CICERO'S ANALYSIS OF THE PROSECUTION SPEECHES IN THE *PRO CAELIO:* AN EXERCISE IN PRACTICAL CRITICISM

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ABOUT ONE-THIRD of the way through his defense of M. Caelius (25–27a), Cicero interrupts his counter-arguments to the charges against his client and embarks upon a remarkable analysis and characterization of the speeches of two of the prosecutors.[1] The passage has attracted a great deal of attention because it comes at a point where the orderly progression of the oration seems to break down and fall back on itself. The starts, stops, and shifts that make up Cicero's defense have offended some scholars and encouraged the radical solution, proposed by E. Norden, that the text that has come down to us is a composite.[2] A decade or so later R. Heinze, rejecting Norden's theory of doublets, laid the foundation for a more practical approach to the analysis of Ciceronian orations, less dependent on perceived structures of theoretical rhetoric.[3] Yet, ironically, he also was unable, for different reasons, to integrate Cicero's critique of his opponents into a single text;[4] his stumbling block was this same passage. Other scholars have hoped that a better understanding of the trial of Caelius and Cicero's speech might emerge if they could reconstruct from Cicero's remarks something of the content and intention of the speeches of Caelius' accusers. They expected that such knowledge might enable them to make better sense of the apparently skewed organization and uneven emphases of Cicero's extant speech. A certain circularity in their reasoning should have inhibited this engagement; but certainly there were strong temptations.

In evaluating the speeches of L. Herennius and P. Clodius, Cicero claims to have been entirely unconcerned with the effect of the latter's speech, but suggests that the strong effect of the former's on the judges

1. The prosecutors were three in number: L. Sempronius Atratinus and the *subscriptores,* L. Herennius Balbus and P. Clodius. See R. G. Austin, ed., *M. Tulli Ciceronis "Pro M. Caelio" Oratio*[3] (Oxford, 1960), pp. 154–57. Caelius spoke in his own defense, supported by Crassus and Cicero in his favored last position.

2. "Aus Ciceros Werkstatt," *Sitz. preuss. Akad.,* phil.-hist. Kl. (1913): 2–32, esp. pp. 12 ff., "Zur Komposition der Caeliana." He assumed "Doubletten" representing revisions occasioned by the surprisingly effective and damaging speech of Herennius which is discussed in this paper. See n. 36, below.

3. "Ciceros Rede *Pro Caelio,*" *Hermes* 60 (1925): 193–258. R. Reitzenstein, "Zu Ciceros Rede für Caelius," *NAWG* (1925): 25–32, independently and sensibly rejected Norden's thesis.

4. Heinze, "*Pro Caelio,*" pp. 236–45, was driven to a theory of post-trial insertions for publication to account for sections 39–50. See W. Stroh, *Taxis und Taktik* (Stuttgart, 1975), pp. 262–74, for a convincing explanation of the problem in terms of the strategy employed by Cicero.

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has forced him to an unexpected and immediate response. I shall argue that in accepting Cicero's judgment of these speeches at face value and believing, because he says so, that he was forced to respond to that of Herennius, scholars have confused a contrived strategy with statements of fact. Cicero should be credited not merely with arguing his case, but, in important ways, with *creating* it. The critique of his opponents' speeches is a ploy used by Cicero in following the defense strategy he had from the outset devised for his client.[5] The question the critic must ask is how this passage furthers the defense.

The premise underlying this argument is that, while an oration represents Cicero's uncompromisingly serious and disciplined attempt to assure his client's success, the contents of that oration can be relied on for very little independent of that special purpose.[6] Information adduced and presented by the advocate, whether concerning the facts of the case, the characters and attitudes of the principals in the trial (including their lawyers, not least of all Cicero himself), the charges and laws involved, or the conduct of the trial, represents the highly controlled and manipulated result of a very practical application of *inventio*. The critic of Cicero's art can no more reject this information in its entirety than accept it at face value, but must judge it by the sole criterion of its rhetorical function and consider what effect Cicero could hope to achieve by using the statement or argument as he does in its particular context.

It is a truism for trial lawyers, universally ignored by Ciceronian scholars,[7] that the defense advocate will argue where and what he thinks will be most effective and will treat the opposition arguments in the manner that he thinks he can best control and manipulate. Logical and legal arguments, even when favorable, can get complicated, facts and figures, confusing; and his listeners are neither logicians nor computers. On the other hand, they can be appealed to in a variety of persuasive ways limited only by the imagination and experience of the advocate: ways that are barely treated by the abstract reconstructions of theoretical rhetoric.[8] In his judicial speeches the only thing Cicero needs to create in his listeners is a disposition to acquit. Whether they should so vote because the charges against his client are dismissed as irrelevant, disproved as false, or despised as a cover for the character assassination of his client is a secondary matter.

5. In the exordium to the *Pro Ligario* Cicero also claims to have had his defense upset by the prosecutor's charge; but there the irony is heavy enough that no one could believe him.

6. This premise informs other work on Cicero by the present author, including the forthcoming papers "Cicero and the Single Judge" and "Oratory as Theater." I am grateful to the National Endowment for the Humanities for the award of a grant to pursue my work. I would also like to thank the Research Board of the University of Illinois for the semi-permanent loan of a word processor.

7. In one or two places I take issue with criteria of interpretation applied, unconsciously, I think, by other scholars. While this engagement may suggest gratuitous polemics, it has, I believe, a relevance. In one's own criticism and in evaluating the criticism of others, it is precisely the criteria for judgment that must be observed and tested. The slips of a Norden or a Heinze may be more instructive than the surefootedness of lesser Latinists; I hope that they may be addressed without impiety.

8. I refer to Cicero's own rhetorical works as well as Aristotle's, Quintilian's, and the lesser textbooks of antiquity. Anecdotes in the *De Oratore, Brutus,* and the *Suasoriae* of Seneca the Elder tell much more about the practice of rhetoric.

As a corollary to the assumptions made above, I also maintain that nothing in a speech by Cicero is wasted on egotistic self-indulgence or obviously gratuitous stroking of the audience. Neither strategy would be likely to lead to forensic victory; and victory was what Cicero's profession was all about. Cicero is, himself, very clear on this subject.[9] If in the *Pro Caelio* Cicero treats his audience to clever and wicked humor and, at times, broad and scabrous farce, this is less likely to be a fillip for his listeners than part of a carefully conceived and executed defense.[10]

The *Pro Caelio* is an especially appropriate speech on which to test both the premise and the corollary. In spite of the organizational difficulties that have exercised the scholars mentioned above, it has a directness of appeal and appears freer than most orations from the conceived need to know more history, more law, or more prosopography. The main characters—the repellent P. Clodius Pulcher, his nymphomaniacal sister Clodia, and M. Caelius, a rakish but politically promising boulevardier—are known to modern readers from Cicero and other sources. The legal issues appear to have had scant influence on the outcome. The whole trial appears to be imbued with the lighthearted spirit of the Megalensian games, which were simultaneously offering comedy and other entertainments to the populace of Rome. Cicero himself is at his relaxed, good-natured, confident best. Earthy and scabrous, sophisticated and magisterial, he keeps the discourse almost exclusively at a level of devastatingly light irony.[11] But the very insistence on urbanity may be argued to have a special relevance in this defense of a client against angry and self-righteous denunciations of his character.[12]

Even as we enjoy the wit and wickedness of Cicero's performance, therefore, we cannot ignore or underplay the very particular function wit and wickedness serve in this particular piece of literature. Our amused response to the trial of Caelius described above is a result of Cicero's masterfully executed strategy, a reflection of the response he elicited from his original audience.

When we read the *Pro Caelio*, we are aware more of a defense of Caelius' character than of an argument against the specific charges, which are for the most part beyond recovery on the basis of Cicero's extant speech and are a subject for scholarly discussion involving the limits of the applicable law and the influence of political considerations.[13] The *communis opinio,* sensible but not necessarily true, is that Caelius was probably implicated in at least some of the charges and that Cicero

9. See H. C. Gotoff, *Cicero's Elegant Style* (Urbana, 1979), pp. 47–49.

10. See n. 20, below.

11. Irony, a statement made at more than one level of understanding, should be distinguished from sarcasm.

12. The theme begins with the distinction between *petulantius/convicium* and *facetius/urbanitas* (6), underlies the criticism of Herennius (25–26), and dominates the concern with *personae* in the next fifteen sections. Cicero's choice of diction reflects the role he adopts; see below on his use of the middle style.

13. See Austin, "*Pro M. Caelio,*" pp. 152–54, and Stroh, *Taxis und Taktik,* pp. 244–49. It is supposed that Crassus dealt with the substantive charges, but that would not have bound Cicero to ignore them; nor does he entirely.

for that reason preferred a general moral defense. Can we profitably assume from the speech that the prosecutors attacked Caelius personally at the expense of their own solid arguments on criminal charges, thus giving Cicero his opening?

Not at all. Cicero could easily create his own opening; that is a part of *inventio.* There is an old vaudeville skit in which a man is found searching on his hands and knees under a lamppost. He tells a passerby who offers assistance that he is searching for a coin he has dropped. "Where did you drop it?" the passerby asks. "Over there," says the man, pointing to a dark corner of the stage. "Then why are you looking here?" "Because the light is better." Cicero, and any other lawyer, looks for his defense strategies where the light of persuasive strategy is best. It is safe, therefore, to say about the *Pro Caelio* that, whatever the charges and whatever the facts and assertions concerning those charges, Cicero judged he could serve his client best by convincing the jury that Caelius was the victim of a character assassination stemming from a personal vendetta and by laughing his opponents' case out of court, rather than by disproving conclusively specific allegations.[14] Whether Clodia really was the *fons et origo* of Caelius' legal problems, or whether Cicero was appealing to some common, if very imprecise, belief about the lady, we shall never know. There is a critically vital sense in which Cicero's Clodia is as much an invention as Catullus' Lesbia.[15] If we may judge by the results, the sole measure of oratorical success, Cicero's strategy was efficacious.

The coincidence that the trial was conducted during the Megalensian games gave Cicero the handle to his strategy. If the theme were going to be character, Roman theater provided characters enough for all the principals.[16] It was, therefore, precisely to this special set of circumstances that Cicero directed his listeners' attention at the outset of his highly elaborate and particularly artificial *exordium.* As he solicitously offers the jury his condolences that they must work on a festive day, he also creates the relationship between his case and comic theater which he exploits in the passage under discussion, and elsewhere.

Certainly, much of the trial was marked by good humor and sharp wit and dramatic allusion. Cicero was not the only advocate in this case to use *facetiae,* often derived, urbanely, from the theater. Atratinus had labeled Caelius a *pulchellus Iason*[17] and been called in return *Pelia*

14. Cicero's *divisio* of the prosecution's case between *maledicere* and *accusare* comes at section 6. The textbook clarity of the distinction is an invitation to the audience to consider the accusation unproven and the moral charges irrelevant.

15. At the 1984 meeting of The Classical Association of the Midwest and South held in Williamsburg, Virginia, M. Skinner argued that virtually all we know about the character of Clodia comes from a disappointed, if highly articulate, lover and an aggressive lawyer, while other evidence does not support so scandalous a reputation. It is difficult to believe that Cicero would risk creating *ex nihilo* such a salacious persona for a prominent Roman lady: the *pyxis Caeliana* (*Cael.* 69 and Quint. *Inst.* 6. 3. 25) argues for public knowledge of some story embarrassing to Clodia. On the other hand, Skinner's intelligent and independent point of view is a reminder that scholars are all too apt to believe what they read.

16. See K. Geffcken, *Comedy in the "Pro Caelio"* (Leyden, 1973), esp. pp. 10–11.

17. So Fortunatianus in Halm, *Rhet. Lat. Min.,* p. 124.

cincinnatus.[18] Besides Cicero's jibe at Clodia, *Palatina Medea* (8. 18), she had been dubbed *quadrantaria Clytemnestra* by Caelius.[19] Even Crassus had trotted out the opening of Ennius' *Medea Exsul,* perhaps for comic effect, before Cicero took it up satirically at 8. 18.[20] Such a general ambience allows perhaps for certain liberties. When Cicero says (59) that a lady whose own husband died unexpectedly should be circumspect in bringing up the subject of poisoning, T. Frank assumed that he was alluding to a well-established rumor.[21] Frank did not entertain the notion that Cicero may have been initiating the rumor. Yet this kind of innuendo, even if created out of whole cloth, would be easier to suggest in an atmosphere of sophisticated defamation with few inhibitions on clever slurs. Cicero may well have invented it on the spot. And if in this ambience one prosecutor, L. Herennius, chose to take a stern, humorless line, excoriating Caelius' way of life and berating him with the indiscretions of youth, so much the harder for him to win sympathy. But it is not even necessary to believe, merely on Cicero's word, that Herennius' performance was all that solemn and austere. It is much to Cicero's, and Caelius', advantage for the speech to be perceived as such. Creating perceptions is a prime aim of an orator.[22]

Although other principals employed humor related to comedy, it is not at all certain that all of them made this theme central to their arguments as Cicero did.[23] It is in the critique of his opponents' speeches that Cicero overtly directs his listeners to look at this trial as theater, as comedy. Cicero attaches to Herennius the role of *pertristis patruus,* as a foil to his own as indulgent father; he also casts that prosecutor as *petulans,* in contrast to his own display of *urbanitas.* If this characterization is substantially accurate, Cicero's task is easier. Strategically, it is in any case merely an alternative to chastising Herennius with condescension or indignation for being simpleminded, heavy, or even hypocritical in content and deficient in urbanity and wit, an alternative that Cicero hopes will be more useful. The most important *inventio* in oratory is the strategy of creating convincing characterizations both for the orator himself and for those who may be called his *dramatis personae,* not excluding his own client. The fact should not be overlooked that, although not necessarily in the manner Cicero would have us believe, the

18. Quint. *Inst.* 1. 5. 61. For a plausible reconstruction of the exchange, see Austin, "*Pro M. Caelio,*" p. 69.

19. Quint. *Inst.* 8. 6. 53.

20. For a full discussion of the comic use of tragic reference, see Geffcken, *Comedy,* pp. 15–17. She, however, like C. J. Classen, "Ciceros Rede für Caelius," in *ANRW* 1.3 (Berlin, 1973), pp. 60–94, esp. p. 66, assumes that the humor of the trial had substantially to do with the fact that Cicero was the last of six speakers before a by now restless audience.

21. Cited and accepted by Austin, "*Pro M. Caelio,*" p. 119.

22. We read in Sen. *Controv.* 7. 4. 6–7 that a defendant once rose in the midst of an impassioned denunciation by Licinius Calvus and asked indignantly whether he had to be judged guilty because the prosecutor was eloquent. The answer was all too likely to be "yes." Conversely, Caelius may well have been acquitted for the same reason.

23. And *he* is not indiscriminate. All the quotations from comedy are to be found in one place, 37–38, where they contribute to a particular and highly effective strategy. See p. 128, below. The two evocations of dramatic figures occur in 33–37.

prosecutors had been devoting their efforts toward creating an especially unattractive persona for M. Caelius.

Cicero begins the critique ingenuously with a compliment and a conciliatory reference to his opponent, two immediate grounds for suspicion: "animadverti enim, iudices, audiri a vobis meum familiarem, L. Herennium, perattente" (25). Time and ingenuity have already been devoted to the attempt to recover Herennius' speech from Cicero's remarks.[24] It should not be impossible to make certain assumptions from what Cicero says, but to take his words literally would be as prudent as following Br'er Rabbit into the brier patch. From the moment he takes his listeners into his confidence, withdrawing from the dramatic situation of the case at law and talking about the business of pleading a case and impressing judges;[25] from the moment he refers to his adversary disarmingly as *meus familiaris;*[26] from the moment he settles into the reasonable, expository mode with *enim,* we may suspect that Cicero has set in motion a subtle and ingratiating strategy, and that his characterizations of the speeches both of Herennius and Clodius will be colored and distorted to the limit to which Cicero thinks he can carry conviction.

It is altogether conceivable that Herennius, not otherwise known to us as an effective orator, did a creditable job.[27] It is equally possible that his speech, either in its content or in its manner of delivery, offered Cicero a welcome foil, a speech that Cicero was all too happy to distort and remold as part of an oblique attack (25):

> in quo etsi magna ex parte ingenio eius et dicendi genere quodam tenebamini, tamen nonnumquam verebar ne illa subtiliter ad criminandum inducta oratio ad animos vestros sensim et leniter accederet.

Cicero is here making a major oratorical point, although it is not for that reason necessarily sincere or even accurate to the facts. He insists not only on distinguishing style from content, but on setting the two in absolute antithesis. That is the only possible interpretation of *etsi . . . tamen:* "I would not mind your being gripped by his style, if I weren't afraid that its content was also impressing you"—a good strategy for trying to persuade the judges of what their response to the speech "really" was.[28]

24. H. Drexler, "Zu Ciceros Rede *Pro Caelio,*" *NAWG* (1944): 21, gave it a Latin tag, *declamatio de moribus;* Reitzenstein, "Rede für Caelius," p. 32, understood Herennius' speech to be divided between an attack on the vices of youth and a general denunciation of moral turpitude. Austin, "*Pro M. Caelio,*" p. 78, reflects his own change of thinking, but is still convinced that the speech was effective.

25. Cicero does this often in the speeches and for a variety of motives. I have dealt with instances in the *Pro Ligario* in a separate work, but individual instances are best considered in their particular circumstances; see C. J. Classen, "Cicero *Pro Cluentio* 1–11 im Licht der rhetorischen Theorie und Praxis," *RhM* 108 (1965): 104–43, on the perfectly disarming and utterly deceptive exordium to that speech.

26. Austin, "*Pro M. Caelio,*" p. 78, claims that the epithet reflects the personal relationship between Cicero and Herennius, as if it mattered here. It is no less ironical than his calling P. Clodius, the third prosecutor, *amicus meus* at 27, though it may be less sarcastic. The most elaborate dig at a "learned friend" is directed at Cicero's *necessarius* Atratinus (1. 2), in a lush tricolon which climaxes with "si speravit aliquid, pueritiae."

27. Virtually no one seems to doubt Cicero's tribute to its effectiveness; see, e.g., Classen, "Rede für Caelius," pp. 75, 76, and n. 67. But see, too, n. 52, below.

28. At *Cael.* 27 he even states a principle, not consistent with anything in his rhetorical works, that audiences listen with greater care to reasoned arguments than to savage denunciations: see below.

In section 6 Cicero had distinguished two kinds of oratorical defamation, one vicious or savage, *petulantius,* the other amusing and witty, *facetius.* Herennius' speech, according to Cicero, was harsh and censorious, not urbane, but rather in the manner of a *pertristis patruus, censor, magister.* These three roles are mentioned, not for the sake of the tricolon, but to make clear the point that, as far as Cicero is concerned, Herennius was adopting a dramatic persona. In other words, Cicero invites his listeners to perceive Herennius as having been acting, if perhaps overdoing it;[29] the real man, *in reliqua vita,* is gentle and pleasantly distinguished by a much-admired kindness and humanity. Is this true of Herennius? We do not know; under one set of circumstances, it might be highly effective derision of an all-too-dour person. Cicero only wants to impress on his audience that the high moral tone Herennius takes with Caelius is merely a pose. He lets the audience in on a trade secret, very apt under the circumstances: oratory is the adoption of dramatic masks suitable to the particular situation.[30]

This theme dominates until section 39, where Cicero claims to rip off the mask and speak in his own voice. It would, of course, do him no good if the judges begin to wonder whether this frankness, too, is a dramatic pose, which, of course, it is. In this section, to gain verisimilitude, he holds an imaginary conversation (*sermocinatio*) with a hostile interlocutor (*dicet aliquis*), creating a platform for his explicit statement of his own humane understanding. As a response to a charge, Cicero's voice conveys the impression of perfect sincerity. In fact, by the very use of this conversational figure he has just created a new dramatic voice and persona.[31]

The reader of sections 25–27a will be aware of something beyond Cicero's typecasting of Herennius, and of himself and Caelius. The performance is also described in stylistic terms. Cicero had earlier characterized part of his colleague Crassus' oration as *graviter et ornate . . . peroratam* (23). The style adopted by Herennius sounds, according to Cicero's description, very much like the *genus humile,* sensible and undramatic, subtly seductive, gentle and understated.[32] Such a style, if properly employed, can have great persuasive power when the speaker is proving a point in a strictly rational fashion, setting out and explaining facts dispassionately. According to rhetorical theory, however, it is not the approach to use if the effect is to move men's souls, to arouse their passions. Yet Cicero's descriptive language, the smoothly rounded phrase *illa subtiliter ad criminandum inducta oratio* and the doublet *sensim et*

29. Cicero's comment, "obiurgavit M. Caelium, sicut neminem umquam parens," is a qualification referring specifically to the theater, although the censorious uncle was legendary: see Classen, "Rede für Caelius," p. 75, n. 68.

30. For the passage, see Geffcken, *Comedy*, pp. 44–45.

31. The observation of Heinze, "*Pro Caelio,*" pp. 229–30, that Cicero, after his return from exile, mellowed and became more tolerant of human foibles, may be biographically accurate. But it misses the point of Cicero's rhetorical strategy here; Cicero's humane persona is an attractive alternative to Herennius' censoriousness.

32. So Austin, "*Pro M. Caelio,*" p. 75, n. 4.

leniter in an explicitly articulated bipartite period *etsi . . . tamen,* suggests to me that he may be speaking ironically. His is certainly the language of the middle style. And, lest any variety of style be omitted, Cicero will soon say that he shrank from Herennius' solemnly disapproving and harsh style of speaking.[33]

The confusion the modern reader is likely to find in sensing the tone of Herennius' speech may arise from the imprecision of rhetorical terms or from too great a reliance on ancient theories of style; but it may also be precisely what Cicero intended.[34] We are told that the style was austere, but also passionate.[35] Whether it was either austere or passionate, or either one effectively, or both, is a different matter.[36] We get at the end of section 25 more the impression of a fire-and-brimstone sermon than a dispassionate disquisition, though the distinction Cicero makes at section 27 between *disputatio* and *atrocitas* does not conform to it.

In any case, at least for the moment Cicero acknowledges, indeed insists, that Herennius' oratory has moved the judges: *ignoscebam vobis attente audientibus.* This, he admits, he can well understand, for he himself shivered at the heavy and harsh tone of Herennius' speech: "propterea quod ego memet tam triste illud, tam asperum genus orationis horrebam." What better way to deflect the rhetorical power of an opponent's speech than to admit being nearly convinced of it yourself?[37] At the same time, Cicero might use the same words to describe, tongue-in-cheek, a far different performance—a dull, sanctimonious attack on youthful morality, filled with an orator's indignation and his listeners' yawns. The words might be suggesting a rhetorical power the original never had, or at least attempting to convince the audience that they, like Cicero, had not really been impressed by the effort.[38]

My own belief is that Herennius' speech consisted of or *could be characterized as* mainly self-righteous moralizing and was far from having the devastating effect on the defense Cicero says it did.[39] But it gave Cicero easy access to parallels from comedy, useful to his own strategy of treating the trial of Caelius as a theatrical performance. Cicero gives the impression that Herennius' harangue was composed both of a general

33. Heinze's remark, "*Pro Caelio,*" p. 225, n. 2, "Bei *tam triste, tam asperum genus orationis horrebam* darf man sich naturlich nicht durch Stellen wie or. 20: *aspera tristi horrida oratione* verleiten lassen, an Stilistiches zu denken: lediglich der Inhalt kommt hier in Frage," is possible, but by no means incontestable.

34. Reitzenstein, "Rede für Caelius," p. 32, observed the inconsistency in passing.

35. There is a place for this combination, not in the theory of *tria genera dicendi,* but in a four-part analysis; see Gotoff, *Cicero's Elegant Style,* p. 32, n. 39, and pp. 42–43.

36. I find no commentator who questions the face value of Cicero's words. See Reitzenstein, "Rede für Caelius," p. 28; Austin, "*Pro M. Caelio,*" ad loc.; and on Norden, see n. 2, above.

37. This ploy is at least as old as the fifth century; Socrates had used it at *Ap.* 17A1, also distinguishing between content and style. For another rhetorical strategy from the same source, see Classen, "Rede für Caelius," p. 66, n. 25.

38. When Austin, "*Pro M. Caelio,*" p. 80, says *horrebam* is "probably" ironic, he seems to suggest the latter alternative. But, in that case, why should he think Herennius "combined personalities with generalities in a very telling way" (p. 78)?

39. Norden, "Ciceros Werkstatt," p. 20, maintained that it forced Cicero to alter his entire defense strategy.

condemnation of various categories of sin and a detailed exposé of Caelius' enormities.[40] As long as the denunciation of Caelius is perceived as being the stereotyped condemnation of youthful excesses by a comic type of an old man, it can be countered, as Cicero in fact later counters it, by a more worldly tolerance and understanding.

Further, having made this apparently gracious, but almost certainly ironic, nod to his opponent's competence, Cicero takes advantage of his own sympathetic hearing to dismiss a couple of points with little or no argument (26):

> ac prima pars fuit illa *quae me minus movebat,* fuisse meo necessario Bestiae Caelium familiarem, cenasse apud eum, ventitasse domum, studuisse praeturae. *non me haec movent* quae perspicue falsa sunt; etenim eos una cenasse dixit qui aut absunt aut quibus necesse est idem dicere. *neque vero illud me commovet* quod sibi in Lupercis sodalem esse Caelium dixit.

Having made his concession, Cicero can now invite the judges to analyze certain points in Herennius' speech in precisely the same way as he himself has, leading them through with an anaphoric litany in tricolon. What Cicero has apparently chosen to single out as less effective criticisms are obscure but particular references to acts of ingratitude on his client's part.[41] One wonders how telling against a man accused of *vis* would be the criticism that, in prosecuting Bestia, Caelius was attacking a man with whom he had previously been on terms of intimacy. It would certainly not be the first example of a shift in alliance in Roman society or Roman trials. Cicero, who claims for the present a close social relationship with Bestia, does not scruple to call the charge a patent lie, *perspicue falsa,* and dismiss it with summary contempt.[42] He continues (26):

> fera quaedam sodalitas et plane pastorica atque agrestis germanorum Lupercorum, quorum coitio illa silvestris ante est instituta quam humanitas atque leges, si quidem non modo nomina deferunt inter se sodales sed etiam commemorant sodalitatem in accusando, ut ne quis id forte nesciat timere videantur.

The second specific charge that Cicero selects is not clear from the text.[43] Is this Herennius' personal complaint of a betrayal of a fraternal relationship by Caelius? Perhaps Cicero's diction indicates the mode of response. The dismissal takes the form of a sweeping and scathing,

40. Cicero goes out of his way to emphasize the categorical character of Herennius' strictures in a litany of four anaphoric prepositional phrases, "multa de luxurie, multa de libidine, multa de vitiis iuventutis, multa de moribus," which is picked up after a few lines by "multa de incontinentia intemperantiaque disseruit."

41. We may assume that the obscurity is deliberate.

42. "Etenim eos una cenasse dixit qui aut absunt aut quibus necesse est idem dicere": a clever and certainly unkind *divisio,* marked by the exclusive *aut . . . aut:* all valid witnesses are absent, all witnesses who are present are not credible.

43. Heinze, "*Pro Caelio,*" pp. 225–26, provides the best understanding of these allusions, which he rightly calls trifles; so, too, J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris, 1927), p. 161. The reason for the inclusion of these obscure references can only be conjectured. One might assume that if Cicero thought these charges dangerous, he would have either skirted them or refuted them more cogently.

smoothly articulated attack on the Luperci in general. Four adjectives allude to its rusticity: *fera, pastorica, agrestis, silvestris,* as opposed to civilized and humane, society. And Cicero's language is at its most urbane: a single progressive period with graceful doublets, elevated diction, and a favored clausula calling attention to the self-defeating dissension of the society and the absurdity of Herennius' demand for fraternal feelings that are strong because obligatory.

Whether Cicero has alluded to all or the most important specific charges raised by Herennius we shall never know. He is moving on to where the light is better (27):

> sed haec omitto; ad illa quae me magis moverunt respondebo.
> deliciarum obiurgatio fuit longa, et †ea† lenior, plusque disputationis habuit quam atrocitatis, quo etiam audita est attentius.[44]

Cicero will go on in sections 27b–30 to respond to Herennius' general condemnation of sin, which, he claims, concerns him, as opposed to specific charges in the prosecutor's speech. First, however, he closes his initial critique of Herennius' speech as he began it, by distinguishing form from content and insisting on reminding his listeners of how impressed they had been by a rather dry, undramatic, academic declamation against sin.[45]

Compared especially with the one-sentence dismissal of the speech of P. Clodius, Cicero's summary of Herennius' oration seems discursive and repetitive. The impression he appears to want to leave with the judges is not just that they were more impressed with the style of Herennius' speech than with its content, but that Herennius' speech was potentially more damaging to the defense than that of Clodius. If we suspect that it was not the style but the content of Herennius' speech that had left its mark on the judges, may we not wonder whether the brevity with which Cicero deals with Clodius' speech represents an even larger diversion?

All commentators have noticed that Cicero treats P. Clodius, the third prosecutor,[46] with condescension or contempt; none seems to doubt that he deserved it (27):[47]

> nam P. Clodius, amicus meus, cum se gravissime vehementissimeque iactaret et omnia inflammatus ageret tristissimis verbis, voce maxima, tametsi probabam eius eloquentiam, tamen non pertimescebam.

Here is another critique of an oratorical performance in careful, insinuating language. Cicero uses a middle style to describe what was at least

44. The reading of the MSS, *et ea,* rejected already by Norden, is conclusively disqualified by Stroh, *Taxis und Taktik,* p. 264, n. 82. That is not sufficient reason, however, for accepting his proposed emendation, *eadem.*

45. On *disputatio,* a dialectical performance as opposed to oratory, see Cic. *Orat.* 117, a distinction made by Quint. *Inst.* 4. 14. 28.

46. This is not P. Clodius Pulcher, as F. Münzer, "Aus dem Leben des M. Caelius Rufus," *Hermes* 44 (1909): 140, pointed out; see, too, Classen, "Rede für Caelius," p. 63, n. 11a.

47. So Reitzenstein, "Rede für Caelius," p. 29, n. 1.

an attempt at impassioned prose. Note the doublets and superlatives, the chiasmus in asyndeton, and the full periodicity explicitly marked by *tametsi . . . tamen.* The same level of diction was employed above in dismissing the *sodalitas Lupercorum.* In treating Clodius, Cicero aims at charming his audience, encouraging them to share with him an urbane, dispassionate assessment of the passionate oratory they have heard. In the emotional or grand style, the difference between success and failure is the ability to carry conviction; and the failure of that style is most egregious.[48] Cicero manages to make Clodius sound like an ineffective windbag and a hack: "aliquot enim in causis eum videram frustra litigantem." No one would know better than Cicero that on occasion these words might be said of any powerful orator.[49]

The theory of the *tria genera dicendi* has been treated to extensive scholarly discussion;[50] there can be no doubt that Cicero could exploit it in academic polemics[51] and in oratory. At *Brutus* 277–78, Cicero tells an anecdote about his treatment of M. Calidius, an Atticist, who had reported to the court his uncovering of an attempt against his own life with the dispassionateness of a plain-style orator. Cicero admits that he used Calidius' lack of emotionalism to accuse him of inventing the rumor. If it had been true, surely Calidius' indignation would have shown in his style.

Cicero may be using a similar ploy against Clodius. This is not to say that Clodius' speech was necessarily effective, only that we do not necessarily know any more about it than we do about Herennius'; our source was not disinterested. If the latter speech provided Cicero with the more efficacious foil, that would have been good and sufficient reason for Cicero to concentrate on it.[52] If Clodius delivered a memorable stemwinder, all the better to dismiss it tersely. A man lying in the road with tire marks across his crushed chest may be more obviously dead than one sitting in a chair with a stiletto discreetly inserted between his ribs. Both, however, are victims, unrecoverably distorted by violence.

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48. See Cic. *Orat.* 96–99.

49. Drexler, "*Pro Caelio,*" p. 22, n. 30, well observes that Cicero's own words reveal that this Clodius was no stranger to the forum.

50. See Gotoff, *Cicero's Elegant Style,* pp. 18–66.

51. For its use in literary polemics, see Cicero's dismissal of Licinius Calvus as an effective orator at *Brutus* 283, and Gotoff, *Cicero's Elegant Style,* p. 43.

52. Stroh, *Taxis und Taktik,* p. 278, shows his typical perspicacity: Cicero chooses to respond to Herennius' speech because that speech presents the set of arguments he prefers to counter. All the rest is pretense.