

Cicero Pro Roscio Amerino

INTRODUCTION

Cicero's oration for Sex. Roscius of Ameria in 80 BCE is his first extant criminal pleading; he was twenty-six years old when he undertook to defend his client on a charge of having murdered his own father. The victim, also called Sex. Roscius, had been killed on the street at Rome at some time during the year 81, a year memorable for the excesses of the dictatorship of L. Cornelius Sulla.

Background on the Civil Strife of the Late 90's and 80's in Rome

Sulla's capture of Rome after the Battle of the Colline Gate (1 November 82) was the beginning of the end of nearly a decade of war and civil strife in Italy, beginning with the outbreak of the Social War between Rome and her Italian allies in 90. Over a century before, the Romans had ceased to extend full citizenship to the allied peoples of Italy, a practice that had characterized Rome during the earlier centuries of the Republic, and beginning with the consul M. Fulvius Flaccus in 125 a number of Roman statesmen had worked unsuccessfully to extend citizens' rights to the Italians. When their latest champion, M. Livius Drusus, was murdered in 91, a coalition of Italians decided to fight not for a share in Rome but for complete independence, and thus began what we call the Social War.

After two years of fighting, the Romans regained their command of the peninsula and the Italians acquired Roman citizenship, but the Italians' troubles were not over. Roman leaders faced not only remaining pockets of resistance, especially among the Samnites, but internal disagreement on how best to incorporate the newly enfranchised Italians into the system of tribes and assemblies. At first the new citizens were enrolled in a small number of tribes, thus ensuring that their weight in tribal electoral assemblies would be slight. P. Sulpicius, one of the tribunes for 88, was opposed by both consuls, Sulla and Q. Pompeius Rufus, in his plan to distribute the Italians throughout the thirty-five Roman tribes. Sulpicius, backed by armed supporters, then resorted to physical intimidation and allied himself with the old general C. Marius. In return for Marius' support, Sulpicius wanted to get for Marius the military command against Mithradates VI of Pontus, who had begun hostilities in Asia Minor in 89 and followed up his successes by coordinating the slaughter of 80,000 Romans and Italians in early 88. The senate had already given this command to Sulla. Threatened with physical danger during the ensuing turmoil in the city, Sulla managed to leave Rome to join his army at Nola. The soldiers — although not the officers (except one) — supported Sulla and marched on Rome, the first time in Roman history that a general had used a military command to attack his political enemies. Sulpicius was killed and many others fled, including Marius. Sulla then left with his army for the eastern campaign.

The consuls for 87, Cn. Octavius and L. Cornelius Cinna, again fell out over the issue of incorporating the newly enfranchised Italians, and Cinna was driven from the city and replaced as consul by L. Cornelius Merula. Aided by many others including

Marius, who had returned from hiding, Cinna captured Rome. There followed a series of murders and suicides as the two took revenge upon their enemies, including the consuls Octavius and Merula. Marius, elected consul for the seventh time for the year 86, died not long after assuming his office, but Cinna and his allies retained control of the political system until 84. Sulla, although declared a public enemy by the government in Rome, successfully prosecuted the war against Mithradates. In 84 Cinna was killed by his soldiers and the next year Sulla made peace with Mithradates and returned to Italy, determined to regain his position without compromise. After more than a year of fighting, and after having defeated various representatives of the Cinna faction, including Marius' young son, Sulla took control of Rome late in 82. Elected dictator by the people, Sulla spent the next year or more rewriting the Roman political system in favor of senatorial control and purging the ranks of the senate and citizen body of anyone who appeared to be a threat.

Both to ensure political stability and to find the resources to pay off his soldiers, Sulla undertook a political purge of the upper classes. One of his innovations was to post lists of those whom he wanted killed; these were the first proscription lists in Rome, but not the last. Anyone whose name was on the list could be killed with impunity and without a trial; his killer could claim a reward. The proscribed person's property was confiscated and his immediate descendants were barred from participation in public life. From late 82 through mid-81 Sulla continued to add names; the proscribed were men of wealth and standing, but especially wealth. Sulla apparently also acquiesced in his supporters' addition of names to his lists either because of personal enmity or for financial gain, yet it is also possible that many deaths had to be accepted after the fact, or took place without the dictator's prior consent. There are no contemporary accounts of these events, save allusions to the chaos in Cicero's orations, but Plutarch's *Life of Sulla* 31 and Appian's *Civil Wars* 1.95–96 preserve some of the details.

Death of Sex. Roscius and Prosecution of His Son

The proscription lists were closed on 1 June 81. Some time later, Sex. Roscius the elder, whom Cicero describes as an adherent of Sulla, was murdered in Rome on his way home from dinner. While it was agreed that the defendant was not in Rome at the time of the murder, the prosecution argued that he must have hired someone else to do the deed for him. According to Cicero, the prosecution neither produced nor named the assassin. After the death of the elder Roscius, his property was confiscated and sold at auction; the buyer was L. Cornelius Chrysogonus, an influential freedman of the dictator. Although other explanations are possible, it would seem, from Cicero's account, that the victim's name was entered retroactively into the proscription lists so that his property could be confiscated and sold. If this is true, Roscius would not be the only person to have found his way onto the list after his death, whether or not he was murdered for his property or whether someone merely took advantage of his demise.

In the course of the defense, Cicero maintains not only that his client is innocent but, in the best manner of defense attorneys, attempts to show who the guilty parties actually are. He names two relatives of the deceased, T. Roscius Capito and T. Roscius Magnus, the latter of whom was present at the trial on behalf of the prosecution, as the people actually responsible for the crime. Cicero claims that the two T. Roscii made a deal with Chrysogonus — whom Cicero is careful not to implicate in the actual murder

— to get hold of the property by having their dead relative retroactively proscribed. When the son protested and tried to regain the property he was due to inherit, he was accused of his father's murder as a means of getting him out of the way, one way or another.

There are three possibilities:

1. Sex. Roscius the younger had his father killed.
2. The T. Roscii had him killed.
3. The murder was committed by person or persons unknown, either randomly (Cicero does describe the chaos and lawless condition of Rome at the time) or for reasons about which we can know nothing.

Kinsey 1980: 178–179 writes that the motivation of profit arose for the T. Roscii only after the murder had occurred, and since the arrangement with Chrysogonus about the property followed the murder, they would have had no way of knowing in advance that elimination of the man would have gotten them anything. Dyck 2003 also describes in great detail the case against the accused and adds other evidence of Roscius' guilt, e.g., the absence of townspeople in support of him, the absence of family members whom Cicero would have pointed out, had they been there, the clear motive entailing the property. These are excellent arguments, which hold, however, only if one accepts other information from Cicero — for example, that the T. Roscii did not make a plan with Chrysogonus prior to the murder — and if one disallows the possibility that the T. Roscii could have planned to take advantage of the proscriptions in just this way (whether or not they knew Chrysogonus), as others had done. It may also be that no one named Roscius had any part in the murder.¹

The Pleading

Cicero and Sulla

Several scholars have analysed what Cicero said about Sulla over the course of his career to find if it is possible to tell what Cicero actually thought of the dictator. But whatever Cicero said or wrote about Sulla in later years cannot affect in hindsight the sincerity or value of the *Pro Roscio Amerino*, an early defense speech tied to a particular time, place, and need.² Cicero himself warned against believing that what a pleader said in the courtroom was true for all time (*Clu.* 50–51, 139). As Cicero himself admits, what he says in a court pleading is not necessarily either what he believes, what he would say if he had better information, or what he would say on the same topic in the future. Nor would any other speaker feel so constrained. There is no consensus that statements about Sulla in the *Pro Roscio* reveal Cicero's true opinion of him, and it is nearly impossible to gauge precisely to what extent defending Roscius presented a danger to Cicero, despite what Plutarch says (*Cic.* 3).³

As Cicero said in his old age, he defended Roscius *contra L. Sullae dominantis opes* (*Off.* 2.51), but what did he mean? In *De Officiis* 2.51 he states that it is proper to defend the guilty, since the patron's task is to defend, even when it involves what is *verisimile* rather than *verum*, for to determine truth is the function of the jury, not of counsel for

¹ For several possible assessments, see Keaveney 1982a: 152 and 176 and 1982b: 515 and 537.

² For two different views, see Diehl 1988: 219 and Buchheit 1975b: 570–576.

³ See David 1992: 255.

the defense. After a citation of Stoic authority for his position, he explains further the advantages gained from defending. The last part of this final sentence of the chapter contains what one may be described as a Freudian slip: "It is proper to defend even the guilty ... especially because to undertake a defense gains one reputation and *gratia*, the more so when the accused be an apparent victim of some powerful person's resources; I have done this on many occasions and when I was young did so on behalf of Sex. Roscius against the resources of L. Sulla when he was in power." In context, *contra L. Sullae dominantis opes* is a description of appearances or defense strategy: an advocate derives an extra measure of glory from defending a person who appears to be beset by a person of superior strength.⁴

In discussing the case of Roscius, many scholars have reproduced without question the version of events that Cicero gives, even if they do not believe that the T. Roscii are guilty,⁵ although the contrary opinion has surfaced as well, especially in recent years. It is difficult to accept beyond a doubt that Roscius was not guilty, or at the least that his innocence was not immediately apparent since without the intervention of the T. Roscii and Chrysogonus he would have benefitted from his father's death (see the commentary to §6). Guilty or innocent, it was the task of his *patronus* to bring forward plausible arguments to secure his acquittal. Stroh 1975: 79 praised the rhetorical arrangement of the oration, with the emphasis from the beginning on the misleading *cui bono* argument.⁶

The recent past was essential to Cicero's defense; his task was to exploit this past without directly implicating Sulla in the specific case at issue. To elicit emotional support, Cicero refers frequently to the civil war, not only by frequent references to the proscriptions (§§11, 16, 21, 27, 32, 89–91, 125, 128, 137, 143–145, 152, 153) and indiscriminate murders (§§12–13, 91, 139), including murders under circumstances similar to those that he describes in the Roscius case (§94), but by threats that judicial murder might replace the proceedings carried out under the proscriptions (§§6–7, 29, 140–142, 153). Even the short excursus on the Furies (§§66–67) can be interpreted as a reminder of the recent violence. He need not refer only to events after November 82; the strained comparison, too, between the present case and Fimbria's attack on Scaevola (§33–34), with the short digression on how Scaevola's death afflicted the republic, urges everyone within earshot to remember the past and try not to repeat it. It is likely that Cicero sincerely felt horror and pity himself; there is no rule against an orator's turning his beliefs and principles to rhetorical account. In a speech for the defense, however, the rhetorical account is the only ledger that matters. By the peroration, Cicero had personified the recent past in the Roscii and Chrysogonus, not in Sulla or the nobility — it was the misuse of the political change, according to Cicero, that produced this murder and the accusation that followed.

Date and Purpose of Publication

⁴ Cf. *Quinct.* 1–2, 5, 7–9. In *Off.* 2.51 Cicero does not elaborate the obvious: that a jury is likely to be sympathetic to a defendant portrayed as a victim.

⁵ Stroh 1975: 57 observed the same phenomenon. Often the same scholars doubt the sincerity of parts of the oration other than the *narratio*.

⁶ Hinard 1985a: 149 is in agreement.

One cannot prove whether most of Cicero's published orations represent faithfully what he said in public. Although it is possible to finesse the issue of publication if one's topic is literary and the conclusions are valid in any case,⁷ before one can use any of the information in the *Pro Roscio* as a source for events of the late 80's, one must address the oration's authenticity as a "transcript". Humbert 1925 is the most often cited but not the first to raise the question of authentic reproduction. Frequently, however, one reads in the scholarship on the Sullan period, the *Pro Roscio*, or Cicero's orations in general arguments for or against revision for publication based upon *a priori* assumptions regarding the content of one or more passages. Yet mere supposition will not do.

The lapse of time between delivery and publication is also at issue.⁸ Laurand's excellent and detailed discussion⁹ of authorship and revision includes ancient testimonia, theories for and against major revisions, and reasonable conclusions. While no one believes that extant orations are verbatim transcripts,¹⁰ Laurand argued that any changes introduced were cosmetic rather than substantive, such as substitution of a more elegant turn of phrase or prose rhythm. He was attuned, too, to the circumstances of speech-making; it is hard to answer his criticism (p. 21) of scholars who seize upon evidence of internal inconsistencies to argue for extensive revision. As Laurand said, all such argumentation is double-edged, and contradictions arise more often in speech than in what is taken to be a carefully composed revision. Kinsey (1975: 100–103) demonstrated that inconsistencies between the two *narrationes* in the *Pro Roscio* are much more likely to represent a genuine account of a speech as delivered than a carefully rewritten version. Small changes in content or emphasis between one section of a long oration and another spoken later can also be an integral part of the orator's strategy, which is to phrase as persuasively as possible whatever point he is trying to make at that moment in his pleading.

A decade before Humbert published his work, Sihler 1914: 50–51 included a short discussion on publication in his biography of Cicero. He assumed that the young orator, who worked very hard to bring a polished performance to the public, had written out and memorized his whole defense in advance. He posits a "second draft" of the oration *Pro Roscio* which took into account what actually transpired in the course of the trial, things that Cicero may have been able to anticipate but could not be certain

⁷ E.g., Dufallo 1998: 213. His n. 1 to that page indicates that his argument is based on the text as we have it, questions of publication aside. In his case this is a valid premise, as the passages discussed do in fact evoke the proscriptions and it does not matter when Cicero wrote them. Although Riggsby's 1999 study is not dependent upon authenticity, he nevertheless devotes an appendix (Published vs. Delivered Speeches 178–184) to the subject. Similarly, Kirby 1990 analyses the *Pro Cluentio* as published (as stated in his Preface, pp. x–xii) but in his penultimate chapter (A Word on Memory and Delivery) on the delivered oration and the published version he writes (163–4) that for purposes of a rhetorical analysis, historical accuracy is "strictly irrelevant".

⁸ Alexander 2002: 15–26 addresses the question of written vs spoken orations, and concludes that the versions that we have are accurate enough to be used as representations of Cicero's defenses, but does not discuss timeliness of publication.

⁹ Laurand 1936–1938 1.1–23, including additions in the second edition. More recent works employing similar methodology include Settle 1962, McDermott 1972 (for the consular orations but with discussion of evidence for publication in general), Crawford 1984 (Introduction) and Riggsby 1999 (Appendix B). These scholars are unanimous in support of timely publication.

¹⁰ With the exception of one which is, the *Post reditum in senatu*, spoken from a written text (*Planc.* 74).

would occur. It is possible that early in his career Cicero wrote out more of his finished arguments in advance and committed them to memory, but even if he did not memorize the entire text of his pleading, what is especially appealing about Sihler's discussion is the assumption that the published oration represents not what Cicero intended and prepared to say in court but what he actually said.¹¹

The preponderance of rhetorical and persuasive understanding, and of nearly all the ancient evidence, is on the side of a published version adhering closely to the delivered oration. Given the purposes of publication, this makes sense. While some scholars have noted Cicero's belief, late in his life, that his orations served as models for aspiring orators,¹² he would not have circulated his efforts for such a purpose when he was in his twenties. At the beginning of his career, he would make available copies of a defense speech, especially a successful one, to let his friends share in his triumph, to attract favorable attention from better established advocates and political figures, and to avail himself of an accepted method of publicity.¹³ It was necessary especially for a young unknown advocate, as Settle 1962: 66 observed, "to publish an oration essentially in the form of its delivery" — there were too many observers, especially for a case such as the Roscius trial, who would have remembered what Cicero had said. It is clear that some orations omit certain aspects of the oral performance, as, for example, at *Rosc.* 25 where the text reads *DECRETVM DECVRIONVM*. David Potter made a case for published speeches as "'eyewitness' or participant narratives" rather than "documents", although Cicero used the stenographer's record to aid his own memory, and these narratives represented, if not "just exactly what was said", "a record of what participants thought should have been said (even if it was not) in close temporal relationship to the actual delivery of the original speech." This record, once set to writing, remained as it was, including any possibly embarrassing statements.¹⁴

The "close temporal relationship" is an important factor to bear in mind as a constraining factor on a young and unknown person. What would have been more ridiculous than to have young Cicero insert brave and sarcastic passages which an attentive and influential onlooker would know he had not uttered? Timely publication also served the interests of a young man eager to be better known.¹⁵ The oration *Pro*

¹¹ Similarly, Alexander 2002: 19.

¹² *Att.* 2.1.3, 4.2.2; *Q.f.* 3.1.11; *Brut.* 123. Full exposition of the educational purpose of publication in Settle 48–54; Stroh 1975: 52–54, with references, discussed the evidence and what may result from a supposition that Cicero's main — or only — purpose in publishing his orations was to have them serve as models. Diehl 1988: 45 also noted that the speeches of the younger Cicero were not put out as models and cannot be suspected of having been improved for that purpose. More briefly, Berry and Heath 1997: 404.

¹³ Eich 2000 is of especial value in assessing the extent to which publication can be regarded as publicity. Publication did not mean production of large numbers of manuscripts to be sold at booksellers' stalls, but the creation in the first instance of a limited number of copies at the author's expense. Anyone who did not receive an individual copy could borrow one to read or to have copied: see Starr.

¹⁴ David S. Potter, *Literary Texts and the Roman Historian* (London and New York 1999) 26–29. Similarly, Eich 2000: 255–262.

¹⁵ Settle 1962: 72, wrote, "If Cicero had not published the speech for Quinctius soon after it was delivered, he might never have done so, for in the following year the *Pro Sexto Roscio Amerino* was to catapult the young advocate to a position of prominence which a lifetime of orations such as the *Pro Quinctio* could not have accomplished." Riggsby 1999: 181 added the *Pro Caecina* and *Pro Tullio* to the *Pro Quinctio*, "technical pieces" whose publication can better be explained by taking them as advertisements rather than models.

Roscio would lose value as publicity with time,¹⁶ and if edited promptly would be hard to tamper with. Cicero himself recalled that, little though the oration pleased his mature taste, the publicity surrounding the case brought him a plethora of clients (*Brutus* 312). And since on his own evidence the defense of Roscius brought Cicero so many new clients that he eventually had to leave Rome to recover his health, circulation of the oration would have ensured more publicity.

It makes less sense to assume that Cicero did not dare to publish the oration immediately upon its delivery but saved it for his first campaign for election to public office, and that, having returned from the East, he added sections critical of Sulla or of the nobility as a statement of his political views. To whom would this political statement have been addressed? Those who voted were many; those who received copies of orations were few, and most of this reading public was identical with the nobility. Available copies could be loaned out and duplicated, but widespread dispersal took much time even so; there was no such phenomenon at the time of the Republic as the simultaneous appearance in many locations of multiple identical copies of the same work.¹⁷ If Cicero had not deliberately planned to wait for a time when Sulla was gone before releasing the written form of an oration but did not dare to publish when the case was timely, and merely seized the opportunity when he returned to Rome in 77, few potential readers would still have been interested in one of the trials of the year 80. There would be new scandals and new threats. By the time Cicero returned from Greece, people were concerned with the recent dangers of Lepidus' insurrection and the continued conflict in Spain. Roscius and Sulla were old news.¹⁸

The Court

The Roman term for criminal court was *quaestio*: inquiry. The first standing court at Rome was established in 149 BCE to hear accusations of misconduct by Roman provincial governors; it was called the *quaestio de rebus repetundis*. In the course of his reorganization of the Roman state, Sulla had instituted permanent *quaestiones* to cover a variety of crimes, including poisonings (*de veneficis* or *de veneficiis*) and assassinations (*de sicariis*). There may have been no permanent court for the latter until Sulla's time: cf. Gruen 1968: 261–262, Keaveney 1982a: 176. Certainly murder cases of all sorts had been heard, though, and decided: Lintott 1978, Nörr 1986. The discussions of Höbenreich 1990, Ferrary 1991 and Cloud 1994 are the most recent and include bibliography and sources. For descriptions of the setup and procedure of criminal trials, see Greenidge 1901 and Strachan-Davidson 1912.

The court for Roscius' trial was presided over by M. Fannius, who was praetor in 80; the jurors were all senators. The number of jurors varied and we do not know if there was a stated number for each type of standing court; at the trial of Oppianicus in this same court six years later, there were thirty-two jurors. The prosecutor spoke first in an oration of whatever length was necessary to set forth the charges, and then the

¹⁶ Cf. Petersson 1920: 3–4, 87.

¹⁷ For detailed discussion of evidence and earlier scholarship on the concept and practice of publication in the late Republic and early Empire, see Eich 2000 chapter 3. In chapter 8 p. 195 Eich distinguishes between the reading public in general and the few who possessed the expertise to read the published orations critically.

¹⁸ Cf. Petersson 1920: 93.

defense patron responded in a continuous speech. Only after the response of the defense would the court hear testimony from witnesses or other evidence; the prosecutor did not share his evidence with the defense prior to the trial, and only the prosecutor could compel a witness to appear in court while the defense could merely make a request. Thus Cicero will refer during the speech to testimony not yet heard (§§21, 84), and also mentions some document that will be produced by a witness (§101). After the prosecutor had brought forward the witnesses, the defense counsel engaged in a question and answer session (*altercatio*) with the prosecutor, not with the witnesses. After all evidence had been brought forward and examined between the two sides, the jurors voted. We do not know whether they took the time to deliberate, nor how much time if they did. Voting was by previously marked tablet: A (*absolvo*) or C (*condemno*). There was a third possible outcome, *non liquet* (not proven), but no special tablet for it; evidently at the time of this trial jurors could mark NL on the wax. The number of jurors being even, a tie vote resulted in an acquittal. The judge presiding over the court immediately announced the verdict and, if the defendant was found guilty, the punishment, which was fixed by law, was exacted. At any time before the verdict was pronounced, a person of sufficient means could leave the court and the city and go into voluntary exile.

The penalty for parricides¹⁹ was to be sewn up in a sack and drowned (see §§30, 70–72). Neither in this oration nor at *Inv.* 2.149 does Cicero say that the sack was to contain other creatures with the condemned person. When the word *culleus* appears in Latin, it is either in an agricultural context or it refers to the punishment of a parricide. Justinian's *Digest* 48.9.9 preserves a late account of the details: in accordance with the custom of the ancestors the parricide is to be beaten then sewn into a sack with a dog, rooster, viper, and monkey and thrown into the deep sea — but only if the sea is nearby. Otherwise, in accordance with a ruling of Hadrian, the parricide is to be thrown to the beasts. Other than this passage in the *Digest*, when authors later than Cicero mention the sack, they too usually neglect to name the animals. Juvenal *Sat.* 8.213–214 is an exception: *cuius [Neronis] supplicio non debuit una parari / simia nec serpens unus nec culleus unus*. For discussions see Radin 1920, Robinson 1995: 46–47.

Dramatis personae

Sex. Roscius the victim (called Roscius maior in the commentary). He was "prosperous" (§15) with respect to influence and connections: he had the favor of and had a relationship of guest-friendship (*hospitium*) with influential Romans. Harris 1971: 100 infers from this statement that the elder Roscius, and the other citizens of Ameria, had not had citizenship before the Social War. The elder Roscius' *gratia* would presumably have depended upon the nature and extent of his relationship with his noble patrons and, possibly, with the amount and kind of support that he had displayed for Sulla's side. He was, as Cicero says in §16, *nobilitatis fautor*. A final factor is Roscius' standing in his own community: since the men of Ameria were able to vote in elections — and Ameria was not too far from Rome for people to travel for an important contest — he may have been in a position to deliver votes. Hellegouarc'h 1963: 202 introduces his

¹⁹ The word *parricidium* does not mean *patris caedes*, but an especially heinous killing of a person, especially but not only a parent or other close relative. The word can also be used to describe treason.

section on *gratia* with observations about elections. Wiseman 1971: 34–37 discusses how various aspects of *hospitium*, *amicitia*, and *clientela* worked out in practice.

Sex. Roscius the defendant (called Roscius in the commentary). He was the surviving son, at least forty years old in 80 (§39). Roscius had a brother who predeceased him and was said to have been the father's favorite (§42). The defendant had devoted his life to taking care of his father's numerous farms and according to Cicero preferred country life to visits to Rome or anywhere else.

C. Erucius the prosecutor, first named in §35 but without his praenomen, given in §38 (Dyck 2004: 758 believes that the initial has fallen out in §35). David 1992: 762 suggests that Erucius may be the officer of Sulla mentioned by Plutarch *Sulla* 16.11 and 18.1, Ἐρύκλιος in Plutarch; Ziegler's text numbers these passages *Sulla* 16.15 and 18.1). See also Dyck 2003: 241. Somewhat later Erucius prosecuted L. Varenus for murder and Cicero defended but lost the case. For discussion, see Crawford 1994: 7–18.

Caecilia Metella was a supporter of Roscius. An old friend of his father, she had taken him in after he had been dispossessed of his property. Scholars do not agree on her identity, as the family of the Caecilii Metelli was a large one, and it does not help that the text of the oration differs in the two places where Cicero mentions her (§§27 and 147). The most recent discussion of her identity is Kragelund 2001: 62–63, who believes that she was a spinster and the same Caecilia, daughter of Metellus Balearicus, who had a vision of Juno Sospita at the outbreak of the Social War (mentioned by Cicero at *Div.* 1.4 and 99).²⁰ Gelzer²¹ believed that she had married App. Claudius Pulcher, consul in 79 (the year after the trial), become the mother of six children including Cicero's later enemy P. Clodius, but had to have been divorced by the time of the trial because Cicero referred to her by her own name, not her husband's.

T. Roscius Capito A relative of the deceased and thus of the defendant, according to Cicero, as was **T. Roscius Magnus**. They first appear in §17. We do not know how they were related to Roscius or to each other. Capito was one of the town councillors of Ameria (§26) and may have appeared later to give testimony (§84). Cicero refers to him as Capito or T. Capito. Magnus (whom Cicero calls T. Roscius) was in court sitting with the prosecutor (§87).

Sulla L. Cornelius Sulla was one of the two consuls of the year 80 and possibly still dictator.

Chrysogonus L. Cornelius Chrysogonus, first named in §6, was one of Sulla's freedmen, whom Cicero describes as a person of great power. He purchased the farms of the elder Roscius for an absurdly low price after they were seized and offered for sale. There is no other reliable record of Chrysogonus other than this speech or any subsequent work that uses the *Pro Roscio* as a source. According to Plutarch (*Cic.* 3.4–5), Roscius bought the estate of Roscius for 2000 drachmas and when the deceased's son announced the

²⁰ This is the latest identification with the unmarried sister-in-law of App. Claudius Pulcher, an identification previously championed by Carcopino 1931: 172–181, Lanzani 1936: 2322–223, Gruen 1968: 266 with n. 52, Desrosiers 1969: 33.

²¹ Gelzer 1969: 19 n. 17 to Caecilia Metella. Many other scholars accept this identification.

estate was worth 250 talents, Sulla engineered the prosecution in anger, and set Chrysogonus to the management of the case. Treggiari 1969: 183–184 argues that Plutarch's understanding is substantially correct.

Other supporters of Roscius sat with the defense but did not speak; in §77 Cicero names P. Scipio and a Metellus, whose first name is uncertain. Gruen 1968: 266 and Gelzer 1969: 21 n. 31 believe that Scipio is the man later known as Metellus Scipio. David 1992: 234 identifies him as Scipio Nasica. The Metellus may be a M. Metellus (so van Ooteghem 1967: 244 and Gelzer 1969: 21 n. 32), a son of M. Metellus Caprarius, while Gruen 1968: 266 reads Q. Metellus and identifies him as probably the son of Nepos, either Celer or Nepos. David 1992: 234 identifies him as Q. Caecilius Metellus Creticus. See also the note to §15 *Metellis etc.*

Outline of the oration

1–14 Exordium

Ancient commentators defined the case as *genus admirabile*, or *genus turpe*: the type of case that elicits revulsion, or a sense of injustice, in the listeners, and thus it is a wonder that anyone undertakes the defense; (cf. *Inv.* 1.20). The *genus admirabile* is difficult to defend because the charge is so shocking. Cicero's own advice (*Inv.* 1.23) was to employ *insinuatio*. Since Roscius stands accused of having had his own father killed, Cicero expects the jurors to be hostile; he deflects their surprise, however, towards a direction of his own choosing: he declares that it is remarkable, not that the case is being defended at all, but that he in particular is the patronus. He will argue further that the reasons for a dearth of willing defenders have nothing to do with the case itself but with the political climate.²²

15–34 Narratio

In this section Cicero tells his version of the events surrounding the crime: not only the actual killing but what happened beforehand (in a setting of the civil war) and afterward. He describes the people involved and their relationship to one another. One cannot assume that any of his narrative is factual, although it would have been impossible to lie about a number of things: the death of Roscius the elder on the street in Rome, the seizure of the property of his son, the deputation sent from Ameria to Sulla's camp. Much later in the oration, when Cicero again tells the story of events (beginning at §95), he adds further arguments to convince the jurors that the T. Roscii were responsible for their relative's death. The attentive reader will notice discrepancies between the two narratives, but differences would have been harder to detect in a lengthy oral performance.

²² At §148 Cicero says again that the many men who ought to be Roscius' supporters do not dare to defend him; he adds there that some of them were not willing to be present in support. Cf. Gruen (1968: 267): "Men of influence and authority shirked the task; their actions might be too readily misconstrued." Gelzer (1969: 21) argues similarly. On the other hand, Kinsey (1980: 183–188) believes that the case was not important enough to engage the attention of prominent men, who may have directed younger family members to attend in support (*adesse*), and further, that Cicero exaggerates Chrysogonus' *potentia* for his own purposes, namely, to create a sensation. Dyck (2003: 236) agrees for the most part.

Cicero introduces the deceased, Sex. Roscius, and the other actors in the drama, T. Roscius Capito, T. Roscius Magnus, fellow townsmen and relations, Magnus' freedman Mallius Glaucia, and Sulla's freedman Chrysogonus, already mentioned. After praise of the victim's political correctness (§§15–16), he describes the antecedents of the T. Roscii and Glaucia in a prejudicial manner (§§17–19) in the course of his narration of the events surrounding the murder. He devotes most of this section of the oration to the machinations of Chrysogonus and the T. Roscii, who conspired, he says, to deprive the bereaved son of his property. He will return to the same narrative at §§84ff, where he mounts his counter-accusation of the T. Roscii.

35–36 Partitio

This short section should comprise the topics or arguments that a speaker will address, yet in the defense of Roscius Cicero enumerates obstacles to his client and addresses each in turn.

37–82 Argumentatio

Whether or not grounds for the present accusation existed if the dead man were rightly listed among the proscribed is an issue that Cicero never addresses directly, obvious though it seems to the modern mind. Kennedy (1972: 151–2) suggests, "Apparently the claim that Roscius' father had been legally killed under the proscription was abandoned once the property was sold." Such an assumption raises the question of how difficult it may or may not have been to recover the property, a lesser consideration for the defendant while still accused of the murder. Alexander (2002: 165–166) lists three reasons why Cicero would not have wanted to discuss the possibility that Roscius maior had been proscribed and thus legally killed: (1) to discredit the accusers, (2) to establish a legal precedent to reclaim the property in future, (3) to allow the jury to think of this contradiction on their own without stating it explicitly. Alexander (2002: 163–164) is right to suggest that the jurors might have felt so much revulsion at the thought of a man killing his own father, even if the latter had been proscribed, that they would have voted him guilty on the strength of their feelings. Butler (2002: 20–22), on the other hand, believes that the elder Roscius may never have been proscribed at all but that his property was offered for sale (literally, "proscribed" or posted up) under some other legal action. See the commentary §§82 *de peculatu*, 126 *constat*, 143 *ista omnia*.

Preiswerk 1905: 36 analyses what is Cicero's usual course of argument for the defense; he finds that the orator uses different sorts of arguments but a predictable structure. In the first part of the *argumentatio* Cicero (1) deplores the crime, explains the cause(s) of death, and describes the defendant's character, then (2) examines the means necessary to perpetrate the crime, and finally (3) discusses the immediate aftermath of the crime and the investigation of it. A synopsis of his outline is as follows:

1. §§38–73: *causae* (motives), arguments from Roscius' character
2. §§73–76, 79–82: *facultas* (the means, opportunity)
3. §§77–78: after the fact, inability to question the slaves

In the first part (*causae*), Cicero describes the defendant's life and character (§§38–73) and describes his role as his father's *vilicus* and the importance of farming in Roman life and culture (§§42–52). Then he offers six excususes, almost seven OCT pages: §§55–63: the role of accusers in the state and criticism of Erucius' performance

§§64–65: the murder of T. Cloelius

§§66–69: the Furies

§§69–70: the wisdom of Roman lawmakers

§§70–72: the punishment for those found guilty of parricide

§§72–73: final criticism of Erucius' lack of preparation

Without dealing with the substance of the motive at all, he concludes in §73, *Esto, causam proferre non potes*. He is more on topic when discussing opportunity.

83–124 Anticategoria (Counteraccusation)

Cicero argues at length to implicate the T. Roscii in the murder, although he is careful to exclude Chrysogonus from any conspiracy before the fact.

1. §§84–91: the Cassian question *cui bono?*; character of T. Roscius

2. §§92–93: *facultas suscipiendi malefici*, T. Roscius' opportunity

3. §§95–124: after the fact, T. Roscius' and Chrysogonus' actions

124–149 Chrysogonus

During continued discussion of how the property was able to be sold, Cicero accuses Chrysogonus of using his position as Sulla's associate to profit from the crime, and does his best to describe the Greek freedman in the most prejudicial way possible, playing upon the Roman sympathies of his senatorial jury.

150–154 Peroratio

The summation of the argument usually involved an emotional appeal. As in this early defense, later in his career Cicero was often to present criminal cases as tests of the Roman republic.

Bayer 1963: 172 advises that for the purposes of instruction one can remove §§37–123 without losing any of the oration's overall form or political character. Although much of the *argumentatio* might seem to offer excessive detail, it is still worth reading, along with the *exordium* and *narratio*, especially to see how Cicero handled, or avoided handling, the substance of the accusation. The counteraccusation, on the other hand, while entertaining again for the use of *insinuendo*, might be omitted if necessary, especially §§109–123, the legation from Ameria to Sulla and Capito's abuse of the *mandatio* entrusted to him and to his fellow town councillors. The attack on Chrysogonus offers a contemporary perspective from the point of view of a man who cherished traditional values and was most unhappy with changes to Roman society and *mores*.

Aims of This Commentary

Commentaries should offer elucidation of a text to a potential reader: grammatical, lexicographical (including normal and unusual constructions), historical, or technical; notes also reflect the interests of the commentator. Given the early date of this oration, I am especially intrigued with peculiarities of Cicero's language, both in elements representative of the orator at all periods and in those particular to his earlier years: compounds, creation of vocabulary, vulgar language, links to comic poets. References to the *Pro Quinctio* are fairly frequent not because students normally read that oration, but because it is the only one earlier than the *Pro Roscio Amerino* and in that pleading Cicero used several of the same types of language and argument, especially political language

and loaded terms such as *potentia*. Cicero was well aware of standard rhetorical treatises and composed one himself when he was a young man, yet he will deviate from standard practice in the interest of best arguing a case. He employs tactics in the *Pro Roscio Amerino* that will become familiar in his later cases; again, it is instructive to see his development as a pleader. While some of his rhetorical flights are characterised by youthful excess, and some passages are downright tedious, it is clear that even at this date he could construct clever arguments, employ misdirection to good effect, display a variety of emotions, and package the whole in forceful language that sounded exactly the tone he wanted to convey.

Some rhetorical and grammatical terms (see also A&G 640–641)

Alliteration: recurrence of an initial consonant sound

Altercatio: a series of questions and answers

Analogy: reasoning or arguing from parallel cases

Anaphora: repetition of the same word at the beginning of successive clauses

Anastrophe: hyperbaton in the case of transposing the position of (only) two words, e.g., *quibus de rebus* instead of *de quibus rebus* (Quintilian 8.6.65)

Anticategoria: counter-accusation or recrimination

Anticipatio: pre-empting an opponent's possible argument

Antithesis: conjoining contrasting ideas

Antonomasia: substitution of an epithet or adjective instead of a proper name, or the opposite

Aporia: also called *dubitatio*; true or feigned doubt or deliberation about an issue or about how a speaker ought to proceed

Aposiopesis: stopping suddenly in midcourse, leaving a statement unfinished

Apostrophe: breaking off to address some person or personified being, present or absent

Argumentatio: Also called *confirmatio* (Cicero *Inv.* 1.34; *Rhetorica ad Herennium* 1.4) or *probatio* (Quintilian 5.Pr.5), this is the argumentation used to refute a charge; sometimes further divided into positive arguments and refutation (*confirmatio* and *reprehensio* respectively at Cicero *Inv.* 1.19)

Argumentum ad verecundiam: appealing to reverence for authority, or to accepted traditional values

Argumentum ex concessis: reasoning from the premises ("things granted") of one's opponent

Argumentum ex probabili: an appeal to what is likely to happen, given certain conditions, this category includes an argument based upon the history or character of a person or the nature of the situation

Assonance: resemblance of internal vowel sounds in neighboring words

Asyndeton: omission of conjunctions

Captatio benevolentiae: Seeking to get the judges or audience on one's side by means of praise or flattery; Cicero often describes the process of winning over the listeners with a phrase such as *benevolentia concilianda* (e.g., *De Or.* 2.182 and 236, *Part. Orat.* 15 and 28). See *Inv.* 1.22 where Cicero delineates the four approaches of attracting *benivolentia*: from our own person, from the person of the adversaries, from the person of the listeners, or from the case itself (*ab nostra [personae], ab adversariorum nostrorum [personae], ab auditorum persona, et ab rebus ipsis*).

Chiasmus: ABBA order
Colon: a clause or member of a larger structure or period
Concessio: conceding a point either to hurt an adversary or to prepare for a more important argument
Copia: abundance; use of several words of similar meaning
Descriptio: vivid description
Digressio: an interpolated anecdote
Dilemma: an argument that offers an opponent unacceptable choices
Ellipsis: omission of word(s) easily supplied
Enlargeia: clear, lucid, vivid description
Exemplum: an illustrative anecdote
Exordium: the opening statements, the preface of an oration; also called *prooemium*
Genus admirabile – genus turpe: a type of charge so dreadful it is hard to see why anyone would undertake the defense
Gradatio: a progression of repetitions; the one cited in *Rhetorica ad Herennium* 4.34 is *ex innocentia nascitur dignitas, ex dignitate honor, ex honore imperium, ex imperio libertas*.
Hapax legomenon: a word used once only
Hendiadys: expression of an idea by two nouns connected by "and" instead of a noun and its qualifier
Homoeoptoton: a succession of the same case form, often the same as *homoeoteleuton*
Homoeoteleuton: a succession of endings that sound the same; see §§13, 20, 22, 23
Hyperbaton: moving a word that belongs with another word (e.g., an adjective and noun) apart from each other; violation of usual word-order (see Quintilian 8.6.62–67)
Incrementum: a gradual buildup in linguistic description of the object to be amplified
Indignatio: arousing the audience's scorn and indignation
Insinuatio: a kind of *exordium* used when the jury is likely to be prejudiced either on account of the type of crime, because the opponent has spoken very persuasively, or because the jury might be tired and unwilling to listen. A speaker uses *insinuatio* to influence the jury by various psychological devices.
Irony: implying a meaning opposite to the literal meaning
Isocolon (plural *isocola*): phrases of equal length and, usually, corresponding structure
Litotes: affirmation by denial of the contrary
Locus: place, as in commonplace (*locus communis*), or as in point in an oration, e.g., the *locus de reo misero* is a standard rhetorical argument based upon the misery of the defendant (*reus*)
Metaphor: changing a word from its literal meaning to one not properly applicable but analogous to it
Metonymy: substitution of cause for effect, effect for cause, proper name for one of its qualities, or vice versa
Narratio: telling or retelling of events pertinent to the issue, e.g., the course of a crime, or the history of a business arrangement
Occultatio: emphasizing something by pointedly seeming to pass over it
Oxymoron: a condensed paradox
Paradox: a seemingly self-contradictory statement
Parenthesis: a word, phrase, or sentence inserted as an aside
Paronomasia: punning; playing on sound or meaning of words
Partitio: also called *enumeratio*; the listing of points to be treated in the subsequent argument; it can occur at end of the *exordium* or at the end of the *narratio* before beginning the *argumentatio*.

Periphrasis: circumlocution
Peroratio: the closing part of an oration
Polysyndeton: the use of extra conjunctions
Praeteritio: *occultatio*
Probabile: probability; argument from likelihood
Prosopopoeia: speech in character or impersonation
Ratiocinatio: reasoning, either in general, or in the form known as syllogism; cf. *Inv.* 1.51 and 1.57. Preiswerk 1905: 104–105 analyses the complex *ratiocinatio* of §§61–73. See commentary to §111.
Reductio ad absurdum: to disprove a proposition, one validly deduces from it a conclusion self-contradictory or contradictory to acknowledged fact
Sermocinatio: the speaker answers the remarks or questions of a pretended interlocutor
Simile: explicit comparison
Traductio: repetition of the same word, often with different meaning
Tricolon, tricolon auctum: three members or clauses of a period; if *auctum*, the second is longer than the first and the third longer than the second; see examples at §§7, 12, 27, 34
Variatio: varying the use of expressions, e.g., by substituting a synonym, to avoid repetition
Verbum sentiendi (abbreviated *verb. sent.*): verb of thinking, e.g., *arbitror, cogito*

Texts, Commentaries, and Translations

This commentary is based upon the 1905 Oxford Classical Text of A. C. Clark. An essential commentary is that of G. Landgraf, *Kommentar zu Ciceros Rede Pro Sex. Roscio Amerino*. Leipzig-Berlin 1914. Reprint Hildesheim 1966. (Landgraf)

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