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One of the debated aspects of legal procedure in Athens is the availability and character of ἀπαγωγή in homicide cases during the fifth and fourth centuries B.C. Ambiguity in the discussions of ἀπαγωγή in Antiphon 5, Lysias 13, and Demosthenes 23.80, plus attempts to integrate these three somewhat disparate sources into a single historical development, has fostered a variety of scholarly opinion. This study will present a brief examination of the evidence, evaluate some of the major interpretations, and offer certain conclusions about the nature and availability of summary arrest for homicide in Classical Athens.

In Antiphon 5 the defendant, a citizen of Mytilene traditionally named Euxitheos, is charged with the murder of Herodes, an Athenian cleruch from Mytilene. The latter disappeared without a trace while on a voyage to Aenus on the same ship with the defendant. It is assumed that relatives of Herodes filed an ἐνδείξεις with the Eleven in Athens and secured the summary arrest of Euxitheos apparently under the νόμος κακουργίας. This law authorized the arrest of ‘malefactors’, including such criminals as thieves, house-breakers, kidnappers, but initially and generally not murderers 1). The defendant complains that the procedures used against him are incorrect and asserts that he should have been prosecuted before the Areopagus by means of summary arrest.

a δίκη φόνου). In his references to the sentence he faces, he fluctuates between the death penalty and a penalty which is τιμητός, i.e. selected by the jury from those proposed by the prosecutor and the convicted defendant). The latter could include the death penalty, a fine, exile, etc.

Interpretation of Antiphon 5 generally falls into one of four categories. (1) — The defendant's complaints that the procedure is incorrect are accepted and the speech is dismissed as valid evidence for reconstructing the Athenian laws of homicide.

(2) — Summary procedures against non-citizens for serious crimes were provided by an extension of ἀπαγωγὴ κακουργίας.

(3) — The murder may have been accompanied by some other crime, such as robbery, which was subject to ἀπαγωγὴ. In this case the full charge would have been Raubmord. (4) — ἀπαγωγὴ κακουργίας or merely ἀπαγωγὴ was extended during the fifth century to include murder

The Eleven, in spite of the defendant's complaints, accepted the δέοντίζει, authorized the summary arrest, and brought the case to trial. If the charge was false in substance, it might have been correct in form. The Eleven's power and ability to investigate beyond the form of the pleading must have been quite limited and a formally correct charge probably was forwarded for trial. The Eleven's discretion in accepting such cases might be measured realistically by the series of examinations to which

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2) 5.8, 5.85—88, and 5.96.
3) 5.16 and 5.10.
4) D. M. MacDowell, Athenian Homicide Law in the Age of the Orators (Manchester 1963), pp. 136—37. See also Busolt and Swoboda, II, p. 1107, n. 3 (at p. 1108).
6) Martin Sorof, Über die ἀπαγωγῆ in attischen Gerichtsverfahren, NJPhP, 131 (1885), 10.
8) See Ath. Pol. 43.4 and 48.4.