides addresses Epichares, *πότερον ... κύριος ὁ νόμος ὅδε ἐστιν ἢ οὐ κύριος*; (1.99). Recounting the questions that had been posed to him by the prosecution, Andocides asks his audience to recall how much like the inquisitions of the Thirty his accusers' questions have been:

> When he made his charges against me it seemed just as though I had been arrested and put on trial by the Thirty ... Who else but Charicles would have conducted the interrogation, asking, "Tell me, did you go to Decelea and build there a bastion against your own homeland? ... Did you lay waste the land or rob your own countrymen on land or on sea?"[21]

Evidently Charicles had continued the interrogation at the trial along the same lines laid out at the *anakrisis*. This passage seems to be an

[20] The proceedings against Andocides are the clearest case of the accused at liberty until the trial in *endeixis*: the *endeixis* was brought by Kephisios to the *thesmothetai*; after the traditional report of the *basileus* to the council, the *prytaneis* summoned the *antidikoi* to a preliminary hearing before the council; there was some debate (And. 1.111–16), but Andocides was released without bail. See Hansen's discussion, *Apagoge* 20–28, 128–30.

[21] 1.101: *οὐδὲν ἄλλο ἢ ὑπὸ τῶν τριάκοντα συνειλημμένος ἔδοξα κρίνεσθαι. εἰ γὰρ τότε ἠγωνιζόμην, τίς ἄν μου κατηγόρει; οὐχ οὗτος ὑπῆρχεν, εἰ μὴ ἐδίδουν ἀργύριον; καὶ γὰρ νῦν. ἀνέκρινε δ' ἄν με τίς ἄλλος ἢ Χαρικλῆς, ἐρωτῶν, Εἰπέ μοι, ὦ Ἀνδοκίδη, ἦλθες εἰς Δεκέλειαν, καὶ ἐπετείχισας τῇ πατρίδι τῇ σεαυτοῦ; Οὐκ ἔγωγε. Τί δέ; ἔτεμες τὴν χώραν, καὶ ἐλῄσω ἢ κατὰ γῆν ἢ κατὰ θάλατταν τοὺς πολίτας τοὺς σεαυτοῦ; Οὐ δῆτα. Οὐδ' ἐναυμάχησας ἐναντία τῇ πόλει, οὐδὲ συγκατέσκαψας τὰ τείχη, οὐδὲ συγκατέλυσας τὸν δῆμον, οὐδὲ βίᾳ κατῆλθες εἰς τὴν πόλιν; Οὐδὲ τούτων πεποίηκα οὐδέν. Δοκεῖς οὖν χαιρήσειν καὶ οὐκ ἀποθανεῖσθαι, ὡς ἕτεροι πολλοί;*

elaboration of extempore debate in the published version of the actual proceedings, and in many other instances, in legal actions involving political issues and party rivalry, what appear to be rhetorical questions in speeches for publication may represent *eroteseis* in the actual delivery.[22]

In the *graphe asebeias* against Socrates, the two surviving accounts, of Plato, who was present at the trial, and of Xenophon, who drew on the account of Hermogenes, although they agree on very little else, confirm that Socrates made extensive use of interrogatories; and his handling of the procedure was in accordance with accepted practice in most regards. Plato's version shows Socrates adapting his own characteristic method of argument, ἐν τῷ εἰωθότι τρόπῳ, to the conventions of the courts where the law required an answer, and for the most part the questioning is based on the wording of the indictment recorded at the *anakrisis*. The prosecution by *graphe* in a case of impiety may have seemed unusual; *endeixis* or *eisangelia* could have provided for the arrest and imprisonment of the accused as an urgent threat to the community; the *eisangelia* against Anaxagoras was the most notorious case of its kind.[23] In the *graphe*, however, the defendant was summoned to appear before the *basileus* and an *anakrisis* was held; afterward Socrates was at liberty until the trial. It appears to be an authentic feature in Plato's account that Socrates' interrogation is directed to the wording of the charges, to refute the accusations of corruption of the youth (24D–26A) and impiety towards the gods of the state (26B–27A). Aristotle, in fact, without citing Plato's version, gives Socrates' interrogatory argument—that he who believes in *daimonia* must believe in the gods (27C)—as an example of the second method of *erotesis*, "when one premise is self-evident and it is clear that the opponent will grant the other" (1419a5–12). This kind of cross-examinaton based on the arguments put forward at the *anakrisis* seems to be typical of *erotesis* in the extant speeches.

The speech of Lysias *Against Agoratus* (13) provides another example of *erotesis* at the trial, in the same year as or soon after the suits

[22] Lipsius (*supra* n.1) 917 n.60 cites this passage along with Pl. *Ap.* 24D–27E and Din. 1.83 as examples of the rhetorical elaboration of interrogatories.

[23] On the *eisangelia* against Anaxagoras (437/6) and the decree of Diopeithes *cf.* E. Derenne, *Les Procès d'impiété* (Liège 1930) 24–30; J. Mansfeld, "The Chronology of Anaxagoras' Athenian Period and the Date of His Trial," *Mnemosyne* IV.32 (1979) 54–55 and n.53; 33 (1980) 80–84. Pericles spoke as *synegoros*, and his speech for the defense seems the most likely source for the *erotesis* attributed to Pericles in Arist. *Rh.* 1419a2–5. *Cf.* Diog. Laert. 2.12, Σωτίων μὲν γάρ φησιν ἐν τῇ διαδοχῇ τῶν φιλοσόφων ὑπὸ Κλέωνος αὐτὸν ἀσεβείας κριθῆναι . . . ἀπολογησαμένου δὲ ὑπὲρ αὐτοῦ Περικλέους τοῦ μαθητοῦ . . .

for impiety against Socrates and Andocides.[24] The extant speech is of special interest as a testimony to the use of *erotesis* in logographic speeches; it is, moreover, a crucial case for the procedure in the prosecution of homicides by *apagoge*.[25] In this case the proceedings were initiated by *apagoge* to the Eleven. We can be sure (*pace* Hansen) that the prosecutors would have made every effort to have Agoratus condemned at the *anakrisis*, but it seems evident that only the fundamental legal questions were decided; we are told that the magistrates insisted that the phrase *ἐπ' αὐτοφώρῳ* be included in the indictment (13.6). It is clear from the context that Agoratus was compelled to make some very damaging admissions,[26] but the possibility of evasive tactics, denying wrongdoing or claiming justifiable cause (such as Arist. *Rh.* 1419a20–30 and the *Rh.Al.* 1444b describe) is clearly foreseen by the speaker, who claims to have evidence and arguments to refute any evasion: *ὡς δὲ ἀπέγραψε τὰ ὀνόματα, οἶμαι μὲν καὶ αὐτὸν ὁμολογήσειν· εἰ δὲ μή, ἐπ' αὐτοφώρῳ ἐγὼ αὐτὸν ἐξελέγξω· ἀπόκριναι δή μοι* . . . (30). The exact wording of the interrogatories is not recorded and in only one manuscript do we find the lemma ΕΡΩΤΗΣΙΣ, but it is clear from the context that some questioning was planned and that the logographer had provided his client with a preconceived strategy of argumentation. The speaker allows for extempore rebuttal if Agoratus denies the fact of the crime, and goes on to introduce the decree against the men named in Agoratus' *menusis*: *καί μοι ἀπόκριναι, ὦ Ἀγόρατε· οὐ γὰρ οἶμαί σε ἔχαρνον γενήσεσθαι ἃ ἐναντίον Ἀθηναίων ἁπάντων ἐποίησας.* ΕΡΩΤΗΣΙΣ (32). Evidently Agoratus had based his defense solely on the interpretation of the phrase *ἐπ' αὐτοφώρῳ*, the Eleven had been unwilling to condemn the accused, and there had been no decision even on considerable evidence. In the epilogue the speaker returns to this issue with some reference to the positions taken at the *anakrisis*,

[24] Agoratus is charged with complicity in the proscriptions of the Thirty. Because the defense objects that the action is time-barred (13.83), Hansen (*Apagoge* 132), assuming a statutory limitation of five years, argues that the case may have been tried sometime after 399, the date usually given.

[25] The precise classification of these proceedings is subject to dispute: Hansen, *Apagoge* 52, argues that Agoratus is tried as a *kakourgos* and the *kakourgema* is the homicide itself, as in the case against Euxitheos (Antiph. 5.10); Gagarin (*supra* n.15) 317–20 argues that the violation is the trespass of areas prohibited to homicides; Hansen (*supra* n.15) 28–29 insists that the phrase *ἐπ' αὐτοφώρῳ* in the indictment shows that the procedure is *apagoge kakourgon*.

[26] The first direct questioning is found at 26–27 and has to do with the plea and the question of guilt: *καίτοι, ὦ Ἀγόρατε, εἰ μή τί σοι ἦν παρεσκευασμένον . . . πῶς οὐκ ἂν ᾤχου* . . . ; The speaker proceeds to refute the defendant's plea that he had acted unwillingly, *νῦν δὲ ἄκων μὲν προσποιεῖ* . . . (28).

ἀκούω δ' αὐτὸν καὶ <τούτῳ> διωσχυρίζεσθαι, ὅτι "ἐπ' αὐτοφώρῳ" τῇ ἀπαγωγῇ ἐπιγέγραπται . . . (85), and interrogates his adversary to suggest that Agoratus has convicted himself in his own words:

> οὐ γὰρ δήπου τοῦτο μόνον οἴει τὸ ἐπ' αὐτοφώρῳ ἐπεὶ ἐκ τοῦ σοῦ λόγου οὐδεὶς φανήσεται ἀποκτείνας τοὺς ἄνδρας οὓς σὺ ἀπέγραψας· . . . οὐκ οὖν αἴτιος τοῦ θανάτου, οὗτος ἐπ' αὐτοφώρῳ ἐστί; τίς οὖν ἄλλος αἴτιος ἢ σὺ ἀπογράψας; ὥστε, πῶς οὐκ ἐπ' αὐτοφώρῳ σὺ εἶ ὁ ἀποκτείνας; (87)

The term ἐπ' αὐτοφώρῳ in the indictment should apply to the arrest rather than the crime,[27] and the prosecutor must go to some length to justify his charges. To debate the fundamental questions of guilt and legality by interrogation in this way suggests that there had been no decisive debate on these questions at the *anakrisis* before the Eleven.

The next example of *erotesis* in the extant speeches is found in Lysias 22 *Against the Graindealers*, dating from the last years of the Corinthian War (*ca* 386). The argumentative purpose is best understood in the light of what we know about the preliminaries. It is uncertain whether the procedure is *apagoge* to the council or *eisangelia*, but given the status of the defendants and the nature of the charges, *apagoge* seems more likely.[28] The speaker says that the metic *sitopoleis* were taken into custody and questioned in the council by members acting *ex officio*. Some among the *bouleutai* had moved for execution without trial; the speaker had moved for trial before the people's court to avert a dangerous precedent (22.2–4). It is clear from the speaker's own comments that the *sitopoleis* had made their plea—that they had acted under order from the authorities—at the hearing before the council: we are told that the archons had been called and questioned on this point, ἐπειδὴ γὰρ οὗτοι τὴν αἰτίαν εἰς ἐκείνους ἀνέφερον, παρακαλέσαντες τοὺς ἄρχοντας ἠρωτῶμεν (8). It seems evident, too, that the interrogatories here cover the same ground covered at the *anakrisis*: ἴσως δ' ἐροῦσιν ὥσπερ καὶ ἐν τῇ βουλῇ κτλ. (11). Nonetheless, although there had been some preliminary investigation, it seems necessary to establish what arguments will be used for the defense. The speaker must determine (1) the legal status of the defendants, (2) the facts of the crime, and (3) responsibility.

[27] Hansen insists (*Apagoge* 48–52) that ἐπ' αὐτοφώρῳ refers to the discovery or apprehension by the accuser himself of the criminal 'with the goods on him', *i.e.*, in incriminating circumstances, and not necessarily 'caught in the act' as it is often interpreted. Strictly speaking "a phrase like ἐπ' αὐτοφώρῳ ἀποκτείνειν is a solecism": Hansen (*supra* n.15) 29.

[28] Harrison (*supra* n.5) 50 n.2; *cf.* Hansen, *Eisangelia* 41, 114, and *Apagoge* 31.

καὶ πρῶτον μὲν ἀνάβητε. εἰπὲ σὺ ἐμοί, μέτοικος εἶ; ... πότερον ὡς πεισόμενος τοῖς νόμοις τοῖς τῆς πόλεως ... ; Ἀπόκριναι δή μοι εἰ ὡμολογεῖς πλείω σῖτον συμπρίασθαι πεντήκοντα φορμῶν, ὧν ὁ νόμος ἐξεῖναι κελεύει ... (5).

From these examples of *apagoge* and related procedures it appears that the initial hearing did not allow for preliminary debate beyond the question of legality and the plea. Instead, in most cases the magistrate would have been reluctant to condemn on his own authority.

In regard to the summary nature of the procedure in *apagoge*, in cases initiated before the council or the assembly, we should compare the action of Pythangelos against Hierocles (ὡς ἱερόσυλον: 332/1).[29] The arrest was made to the *prytaneis*, who brought the case before the *ecclesia*. Aristogeiton proposed that the accused stand convicted and be condemned to death if he admitted having taken the sacred garments as charged, without allowing the plea that he had acted on order from the priest. Aristogeiton's proposal was indicted for illegality. By law, if the accused denies the charges he has the right of trial before the people's court, but in this instance it is proposed that the pre-judicial authority, the *ecclesia* acting in the rôle of the archon, interpret admission of the fact as admission of guilt. It is significant for our purposes that in this case, just as in the case against the *sitopoleis*, the proposal for summary execution without trial is rejected as unconstitutional without a *probouleuma* (πρῶτον μὲν ἀπροβούλευτον), and because of the severity of the sentencing without due process, ἔπειτα δεινότατον κελεῦον (Dem. 25 hyp. 1). Aristogeiton's proposal to the council may seem to suggest that the Eleven and other legal officials had similar authority to interpret the statements of the accused as admission of guilt; however, we have no single instance of summary execution in such cases. Instead, it seems more likely that the rôles of the *boule* and the *ecclesia*, in the cases against the *sitopoleis* and against Hierocles as in Archinos' *apagoge*, were exceptional owing to religious and political implications; in both cases the proposal was condemned as contrary to the principles of the democratic judiciary.

In the first five examples of *erotesis* in the extant speeches, every case involved some sort of preliminary hearing, although from the argument it appears that the hearing left undecided many questions at issue. In the case against Agoratus it is evident, both from the nature of the procedure and from the questioning indicated in the text, that in the preliminary investigation the Eleven were concerned only with

[29] Hansen, *Apagoge* 139–40.

the question of legality and the defendant's plea. In all five examples the same principle seems to apply: debate on the questions at issue is reserved for trial before the people. In the next four examples, from the period after the formalization of procedures in 378/7, this principle of the people's sovereignty is all the more evident.

It is generally agreed that written depositions were required in all legal action after 378, although the exact date of the requirement cannot be determined;[30] it is often assumed that no new evidence was submitted at the trial. The latter assumption is based on the belief that the same principle applies in other procedures as in private suits on appeal from arbitration. It is now generally acknowledged, however, that in cases on appeal from arbitration the restriction against new evidence (*Ath.Pol.* 52.2–3) is a safeguard to ensure that the claimants negotiate in good faith. The same principle does not hold true for the archon's decision at the *anakrisis*: he simply decides whether the action is or is not admissible.[31] We might expect to find some limitations to the uses of *erotesis* at the trial when the facts of the case had been fully documented. In the following examples, however, special procedures were used to circumvent the new restrictions: the first example is found in Isaeus 11, in a private suit prosecuted by *eisangelia* to the archon; two of the remaining examples are found in speeches given at hearings for *paragraphai* in private suits; the fourth case is an appeal (*ephesis*) against expulsion (*diapsephisis*).

Speeches involving claims of kinship, rights of inheritance, and citizenship are numerous among the extant orations, and in many cases proof of identity and family ties depends in part upon interrogatories. The clearest example comes from Isaeus' speech (11) for Theopompus *On the Estate of Hagnias* (*ca* 360),[32] where the procedure followed is not *dike* but *eisangelia kakoseos*, and in fact the speaker protests against this form of 'criminal' prosecution in what is patently a private dispute (11.28). The prosecutor brought his report

[30] G. M. Calhoun, *TAPA* 50 (1919) 177–88, observed that judicial speeches before 378/7 make no clear reference to written pleas. Thus the rule for written statements at the *anakrisis* is thought to coincide with other changes in procedure of that time. *Cf.* Harrison (*supra* n.5) 98–99.

[31] For the view that no new evidence was submitted at the trial, see Lipsius (*supra* n.1) 829; Leisi (*supra* n.1) 85; Bonner and Smith (*supra* n.2) I 283–84; for the argument followed here, see Harrison (*supra* n.5) 97 and n.2, 102.

[32] On the lengthy dispute on the estate of Hagnias, and the date of Isaeus' speech written for Theopompus, see the discussion in Wyse's commentary (*supra* n.1) 671–78; *cf.* W. Thompson, *De Hagniae Hereditate: An Athenian Inheritance Case* (*Mnemosyne* Suppl. 44 [1976]).

(*eisangelia*) before the archon *eponymos* as the competent magistrate in property disputes. It is clear that the archon's hearing was not intended to decide the issue without trial but to prepare the case for speedy trial before the people's court. Thus, at 5, the *erotesis* is used to establish fundamental facts of the case that might ordinarily be answered at the *anakrisis*:

> Is the child a brother or nephew, either brother's son or sister's son, cousin or cousin's son . . . ? Which of these connections [can he claim], which the law requires to determine 'next of kin'? . . . You must explain, then, the claim of kinship, what relation this boy is to Hagnias. Tell them! You see that he cannot explain their kinship and answers anything but what you need to know.[33]

The uses of *erotesis* in Isaeus 11, and in Lysias 13, are especially significant as examples of cross-examination in logographic speeches in proceedings where the questions at issue had not been debated in preliminaries. The next three examples are also found in logographic speeches in cases where important questions at issue seem to be first debated at the trial. The first two are in speeches for the *paragraphe* hearing in private suits of about the same period, speeches 35 and 36 in the Demosthenic corpus.[34] In these two the *eroteseis* are directed to the question of legality.

The *synegoros* for Phormio (Dem. 36) against Apollodorus makes extensive use of direct questioning against the legal basis of his adversary's claim. After a brief *diegesis* the speaker addresses the two questions upon which the legality of the charges must be decided: in eighteen years Apollodorus had not contested the settlement of his father's estate; the plaintiff has not been able to produce any documents to support his claim.

> τίς ἐνείματ' ἂν τὰ πατρῷα μὴ λάβων γράμματα ἐξ ὧν ἔμελλεν εἴσεσθαι τὴν καταλειφθεῖσαν οὐσίαν; . . . οὐκ ἂν ἔχοις ἐπιδεῖξαι ὡς ἐνεκάλεσας πώποτ' ὑπὲρ τῶν γραμμάτων . . . ἐκ ποίων γραμμάτων τὰς δίκας ἐλάγχανες; (36.19)

Speech 35 defends the legality of the speaker's suit against Lacritus for fraud; in the *paragraphe* Lacritus has objected that suits involving

[33] 11.4–6: Ἐπίσχες. ἐρωτήσω σέ. ἀδελφός ἐσθ' ὁ παῖς Ἀγνίου <ἢ> ἀδελφιδοῦς ἐξ ἀδελφοῦ ἢ ἐξ ἀδελφῆς γεγονώς, ἢ ἀνεψιός, ἢ ἐξ ἀνεψιοῦ πρὸς μητρὸς ἢ πρὸς πατρός; τί τούτων τῶν ὀνομάτων, οἷς ὁ νόμος τὴν ἀγχιστείαν δίδωσι; . . . δεῖ δή σε τῆς ἀγχιστείας, ὅ τι ὁ παῖς Ἀγνίᾳ προσήκει, τὸ γένος εἰπεῖν. φράσον οὖν τουτοισί. αἰσθάνεσθε ὅτι οὐκ ἔχει τὴν συγγένειαν εἰπεῖν, ἀλλ' ἀποκρίνεται πάντα μᾶλλον ἢ ὃ δεῖ μαθεῖν ὑμᾶς.

[34] See Isager and Hansen (*supra* n.4) 123–29 on procedure in *paragraphe*; 169–70 and 177 on dating Dem. 35 and 36.

business dealings of this kind are inadmissible before the people's courts. Thus the speaker demands (45–49):

> For what reason, Lacritus, does this principle [of prosecution for fraud] hold good in your case but will not be valid for me? Are not the same written laws valid for us all, and the same principle of justice in commercial disputes? ... Where then is such a suit admissible? Just give a straight answer, according to the laws (*δίδαξον, ὦ Λάκριτε, μόνον δίκαιόν τι λέγων καὶ κατὰ τοὺς νόμους*, 49).

In these arguments for the prosecution and in Dem. 36 for the defense we have two examples of debate at *paragraphe* hearings on questions of legality that might have been answered ordinarily at the *anakrisis*. The growing importance of the *paragraphe* points to a final phase in the decline of the archon's judicial authority. Even on the fundamental question of legality *erotesis* and other decisive arguments were often reserved for debate before the *dikastai*.

From the same period we have a fourth instance of *erotesis* in the speech *Against Euboulides* (Dem. 57), in an appeal against expulsion (*διαψήφισις τῶν δημότων*).[35] In this case, again, the accusers have taken advantage of a special procedure to prosecute a private dispute, without the usual safeguards and restrictions. From the *diegesis* it is clear that the questions at issue have not been decided before the trial. The speaker in his own defense challenges his adversary to debate the issues in the time allotted to the speaker. It has been acknowledged that such challenges indicate *erotesis* and extempore debate:[36] *ἐπὶ τοῦ ἐμοῦ ὕδατος ὅστις βούλεται τούτων τἀναντία μαρτυρησάτω* (61). Again, in the epilogue (76–78), the speaker himself responds to the customary questions in proof of identity, the same questions asked in the *dokimasia* of candidates for public office (*cf. Ath.Pol* 53.3), and, one may assume, a conventional procedure in such disputes involving rights of citizenship or inheritance.

These last four examples (Is. 11.5; Dem. 35.35–49, 36.19, 57.61), from the period after 378/7 to the 340's, illustrate two aspects of the conservatism of Athenian court proceedings. All are found in logographic speeches in private suits in procedures where the usual opportunities for preliminary debate on the questions at issue had been circumvented. None of these speeches is likely to have been published in any revised form: the text we have is essentially the prepared text. Thus we have considerable evidence, first, that logography did not put an end to extempore tactics, second, that the re-

[35] For the procedure in *diapsephisis* see Bonner and Smith (*supra* n.2) I 319.
[36] Leisi (*supra* n.1) 40–41.

quirement for written depositions at the *anakrisis* did not restrict *erotesis* at the trial. In most cases there was no restriction against new evidence, and in many cases even the most fundamental questions were debated first before the *dikastai*. Only the charges, the plea, and the question of legality were decided at the *anakrisis*, and even the question of legality could be deferred by *paragraphe*.

The next four examples, however, are all found in procedures where there was some preliminary debate and most of the questions at issue seem to be clearly defined. All occur in speeches in public suits of some notoriety in the prosecution of *rhetores*, and in each case it is likely that the received text is a version revised for publication. We cannot be sure how closely the extant speeches follow the speaker's actual delivery, but it seems inherently unlikely that the published version would have included such provocative tactics as *erotesis* if the speaker had not had the confidence to challenge his adversary in the actual proceedings.

The speech of Demosthenes (19) in the *graphe parapresbeias* against Aeschines provides the first of these examples. It is clear that the questions at issue and the essential arguments on both sides were defined at the hearing before the *euthynos*:[37] *καὶ τίς μου καταμαρτυρεῖ, φήσει, δῶρα λαβεῖν*; Nonetheless, it seems necessary to challenge the adversary to dispute the speaker's arguments: . . . *πρὸς δὲ τοῖς πράγμασιν αὐτὸς αὐτίκα δὴ σὺ σαυτοῦ. ἀπόκριναι γὰρ δεῦρ' ἀναστάς μοι* (120).

The next two examples come from speeches in the *paranomon graphai*: Hyperides' *Against Aristogeiton* (frr.32–43) and Demosthenes' *On the Crown* (18). These suits for illegality were initiated by a sworn oath (*hypomosia*) of intent to prosecute a decree or proposal before the assembly; the council then prepared the *probouleuma* for a decree for trial before the dicastery. This initiating procedure in itself tended to restrict the preliminary debate as such, although the proposal under indictment would have been first debated in the assembly and many of the jurors at the trial would have been familiar with the issue: in effect parliamentary debate took the place of the *anakrisis*.[38]

In the fragment of Hyperides' speech reported in Rutilius Lupus (fr.32), the phrase *saepius his verbis . . . requiris* suggests that the issue

[37] M. Piérart, "Les ΕΥΘΥΝΟΙ athéniens," *AntClass* 40 (1971) 560–63; *cf.* Harrison (*supra* n.5) 210–11.

[38] Hansen, *Sovereignty* 50–51, "the majority of the jurors in a *graphe paranomon* had already attended the session of the assembly during which the proposal was discussed, and no doubt the decree was the subject of public debate in the interval between the hearings of the case by the assembly and by the court"; *cf.* Dem. 22.59.

had been debated in the assembly—unless we are to assume that this represents an editorial comment in the published version.

> *quid a me saepius his verbis de meo officio requiris? "Scripsisti ut servis libertas daretur?" Scripsi, ne liberi servitutem experirentur, "Scripsisti ut exules restituerentur?" Scripsi, ne quis exilio afficeretur. "Leges igitur quae prohibebant haec nonne legebas?" Non poteram, propterea quod litteris earum arma Macedonum opposita officiebant.*

In another report of these proceedings ([Plut.] *Mor.* 849A) the famous dictum οὐκ ἐγὼ τὸ ψήφισμα ἔγραψα, ἡ δὲ ἐν Χαιρονείᾳ μάχη probably represents a response to *erotesis*; apparently Aristogeiton demanded ἔγραψας σὺ τοῦτο τὸ ψήφισμα; as Dinarchus (1.83) was later to interrogate Demosthenes.

In Demosthenes' oration *On the Crown* the speaker makes persistent use of direct questioning to his adversary (18.63–71, 124, 196), and there is ample evidence that these questions represent *eroteseis* in the actual delivery. In his speech for the prosecution Aeschines claims that he has been threatened with cross-examination: ταῦτα δὲ καταριθμησάμενος, ὡς ἀκούω, μέλλει μὲ παρακαλεῖν καὶ ἐπερωτᾶν . . . κἂν μὴ θέλω ἀποκρίνασθαι, . . . ἐκκαλύψειν μέ φησι προσελθὼν καὶ ἄξειν ἐπὶ τὸ βῆμα καὶ ἀναγκάσειν ἀποκρίνασθαι (3.55). Demosthenes' challenge to Aeschines to reveal a better policy (18.63–71) suggests in itself that the issues had been debated publicly and the speaker was sure of his ground. Later commentators in antiquity seem to have assumed that such questions demanded some response.[39]

The last of the examples that can be dated is found in Dinarchus' speech *Against Demosthenes* (1). The prosecution was initiated by *apophasis*, or report of the council of the Areopagus to the assembly. The council of the Areopagus undertook the preliminary investigation, and in this case, as in few other public suits, all the evidence was entered at the preliminary hearing: not a single authentic deposition is read in the four surviving speeches.[40] We may assume that the evidence was cited in the *apophasis* proper, the report of the Areopagus to the assembly. Thus the *dikastai* were well acquainted with the evidence, and Dinarchus' challenge is a safe strategy (1.83):

> ἔγραψας σὺ τοῦτο, Δημόσθενες; ἔγραψας· οὐκ ἔστιν ἀντειπεῖν. ἐγένετο ἡ βουλὴ κυρία σοῦ προστάξαντος; ἐγένετο. τεθνᾶσι τῶν

[39] See the essay Περὶ διλημμάτου in Hermog. *Inv.* 4.6: δύο ἐρωτήσεις ἐρωτῶντες τὸν ἀντίδικον πρὸς ἑκατέραν ὦμεν εἰς λύσιν παρασκευασμένοι. δεῖ δὲ τὰς ἐρωτήσεις ἐναντίας ἀλλήλαις εἶναι, κτλ.

[40] Hansen, *Eisangelia* 39–40.

πολιτῶν ἄνδρες; τεθνᾶσι. κύριον ἦν τὸ σὸν ψήφισμα κατ' ἐκείνων; ἀδύτατον ἀντειπεῖν.

Demosthenes himself had proposed the investigation that found him guilty; the purpose of the interrogation is to provoke any arguments against the legality of the proceedings. The speaker's next questions are meant to refute Demosthenes' defense that he had proven his integrity in handling public monies (89–90):

οὕτως οὖν, ὦ ἄριστε, εἰπέ μοι, φυλάξομεν, ἐὰν σὺ μὲν εἴκοσι τάλαντα λαβὼν ἔχῃς . . . ἕτεροι δ' ὅσα δή ποτε ἀποπεφασμένοι εἰσί; . . . καὶ πότερα κάλλιόν ἐστι, πρὸς δὲ δικαιότερον, ἅπαντ' ἐν τῷ κοινῷ φυλάττεσθαι . . . ἢ τοὺς ῥήτορας . . . διηρπακότας ἔχειν;

These last four examples of *erotesis* from proceedings against *rhetores* resemble the examples from earlier periods in form and argumentative function: the interrogatories are directed to the questions of guilt and legality; they are not literary ornamentation, as some commentators have supposed,[41] but indicate a common practice in the courts.

There are two further indications of *erotesis* in speeches that have not been dated or identified with any certainty: Isaeus fr.2 and Hyperides fr.B55. These examples suggest some general trends in the practice of judicial debate. The earlier of the two, from Isaeus, is cited by Dionysius (*Isae.* 12). The speaker's argument suggests that examinational questions were a conventional if not obligatory part of the rhetoric of accusation: the judges were accustomed to hearing the issues clearly phrased in a few straightforward interrogatories.

ἐχρῆν δὲ αὐτόν, εἴ πέρ τι δίκαιον ἐφρόνει . . . καὶ ἐξετάζειν ἕκαστα τῶν ἐν τῷ λόγῳ, τοῦτον τὸν τρόπον παρ' ἐμοῦ πυνθανόμενον. εἰσφορὰς λογίζῃ πόσας; τόσας. κατὰ πόσον ἀργύριον εἰσενηνεγμένας; κατὰ τόσον καὶ τόσον. καὶ ποῖα ψηφίσματα; ταυτί. ταύτας εἰλήφασι τίνες; οἵδε. (καὶ ταῦτα μαρτυρόμενον σκέψασθαι . . .)

The second example, from the latter half of the fourth century, shows how speakers in the courts may have departed from formal *erotesis* to take full advantage of their position on the *bema* in direct questioning to the adversary: ἀπόκριναί μοι, Ἑρμεία, ὥσπερ κάθῃ.

[41] C. D. Adams, for example, *ad* Lys. 12.25–26, in *Lysias, Selected Speeches* (New York 1905) 356, recognizes the interrogatory formula in the questions at 12.25, but regards the follow-up questions at 26 as "rhetorical questions" for stylistic effect, with reference to the *pusmatikon schema* in Tiberius *De figuris* (Spengel *Rh. Gr.* III 64). Thompson (*supra* n.32) *ad* Isae. 11.4–6 makes the suggestion that the questions in Lys. 12.25–26 are simply rhetorical embellishment. On Din. 1.83 see Lipsius (*supra* n.1) 917 n.60.

This fragment confirms many indications that the adversary was not always 'called to the stand' for cross-examination, but his answers or his silence were no less incriminating.

Thus, over the course of the fourth century, changes in practice and procedure, rather than restricting *erotesis* within set speeches, called for new tactics in debate at the trial. In such summary procedures as *apagoge* and *endeixis* only the defendant's plea and the legality of the charges were decided at the *anakrisis*; in many cases the major questions at issue were first debated in court. In ordinary procedures in most cases the rules for submitting evidence at the hearing were no obstacle to *erotesis*; in *paragraphe* the sovereign court assumed authority to judge even the question of legality. In the prosecution of *rhetores* by *graphe paranomon* and related procedures, in political disputes involving well-known policies and personalities, the requirement to answer the speaker's questions could still be invoked to discredit the opposition. In logographic speeches and in speeches for publication *erotesis* is not a stylistic ornament but a sign of common practices in the courts.

GASTONIA, NORTH CAROLINA
September, 1983