



TYCHE

Beiträge zur Alten Geschichte Papyrologie und Epigraphik

Herausgegeben von

Gerhard Dobesch, Hermann Harrauer
Peter Siewert und Ekkehard Weber

Band 11, 1996

1996

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H O L Z H A U S E N

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Tafeln 1–10

FRANCIS X. RYAN

Some Persons in the *pro Cluentio*

In the preface to his text and commentary on the *pro Cluentio*, W. Ramsay declared: „I have endeavoured to the best of my ability to explain everything which might fairly cause embarrassment to a young scholar“¹. The much less impressive *commentariolum* which follows is offered in the same spirit, to disembarrass ourselves of mistakes.

§ 21. Q. Sergius (21). We are told that a certain M. Aurius of Larinum was captured at Asculum during the Social War, and that he was kept among the slaves of the senator Q. Sergius: *in Q. Sergi senatoris, eius qui inter sicarios damnatus est, manus incidit et apud eum fuit in ergastulo*. We further learn that the elder Oppianicus arranged for the murder of M. Aurius so that the younger Oppianicus might claim a larger inheritance from Dinaea, the mother of M. Aurius and the grandmother of the younger Oppianicus (§§ 22–23). What then can we say about the murder conviction of Q. Sergius? Fausset observed: „Zumpt conjectures very plausibly that Sergius had by this maltreatment of Aurius made himself amenable to a certain clause of the *lex Cornelia de sicariis et veneficiis*“². We should bear in mind that this is the speech to which Cicero was referring when he bragged that he had thrown dust in the eyes of the jury, *se tenebras offudisse iudicibus* (Quint. 2, 17, 21). A certain A. Aurius blamed Oppianicus for the murder, and threatened to prosecute him (§§ 23–25). Just as we are not told for whose murder Q. Sergius was condemned, we do not see A. Aurius threatening to prosecute Sergius. In short, Cicero has stated his case weakly if Sergius was condemned for complicity in the murder of M. Aurius, but has stated his case artfully if the conviction of Sergius had nothing whatever to do with the alleged murder of M. Aurius. It seems probable that *qui inter sicarios damnatus est* is an instance of *tenebrae*, and that Cicero consciously meant to imply what he knew to be false: namely that Q. Sergius was convicted for taking part in the murder of M. Aurius.

§§ 38–39. Q. Manlius (34)³. A certain Q. Manlius served as *triumvir capitalis* at some point before the trial of Oppianicus in 74, and was allegedly bribed by Oppiani-

¹W. Ramsay, *Cicero: Pro Cluentio*³, Oxford 1873, VIII.

²W. Yorke Fausset, *M. Tullii Ciceronis pro A. Cluentio oratio*⁴, London 1901, 97. The trial of Q. Sergius was missed by M. C. Alexander, *Trials in the Late Roman Republic, 149 BC to 50 BC*, Toronto 1990.

³It is not clear whether the capital triumvir Q. Manlius and the Q. Manlius who served as tribune of the plebs in 69 B. C. are the same man. Cicero has left a very low estimate of the character of the former (§ 39) and a very high estimate of the character of the latter (*Verr.* 1, 30), and D. R. Shackleton Bailey maintained that the two men must be distinguished; cf. *Two Studies in Roman Nomenclature*, Atlanta 1991², 32; id., *Onomasticon to Cicero's Speeches*, Norman 1988, 65. As Shackleton Bailey realized, in favor of the bifurcation the different character attributed to each provides an inconclusive argument; the

cus to abandon an investigation of the murder of one Asuvius of Larinum. Broughton has judged this man „IIIvir Cap. ca. 77“⁴. Broughton did not explain his preference for 77 but seems to have followed Münzer, who had determined that Manlius was triumvir „um 677=77“⁵. Münzer similarly failed to explain the grounds for this dating, but one may guess that 77 was favored because Manlius was in office *in discordiis civitatis* (§ 39); the rebel Lepidus was defeated in Italy early in 77. If we read the text closely, we find that Cicero credits Manlius not with being in office at a time of civil strife, but with being elected to office at a time of civil strife: *in discordiis civitatis ad eam columnam ad quam multorum saepe conviciis perductus erat tum suffragiis populi pervenerat*. Since Lepidus had been demanding a second consulship, these words might describe the election of a capital triumvir late in 78, or better yet, the delayed election of a capital triumvir in early 77. But these words may equally well describe an election in any year from 85, when the consuls began to prepare for the return of Sulla, to 82 when Sulla himself conducted the elections. We must then classify Manlius „IIIvir Cap. 84–81 or 77“. It seems likely that 77 was so favored because the triumvir was identified with the tribune, and the lower date for the triumvirate allowed Manlius to enter upon the tribunate of 69 as a younger man. Once the amalgamation is recognized as improbable, there is no longer any reason to prefer the lower date for the triumvirate.

§§ 71–72, 97. M. Atilius Bulbus (34). A juror at the trial of Oppianicus, and hence a senator in 74. Since his condemnation for *maiestas* is mentioned in the speech against Verres (Cic. *Verr.* 1, 39), scholars have declared that he was „convicted ... before 70“⁶ or that the condemnation came „in den J. 73–70“⁷. But recently Alexander, when dating the trial „between 74? and 70“, maintained that „the trial possibly occurred before this date“⁸. Now it is impossible that the trial of Bulbus took place before December 74. The trial of C. Iunius took place in the first days of December 74 (§§ 89–90), and all the trials mentioned in §§ 89–104 took place after the trial of Oppianicus (§ 88: *quae facta postea iudicia de illo iudicio dicerentur*). Since the trial of Bulbus (§ 97) is discussed before the trial of Staienus (§§ 99–102), and since it can be demonstrated that the trial of Staienus dates to 73⁹, it might at first seem that the date of the trial of Bulbus can be narrowed down to the years 74–73. But while Cicero

bifurcation derives greater support from the fact that the passage of the *pro Cluentio* implies that for the Q. Manlius named there the „the Triumvirate was his peak“, and that „by 66 he had been out of view for a considerable period“. Since in 66 B. C. not all of Cicero’s auditors could be expected to have known the capital triumvir (§ 39: *Manlium plerique noratis*), he had probably been dead or in exile for some time, and should be distinguished from the plebeian tribune of 69. T. R. S. Broughton, MRR 3. 135, reported the bifurcation without comment.

⁴MRR 2. 92 and n. 7, 585; 3. 135.

⁵F. Münzer, *Manlius* 34, RE 14, 1928, 1161.

⁶Broughton, MRR 2. 488.

⁷E. Klebs, *Atilius* 34, RE 2, 1896, 2079.

⁸Alexander (n. 2) 80–81.

⁹That Staienus was convicted in 73, before the aedilician comitia for 72, emerges from a combination of *Clu.* 69 and *Brut.* 241; cf. *Six Birth-dates, Two Quaestorships, and One Trial* (forthcoming).

promises that the trials he is about to discuss are later than the trial of Oppianicus (§§ 88: *postea*), and while he pledges to treat these trials one by one (§ 89: *dum de his singulis disputo iudiciis*), he does not strictly promise to discuss these trials in chronological order¹⁰. The trial of Bulbus cannot be dated more precisely than to the period 74–70.

Beyond straightening out the confusion over the date of his trial, it seems possible to make an addition to the *cursus* of Bulbus. He now stands identified simply as „Senator in 74“¹¹. His treason consisted in subverting a legion in Illyricum, and was detailed in *litterae* of C. Cosconius, governor of that province ca. 78–ca. 76 B. C. He would have been in a better position to diminish the majesty of the Roman people if he was in the province in a public capacity rather than a private capacity, and better placed again if his public position was higher rather than lower. Beside his name it is permissible to add the notation: Q.? or Leg.? Illyricum in the period ca. 78–ca. 76¹². There can be no preference for a quaestorship. Of a man attested as senator in 64, it can be confidently said that he was quaestor by 65, but a similar inference cannot be made about a man attested as senator in 74: it is possible that such a senator was selected by Sulla for senatorial membership and had not yet got around to holding the quaestorship, especially if Sulla included among his appointees to the senate men too young to run for the quaestorship. It is time for scholars to credit Bulbus with service in Illyricum, even though that service did him the greatest discredit.

§§ 98, 131–132. P. Popillius (10). Another juror at the trial of Oppianicus, and so senator in 74. At some point in the years 74–66 he was convicted of *ambitus* (§ 98), and in 70 he was expelled from the senate (§§ 131–132). Men convicted of *ambitus* suffered a loss of rank or rights; the accusers of Popillius and Gutta had previously been convicted of *ambitus*, and Cicero could say that the accusers when successful were *in integrum restitutos* (§ 98). The problem is that Popillius seems to have lost his seat in the senate twice, once by action of the courts and once by action of the censors. Volkmann placed the conviction after the expulsion, so that the condemnation for *ambitus* came only when Popillius tried to recover his senatorial status by seeking office. Alexander followed suit by dating the trial „between 70 and 66“, and by suggesting that the charge was „misconduct in campaign for tribunate?“¹³. Perhaps a trial in the years 74–70 was excluded on the assumption that conviction would have brought loss of membership in the senate, so that expulsion by the censors of 70 proved that the trial did not take place in 74–70. But it was the *lex Calpurnia* of 67 which punished *ambitus* with expulsion from the senate (Schol. Bob. 78–79 St. cf. Dio 36, 38, 1); the Sullan law of 81 punished *ambitus* by prohibiting the guilty man

¹⁰E. g., between Bulbus and Staienus, both of whom were convicted for treason, Cicero lists the trials of P. Popillius and Ti. Gutta, both of whom were convicted for electoral bribery; we must wonder whether Cicero dispensed with chronology and grouped Popillius and Gutta together because they were convicted of the same offense.

¹¹MRR 2. 488, 534.

¹²A specifically elective military tribunate would not be out of the question.

¹³H. Volkmann, *Popillius* 10, RE 22, 1953, 53–54; Alexander (n. 2), 93–94.

from standing for office for ten years (Schol. Bob. 78 St)¹⁴. While Cicero records that Popillius was convicted of *ambitus*, he does not reveal whether this conviction came under the Sullan or the Calpurnian law¹⁵. In short, if convicted of *ambitus* in the period 74–70, Popillius would have retained his seat in the senate, and would have been susceptible to the *nota* of the censors of 70.

That the trial of Popillius took place in the period 70–66 seems certain, but not because his implied candidacy can then be explained as an attempt to recover the status of which he was deprived by the censors. In their *subscriptiones* neither censor of 70 adduced electoral bribery as a contributory factor. L. Gellius faulted Popillius for taking a bribe as a juror to condemn Oppianicus (§ 131); Cn. Lentulus on the other hand passed over Popillius since he was the son of a freedman (§ 132). Though their reasons were different, the censors of 70 agreed to expel Popillius from the senate, but neither proffered a conviction for *ambitus* in explanation of his *nota*, and this silence contributes toward proving that the trial took place later than the expulsion. Full and final proof that the expulsion antedated the trial is extant: *et eundem Popillum postea Lentulus in ambitus iudicio pro testimonio diligentissime laudat* (§ 132). Hodge translated *in ambitus iudicio* „at a trial for bribery“, and Boyancé translated „dans un procès pour brigue“¹⁶. The *ambitus* trial mentioned in § 132 is surely the same as that mentioned in § 98; Cn. Lentulus was a witness for the defense, and praised Popillius at his own trial, not at the trial of some unspecified man¹⁷.

To sum up: P. Popillius was convicted of *ambitus* in the period 70–66. It is not known whether he was convicted under the Cornelian or under the harsher Calpurnian law¹⁸. If he had tried to regain his seat in the senate, he might have stood in 69 for a magistracy of 68, and might have been successful: we do not know whether he was convicted as a candidate, as a magistrate-designate, or after laying down the office which gave him a year's worth of immunity. For that matter, the *ambitus* conviction is not proof of a candidacy in the period 70–66. Prosecutors who had been convicted of *ambitus* could probably be restored to their rights upon securing the conviction of a

¹⁴B. A. Marshall, *A Historical Commentary on Asconius*, Columbia 1985, 246 states that the Sullan law prevented the condemned man from standing for the same office for ten years. But the plural *magistratum* at Schol. Bob. 78 St suggests that the guilty were debarred from seeking any office over the next decade: *ut magistratum petitione per decem annos abstinerent*.

¹⁵A point recognized by Marshall (n. 14) 206.

¹⁶H. Grose Hodge, Loeb ed., Cambridge (Mass.) 1927; P. Boyancé, Budé ed., Paris 1953.

¹⁷Alexander (n. 2) 93–94 believed that the defendant was named either „P. Popillius“ or „C. Popillius“, and that in the latter case he might be identical with the plebeian tribune of 68 or the military tribune from the period 72–71. Alexander also noted that the manuscripts at § 131 give the praenomen „L.“, while those at § 98 give the praenomen „P.“. The mention of an *ambitus* trial proves that the Popillius in both passages is the same man. Inasmuch as no Lucius is known among the republican Popillii, „P.“ is preferable to „L.“; to change „P.“ in turn to „C.“ on the suspicion of dittography does not seem warranted, for the praenomen „Publius“ was in frequent use among the republican Popillii.

¹⁸Pace Alexander (n. 2) 93, who states that Popillius was prosecuted under the *lex Cornelia*.

non-senator for *ambitus*¹⁹, so the campaign for which Popillius was condemned could be prior to 70. In this connection it profits us to remember that Cn. Lentulus testified for Popillius even after expelling him from the senate. Such amity suggests that Popillius abided by the censorial expulsion and engaged in no campaigning after 70. The canvass for which he was convicted should antedate the expulsion. It is certain that Popillius was expelled from the senate in 70, and highly probable that he had conducted an electoral campaign before that time. With some confidence we can write beside the name of P. Popillius „Q. by 71“²⁰, an improvement upon the current label „Senator 70“²¹.

§§ 98, 127. Ti. Gutta (s. v. „Gutta“). A juror at the trial of Oppianicus (§§ 71, 75, 78, 103) and therefore a senator in 74. He was convicted of *ambitus* at some point in the period 74–66 (§ 98). Alexander maintained that he was convicted of *ambitus* „between 74 and 70“²². Now Cicero relates that Gutta was expelled from the senate in 70 on the ground that he had accepted a bribe to condemn Oppianicus (§ 127). Since Cicero argued consistently that Oppianicus was guilty and deserved to be convicted, we should expect him to have done everything possible to mitigate the *subscriptio* of the censors; if Gutta had been convicted of *ambitus* in the period 74–70, we would expect Cicero to throw a little dust and claim that the *ambitus* conviction had aroused unfair prejudice against Gutta. But Cicero said nothing about the conviction for *ambitus* when playing down the expulsion from the senate; this silence gives us some reason to believe that Gutta was convicted in the period 70–66. A further reason is found in the order of names in the chapter which mentions the *ambitus* conviction: *duo iudicia P. Popilli et Ti. Guttae, qui causam de ambitu dixerunt* (§ 98). As we have already determined that Popillius was convicted in the period 70–66, the order of names here strongly indicates that Gutta too was convicted in the period 70–66.

Since a man convicted of *ambitus* seems to have taken advantage of the expulsion of Popillius by prosecuting him for *ambitus* in a past campaign, the question arises whether Gutta was charged with engaging in *ambitus* before or after his expulsion. Just as modern scholars have credited Popillius with a campaign in the years 70–66 which he almost certainly did not conduct, they have failed to credit Gutta with a campaign in the years 70–66 which he quite certainly did conduct. Cicero states that those expelled by the censors of 70 for theft and those expelled for taking bribes as jurors were both returned to the senate and acquitted in the courts: *quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri sapientissimique homines, furti et captarum pecuniarum nomine notaverunt, ei non modo in senatum redierunt sed*

¹⁹If the restoration of rights had been limited to cases against senators, the effect would have been to immunize unsuccessful quaestorian candidates and expelled senators who were unsuccessful in campaigns for higher office, so that rogues were in a sense protected from the prosecutions brought against honest men.

²⁰All we know with reasonable certainty is that Popillius engaged in a campaign in or before 70, not that he engaged in a successful campaign. It is theoretically possible that Popillius was enrolled in the senate by Sulla, and that the only campaign he waged was an unsuccessful bid for the quaestorship, so that he never served as quaestor. But this is hairsplitting: in all likelihood he served as quaestor by 71.

²¹MRR 2. 605.

²²Alexander (n. 2) 80.

etiam illarum ipsarum rerum iudiciis absoluti sunt (§ 120)²³. We do not know the total number of senators expelled in 70 for judicial corruption²⁴, but the number might be sizeable; perhaps Cicero did not mean to say that all senators expelled for taking bribes were tried and acquitted, but that all the senators expelled for taking bribes who were later tried for taking bribes were acquitted. As it stands, the statement of Cicero permits us to attribute to Gutta a missing trial in the period 70–66 for taking bribes as a juror (*de pecuniis repetundis*), at which he was acquitted, and a missing magistracy to which he was elected in the years 69–66. While § 120 proves that Gutta was elected to an office and so not convicted of *ambitus* while a candidate, it might be thought that he was convicted as a magistrate-designate, but the strict interpretation of *in senatum redierunt* implies that Gutta fell to the *ambitus* charge as an ex-magistrate rather than as a magistrate-designate²⁵. It seems probable that Gutta was acquitted *de pecuniis repetundis* in 70/69, elected to a magistracy in 69, and condemned *de ambitu* in late 69 or in 67/66. Instead of the current label „Senators in 74“²⁶, we may write beside the name of Gutta: Q. by 71²⁷, Tr. Pl.? (Desig.?) 68.

A „Gutta“ was a candidate for a consulship of 52. Broughton distinguished the consular candidate from the juror, and Shackleton Bailey more explicitly declared that the consular candidate „can hardly be ... a corrupt juror who was expelled from the senate in 70“²⁸. But the rarity of the cognomen „Gutta“ argues for identification, and the notion that a cognomen was used as a nickname for Plautius Hypsaeus or Metellus Scipio²⁹ is not very convincing. The disappearance of Gutta from politics for a decade can be explained by the thesis that he was convicted by the middle of 67, and therefore under the Sullan law, and so was barred from canvassing for ten years rather than for life. If convicted in 69, he might have served as praetor in 58; if convicted in 68 or 67, he might have served as praetor in 56 or 55³⁰. One can therefore reconstruct a rather full cursus for Gutta: Q. by 71, Mag. (Desig.?) 68?, Pr. by 55, Cons. cand. for 52³¹.

²³Election to office after 70 is not implied for Popillius, since judicial corruption was imputed to him by one censor, not *duo censores*.

²⁴We do know that just two of the jurors at the trial of Oppianicus were expelled for taking bribes (§ 127).

²⁵If quaestors-designate and other magistrates-designate who were not senators were allowed to speak in the senate, the phrase *in senatum redierunt* would be compatible with conviction as a magistrate-designate.

²⁶MRR 2. 571.

²⁷The quaestorship is unattested; like the other jurors of 74, if he had been enrolled by Sulla and had not served as quaestor by 75, he probably did so by 71.

²⁸Broughton, MRR 3. 100; D. R. Shackleton Bailey, *Two Studies in Roman Nomenclature*, Atlanta 1991², 26.

²⁹Cf. MRR 3. 100.

³⁰All eight praetors of 57 are known. Gutta of course might have been designated praetor in one of the years 69–66, or might have served as praetor in 68 or 67. He could not have been praetor in 66 since he was either condemned for *ambitus* in the years 70–67, in which case he was not eligible to campaign for a praetorship of 66, or he was condemned in 66, in which case he was not in office in 66.

³¹If the two Guttas are identified, it is not necessary to query the fact of the praetorship, since the consular candidate must have been a *praetorius*.

§ 99. Safinius. Though he pretended to be reluctant to mention it, Cicero alluded to the receipt of money by Staienus *nomine iudicii Safiniani*. Gruen was not convinced that Safinius was a defendant: „The phrase *iudicium Safinianum*, like *iudicium Iunianum*, may suggest that Safinius was the presiding magistrate rather than the defendant“³². But the phrase is not so ambiguous if read in context: *quae ille cum accepisset nomine iudicii Safiniani, sicut in Oppianici iudicio postea, reticuit atque suppressit*. The close conjunction with *Oppianici iudicio* seems to prove that Safinius was a party to a suit rather than a magistrate. All misunderstanding is cleared up if we return to § 68. There we learn that the Safinius from whom the money was received was a ward (*pupillus*); apparently the young Safinius brought suit in connection with the fraudulent disposition of his father’s property, and he must have won his case since the purchasers of the property appear to have been forced to restore it³³. It follows that Safinius was neither a magistrate nor a defendant, but a very young plaintiff, a minor. The trial can be precisely dated to 76 B. C. (§ 58: *biennio ante*)³⁴.

§ 103. C. Fidiculanus Falcula (1). Suspected of corruption because he sat for a few days as a substitute juror and voted for the condemnation of Oppianicus. The first trial of Fidiculanus seems to have taken place in a *iudicium populi*, for he was tried „under much the same law and charge“ as Iunius (*eadem fere lege et crimine*). Alexander lists the outcome as „uncertain“, the date as „74, before Dec. 10“, and the prosecutor as L. Quinctius³⁵. The outcome is quite certain: Cicero says *est absolutus* and speaks of *hanc absolutionem* (the words *Fidiculanus absolutus est* in § 112 might refer to the second trial rather than the first). What of the prosecutor? It is true that L. Quinctius aroused *invidia* against Fidiculanus at *contiones* (§ 103), and it is true that Cicero refers generally to the trials of the Oppianican jurors as *Quinctiana ... iudicia* (§ 113). When excusing the conviction of Iunius, Cicero pointed to popular fervor (§ 108: *hominum studia*), and maintained that Quinctius could have secured the conviction of the innocent Fidiculanus if he had chosen to prosecute Fidiculanus rather than Iunius: *quod si, per quos dies Iunium accusavit* (sc. *Quinctius*), *Fidiculanum accusare voluisset, respondendi Fidiculanio potestas facta non esset* (§ 108). We could not ask for a clearer statement to the effect that Fidiculanus was not prosecuted by Quinctius. On the contrary, Fidiculanus was accused at a less turbulent period than Iunius (§ 103: *paulo sedatiore tempore est accusatus quam Iunius*). The first trial of Fidiculanus took place after 10 December 74, perhaps in 73, and the name of the plebeian tribune who prosecuted him has not been preserved.

§ 107. L. Cassius (64; cf. 12, 32, 63). This juror at the trial of Oppianicus is identified by Broughton and Alexander with the praetor of 66, L. Cassius Longinus³⁶. In this they followed the lead of Shackleton Bailey, who believed that the L. Cassius who was a juror in 70 (Cic. *Verr.* 1, 30) was also to be identified with the praetor of 66. It did not bother Shackleton Bailey that the juror of 70 was military tribune in 69,

³²E. S. Gruen, *The Last Generation of the Roman Republic*, Berkeley 1974, 530.

³³Cf. the note of Ramsay (n. 1) 182.

³⁴Gruen (n. 32) 530 had dated the trial „prior to 74“; the trial is missing from Alexander (n. 2).

³⁵Alexander (n. 2) 78.

³⁶Broughton, *MRR* 3. 50; Alexander (n. 2) 75.

since two other Verrine jurors held a military tribunate in 69; instead, Shackleton Bailey took the words *ex familia ... severissima* (Verr. 1, 30) as positive proof that the juror in 70 was a Longinus. Sumner objected to a military tribunate in 69 for a man who was praetor in 66, and so reintroduced the distinction between the juror of 70 and the praetor of 66: the former was a descendant of L. Cassius Longinus Ravilla, the latter belonged to the lesser branch of the Cassii Longini³⁷.

Sumner did not question the identification of the juror of 74 with the praetor of 66, an identification about which Münzer had been entirely confident³⁸. The first to separate the juror of 74 and the praetor of 66 was Shackleton Bailey; on his second attempt he accepted Sumner's argument that the juror of 70 was distinct from the praetor of 66, but went further by arguing that „the upright juror of the Verrines is surely the upright juror of *pro Cluentio*“. The amalgamation of the juror of 74 with the juror of 70 yields a fairly young man, since the junior of 70 was military tribune in 69. The relative youth of the juror of 74 did not trouble Shackleton Bailey, who maintained that *homines veteres* (Verr. 1, 30) meant „men of the old school“ rather than „old men“³⁹; indeed, the phrase cannot mean „old men“ since *tres hi homines veteres* were all military tribunes-designate. Shackleton Bailey has left us with two men: L. Cassius (Longinus), juror in 74 and again in 70, and military tribune in 69; L. Cassius Longinus, praetor in 66.

The L. Cassius who was a juror at the trial of Oppianicus was indeed an older man; in contrary to L. Cassius and other jurors, P. Saturius is described as *in his omnibus natu minimus, ingenio et diligentia et religione par eis* (§ 107). The Oppianican juror L. Cassius was remarkably older than his fellow senator P. Saturius; since L. Cassius was a member of a recognizably older generation in 74, the new solution which identifies him with a military tribune of 69 must be wrong, but equally wrong is the traditional solution which amalgamates him with the praetor of 66. The late seventies were blessed with three L. Cassii: 1) L. Cassius, senator and juror in 74, if not an old man, then a man older than young ones; 2) L. Cassius (Longinus), senator and juror in 70, military tribune in 69, and hence a rather young man; 3) L. Cassius Longinus, praetor in 66.

The one remaining question is whether the Oppianican juror is otherwise known. The L. Cassius Longinus (63) who was tribune of the plebs in 104 was probably at least sixty in 74, but the intervening thirty years reveal no other activity by him. The L. Cassius (12) who was tribune of the plebs in 89 was probably at least forty-five in 74; if P. Saturius was a *quaestorius* of recent vintage in 74, the difference between his age and that of the tribune of 89 might just have been great enough to justify Cicero's remark. It is true that the tribune of 89 incited a mob to kill the praetor Sempronius Asellio⁴⁰, but as the mob was one of creditors rather than debtors, there was nothing very shameful about it, and the incident should not have lowered the tribune of 89 in Cicero's estimation. Though we can never be certain that a man attested as *monetalis* later entered the senate, a final possibility for amalgamation is the *monetalis* L.

³⁷Shackleton Bailey (n. 28) 16, 90; G. V. Sumner, CPh 73, 1978, 160.

³⁸F. Münzer, *Cassius* 64, RE 3, 1899, 1738.

³⁹D. R. Shackleton Bailey, *Onomasticon to Cicero's Speeches*, Norman 1988, 31.

⁴⁰Cf. MRR 2. 34.

Cassi(us) Caeician(us) (32). When his moneyership was dated ca. 93–91⁴¹, it was possible that he was barely forty in 74; now that his moneyership is dated ca. 102⁴², he was probably at least fifty in 74. There are then three known L. Cassii with the whom the Oppianican juror might be identified, though the juror of 74 might well be someone else and otherwise unknown. For that matter, it is possible that the monetalis of ca. 102 and the plebeian tribune of 89 are the same man; though one would not deem the amalgamation likely, an amalgamation formerly improbable is now possible on account of the higher date for the moneyership.

§ 126 M. Plaetorius Cestianus (16) and C. Flaminius (4). In 66 these men presided over the court *de sicariis* (§ 147), and they had listened to Cicero defend a *scriba aedilicius* recently (*nuper*) when they were colleagues in the curule aedileship (§ 126). The date of the aedileship is a little vexing. Since they chose as clerk a certain D. Matrinius who had been left an *aerarius* by the censors, they might theoretically have been aediles as early as 70, or as late as 66, when Cicero delivered his speech for Cluentius. But of the five years 70–66, both 70 and 66 are extremely improbable: the year 66 is all but ruled out by the *cursus* of Caesar, which indicates that the presidents of the murder court were *aedilicii*, not incumbent aediles; the year 70 is all but excluded because clerks were chosen at the beginning of the magisterial term, so that Matrinius would not have been seeking appointment at a point in 70 still later than the *lectio*. The only likely years for the aedileship are the three years 69–67, and of these three years 67 is the likeliest, since the example of Caesar suggests that it was normal to serve as *iudex quaestionis* in the year after the aedileship. In consequence Broughton preferred 67 without insisting upon it, and gave to Plaetorius and Flaminius the label „Aed. Cur. 67?“⁴³.

Upon reflection it seems possible to remove the query against 67, to argue convincingly that the aedileship should be dated precisely to that year. Though presidency of the court *de sicariis* in 66 tends to prove that the aedileship is no later than 67, at first it would appear possible that the aedileship is earlier. The elogium of the plebeian aedile C. Octavius reads „*iudex quaestionum*“ (ILS 47); the plural might reflect service in different *quaestiones* in the same year, but in all likelihood the plural is due to service as *iudex quaestionis* in two successive years⁴⁴. It might be thought that consistency requires us to allow to Plaetorius and Flaminius what we have allowed to Octavius, so that service as *iudex quaestionis* in 66 is as compatible with an aedileship in 68 as with one in 67. But we should bear in mind that Plaetorius and Flaminius are attested as colleagues both in the presidency of the murder court and in the curule aedileship. That one of them was iterating service as *iudex quaestionis* in 66 could be believed, did we not know that they were colleagues in the aedileship. Since we do know that they were aedilician colleagues, we know that the one was serving a second term as a court president if the other was, and that both were iterating in

⁴¹MRR 2. 435, 543.

⁴²Cf. MRR 3. 51.

⁴³MRR 2. 143, 150 n. 3, 565, 601.

⁴⁴The unnoticed double service as *iudex quaestionis* permits us to classify C. Octavius „Aed. Pl. by 64“ rather than as „Aed. Pl. 64?“; cf. *The Quaestorship and Aedileship of C. Octavius*, RhM, forthcoming.

66 passes belief: then they served together as aediles in 68, and by coincidence became colleagues again at the murder court in 66, or they served as colleagues throughout the whole period 68–66, the first year in a magistracy, and the second and third years in a court. The fact that they are attested as colleagues both in the aedileship and in the presidency of a *quaestio* seems to me sufficient proof that their careers exhibited the pattern which appears to have been the normal one, tenure of the aedileship in the year preceding service as *iudex quaestionis*⁴⁵. With confidence we can label both Plaetorius and Flaminius „Aed. Cur. 67“.

The moneyership attributed to M. Plaetorius calls for a short note. The cognomen „Cestianus“ is attested on the obverse of the aedilician coinage⁴⁶, and the aedile has been identified with the monetalis „M. Plaetorius Cest.“⁴⁷. Crawford thought the coinage could belong to 68 rather than 69, but preferred 69 because of the identification with the aedile of 67; Broughton accepted a moneyership in 69, and the corollary that the unattested quaestorship of Plaetorius therefore precedes the moneyership. If Plaetorius came to the aedileship a little late and became a father a little early, the monetalis could be his son⁴⁸; his cursus does not provide a certain example of the quaestorship preceding the moneyership.

§ 126. M. Iunius (25) and Q. Publicius (13). Both now stand identified in Broughton as „Pr. 67?“⁴⁹. Since their praetorships are synchronized with the curule aedileship of Plaetorius and Flaminius, the query against the date of which we have removed, we may regard each as „Pr. 67“, Iunius as „Pr. (Urb.) 67“ and Publicius as „Pr. (Pereg.) 67“⁵⁰.

§ 127. M'. Aquilius (not in RE). Apart from Ti. Gutta, he was the only juror at the trial of Oppianicus expelled from the senate for taking a bribe. Like Ti. Gutta, he was tried and acquitted *de pecuniis repetundis* in the period 70–66⁵¹; like Ti. Gutta, he

⁴⁵The author regards the argument given in the text as sufficient for the removal of the query against the date of the aedileship, but another argument is at hand. For the curule aedileship of Galba 68 is far more likely than either 71 or 69; cf. *The Aedileship of P. Sulpicius Galba*, Eos: forthcoming. When that work was being written it was not noticed that the revision in the date of the aedileship of Galba helps secure the aedileship of Plaetorius and Flaminius to 67: surely we cannot believe that these two men served together as aediles in 69 and again as iudices quaestionis in 66, that neither had gone on to the praetorship and that neither had tired of presiding over the courts.

⁴⁶M. H. Crawford, RRC 1. 436–37, no. 409.

⁴⁷Crawford, RRC 1. 87, 414–18, no. 405; Broughton, MRR 3. 157.

⁴⁸That the moneyer was the son of the aedile would be assured if it should be determined that his coinage has been given too high a date; the possibility of redating the coinage of the moneyer is raised by the quaestorian coinage of P. Spinther, now dated four or five years too high, since he was quaestor in 70 or 69, not 74. Cf. *Ten Ill-Starred Aediles*, Klio 78 (1996), 68–86.

⁴⁹MRR 2. 576, 609.

⁵⁰The jurisdictions were suggested by F. Serrao, *La „Iurisdictio“ del pretore peregrino*, Milan 1954, 110–111; M. Iunius on one occasion had been deemed praetor urbanus in 67 by P. Groebe, *Geschichte Roms*, Leipzig 1908/10², 4. 58. Since no urban praetorship is fixed to either 68 or 67, the attempt to date Plaetorius and Flaminius through Iunius permits us to say no more than that all held office in 68 or 67; cf. W. Drumann–P. Groebe, *Geschichte Roms*, Leipzig 1919², 5. 357 n. 7.

⁵¹Missing from Alexander (n. 2).

was elected to some magistracy in the period 69–66. Instead of „Senator 74“⁵² beside his name we may write: Q. by 71, Mag. 68–66. Unlike Ti. Gutta, Aquilius was not convicted of *ambitus*, so he definitely entered upon the magistracy to which he was elected. The magistracy by which he returned to the senate is not known, but one thing is certain: he was not curule aedile in 67.

§ 182. T. Annius (21) and L. Rutilius (16)⁵³. In 72 (§§ 178–179, 182) Sasia held an inquiry (*quaestio*) into the death of Oppianicus, to which she summoned T. Annius, L. Rutilius, and P. Saturius (§ 182). Broughton had judged both Annius and Rutilius senators⁵⁴, but conceded that their senatorial status was not certain after Shackleton Bailey stressed that „they participated in the investigations into Oppianicus’ death in 72 not as senators but as family friends“⁵⁵. Since P. Saturius was a young senator in 74, as noted in the discussion of the identity of L. Cassius, it is quite possible that P. Saturius was named last of the three *amici* on account of his lesser rank or lower age⁵⁶. The senatorial status of Annius and Rutilius is then not certain, but likely nevertheless.

The *pro Cluentio* has been described as an „evocation“ of „this Italy of local notables, of family alliances and family feuds, of business and passion“⁵⁷. The *pro Cluentio* is also a great repository of information on Roman politicians, though not greatly used.

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⁵²MRR 2. 532.

⁵³The „L. Rutilius“ of § 182 has been identified with the „L. Rutili(us) Flac(cus)“ who was monetalis ca. 77; cf. F. Münzer, *Rutilius* 16, RE 1A, 1914, 1255, and Broughton, MRR 3. 183.

⁵⁴MRR 2. 487, 496.

⁵⁵Shackleton Bailey (n. 28) 7; Broughton, MRR 3. 16.

⁵⁶Münzer, *Saturius* 1, RE 2A, 1921, 200, thought that his nomen perhaps should read „Satureius“, and that he might be the son of the P. Satureius who was tribune of the plebs in 133 B. C.; Saturius was probably closer in age to the grandchildren of the tribune of 133.

⁵⁷J. Linderski, *The Death of Pontia*, RhM 133 (1990) 93.