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Forensic Strategy in Cicero's Speech in Defence of Aulus Cluentius Habitus

Abstract. The statement of the defence delivered in the criminal action (*causa publica*) of Aulus Cluentius Habitus—Cicero's longest actually delivered speech left to us—is from 66, that is, the year when Cicero was *praetor*. In certain respect, it is the precious stone of Cicero's *ars oratoria* since its narrative is vivid, full of turns like a crime story; events, scenes, planes of time replace one another boldly, sometimes seemingly illogically but, being subordinated to the effect the orator means to attain, in an exactly premeditated sequence. Cluentius was charged, on the one hand, with poisoning his stepfather, Statius Albius Oppianicus. The other part of the charge was founded on the criminal proceedings under which eight years before Cluentius charged Oppianicus with poisoning attempt against him, as a result of which Oppianicus was compelled to go into exile—in the current lawsuit, however, the prosecution brought it up against him that the former court of justice declared Oppianicus guilty purely because Cluentius had bribed the judges. *Lex Cornelia de sicariis et veneficis* of 81 served as basis for judging crimes that provide grounds for the charge of poisoning; however, the prohibition of bribing judges applied to the order of senators only, and Cluentius belonged to the order of knights. First, we intend to outline the historical background of the oration, so to say, the historical facts of the case (I.); then, we turn our attention to the opportunity of applying statutory facts of the case, i.e. *lex Cornelia de sicariis et veneficis*. (II.) Finally, we examine the rhetorical tools of Cicero's strategy to explore how the orator handled, modified or distorted the system of the charges and chronology—to support the argument, which can be considered brilliant with a lawyer's eyes, too. (III.)

Keywords: Cicero, *Pro Cluentio*, *lex Cornelia de sicariis et veneficis*, forensic strategy

I. Historical background of *Pro Cluentio*

Cicero refers to the oration delivered in defence of Aulus Cluentius Habitus in 66 in *Orator* written twenty years later as an example of using the three genres of style in the same speech,¹ and quotes a truly successfully made phrase² from it.³ Writing about the orator's power of judgement Quintilian brings up *Cluentiana* as a textbook example of properly built rhetorical strategy,⁴ and elsewhere he expounds that Cicero threw sand (that is, dust) into the judges' eyes.⁵ The oration is cited by Gellius too;⁶ Pliny considers it Cicero's most

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¹ Cicero, *Orator* 103.

² Cicero, *Pro Cluentio* 199.

³ Cicero, *Orator* 108.

⁴ Quintilianus, *Institutio oratoria* 6, 5.

⁵ *Ibid.* 2, 17, 21. *gloriatu est offudisse tenebras iudicibus Cluentianis.*

⁶ Gellius, *Noctes Atticae* 16, 7, 10.

outstanding rhetorical achievement,⁷ and from among Claudius Tryphoninus mentions it.⁸ Philology of the modern age also devoted considerable scope to the *Pro Cluentio*, Theodor Mommsen refers to the speech as an outstanding example of antique "criminal statistics".⁹

The accused of the lawsuit, A. Cluentius Habitus was born in Larinum in north Apulia controlled by the Aurii, Albii, Cluentii and Magii related by manifold marriage connections and kinship,¹⁰ which shows the reflection of crimes growing wild in Rome¹¹ and it cannot be said that at a rate of a small town.¹² He lost his father, Cluentius senior when he was fifteen, in 88;¹³ two years later his mother, Sassia got married again, and to the husband of her daughter, Cluentia, that is, her own son-in-law, A. Aurius Melinus, at that.¹⁴ That is where Cicero dates the bad relation between the accused and his mother from as he claims that Cluentius was so much shocked at Sassia's act that he decided not to maintain any relation with his mother.¹⁵ Aurius—purportedly as a result of the machinations of St. Abbius Oppianicus—fell victim of Sulla's *proscriptiones*,¹⁶ and Cluentius's mother married Oppianicus, who earlier divorced at least two wives, Papia (Magius's widow) and Novia, and lost two wives, the elder Cluentia and Magia.¹⁷

It is worth noting that to illustrate the hatred between Oppianicus senior and Cluentius Cicero does not use the opportunity that he could properly exploit as the psychological motivation of the assassination attempted by Oppianicus against his stepson, namely, he does not mention how Cluentius responded—possibly with antipathy or anger—to the fact of the marriage of his mother and Oppianicus.¹⁸ Magia was the mother of Oppianicus junior, who acted as accuser against Cluentius, that is, the son of his stepmother in 66. Oppianicus senior purportedly wanted to get his stepson, Cluentius poisoned and used C. Fabricius for carrying out his plan, who tried to win the help both of Scamander, the libertine and the slave of the physician who treated Cluentius for performing the murder.¹⁹ It is impossible to clarify how much the fact of the assassination attempt could be considered proved; however, Cluentius brought a charge first against Scamander, then Fabricius and finally his stepfather, Oppianicus senior. The court of justice found all the accused persons guilty; however,

⁷ Plinius minor, *Epistulae* 1, 20, 4.

⁸ Tryphoninus, D. 48, 18, 39. Cf. Nörr, D.: *Cicero-Zitate bei den klassischen Juristen. Zur Bedeutung literarischer Zitate bei den Juristen und zur Wirkungsgeschichte Ciceros*. In: *Ciceroniana. Atti del III Colloquium Tullianum*. Roma, 1978. 111–150, 122ff.

⁹ Mommsen, Th.: *Römische Geschichte, III*. Berlin, 1875⁶. 528. *Die Criminalstatistik aller Zeiten und Länder wird schwerlich ein Seitenstück bieten zu einem Schaudergemälde so mannichfaltiger, so entsetzlicher und so widernatürlicher Verbrechen, wie es der Prozeß des Aulus Cluentius in einem Schoß einer der angesehensten Familien einer italischen Ackerstadt vor uns aufgerollt*.

¹⁰ See Hoenigswald, G. S.: The murder charges in Cicero's *Pro Cluentio*. *Transactions of the American Philological Association*, 93 (1962), 109–123, 109f.

¹¹ Cf. Sallustius, *De coniuratione Catilinae* 11, 4.

¹² Kroll, W.: Ciceros Rede für Cluentius. *Neue Jahrbücher für das klassische Altertum*, 53 (1924), 174–184, 176.

¹³ Cicero, *Pro Cluentio* 11.

¹⁴ *Ibid.* 12f.

¹⁵ Cicero, *Pro Cluentio* 16. Cf. Hoenigswald: *op. cit.* 115.

¹⁶ Cicero, *Pro Cluentio* 25.

¹⁷ *Ibid.* 27f.

¹⁸ Hoenigswald: *op. cit.* 116.

¹⁹ Cicero, *Pro Cluentio* 47ff.

Oppianicus was convicted with a little majority of the votes cast.²⁰ The lawsuit involved several suspicious circumstances, for example, the judges were drawn irregularly,²¹ the suspicion of bribe²² emerged with respect to several senators, e.g. C. Fidiculanus Falcula,²³ M. Atilius Bulbus and Staienus.²⁴

Based on all that, suspicion extensively spread that the lawsuit was influenced by bribes and bribe attempts. In spite of the fact that Oppianicus was convicted, Cicero tries to present the case as if Oppianicus himself might have been the briber and it was thanks to this that almost half of the members of the court of justice voted for his innocence, in contrast with Scamander and Fabricius who were unanimously convicted; on the other hand, Oppianicus's counsel, L. Quinctius suspected Cluentius of bribe as by his formal accusation he eventually won success, and used this case for agitating as a tribune before the popular assembly against the corruptness of the order of senators constituting the courts of justice.²⁵ Consequently, the lawsuit caused political stir and served as grounds for proceedings against several senators who participated in the lawsuit as judges.²⁶ Cicero, who defended Scamander in the 74 proceedings, refers to the case as a textbook example of the bribeability of courts of justice just because Oppianicus was sentenced by only little majority of the votes cast, from which he wanted to create evidence of or at least arguments on the bribe committed by the accused.²⁷

Two years after he was convicted, in 72, Oppianicus senior died in exile but near Rome²⁸—the prosecution claimed that Cluentius had him poisoned²⁹—however, no factual data are available on the circumstances of his death. His widow, Sassia suspected her son (that is, Oppianicus's stepson), Cluentius of having poisoned Oppianicus, and she tried to confirm her suspicion by testimonies—primarily forced from slaves—but she did not succeed in it.³⁰ However, after further deaths occurred, and Cluentius got involved in them under unclarified circumstances, in 66 Abbius Oppianicus junior—presumably twenty-one years old at the time of the lawsuit³¹—brought a charge against Cluentius, a member of the order of knights, based on Sulla's *lex Cornelia de sicariis et veneficis*, which contained the state of facts elements homicide, illegal possession of arms, making and passing on poison for the purpose of manslaughter, arson and certain procedural crimes, such as for example bribing the court of justice in order to have innocent persons sentenced—however, it extended this later scope of state of facts to magistrates and senators only.³² Based on that—

²⁰ Cf. Cicero, *Pro Caecina* 29.

²¹ Cicero, *In Verrem* 2, 1, 157.

²² *Ibid.* 1, 29.

²³ Cicero, *In Caecilium* 28f.

²⁴ Cicero, *In Verrem* 2, 2, 79.

²⁵ Cicero, *Pro Cluentio* 74ff.

²⁶ Classen, C. J.: *Recht, Rhetorik und Politik. Untersuchungen zu Ciceros rhetorischer Strategie*. Darmstadt, 1985. 21.

²⁷ Cicero, *In Verrem* 1, 38–40.

²⁸ Kroll: *op. cit.* 174.

²⁹ Cf. Cicero, *Pro Cluentio* 161ff.

³⁰ Hoenigswald: *op. cit.* 111; Kroll: *op. cit.* 175.

³¹ Stroth, W.: *Taxis und Taktik. Die advokatische Dispositionskunst in Ciceros Gerichtsreden*. Stuttgart, 1975. 195.

³² See Mommsen, Th.: *Römisches Strafrecht*. Leipzig, 1899. 628; Kunkel, W.: *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*. München, 1962. 64–70;

paying regard to the letter of the law—Cluentius could not be declared guilty in the charge of bribe if for no other reason than because he did not belong to the scope of subjects of the law as he came from a family in the order of knights and had never held a state office.³³ The office of *iudex quaestionis* was fulfilled by Q. Voconius Naso,³⁴ the young Titus Attius, knight of Pisaurum acted on the side of the prosecution,³⁵ the defence of Cluentius, who can be most probably considered guilty in the charges brought against him, was undertaken by Cicero, a *praetor* in 66, who attained that the accused was acquitted.³⁶ The court of justice consisted of thirty-two jurors, made up, on the grounds of *lex Aurelia iudiciaria* of 70, of senators, knights and aëran tribunes each constituting one-third of the panel.³⁷

The defence followed a double path: it did not come to the main count of the indictment immediately; instead, it dealt with the issue of bribe first. In order to support his own narrative on bribe, to discuss the subject of bribe more extensively than the accuser: first, he details Oppianicus senior's guilty past record, and deals with two former lawsuits related to the assassination attempt against Cluentius. In the introduction Cicero announces that in his statement of the defence he will follow the double path indicated by the prosecution and will justify why he deals with the first point more profoundly than with the second one: the charge of poisoning is fully unfounded, therefore, it can be get done with briefly; the bribe case has been generally known for eight years already, and the joint effort of the counsel for the defence and the judges will be required to do away with it. The first part of the statement of the defence consists of three subchapters, which deal with Oppianicus senior's past record, the poisoning lawsuit of the year 74 and the bribe case. In the second part of the oration, which now covers the main count of the indictment, i.e. the issue of assassination committed by Cluentius against Oppianicus by poison, the orator passes over other purported acts of the accused and the crime of poisoning with lapidary conciseness and almost suspicious ease, and he spends more time only on the testimonies enforced from slaves brought up by the prosecution as evidence.

II. Applicability of *lex Cornelia de sicariis et veneficis* in Cluentius's lawsuit

In the beginning of the speech, in the *prooemium*, Cicero strictly separates the charge of murder committed by poison and the charge of bribing the court of justice that passed sentence on Oppianicus senior eight years before, which was politically highly exploited by *subscriber* Attius.³⁸ The charge could be based (i) on assassination and mixing of poison, (ii) several poisoning attempts and bribing the court of justice, (iii) simply on assassination attempt.³⁹ It makes it rather difficult to reconstruct the facts that Cicero both conceals facts

Cloud, J. D.: The primary purpose of the *lex Cornelia de sicariis*. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, 86 (1969), 258–268; Classen, C. J.: Cicero, *Pro Cluentio* 1–11 im Licht der rhetorischen Theorie und Praxis. *Rheinisches Museum*, 108 (1965), 104–142; Humbert, J.: Comment Cicéron mystifia les juges de Cluentius. *Latomus*, 16 (1938), 275–296, 276.

³³ Stroh: *op. cit.* 196.

³⁴ Cicero, *Pro Cluentio* 147f.

³⁵ *Ibid.* 65. 84. 156; Cicero, *Brutus* 271.

³⁶ Kroll: *op. cit.* 174.

³⁷ Stroh: *op. cit.* 202.

³⁸ Cicero, *Pro Cluentio* 1–2. 11. 119. Cf. Humbert: *Comment Cicéron mystifia...* *op. cit.* 287.

³⁹ Classen, C. J.: Die Anklage gegen A. Cluentius Habitus (66 v. Chr. Geb.). *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, 89 (1972), 1–17; Classen, C. J.: Cicero, the Laws, and the Law-Courts. *Latomus*, 37 (1978), 597–619, 604ff.; Köhler, Ch.: *Die*

unpleasant to his defendant and dispenses with elements self-evident to the audience of the period but no longer known to the reader of the present day. It is clear that as counsel for the defence Cicero's task was to prove to the judges that his defendant had not committed the crime(s) he was charged with—that is, in accordance with the fundamental rhetorical principles he had to proceed in compliance with *status coniecturalis*.

To a lawyer's eyes, one of the most interesting questions of *Pro Cluentio* is whether the charge brought by Oppianicus junior based on *lex Cornelia de sicariis et veneficis* against Cluentius applied to manslaughter committed by poison only or covered bribe of the court of justice too, which the accused committed, as claimed by the accuser, eight years before, in the lawsuit against Oppianicus senior. In clarifying the question, as a matter of fact, the problem of the reliability of the source base arises as Cicero's form of presentation and his references to the text of the law are most probably tendentious—even if he could not have modified or distorted the text of the law on the merits when citing it—and the form of Sulla's laws left to us is from a much later age;⁴⁰ furthermore, it must be taken into account that the text effective at the time of the lawsuit is not necessarily identical with the text left to us.⁴¹ Although the later version of *lex Cornelia de falsis* sanctions active bribe in court of justice, it is not probable that the original *lex Cornelia testamentaria* contained provisions to such effect. In the attempt to determine the counts of the indictment precisely, one should not forget about the circumstance that in the *quaestio* proceedings the accuser was allowed to present everything to the jurors that he could bring up against the accused since his aim was to declare guilt in general only and not to fix guilt that can be declared in specific counts of the indictment since punishment was not based on the discretion of the court of justice.⁴² We cannot know for sure if in *delatio nominis* it was mandatory to notify the law and if in addition to naming the law that provided grounds for the charge it was mandatory to specify its exact passage or if it was mandatory to name other counts of the indictment to be referred to in the scope of the charge and whether they were binding with respect to the continuation of the lawsuit in the event that they were determined.⁴³

There is a good chance of stating that in the introduction of the lawsuit it was mandatory to set the counts of the inducement in writing, as Cicero notes this in *De inventione* regarding the period before Sulla.⁴⁴ It is worth looking at how much Cicero specifies statutory grounds of the charge of the given lawsuit in his speeches and to what extent he comments on the introductory part of the lawsuit (*postulatio, delatio nominis, receptio nominis*). References to the state of facts and charge of *de pecuniis repetundis*,⁴⁵ *de*

Proömienttechnik in Ciceros Reden: Ein Beitrag zum Verhältnis von rhetorischer Theorie und rednerischer Praxis bei Cicero. Diss. Jena, 1968. 100–109; Pugliese, G.: *Aspetti giuridici della Pro Cluentio di Cicerone.* *Iura*, 21 (1970), 155–181.

⁴⁰ Paulus, *Sententiae* 5, 23; *Collatio legum Mosaicarum et Romanarum* 1, 2, 3; D. 48, 8. Cf. Mommsen: *Römisches Strafrecht. op. cit.* 628ff.; Cloud: *The primary purpose... op. cit.* 258ff.

⁴¹ Classen: *Die Anklage gegen A. Cluentius Habitus. op. cit.* 2.

⁴² *Ibid.* 3.

⁴³ Mommsen: *Römisches Strafrecht. op. cit.* 385⁴.

⁴⁴ Cicero, *De inventione* 2, 58.

⁴⁵ Cicero, *In Caecilium* 76; *In Verrem* 2, 2, 142; *ad Quintum fratrem* 3, 1, 15; *ad familiares* 8, 8, 2, 3.

maiestate,⁴⁶ *de ambitu*,⁴⁷ *peculatus*,⁴⁸ *inter sicarios* and *veneficii*,⁴⁹ *iniuriarum*,⁵⁰ *furti*,⁵¹ *de vi*,⁵² *de alea*⁵³ and *de parricidio*⁵⁴ can be found item by item.⁵⁵ Furthermore, in several cases he names the particular law, for example *lex Plautia de vi*,⁵⁶ *lex Iulia de pecuniis repetundis*,⁵⁷ *lex Papia*,⁵⁸ *lex Acilia*⁵⁹ and *lex Scantinia*.⁶⁰ In several orations he refers *expressis verbis* to the charge being in conformity with the facts of the case, for example, in *Pro Roscio Amerino*,⁶¹ *In Verrem*—among others regarding the statues erected⁶²—*Pro Scauro*,⁶³ *Pro Rabirio Postumo*⁶⁴ and *Pro Ligario*.⁶⁵

In *Pro Cluentio* Cicero's form of presentation is twofold. On the one hand, it gives the impression that the court of justice is competent exclusively in the case of poisoning,⁶⁶ and article six of *lex Cornelia de sicariis et veneficis* on bribing the court of justice does not apply to Cluentius as the scope of persons is restricted to the order of senators;⁶⁷ on the other hand, it deals with bribe continuously as *crimen*. The *quaestio* chaired by Q. Voconius Naso was undoubtedly competent primarily in cases of poisoning—which, as a matter of fact, does not exclude bringing up other counts of the indictment—at the same time it contained a section that sanctioned bribe.⁶⁸ It is worth looking at the points referred to by Joachim Classen in order to clarify if the charge was in conformity with the facts of the case. In spite of incomplete source base it can be pointed out that in no other cases was a charge brought due to bribe in court of justice on the grounds of *lex Cornelia de sicariis et veneficis* as there were other opportunities for sanctioning bribe of the court of justice. Furthermore, it is not probable that *iudex quaestionis* would have sustained the charge contrary to the letter of the law, more specifically, that the prosecutor would extend the state of facts of Sulla's law to the order of knights, beyond the order of senators. Cicero asserts that Attius often referred to *aequitas*, by which he argued for the extensive interpretation of

⁴⁶ Cicero, *Q. fr.* 3, 1, 15; *De inventione* 2, 72; *ad familiares* 3, 2, 3; *Philippicae* 1, 23.

⁴⁷ Cicero, *Cael.* 16. 76; *De oratore* 2, 274. 280; *ad Quintum fratrem* 1, 2, 15; 2, 3, 5; 3, 2, 3; *Pro Cluentio* 114.

⁴⁸ Auctor ad Herennium 1, 22.

⁴⁹ Cicero, *De inventione* 2, 58; *Pro Roscio Amerino* 90; *Pro Cluentio* 21; Auctor ad Herennium 4, 23.

⁵⁰ Cicero, *De domo sua* 13; *De inventione* 2, 59.

⁵¹ Cicero, *Pro Cluentio* 163; *ad familiares* 7, 22; *Pro Flacco* 43.

⁵² Cicero, *Post reditum in senatu* 19; *ad Quintum fratrem* 2, 3, 5; *Pro Sestio* 90. 95.

⁵³ Cicero, *Philippicae* 2, 56.

⁵⁴ Cicero, *Pro Roscio Amerino* 28. 64.

⁵⁵ Classen: *Die Anklage gegen A. Cluentius Habitus. op. cit.* 5.

⁵⁶ Cicero, *ad familiares* 8, 8, 1.

⁵⁷ Cicero, *Pro rabirio Postumo* 12.

⁵⁸ Cicero, *Pro Balbo* 52.

⁵⁹ Cicero, *In Verrem* 2, 1, 26.

⁶⁰ Cicero, *ad familiares* 8, 12, 3; 8, 14, 4.

⁶¹ Cicero, *Pro Roscio Amerino* 28. 61. 64. 76.

⁶² Cicero, *In Verrem* 2, 2, 141.

⁶³ Cicero, *Pro Scauro* 1.

⁶⁴ Cicero, *Pro Rabirio Postumo* 8. 9. 37.

⁶⁵ Cicero, *Pro Ligario* 1. 4. 5. 9. 11.

⁶⁶ Cicero, *Pro Cluentio* 1. 2. 148. 164.

⁶⁷ *Ibid.* 144ff.

⁶⁸ Classen: *Die Anklage gegen A. Cluentius Habitus. op. cit.* 10f.

the law, and Cicero—although he wants to protect Cluentius against the peril arising from the suspicion of bribe—does not refer to bribe even once as *crimen* in conformity with the charge, and quotes no testimony to refute it; instead, he underlines it much rather as a point brought up by the prosecution that can generate prejudice⁶⁹ and bias.⁷⁰

III. Rhetorical tactics and double handling of facts of the case in *Pro Cluentio*

Discussion of *crimina veneficii*, that is, actual, legally relevant counts of the indictment in the first place could give the impression to the judges that Cicero tries to evade the less considerable but highly effective part of the charge, *iudicium Iunianum*, for this reason, he admittedly—in fact only apparently since he starts discussing the Oppianicus lawsuit on the merits much later only⁷¹—follows the system set up by Attius. Regarding the forced choice between *status collectionis* and *status coniecturalis* Cicero resolves to perform a stunt, a highly break-neck one, at that, which he, however, already used successfully in *Pro Roscio Amerino*.⁷² he separates his own intentions and his defendant's interests and claims by stating that for him as counsel for the defence it would have been absolutely sufficient to refer to the law itself,⁷³ but at the request of Cluentius, who wanted not only to win the lawsuit but to restore his reputation⁷⁴ he has chosen the more difficult way, specifically he wants to prove the innocence of the accused not only formally but also substantively.⁷⁵ By that he can absolutely give the impression as if each of the two *status*es represented proper weight for him to make a success of his case.⁷⁶

The double argument technique, at the same time, fits in with the “needs” of the members of the court of justice with brilliant accuracy since by applying *status collectionis* he defends the interests of the order of knights adhering to the words of the law, which take them out of the scope of culpability;⁷⁷ at the same time, he arouses fear in them that in the event that the extensive interpretation gains ground, charge can be brought at will in the future due to bribe against knights too;⁷⁸ on the other hand, he does not have to be afraid of drawing the anger of judges who come from the order of senators because having used *status coniecturalis* he can be sure of their sympathy since by proving bribe committed by Oppianicus and not by Cluentius and by having explored that only a few judges were bribed in the Oppianicus lawsuit and only Staienus was actually given money,⁷⁹ through a kind of “washing the Moor white”—so kind to senators so much damaged by the events of the lawsuit in 74—he restores the honour of the judges in the present case by providing them with a scapegoat.⁸⁰ With respect to the application of two *status*, in the *dispositio* of *Pro Cluentio*, together with Wilfried Stroh we can create the following system:⁸¹ in the

⁶⁹ Cf. Cicero, *Pro Cluentio* 142.

⁷⁰ Classen: *Die Anklage gegen A. Cluentius Habitus. op. cit.* 14f.

⁷¹ Cicero, *Pro Cluentio* 59ff.

⁷² Cicero, *Pro Roscio Amerino* 128ff.

⁷³ Cicero, *Pro Cluentio* 145.

⁷⁴ *Ibid.* 144.

⁷⁵ Stroh *op. cit.* 200.

⁷⁶ Quintilianus, *Institutio oratoria* 6, 5. 9.

⁷⁷ Cicero, *Pro Cluentio* 150–155.

⁷⁸ *Ibid.* 152. 157. Cf. Mommsen: *Römisches Strafrecht. op. cit.* 634f.

⁷⁹ Kroll: *op. cit.* 178.

⁸⁰ Stroh: *op. cit.* 203.

⁸¹ *Ibid.* 204.

discussion of *iudicium Iunianum*,⁸² *status coniecturalis* (i.e. it was not Cluentius who committed bribe) was addressed to senators⁸³ and *status collectionis* (i.e. Cluentius could not be punished pursuant to section six of *lex Cornelia de sicariis et veneficis*) to knights,⁸⁴ and it is followed by the discussion of *crimina veneficii*.⁸⁵

To counteract the sympathy shown towards Oppianicus junior, Cicero chooses a masterly tool: he enters in the picture Cluentius's mother (that is, the widow of Oppianicus senior and stepmother of Oppianicus junior), Sassia, who is fired by *hostile odium* and *crudelitas* against her son, and in whose hands—for she is moving the threads of the charge—Oppianicus junior guided by a child's *pietas* is merely a tool for accomplishing her revenge.⁸⁶ It is worth examining closer at what points and in what context Cicero mentions Sassia.⁸⁷

Directly after *exordium/prooemium* he names Sassia as a mother guided by cruelty and hatred and as the source of the charge.⁸⁸ The question whether Sassia (as Joachim Classen argues) was personally present at the trial⁸⁹ or (as Wilfried Stroh and Jules Humbert asserts) was absent⁹⁰ cannot be settled, as Cicero does not address her directly at any point and it is not known if she testified or not, and perhaps it is not exceptionally relevant. He emphatically alludes to Sassia's significance in terms of the lawsuit,⁹¹ and states that for the sake of saving Cluentius he cannot show consideration for her,⁹² however, it is much later, in the discussion of *crimina veneficii* that we learn what this significance is.⁹³ The minutes of the interrogation of the slave was read (caused to be read) by Attius before the court of justice,⁹⁴ but it is doubtful if Sassia's name occurred in it;⁹⁵ however, the most probably rather subjective reconstruction of the events imbued with rhetorical exaggerations enabled Cicero to make an attack against Cluentius's mother.⁹⁶ The orator keeps the promise made earlier⁹⁷ only after that, and he presents a stylised image of the mother as *monstrum* to the judges who probably had not known anything about the relation between mother and son before the trial. Accordingly, she was already part of the assassination attempt against Cluentius,⁹⁸ she made her stepson her son-in-law in order to enter him as an accuser acting resolutely against her son;⁹⁹ then, after brief summary of the interrogation of the slave¹⁰⁰ the

⁸² Cicero, *Pro Cluentio* 9–160.

⁸³ *Ibid.* 9–142.

⁸⁴ *Ibid.* 143–160.

⁸⁵ *Ibid.* 161–187.

⁸⁶ *Ibid.* 12ff. Cf. Quintilianus, *Institutio oratoria* 6, 5, 9; 11, 1, 62.

⁸⁷ Stroh: *op. cit.* 205ff.

⁸⁸ Cicero, *Pro Cluentio* 12ff.

⁸⁹ Classen: *Recht, Rhetorik und Politik. op. cit.* 36.

⁹⁰ Stroh: *op. cit.* 206; Humbert, J.: *Les plaidoyers écrits et les plaidoiries réelles de Cicéron*. Paris, 1925. 115f.

⁹¹ Cicero, *Pro Cluentio* 17.

⁹² *Ibid.* 18.

⁹³ *Ibid.* 176ff.

⁹⁴ *Ibid.* 184.

⁹⁵ Stroh: *op. cit.* 206.

⁹⁶ Cicero, *Pro Cluentio* 176–187.

⁹⁷ *Ibid.* 17.

⁹⁸ *Ibid.* 189.

⁹⁹ *Ibid.* 190. Cf. Kroll: *op. cit.* 175; Hoenigswald: *op. cit.* 111.

¹⁰⁰ Cicero, *Pro Cluentio* 191.

orator creates the image of Sassia who manipulates witnesses, arrives to Rome to hasten her son's ruin, holds the threads in her hands in the background but hides from public.¹⁰¹

As the prosecutor most probably did not mention Sassia, instead, tried to strengthen the “*pius Oppianicus–impius Cluentius*” opposition in the judges, Cicero, with good sense, using the tool of *retorsio criminis* let the characterisation set up by the prosecution fall back—if not on Oppianicus junior, of whom the orator could not speak much ill for he was young and gave a good impression to the judges—on Sassia purportedly manipulating the charge, who seemed to be suitable for this role all the more because the fact of her marriage entered into with her son-in-law¹⁰² around 86 offered the defence the opportunity to expound the topos of a female violating the order of nature and for this reason undoubtedly not shrinking back from other foul deeds either.¹⁰³ Cicero achieves all that by brilliant regrouping of the events since it is just this *ordo artificiosus* that allows him to build the *narratio* divided into two into the *argumentatio* and to get from here straight to the *peroratio* that fulfils the function of invective against Sassia, in which the attention and effort of the judges should be aimed no longer at deliberating if Oppianicus junior was right or wrong in taking vengeance for the conviction and death of his stepfather but at saving the son from the revenge of the mother, who is treading under foot the laws of nature and wants to use administration of justice to achieve this goal.¹⁰⁴

In the part on *iudicium Iunianum*¹⁰⁵ Cicero handles the tools of *narratio* and *argumentatio*, traditionally and theoretically clearly separable and to be separated, with brilliant and deceptive ease. Although after the *propositio*¹⁰⁶ and the interposed narrative on Sassia¹⁰⁷ he starts the *narratio* that culminates later in *confirmatio*,¹⁰⁸ its given parts,¹⁰⁹ for example, the paragraphs on Oppianicus's foul deeds¹¹⁰ and those relating *praeiudicia*¹¹¹ actually fulfil the function of *probabile e causa* working towards the purpose to be proved¹¹² because they are meant to support that it was not Cluentius but Oppianicus who might have had and did have a reason for bribing the court of justice.¹¹³ Similarly, the argument on the amount of bribe as *probabile e facto* partly precedes,¹¹⁴ partly follows,¹¹⁵ that is, surrounds the *narratio* on this topic;¹¹⁶ in other words, the *argumentatio* discussing these events, outlining an approximate chronology is of a narrative kind.¹¹⁷

¹⁰¹ *Ibid.* 192ff.

¹⁰² *Ibid.* 12.

¹⁰³ Hoenigswald: *op. cit.* 113.

¹⁰⁴ Stroh: *op. cit.* 210.

¹⁰⁵ Cicero, *Pro Cluentio* 9–142.

¹⁰⁶ *Ibid.* 9–11.

¹⁰⁷ *Ibid.* 11–18.

¹⁰⁸ *Ibid.* 81.

¹⁰⁹ *Ibid.* 21–61.

¹¹⁰ *Ibid.* 21ff.

¹¹¹ *Ibid.* 49ff.

¹¹² Stroh: *op. cit.* 211.

¹¹³ Cicero, *Pro Cluentio* 62. 64. 81.

¹¹⁴ *Ibid.* 64f.

¹¹⁵ *Ibid.* 82.

¹¹⁶ *Ibid.* 66–81.

¹¹⁷ Stroh: *op. cit.* 211.

This complicated procedure is indispensably necessary for Cicero to make the—lesser lifelike—train of thoughts believable to the judges which states that in the lawsuit in 74 it was not the winner Cluentius but Oppianicus declared guilty that bribed the court of justice and in such fashion, in fact, that the hired intermediary, Staienus promised to hand over the bribe to the judges but later he alleged that the accused was not willing to pay, thereby he turned the judges against him and made sure that Oppianicus would be convicted, and all that he did in order to keep the whole amount for himself. Cicero, however, did not shower this narrative on the audience without any preparation, therefore, he was compelled to give reasons for the reconstructive *narratio* by a preceding *argumentatio* claiming that Oppianicus—being aware of his numerous foul deeds and *praeiudicia* negatively influencing his case—must have had a serious motif to bribe the court of justice.¹¹⁸ Cicero, as a matter of fact, gets into conflict with his promise that in his speech he intends to follow the order set up by the opponent;¹¹⁹ yet, he more or less keeps his promise during the actual *narratio*, although prior to it he speaks about the points not touched upon by the prosecutor. And in long preparatory passages he assures the judges several times that he wants to make it short what he has got to say,¹²⁰ which he can do because right at the beginning of the *oratio* he states that he does not intend to conceal anything of the facts of the case and is willing to deal with every circumstance mentioned by Attius.¹²¹

Breaking strict chronology can be clearly observed especially in discussing *praeiudicia* that are against Cluentius's case and the list of Oppianicus's crimes. The chairman of the Oppianicus lawsuit (*iudex quaestionis*), C. Iunius was convicted in 74, and in the same year the senate issued a resolution that made it possible to hold judges affected by *iudicium Iunianum* responsible for bribe.¹²² In 73, C. Fidiculanus Falcula was acquitted in two lawsuits;¹²³ in 72, P. Septimius Scaevola was convicted for *crimen repetundarum*, between 73 and 70 M. Atilius Bulbus was convicted for *crimen maiestatis*; in 70, on the occasion of census M. Aquilius, Ti. Gutta and P. Popilius—just as Cluentius himself—were reprimanded by the censors; in the following years Popilius and Gutta were convicted due to *ambitus*, Staienus was convicted on the grounds of other charges.¹²⁴ The prosecutor presents each of these lawsuits and judgments as it were—independently of the nature of the particular charge—as the outcome of *iudicium Iunianum*,¹²⁵ whereas Cicero, contrary to natural chronology, sets up an artificial chronology that suits his intentions as counsel for the defence, in which judgments appear as the consequence of the *invidia* stirred up by tribune Quintus,¹²⁶ furthermore, by anticlimactic editing, from cases with greater weight¹²⁷ through Septimius Severus's *listis aestimatio*,¹²⁸ censorial measures considered weight-

¹¹⁸ *Ibid.* 312.

¹¹⁹ Cicero, *Pro Cluentio* 1.

¹²⁰ *Ibid.* 19. 20. 30. 36. 41.

¹²¹ *Ibid.* 1.

¹²² *Ibid.* 136.

¹²³ *Ibid.* 114.

¹²⁴ Stroh: *op. cit.* 215f.

¹²⁵ Cicero, *Pro Cluentio* 115.

¹²⁶ Hoenigswald: *op. cit.* 111; Kroll: *op. cit.* 174ff.

¹²⁷ Cicero, *Pro Cluentio* 89–114.

¹²⁸ *Ibid.* 115–116.

less,¹²⁹ Egnatius's last will and testament¹³⁰ and the *senatus consultum*¹³¹ he gets to his own opinion formulated in *Verrine orations*,¹³² thereby—by striking a tone ranging from pathetic to irony—he gives the impression of decrescendo of the *invidia* to the audience.¹³³

Similarly, with respect to Oppianicus's murders and foul deeds—real ones and those attributed to him¹³⁴—a relative chronology suitable for rhetoric tactics set up by Cicero can be clearly observed. The first murder: Oppianicus poisons his wife, Cluentia, Cluentius's aunt with his own hands.¹³⁵ The second and third murders: Oppianicus poisons the pregnant wife of his brother, C. Oppianicus and then his brother to get his inheritance.¹³⁶ After that, following the death of his brother-in-law, Cn. Magius, who named Oppianicus junior as his inheritor, Oppianicus senior induces Magius's pregnant widow to abort the embryo then marries her.¹³⁷ The fourth murder and counterfeiting of the last will and testament: by the assistance of a travelling pharmacist/poison mixer Oppianicus poisons his former mother-in-law, Dinaea, who had named him as her inheritor in her last will and testament, then, he has the last will and testament, from which he had already deleted bequest orders, drafted again and has it sealed by a forged seal.¹³⁸ The fifth murder: Oppianicus gives order to find and murder M. Aurius, Dinaea's son, of whom he learns—he bribes the messenger to provide false information for the relatives—that he was taken prisoner of war and lives in Gallia as a slave, and to whom his mother left four hundred thousand *sestertii*.¹³⁹ The sixth, seventh, eighth and ninth murders: by creating the appearance of *proscriptio* Oppianicus has A. Aurius killed, who threatened to sue him due to the assassination of M. Aurius, and has three other citizens of Larinum killed under the pretext of the same legal title.¹⁴⁰ The tenth and eleventh murders: Oppianicus wants to marry A. Aurius's widow, Sassia, but she does not want to be the stepmother of three male children, therefore, Oppianicus kills two of his sons and leaves only Oppianicus junior alive.¹⁴¹ Counterfeiting of the last will and testament and the twelfth murder: to indicate himself as inheritor Oppianicus forges the last will and testament of Asuvius from Larinum, then has Asuvius killed, and pays off Q. Manlius, *triumvir capitalis* who starts investigations in the case.¹⁴²

Changing this chronology Cicero gives account of Oppianicus's crimes in the following chronology: assassination of M. Aurius,¹⁴³ A. Aurius and three citizens from Larinum,¹⁴⁴ the

¹²⁹ *Ibid.* 117–134.

¹³⁰ *Ibid.* 135.

¹³¹ *Ibid.* 136–138.

¹³² *Ibid.* 138–142.

¹³³ Stroh: *op. cit.* 217.

¹³⁴ Cicero, *Pro Cluentio* 20–41.

¹³⁵ *Ibid.* 30.

¹³⁶ *Ibid.* 30–32.

¹³⁷ *Ibid.* 33–35.

¹³⁸ *Ibid.* 40–41.

¹³⁹ *Ibid.* 21–23.

¹⁴⁰ *Ibid.* 23–25.

¹⁴¹ *Ibid.* 26–28.

¹⁴² *Ibid.* 36–39.

¹⁴³ *Ibid.* 21–23.

¹⁴⁴ *Ibid.* 23–25.

two male children,¹⁴⁵ Cluentia,¹⁴⁶ the sister-in-law and the brother, C. Oppianicus,¹⁴⁷ instigation for abortion,¹⁴⁸ counterfeiting of the last will and testament and assassination of Asuvius,¹⁴⁹ assassination of Dinaea and forging her last will and testament.¹⁵⁰ Why was Cicero “compelled” to act like that?¹⁵¹ As the *narratio* is not directly linked to the Cluentius case, the orator cannot dwell on specific cases by supporting them by documentary evidence or testimonies, instead, he must content himself with flashing the appearance of demonstration from time to time.¹⁵² Furthermore, possible demonstration would be made difficult by the fact that the crime story like narrative is not lifelike because it would be hard to explain: why a Richard III like serial murderer Oppianicus, who gets his victims from his own family, who settles in their estate, who marries his victim's widow, was called to account for his deeds only one and a half decades after his first assassination; why he was named as their inheritor in their last will and testament by several persons during the times although they must have known that thereby they hastened their own death; why his brother, C. Oppianicus should have made the murderer of his wife his inheritor; why he killed his two sons only and left the third one alive; and why he had M. Aurius killed although earlier, when forging Dinaea's last will and testament he had already deleted the bequest ordered to be given to the son.¹⁵³

The orator does not even try to refute the counter-arguments listed above; much rather he makes efforts to avoid that they should occur to the audience at all, that is, to achieve his goal, instead of obvious lies, by delicately dislocating and concealing facts and arbitrarily determining the dramaturgical order of the cases—and that in doing so he meets success is proved by the sheer fact that the authors of later comments did not form a suspicion either, and only Wilfried Stroh made an attempt at reconstructing the actual order of events.

Placing the assassination of M. Aurius first in the order proved to be a masterly trick since as “evidence” it was possible to bring up the idle talk about the case and the open threat by A. Aurius,¹⁵⁴ and as the cause of failure to commence any trial it was possible to bring up the use of Sulla's *proscriptiones*, that is, the assassination of A. Aurius by political machinations,¹⁵⁵ which supported failure to call Oppianicus to account for his deeds regarding other cases by his political influence.¹⁵⁶ Cicero eliminates questions that might arise regarding Dinaea's death and last will and testament by similar ingenuity. When Dinaea is mentioned for the first time, only her illness and death and the existence of her last will and testament is referred to but counterfeiting of the last will and testament is not,¹⁵⁷ and only much later—once he has showered the stream of Oppianicus's crimes on the

¹⁴⁵ *Ibid.* 26–28.

¹⁴⁶ *Ibid.* 30.

¹⁴⁷ *Ibid.* 30–32.

¹⁴⁸ *Ibid.* 33–35.

¹⁴⁹ *Ibid.* 36–39.

¹⁵⁰ *Ibid.* 40f.

¹⁵¹ Stroh: *op. cit.* 220.

¹⁵² Michel, A.: *Rhétorique et philosophie chez Cicéron. Essai sur les fondements philosophiques de l'art de persuader*. Paris, 1960. 257ff.

¹⁵³ Stroh: *op. cit.* 221.

¹⁵⁴ Cicero, *Pro Cluentio* 23.

¹⁵⁵ Kroll: *op. cit.* 176.

¹⁵⁶ Stroh: *op. cit.* 222.

¹⁵⁷ Cicero, *Pro Cluentio* 21f.

audience, which as it were makes the new and umpteenth murder logical—does the orator bring up the fact of the assassination of Dinaea and forging of her last will and testament.¹⁵⁸ Cicero explains the momentum that Oppianicus was willing to murder also his own sons not from the character of Oppianicus but of Sassia, who agreed to marry him only under this condition, and the dark portrait depicted of Sassia who married the murderer of her husband¹⁵⁹ does not rule out but definitely makes the double assassination probable.¹⁶⁰ Lack of evidence does not prevent Cicero in his narrative at all, he turns necessity into a virtue and reminds the judges of the point that their indignation must be dwarfed by the indignation of the court of justice eight years before that examined proofs and heard witnesses in details.¹⁶¹

Referring to shortage of time, Cicero gets down briefly with the assassination of the one-time wife, Cluentia and the sister-in-law and brother, C. Oppianicus, however, there are good chances that reference to Sassia after the former wife, Cluentia—of whom he does not state *expressis verbis* that she remained Oppianicus's wife until his death—might make the audience believe that Cluentia was Oppianicus's wife later, after Sassia; and suspicion that the orator speaks about events that occurred before 82 does not even arise. Undoubtedly: Cicero's aim must have been just to confuse the chronology and thereby the audience completely since he could not prove, only complain of the assassinations listed here.¹⁶² The gifts given by Oppianicus to the widow of his brother-in-law, Magius by themselves would make only the intention to marry probable, however, connecting them not with the marriage but with the abortion carried out by Magia upon Oppianicus's instigation presents them as *merces abortionis*.¹⁶³ To make the assassination of Dinaea and especially counterfeiting of her last will and testament¹⁶⁴ lifelike, Cicero inserts the assassination of Asuvius after the above—in whose last will and testament Oppianicus was indicated in the first place as inheritor—which is supported by the testimony of Oppianicus's accomplice, Avillius, and thereby inheriting through assassination is made the outstanding motivation of Oppianicus's deeds,¹⁶⁵ and so poisoning of Dinaea and forging of her last will and testament are now nothing else than enhancement of the motives of the Asuvius case.¹⁶⁶

Cicero's *narratio* in *Pro Cluentio* is a beautiful example of the appearance of *ordo artificialis*—and *mos Homericus*¹⁶⁷—in which *perspicuitas* considered a virtue is replaced by the strategy justified by *utilitas causae*, based on which in the representation of both the chain and the internal structure of events elements that are more believable and better supported by proofs precede elements that can be proved with difficulties—or cannot be proved at all—as it were creating credit and basis for having them accepted too.¹⁶⁸

To give a technical summary of the rhetorical virtuosity of *Pro Cluentio*: by discussing the charge of bribe and the charge of poisoning separately Cicero doubles *narratio* and

¹⁵⁸ *Ibid.* 40f.

¹⁵⁹ *Ibid.* 12–16.

¹⁶⁰ Stroh: *op. cit.* 222.

¹⁶¹ Cicero, *Pro Cluentio* 29.

¹⁶² Stroh: *op. cit.* 223.

¹⁶³ Cicero, *Pro Cluentio* 34.

¹⁶⁴ *Ibid.* 40f.

¹⁶⁵ *Ibid.* 36–39.

¹⁶⁶ Stroh: *op. cit.* 224.

¹⁶⁷ Quintilianus, *Institutio oratoria* 7, 10, 11.

¹⁶⁸ Stroh: *op. cit.* 224f.

argumentatio; he inserts *propositio*, which usually follows *narratio*, directly after *prooemium*; *argumentatio* in connection with both the first and second count of the indictment unnoticeably and almost inseparably flows together with *narratio*; *peroratio* is a logical outcome of *narratio* inserted as conclusion; the narratives inserted *extra causam*, free handling of chronology and joint application of *status collectionis* and *status coniecturalis* built on each other strengthen the positions of the defence. This rhetorical tactics becomes astonishing just by the fact that the listener or the reader never feels that he is the victim of Cicero's knowing misleading, what is more, the links of the narrative are intertwined without spectacular jumps, seemingly integrated in a logical order, which is supported also by the fact that, except for Wilfried Stroh, modern commentators of the text mostly set out from the order of the events outlined by Cicero in order to reconstruct the historical facts of the case.¹⁶⁹

As *exemplum* of the exemplary combination of the three genres of style of rhetoric Cicero himself also referred to *Pro Cluentio*,¹⁷⁰ in which extended introduction, soberly brief descriptions, precise argumentation, colourful narrative, reasons full of emotions, pathos and irony, linguistic humour and keywords hammered with passion, apposite characterisations, polemical statements not free from exaggerations, questions formulated with tormenting temper and invective like insertions are combined into a harmony not seen anywhere else.¹⁷¹ Thanks to Cicero, Cluentius was acquitted; however, as we can learn it from Quintilian's account, the orator himself admitted that he had achieved that by cleverly manipulating the judges.¹⁷² Perhaps for this reason, Cicero considered *Pro Cluentio* one of the maximum outputs of his orator's career,¹⁷³ which both Quintilian¹⁷⁴ and Pliny, who praised this *oratio* as Cicero's most excellent speech, agreed with.¹⁷⁵ The oration can be indeed considered exemplary: the orator masterly changes elements of style; combines pathos, simple description and humour; represents situations and characters appropriate for a crime story with apt preciseness; palpably connects arguments and planes of time, except when he intends to make obscurity denser, without distorting lucid arrangement of facts. From first to last engaging the attention of the audience—since later he himself admitted that he had to throw dust in the judges' eyes during his speech¹⁷⁶—and leading the judges qualified to decide the case, as a matter of fact, towards the direction he wanted to.

¹⁶⁹ *Ibid.* 226f.

¹⁷⁰ Cicero, *Orator* 103. Cf. Humbert: *Comment Cicéron mystifia... op. cit.* 280.

¹⁷¹ Classen: *Recht, Rhetorik und Politik. op. cit.* 105.

¹⁷² Quintilianus, *Institutio oratoria* 2, 17, 21.

¹⁷³ Cicero, *Orator* 107f.

¹⁷⁴ Quintilianus, *Institutio oratoria* 4, 1, 35; 6, 5, 9.

¹⁷⁵ Plinius minor, *Epistulae* 1, 20, 4.

¹⁷⁶ Quintilianus, *Institutio oratoria* 2, 17, 21.