

VIII. The Murder Charges in Cicero's *Pro Cluentio*

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Cicero's boast of having thrown dust into the eyes of the jury in his defense of Cluentius, as related both by Quintilian¹ and by Rufinianus,² has prompted many scholars to demonstrate how he mystified the jury, how he brought about the probable acquittal of a guilty man, and where this man's guilt lay.

The speech in defense of Cluentius³ is divided into two parts. If we are to believe Cicero, this was necessary to refute the double accusation made by the prosecutor, T. Attius (§1). Cicero deals at great length with the alleged first charge of the prosecution, the *invidia* resulting from the trial of the year 74 B.C. in which A. Cluentius Habitus had been the accuser and Statius Albius Oppianicus the defendant, and deals quite summarily—as he indicates at the beginning of the speech (§2)—with the three murders of which Cluentius is accused.

To understand Cicero's argumentation in the defense of his client, a brief synopsis of the long and complicated speech held in 66 B.C. may be useful. It begins with the year 88 B.C. when Cluentius' father dies, leaving Sassia a widow; his daughter, Cluentia, a girl of marriageable age; and his son, a boy of fifteen (§11). Cluentia is subsequently married to A. Aurius Melinus; but Sassia, falling in love with her son-in-law, soon

¹ *Inst.* 2.17.21.

² *De figuris sententiarum et elocutionis* in Halm, *Rhet. Lat. Min.* 42.13; a similar quotation in Hieron. *Epist.* 50.2. J. Humbert traced the common source of these quotations to Cicero's lost letters to Brutus and Calvus: "Comment Cicéron mystifia les juges de Cluentius," *REL* 16 (1938) 275-96.

³ The following editions have been consulted: J. Classen, *M. Tulli Ciceronis Oratio pro Cluentio Habito* (Bonn 1831); W. Ramsay, *Cicero, Pro Cluentio*,³ ed. by G. Ramsay (Oxford 1876); W. Y. Fausset, *M. Tulli Ciceronis Pro A. Cluentio Oratio*³ (London 1897) (4th ed., 1910 not seen); W. Peterson, *The Speech of Cicero in Defence of Cluentius*, transl. into English (London 1895); W. Peterson, *M. Tulli Ciceronis Pro A. Cluentio Oratio* (London 1899); A. C. Clark, *M. Tulli Ciceronis Orationes*² (Oxford 1905); H. Grose Hodge, *Cicero The Speeches* (London 1927); P. Boyancé, *Cicéron Discours: t. 8 Pour Cluentius* (Paris 1953). Text quotations are from Boyancé; translations are from Grose Hodge. For many valuable suggestions in the preparation of this paper, I am greatly indebted to Prof. W. C. McDermott of the University of Pennsylvania.

induces him to divorce her daughter and marry her instead (§14). It is Cicero's assertion that the enmity between Cluentius and his debased mother stems from this time and that the mother henceforth never ceased to plot against her son. At about that time a kinsman of Sassia's second husband, M. Aurius, was murdered, and the elder Oppianicus is suspected of the crime (§23). Cicero then unfolds the criminal record of Oppianicus: he is said to have killed his first wife Cluentia, aunt of the defendant (§30), his own brother as well as the brother's wife, Auria, and their unborn child (§31); a young man, Asuvius, whose will benefited Oppianicus (§36); and finally Dinaea, mother of M. Aurius and of Magia, Oppianicus' deceased wife, who had willed her entire estate to her grandson, Oppianicus the younger (§40). Threatened with prosecution by A. Aurius Melinus, Sassia's husband, Oppianicus flees Larinum, joins the victorious Sullan forces and, with their help, gets himself installed as chief magistrate at Larinum (§§24-25). With his newly established power he manages to wipe out all those who had been standing in his way, among them A. Aurius Melinus, Sassia's husband. Nonetheless, Sassia accepts him as a suitor on condition that he kill two of his small sons (§§27-28). Finally Oppianicus marries Sassia and thus becomes the step-father of Cluentius. Several years later Cluentius is urged by his fellow citizens to take their side against his step-father in a dispute about the citizenship status of the Martiales (§§43-44). The case is taken to Rome where Oppianicus, according to Cicero, attempts to poison his stepson, who had not yet made a will. He does this with the help of a certain Fabricius and his freedman, Scamander. Cluentius after uncovering the plot decides to prosecute, beginning with an indictment against Scamander, who had supposedly procured the poison. Although defended by Cicero himself (Cicero has some difficulty, eight years later, explaining his stand on the opposite side), Scamander is found guilty by all but one of the jurors, Staienus (§§50-55). Cluentius then proceeds to accuse Fabricius, the author of the plan, who is found guilty by unanimous vote (§§56-59). Finally, before the same jury, Oppianicus is brought to trial for his attempt at killing Cluentius. On the basis of the *praeiudicia* a verdict against Oppianicus appeared a foregone conclusion (§60). Yet, he is judged guilty only by a slight majority (§§74-76). At this point Cicero begins his defense

against the *invidia* resulting from the trial of 74 B.C., when Cluentius was said to have bribed the jury. His argument is twofold: only he who was sure of being condemned had reason to bribe, and that was Oppianicus, who should have been aware of the verdict on the basis of the two previous trials; furthermore, since bribery of the jurors had been clearly established, it could come only from one of the parties, namely the guilty one, and that was Oppianicus (§§62–73).⁴ This trial, the notorious *iudicium Iunianum*, had repercussions entailing dire consequences for many of the jurors, though Cicero tries to point out that these were not necessarily connected with the case of Oppianicus. The tribune's censure of Cluentius is merely attributed to the general ill-will created at Rome in connection with the trial (§§77–133). Confident of having cleared his client of all suspicion of bribery in the trial against Oppianicus, Cicero now turns to the prosecutor, who apparently had hoped that the defense would throw out the first indictment on technical grounds by stating that Cluentius, a knight, could not be prosecuted under the *lex Cornelia*, on the history and interpretation of which Cicero dwells at great length (§§143–60).

Finally, Cicero turns to the murder charges. Brushing aside the evidence proffered by the prosecution against Cluentius' character (§§161–64) he quickly refutes the alleged poisoning of C. Vibius Capax (§165) and that of Balbutius with the poison intended for young Oppianicus (§§166–68). Lastly he deals at somewhat greater length with the death of the elder Oppianicus. About two years after the trial Oppianicus had died, and Sassia immediately questioned the slaves in order to produce evidence against her son, the suspected murderer. No evidence having been obtained, Sassia remained silent. Several years later, one of the slaves is apprehended in a theft. When questioned in that connection, he is said to have confessed to the circumstances of the elder Oppianicus' death, thereby furnishing Sassia with the needed evidence (called forged by Cicero) to bring her son to trial for having poisoned his stepfather. By inducing young Oppianicus, allegedly against his will, to marry one of her daughters, she finally procures an accuser in the present trial.

⁴ Yet Cicero himself refers to the *iudicium Iunianum* in which one of the jurors took bribes, both from the accused and the accuser, *Verr.* 1.39, also *Verr.* 2.78–79; see also below, note 23.

The prosecutor, T. Attius, had charged Cluentius with his conduct at the trial of 74 B.C. as well as with the three murders (§1). Cicero, singlehanded and successfully, took over the defense as recorded, though in a somewhat shortened form, in the *Pro Cluentio*.

Attempts have been made, based partly on technical vocabulary, partly on the interpretation of the murder charges, and partly on the context in which the quotation appears in Rufinianus (above, note 2), to show that the only *bona fide* accusation was the one of poisoning.⁵ Consequently the lengthy story of Oppianicus' life and the trial of 74 B.C., with all its political consequences (nine-elevenths of the whole speech), would constitute the mystification of the jurors. Others have rejected this thesis and accepted a "double accusation"⁶ since, according to the text (§144), a case of "judicial murder" like the one in the trial of 74 B.C. might well be brought before a *quaestio de veneficiis*. Others again maintain that the real charge is the one resulting from the earlier trial⁷ and that the poisoning charges so easily disposed of by Cicero (§§164-69) were only added to bring the case before a jury.

I shall not enter into a discussion on whether there was a double or single accusation; I shall, however, try to examine the murder charges on the basis of Cluentius' character and life of which we learn surprisingly little. Cicero gives no indication as to what his client had been doing from 86 B.C., when the enmity between him and his mother arose, to 74 B.C., when he first opposed his stepfather in the Martiales case and then accused him of the attempted poisoning. Again nothing is mentioned of Cluentius' activities from 74 B.C. to the time of the present trial. And yet he maintains, over and over again, that his client's righteousness is the best proof of his innocence.

Surely Cicero's defense in respect to the poisoning charges,

⁵ C. Bardt, "Zu Cicero's Cluentiana," *Programm des Gymnasiums zu Neuwed*, 1878; I. Müller, *Bursian* 2 (1878) 204; J. F. Davies, "Cicero's Speech for A. Cluentius Habitus," *Hermathena* 2 (1876) 387-422; W. T. Lendrum, "Fausset's Pro Cluentio," *Hermathena* 14 (1888) 355-65; Humbert (above, note 1) 276.

⁶ F. Boll, "Num Cluentius de crimine iudicii corrupti causam dixerit," *Commentationes Monacenses* (1891) 201 ff.; Drumann-Groebe 5.323-97; Peterson (1899) (above, note 3) xxxi.

⁷ Fausset (above, note 3) x; Boyancé (above, note 3) 26. Boyancé digests the various opinions (18-29); É. de Saint Denis, "Boyancé: Cicéron Discours: t. viii," *Latomus* 13 (1954) 431 ff.

as all scholars agree, is weak and unconvincing.⁸ This paper attempts to show that Cluentius is, in all probability, no less a criminal than Oppianicus, that the motive for the murders he is accused of is lust for gain, while Cicero, by presenting another motive as the only one which might have driven Cluentius to such a deed, makes murders committed by his client seem absurd.

The jurors of 66 B.C. were mystified about the man and the case they had to judge, and the modern reader is easily misled by Cicero. The first reading of the famous speech fully convinces one that the elder Oppianicus is a scoundrel, that Sassia is a woman who will shrink from no crime, but that Cluentius, first a victim of Oppianicus' and now of his mother's intrigues, is an upright and innocent man.

Drumann-Groebe,⁹ in discussing Cicero's speech *Pro Oppio*, remark that it seems to be Cicero's technique to paint the adversary most ruthlessly when he is most aware of his client's guilt, and that he manages at the same time to maintain the favor of those in the opposing party who might be useful to him in the future. He does so in this speech where the accuser, Oppianicus the son, is treated with greatest deference (§10 and *passim*), and even the prosecutor is shown utmost respect (§156).

Attius had said (§9) that Cluentius had bribed the jury to condemn his enemy, the innocent Oppianicus. Cicero, on the other hand, tells us that Oppianicus was a man who shrank from no crime and was the source of all the evils that befell not only his own family but his whole community. In his quest for power and money he is said to have killed a large number of his own family and other wealthy people whose heir he had contrived to become, and finally to have married Sassia, the mother of Cluentius, also in the hope of some day inheriting her money.¹⁰

⁸ Proponents of the theory that the poisoning charges were thrown in only to bring the case before a jury (above, note 7) maintain that Cicero could not have disposed of these charges so easily, if they had been well founded. Boyancé (above, note 3) 19-20; Fausset (above, note 3) xxxiii. But even those who believe in a double accusation (above, note 6) stress the weakness in the reply to the poisoning charges: Peterson, 1899 (above, note 3) xx-xxi, as do the proponents of the theory that Cluentius was tried only for his murders: Bardt (above, note 5) 6 ff.

⁹ 5.368. It should be noted that Oppianicus the elder is not the *de facto* opponent in our speech.

¹⁰ He is called *homo in uxoribus necandis exercitatus* (§52); in this connection see Boyancé (above, note 3) 9, note 2. It should be noted that, for all the crimes attributed to him, we only have Cicero's word. He had never been brought to trial until 74 B.C., when he was only charged with the attempt to poison Cluentius.

It would lead us too far to try to establish a chronology of the various crimes attributed to Oppianicus, obviously not told in order by Cicero.¹¹ Upon closer examination it appears that the series of murders and other crimes of which he is accused here, and which had been listed previously by P. Cannutius (§29)¹² must be dated before 82 B.C. Of this period Cicero says (§41):

cum illo nemo iam rationem, nemo rem ullam contrahebat; nemo illum ex tam multis cognatis et adfinibus tutorem umquam liberis suis scripsit: nemo illum aditu, nemo congressione, nemo sermone, nemo convivio dignum iudicabat.

Nevertheless it would appear that for some years, from the time of his marriage to Sasia until the time of his supposed attempt to poison Cluentius, Oppianicus lived an ordinary and respected life at Larinum, where he held the power given him in consequence of his support of Q. Metellus and the Sullans.¹³ Only in connection with the controversy between him and the town council¹⁴ in respect to the citizenship status of the Martiales do we hear that there was enmity between him and his stepson (§44).¹⁵ Furthermore, this man who had been described as the embodiment of all that is evil, with whom, allegedly, no one cared to have any more dealings, had, even after his conviction, a large number of respected citizens as friends.¹⁶ They saw to it that he got his

¹¹ The most striking inconsistency occurs in the account of Dinaea's death (§22; and differently, §40).

¹² Cicero refers to the jurors in the previous trial who were able to see the guilty man's face, the man "who was hated by all and seemed worthy of punishment."

¹³ This is also pointed out by Boyancé (above, note 3) 44.

¹⁴ *Decuriones cunctique municipales* (§43) opposed Oppianicus' wishes. Yet, in 82 B.C. (§25) Oppianicus is said to have removed from office the *quattuorviri* appointed by the *municipes*, to have set up another council of four, himself being one of them, to have killed all citizens who had opposed him, while frightening the others. We are certainly puzzled about the origin of the alleged opposition.

¹⁵ Most scholars seem to be led by Cicero into assuming that there had always been enmity between Oppianicus and his stepson. So Peterson (1899) (above, note 3) xiii. But see below, 116, 117, 119.

¹⁶ After he had been found guilty, Oppianicus meets Staienus in the house of T. Annus, *hominis honestissimi* (§78), and Staienus is forced to return the bribe. *Viri boni* are in hiding to witness the proceedings. To be sure, these dealings are mentioned to incriminate Staienus, not to exonerate Oppianicus. But the same T. Annus is among the friends witnessing the torturing of the slaves. Later it is mentioned that Oppianicus spends some time at the estate of C. Quintilius (§175). After his death, when Sasia tortures the slaves, there are present (§176) *amici et hospites Oppianici et ipsius mulieris multi, homines honesti atque omnibus rebus ornati*. These same men, among them T. Annus, L. Rutilius, P. Saturius, are mentioned once more (§182) as witnesses to the first questioning.

money back, took part in the investigation of the circumstances of his death, and were willing to have him live with them when an exile. The fact that his son, even while accusing Cluentius, is treated with deference, suggests that the authority of his family cannot have been as low as Cicero wants us to believe. For Cicero, granted that he never lost sight of his political career,¹⁷ in which he needed the support of the *ordo equestris* and that from as many communities as possible, would have jeopardized that support, had he treated the opposing party in the trial so respectfully without justification.

Now let us take a look at Cluentius, always referred to as the innocent victim of the elder Oppianicus' and his mother's intrigues. He, like his stepfather, is the son of a respected citizen of Larinum (§11), also a knight, and has lost his father while still a boy. His sister, somewhat older, had been married after the father's death. But two years later her husband, Aurius Melinus, divorced Cluentia and, allegedly seduced by his mother-in-law, Sassia, married her. We are told that Cluentius, now a young man of seventeen, took the insult to his sister as one against himself and determined to have no further dealings with his mother (§16)¹⁸ The speech starts and ends with a picture of this debased woman who took away her own daughter's husband, then married the same Oppianicus who had arranged the killing of the "son-in-law-husband," Aurius Melinus, and demanded from him as a wedding gift the death of two of his own children. To be sure, there is nothing attractive in having such a mother but, whereas Cicero asserts that all the misery, misfortunes, and tribulations of his client (§18) were the result of the mother's hatred and enmity, he offers only three pieces of evidence, all stemming from a time at least ten years later. These are (1) her supposedly successful efforts in inflaming Oppianicus' passions at the time of the Martiales case (§44), (2) her alleged

¹⁷ W. Kroll, "Ciceros Rede für Cluentius," *NJbb* 53 (1924) 174 ff. To be sure, courtesy to the opposing party is part of "good court procedure" in all Cicero's speeches as attorney for the defense (see above, 113 and note 9). Yet in this speech, while Attius is treated in the customary manner, the younger Oppianicus is given more than the usual courtesy.

¹⁸ The wording is very vague. It almost seems as if Cicero did not want to admit the real reason for the enmity between mother and son. Later on (§45), when stating that Cluentius had not made a will, he is equally evasive, saying that his client could not bring himself to disinherit his mother.

intrigues aimed at obtaining evidence against Cluentius as the murderer of her husband, as well as (3) her securing an accuser in the person of young Oppianicus (§179). On the other hand, the attempted poisoning of Cluentius is clearly presented by Cicero as the elder Oppianicus' scheme (§189): "non est profecto de illo veneno celata mater," Nor is the hostility between Cluentius and his stepfather better substantiated. And indeed we would assume that Cluentius must have rejoiced when Aurius, divorced from his sister and married to his mother, is killed by Oppianicus. After all, we hear nowhere of any reactions Cluentius may have had to his mother's third marriage. Her second marriage, so distasteful to him, must have alienated him from the Auri. They were, according to Cicero, among the leading citizens of Larinum until Oppianicus' return in 82 B.C., when he managed to wipe them all out. Cluentius at that time escaped the general massacre. This fact would lead us to assume that he was either too unimportant to be in danger or on friendly terms with Oppianicus. The latter assumption would explain why Cicero excuses Cluentius for taking a stand against him in the Martiales case. For, obviously in reply to a remark of the prosecution, we are told that Cluentius very reluctantly, upon the urging of his fellow citizens and because he saw it his duty (§43), had gone to Rome to present the opinion of the city council.¹⁹ If old and commonly known enmity had existed between the two men, there would have been no need to excuse his action, especially as it was directed against a man who, according to Cicero, was known to be a criminal. While both men were in Rome in connection with the dispute, Oppianicus, hoping to enrich himself, allegedly attempted to have Cluentius killed. His estate would go to his mother, since he had made no will. Once more the credulity of the audience is strained. It is asked to believe not only that Oppianicus, spurred on by Sassia, tried to detach Cluentius from the case of the Martiales, but also that "another and more cogent reason" (§44) compelled Oppianicus to desire Cluentius' death: lust for money.²⁰

¹⁹ See note 14 and text.

²⁰ When Cicero speaks of Oppianicus' reason for marrying Sassia (§27), *qui pecuniam Sassiae concupivisset*, he does not spell out how her money would benefit Oppianicus. Now he states (§45) "all his property would pass to his mother who could afterwards be put to death with greater advantage to himself, through the addition to her fortune, and with less risk through the loss of her son."

Cluentius then accuses his stepfather of having tried to poison him, thus bringing about the notorious trial of 74 B.C. Again, just as in the controversy about the Martiales, we are told that Cluentius was most reluctant to bring charges (§§19–20): “Cluentium vi ac necessitate coactum . . . nullam huic aliam accusandi causam fuisse nisi uti propositum vitae periculum . . . vitaret.” If Oppianicus had really been generally hated at Larinum, and if it had been known that he had attempted to have his stepson killed, as Cicero would have us believe, nothing would be more natural and justifiable for Cluentius, especially since Oppianicus had, up to now, escaped prosecution for his many misdeeds. Only if the two men had been on fairly friendly terms theretofore, as we might deduce from the statement (§189): “quod [venenum] iam tum recens suspiciosum ceteris, huic [Cluentio] incredibile, nunc vero apertum iam omnibus . . . videtur,” is such an apology for Cluentius’ action understandable, and is the prosecution’s attack against Cluentius’ brazenness justified.

The reasons given by Cicero for his client’s action against Oppianicus are (1) the necessity to save his life, and (2) consideration for his fellow citizens. Nowhere, however, are we told what Cluentius had done to deserve the confidence of the Larinates, who entrusted him with their affairs in the case of the Martiales and who now, at the trial of 66 B.C., had turned out in such crowds to support his case. Of Oppianicus we had been told (§41): “He it was whom the town council of Larinum adjudged by a unanimous finding to have falsified the public records of their censors, with whom no one would have any pecuniary transactions, nor any dealings whatsoever, whom not one of all his kinsmen and connexions ever appointed by will as trustee to his children.” We would expect to hear of cases in which Cluentius’ “pudor, honesta vita, nulla suspicio pecuniae” (§83) had manifested themselves; or why “neque enim hoc homine sanctor neque probior neque in omnibus officiis retinendis diligentior esse quisquam potest” (§133). The proof of this unblemished character would have consisted of instances in which he acted as guardian or in some other responsible position, or of examples of distinguished and worthy friends. Yet, of his sister whose fate supposedly had forever turned him at the age of seventeen against his mother, we hear no more in the whole narrative. Would we not expect him to have given her a home,

provided her with a new husband, and taken care of her children? ²¹

Nowhere do we hear by name of fellow citizens whose friendship, hospitality, and advice he enjoyed. To be sure, we are told that the senator, M. Baebius, had advised him when he had learned of the poisoning attempt (§53); but, at the time of the trial, he is dead. We are also told (§198) that L. Volusienus, P. Helvidius Rufus, Cn. Tudicius, obviously citizens of that region known to the jurors at Rome, were most concerned with the case; but for one reason or another none was able to appear in court (§198). There are only the *testimonia* of anonymous townspeople as well as of neighboring communities, doubtless indebted to Cicero but hardly known to the jurors at Rome.

With such vague statements Cicero makes his client appear a righteous and honored man²² despite the charges that he had bribed the jurors of 74 B.C.,²³ despite the fact that he was put on the censor's list (§133), and despite the incriminations brought against Cluentius' character by the prosecutor (§§161–64). These incriminations are brushed aside in a few paragraphs as mere inventions and negligible (§164): “*quam levia genere ipso; quam falsa re; quam brevia responsu!*” At least one of these charges seems to be worth looking into (§162). Cluentius was made the heir to a fortune of a certain P. Aelius who, in turn, had disinherited his rightful heir. In so doing, says Cicero,

²¹ Fausset (above, note 3) xxxvii and Grose Hodge (above, note 3) 214 attribute to her two sons: L. Aurius, son of A. Aurius (killed by Oppianicus in 82 B.C.), and N. Cluentius (§165). Fausset considers the latter a son of A. Aurius, born after the divorce had become effective, and had them both live with A. Cluentius. “She probably lived with her brother.” Cicero would hardly have failed to mention this, had he been able to do so. Münzer in *RE* 4 (1901) 111–12, s.v. “Cluentius”, lists N. Cluentius as son of Cluentia, born to her in a second marriage with another Cluentius. See below, 119, and especially note 25.

²² Even the modern reader is still taken in by this fiction. Davies (above, note 4) 396 calls Cluentius “richer and more influential than Oppianicus”; Kroll (above, note 17) 177 says “*anscheinend war Cluentius reicher und geschickter*”; Boyancé (above, note 3) 44 states “*À Larinum Cluentius était populaire, et Oppianicus ne l'était pas.*” Only Drumann–Groebe 5.395, note 10 differ from the general view: “*Es ist seltsam, dass man von Ciceros Schützling allgemein Schlechtes erzählt. Wäre jener sein Ankläger gewesen, so würde er ohne Zweifel mit Oppianicus die Rolle vertauscht haben.*”

²³ As this paper concerns itself with the murder charges only, Cluentius' bribing the jury in 74 B.C., commonly accepted by all modern scholars and fully digested by Boyancé (above, note 3) 34–35, as well as his possible implication in the case of Sca-mander as assumed by Peterson (1899) (above, note 3)xix, though corroborating my views on the criminal character of Cluentius, could not be discussed here.

Aelius only discharged an obligation toward Cluentius. The signature which proved the validity of the will was that of "his enemy Oppianicus"! Previously we had been told that no one would have any pecuniary dealings with Oppianicus and that he was accustomed to falsify public records (§41). Here we are supposed to believe that his signature is the best guarantee for the legality of the will in question. This incident, too, would seem to confirm the assumption that the two men had been on friendly terms until 74 B.C.

We must now consider the way in which Cicero deals with the three charges of poisoning or attempted poisoning brought against Cluentius. The first concerns the death of a certain C. Vibius Capax,²⁴ who had allegedly been poisoned by Cluentius while staying at the house of L. Plaetorius, a senator, who was present at the trial. When Cicero says (§165) *opportune adest*, it probably means that Plaetorius did not give formal evidence, since just a little later Cicero emphasizes the formal testimony of the elder Balbutius (§168). Consequently when Cicero says that Vibius took sick and died a natural death, we cannot assume any real substantiation of Cicero's statement by Plaetorius. The story of Vibius sounds familiar when we recall that Dinaea (§40), too, was ill and was "quickly cured" by a physician who happened to pass through Larinum and was introduced to her by Oppianicus. Vibius had died intestate, and his estate was given to his sister's son, N. Cluentius,²⁵ through an edict of the praetor. This, too, reminds us of one of Oppianicus' deeds: he was alleged to have poisoned Cn. Magius, whose nephew (*sororis filius*) and at the same time Oppianicus' son was the heir (§33). N. Cluentius cannot be identified with any certainty, and we cannot know how many Cluentii there were at Larinum. Surely he was a relative of the defendant. One theory is that A. Cluentius was married to a Vibia, sister of the deceased Vibius, and that N. Cluentius was their son.²⁶ The accusation and the parallel to

²⁴ For a discussion of the cognomen see Boyancé (above, note 3) 157, note 1 and Ramsay (above, note 3) 231.

²⁵ *illius sororis* (§165) can only mean sister of C. Vibius Capax; see Boyancé (above, note 3) 157, note 2. Fausset's interpretation (above, note 21), accepted both by Peterson (1895) (above, note 3) 244 and by Grose Hodge (above, note 3) 403 as "my client's sister's son," is grammatically impossible.

²⁶ At the time of the present trial Cluentius was thirty-six years old and could easily have been the father of an *adolescens*. To be sure, we are told by Cicero (§45) that Oppianicus attempted to poison Cluentius in the hope that, no will being made,

Cn. Magius make this at least a possibility. If this theory be true, Cluentius, like his stepfather, had killed an ailing person whose death could not easily be attributed to poisoning; the legatee was his own son through the sister of the victim.

Next Cicero deals with the charge that Cluentius had attempted to poison young Oppianicus at his wedding banquet.²⁷ He starts his client's defense by reasserting that Cluentius' character would never admit of attributing such a crime to him (§167): "Quid umquam Habitus in se admisit ut hoc tantum ab eo facinus non abhorreere videatur?"²⁸ We are told that SASSIA had brought about the marriage of young Oppianicus to her daughter, AURIA (§179), *testamenti spe devinctum*. As we have seen that Cluentius had the same background as Oppianicus and was just as inclined to go to extremes when it meant financial gain, it becomes clear why he should have attempted to murder his stepbrother, Oppianicus, before he came into the possession of that promised heritage which would otherwise, at least in part, come to him.

At this point, Cicero introduces the most startling line in the defense of his client (§167): "quid autem magno opere Oppianicum metuebat?" In other words, as a motivation for the attempt on the life of young Oppianicus he cites *fear*; fear, because SASSIA wants young Oppianicus to become the accuser of Cluentius. The sentence seemed so much out of place that Classen²⁹ took it out of its context and inserted it into the following account of the death of Oppianicus the elder. At this point Cicero seems to be attempting, quite successfully, to persuade the jury that fear is the basic reason for planning murder, even though he has just catalogued the victims of the elder Oppianicus, who were

bona eius omnia would go to his mother, a fact which would speak against Cluentius' being married and the father of a son. But Cicero, according to his own statement in the speech under consideration (§139), admits to presenting many distorted facts.

²⁷ Cluentius, of course, is here accused of having poisoned Balbutius, who allegedly drank the cup meant for young Oppianicus. Peterson (1895) (above, note 3) xxi calls the testimony of Balbutius' father the "only satisfactory piece of evidence." But the way in which Cicero repudiates the charge makes the testimony seem most dubious.

²⁸ See, however, above, 118, with notes 22 and 23.

²⁹ As quoted by Fausset (above, note 3) 265. Davies (above, note 4) 397 accepts Classen's view with different reasoning. Fausset says: "In the case of the younger Oppianicus fear could not, even rhetorically, be denied," and "it must be allowed that the similarity between the opening of §167 and §170 is singular and perhaps more than accidental." Yet he fails to draw any conclusion from this observation.

all killed on account of greed. Thus by giving a list of reasons why Cluentius need not have feared young Oppianicus, he seems to have dispelled the suspicions of the jury.

Having succeeded in convincing his audience that fear would have been the only reason for an attempt on the life of young Oppianicus and that, since fear was not justified, the attempt cannot have been made, he continues to take advantage of this motivation for murder when he speaks of the mysterious death of the elder Oppianicus of which Cluentius was accused (§169): "... homines inimicos suos morte adfici volunt aut quod eos metuunt aut quod oderunt." This is exactly the opposite of the reasoning presented for Oppianicus' attempt on Cluentius' life. Cicero stated then (§44) that, while there was considerable enmity between the two, *suberat... causa maior*, the desire for Cluentius' money.

Oppianicus was convicted as a result of the trial of 74 B.C., but he was still a wealthy man.³⁰ Although we are not told whether Oppianicus had made a will, we may assume that part of his estate would eventually come to Cluentius through Sassia, his wife and Cluentius' mother. In narrating the events leading up to Oppianicus' death, Cicero tells us (§175) that Sassia had an affair with a *colonus*, one Statius Abbius, and that Oppianicus was so upset by this that, despite an alleged illness, he left the estate at which he was staying, since he "could endure no longer the misconduct of the Falernian yeoman." If Cluentius at this point had reasons to believe that Oppianicus might divorce his mother and that he would lose his share of his stepfather's estate, he could have chosen no better time to poison Oppianicus, since he would assure himself, through his mother, of part of the deceased's estate.

Yet everything Cicero can state in support of his client's innocence is vague and not supported by factual evidence. Once more he reminds the jurors that all the misfortunes that befell Cluentius stemmed from his mother's intrigues. He calls preposterous the prosecution's assertion that the poison had been concealed in a loaf of bread, a most unheard-of procedure! He finds equally ridiculous the person chosen to administer the poison, a certain M. Asellius, friend of the elder Oppianicus, stating (§172) that "there was more probably actual enmity

³⁰ See the evidence collected by Peterson (1895) (above, note 3) xx.

between them [Asellius and Cluentius] because Asellius was on intimate terms with Oppianicus." If Cluentius and Oppianicus, too, had been intimate friends until 74 B.C., as I hope to have shown, we must assume that Asellius, originally a friend of both men, sided with Cluentius after the trial of 74 B.C.—a fact which was not commonly known—and that he was thus the ideal person to administer the poison. It is important to note here that Cicero neither denies that Cluentius was acquainted with Asellius nor does he call them enemies. He carefully says Asellius was "more or less ill-disposed to himself" (*sibi infensiores*), implying that, since Cluentius and Oppianicus were enemies after 74 B.C., all friends of Oppianicus must now be enemies of Cluentius.

Having thus taken care of the prosecution's evidence for poison, Cicero turns to the motivation. In the case of young Oppianicus, he had introduced fear as a possible motive for murder. Here he enlarges on this theme by stating categorically that only fear and hatred could be considered reasons for killing one's enemies. He takes great pains (§§170–71) to explain that Cluentius had no reason to fear an outcast like Oppianicus, and that his hatred could best be satisfied by letting him live as long as possible the wretched life of the convicted, friendless man.

Having convinced the jury that Cluentius had no motive for the crime, he once more brushes aside the evidence of the prosecutor, adding that even "sudden death" (§173) is not necessarily to be attributed to poisoning. But, he goes on to say, Oppianicus did not even die a sudden death. He undertook a trip when he was still weakened from illness, fell from a horse (*cecidisse ex equo dicitur*, §175), arrived outside Rome with a fever, and died several days later: truly a death without any suspicion unless it were to be looked for in his own household!

When defending his client against the charges concerning the death of C. Vibius Capax and the attempted poisoning of the younger Oppianicus, Cicero had introduced witnesses.³¹ Here he does not even attempt to do so and relates the actual death of the older Oppianicus in the vaguest of terms (*dicitur*, §175). He succeeds in proving to the jury Cluentius' innocence by attacking once more the villainess, Sassia, by ridiculing the evidence pointing to death by poison and, finally, by citing fear

³¹ See above, 119, and note 27.

and hatred as the only possible motives for murder, when he had told the same jury that Oppianicus himself had been motivated, in *his* crimes, by greed for gain and power.

In summary I conclude that "the dust which Cicero threw into the eyes of the jury" did consist, to be sure, (1) in the disproportionate length of his reply to the first accusation, and (2) in the dramatic description of Sassia and the elder Oppianicus as monsters in crime, as well as (3) in the technical discussion of the *lex Cornelia*. But not the least part of Cicero's deception lay (4) in his convincing the jury, and modern readers, that Cluentius was an honest and upright citizen, whereas in reality he was a fair match for his mother and stepfather; witness his conduct at the trial of 74 B.C.³² and his attempts against Capax and the Oppianici. The key to Cicero's wily advocacy in dealing with the murder charges as such lies in his sudden shift from greed as a motive for murder to fear and hate as the sole motives. We then realize that Cluentius probably was guilty of the charges in the second accusation as well as of the one in the first, and that Cicero's clever treatment of the murder charges constitutes a considerable part of the "dust thrown into the eyes of the jury."

³² See above, note 23.