

THREE PROBLEMATIC PERSONS IN THE DEFENSE OF FLACCUS
(CIC. *FLACC.* 70, 81, 102)

Unrecognized historical problems are posed by three passages of this speech, a speech which has attracted less comment than many others in the Ciceronian corpus. But it is this very neglect which makes time spent on the speech for Flaccus wisely spent. The three chapters discussed here permit us to become better acquainted with three persons mentioned in the speech, Decianus, Laelius and Pomptinus. The historian seeking to know them better must not only familiarize himself with the more obvious rhetorical strategies followed by Cicero, but work to elucidate some less obvious ones.

§ 70. In 59 B.C., and perhaps by September of that year¹, L. Valerius Flaccus (Pr. 63²) was acquitted of misconduct during his governorship of Asia in 62. The accusation had been brought by D. Laelius and was supported by various subscribers, among whom, C. Appuleius Decianus, whose homonymous father is presently considered to have been tribune of the plebs in 99³. Addressing the younger Decianus, Cicero took note of the fact that he was in business in Apollonis (*negotiaris*), and then proceeded to ask him how long he would continue in business: *quo usque negotiaberet, cum praesertim sis isto loco natus? annos iam XXX in foro versaris, sed tamen in Pergameno* (§ 70)⁴. Cicero here seems to

¹ M. C. Alexander, *Trials in the Late Roman Republic, 149 BC to 50 BC*, Toronto 1990, 122-3.

² But the urban praetor of 63 was someone other than Flaccus; cf. F. X. Ryan, "The Praetorship of L. Roscius Otho", *Hermes* 125, 1997, 236-40.

³ T. R. S. Broughton, *MRR* 3.23.

⁴ M. Fuhrmann, Zürich/München 1978, translates: "Wie lange willst du noch Handel treiben, zumal bei deiner Herkunft? Schon dreißig Jahre tummelst du dich auf dem Forum—freilich auf dem von Pergamon." Since Cicero in the

draw a contrast between private business and public affairs, with the intention of embarrassing Decianus: it was an insult publicly to remind a man that he had not held office in the city and so to underscore his insignificance. But the two sentences do not seem to fit together very well. If Decianus had been engaged in local public affairs for thirty years, then he was a middle-aged man, and it is not reasonable to question a man whose course in life is set about his future career. Even though the question was intended to discomfit Decianus and not to elicit information from him, the question—and therefore, the insult—falls flat if Decianus was middle-aged. In short, the question posed by Cicero was artless if Decianus was older, and artful only if Decianus was a younger man: then the question could be understood on two levels, partly as query and partly as criticism. Just as a stylistic objection can be raised to the question of Cicero, a historical objection can be raised to the declarative statement following the question. The statement that Decianus was *in foro Pergameno* for thirty years means he was there since ca. 89; the figure *XXX* does not have to be exact. The father of Decianus is considered to have been exiled in 98, and since we know that Decianus served in the army, it would seem possible to argue that he was a soldier from 98 to 88, and *in foro Pergameno* from 88 to 59: very nearly thirty years⁵. But this solution will not work, since Decianus was a *miles* when Flaccus was *tribunus militum* (§ 77), and it can be shown that Flaccus served as military tribune just once, in the period 78-74⁶.

The birth-date of Decianus is delimited by his service as an ordinary *miles* during the period 78-74. We would not expect him at the time of his service to have been older than twenty-seven or younger than seventeen; it follows that the earliest possible year for his birth is 105, and that the latest possible year for his birth

next chapter asks Decianus why he did not carry on business at Pergamum, *in foro* should not be taken as a reference to private business.

⁵ His military service is placed before his Pergamene activity by E. Klebs, "Appuleius 22", *RE* 2, 1894, 260, though Klebs does not state a belief that Decianus served a full ten years in the army.

⁶ Cf. Broughton, *MRR* 3.212; to this problem we shall return elsewhere.

is 91. At the most, he was forty-six years old in 59, and at the least, he was thirty-two. Even if he was forty-six, he would not have enjoyed a place of prominence in Pergamene affairs for a full thirty years⁷. And the curiosity of Cicero about his future plans makes better sense if his age was closer to thirty-two than forty-six. Finally, if his activity *in foro Pergameno* did not commence before his army service ended, then the time he spent in the forum of Pergamum would not total so much as twenty years. Since there is reason to believe that Decianus was too young in 59 to have thirty years of involvement in local politics behind him, this conclusion should be reflected in our translation of *annos iam XXX in foro versaris*. Instead of taking this to mean “for thirty years now you have practised at the bar”⁸, we may insist that it means: “Voilà déjà trente ans que tu fréquentes assidûment le forum”⁹ or “Da trenta anni frequenti il foro”¹⁰.

By changing the translation of *in foro versaris*, we obviate the need to change the number *XXX*, which latter change could probably not be made with verisimilitude. But if the phrase denotes hanging about the forum, a simple activity in which Decianus could engage as a boy far too young to take part in politics, then we must ask why he is not credited with forty years of such activity rather than thirty, since the exile of his father is usually dated to 98¹¹. Still it is not necessary to emend the number *XXX*. Although it seemed impossible to reconcile the interpretation “practising at the bar” with the figure *XXX*, there are three ways in which it is possible to reconcile the interpretation “hanging about the forum” with the figure *XXX*. One solution is to interpose a delay of ten years between the date at which Decianus accompanied his father into exile and the date

⁷ Q. Hortensius Hortalus made his first speech in the Roman forum when nineteen years old (Cic. *Brut.* 229).

⁸ C. MacDonald, Loeb ed., 1976.

⁹ A. Boulanger, Budé ed., 1959.

¹⁰ G. Maselli, *Cicerone, In difesa di Lucio Flacco*, Venezia 2000.

¹¹ One of my referees refuses to rule out emendation: “Notoriamente le cifre sono spesso assai esposte a corruzione”. On the assumption that Cicero here was dealing in round numbers, the only likely emendation would be that to *XXXX*.

at which he began to reside at Pergamum. Such a delay would not be compelling if it had to be manufactured out of whole cloth, but some ancient evidence can in fact be cited in its favor. The scholiast writes as if the father of Decianus proceeded directly to Pontus after his condemnation: *damnationem passus in Pontum se et ad partes Mithridaticas contulit* (*Schol. Bob. 95St*). Cooperation between the exile and Mithridates was accepted without argument by Gruen¹², but Klebs rejected the scholion because of the silence of Cicero¹³. In the speech Mithridates and *pater tuus* are mentioned in the same breath as making the people of Apollonis miserable (§ 71). But we are not told that they acted in concert to make the people of Apollonis miserable, so their unkindness toward the Apollonidenses might be the one similarity in otherwise disparate lives. And we must wonder whether the assertion of the scholiast derives from the coupling of their names by Cicero, and whether some of the *tenebrae* Cicero aimed at the jurors has settled on the commentator¹⁴. The fact that Decianus and his son did not perish in the pogrom does not prove that the father was a loyal adherent of Mithridates¹⁵. Even if we learned that the elder Decianus had been spared by an act of Mithridates, it would not follow of necessity that the former had pledged fealty to the latter, since we would have to reckon with the possibility that what had protected him was his

¹² E. S. Gruen, *Roman Politics and the Criminal Courts 149-78 B.C.*, Cambridge (Mass.) 1968, 190.

¹³ Klebs, "*Appuleius 22*", 260.

¹⁴ Decianus *pater* was not among the *proscripti* of 81: the sons of such men could not hold office in Rome, and Cicero would not have implied that Decianus *filius* should be seeking office in Rome if his father had been proscribed. But the fact that Decianus *pater* was not proscribed does not prove that he never associated with Mithridates: he might have ceased to associate with Mithridates at the time of the Asian Vespers, he might have avoided proscription despite past association with Mithridates by supporting Sulla over Fimbria, or he might have cheated judicial murder while remaining *ad partes Mithridaticas* by a timely natural death.

¹⁵ As one of my referees supposed: "Decianus and his father must surely have been supporters of Mithridates in order to be allowed to continue to live there (would not other Roman citizens have been killed or expelled?)".

status as an exile, i.e., as an erstwhile Roman and not a Roman; for a wealthy man to live to say “j’ai survécu,” it might have been enough not to wear a toga in public at the wrong time¹⁶. In sum, while Cicero is not completely silent about any connection between Decianus *pater* and Mithridates, we would expect him to dilate upon the point explicitly and forcefully if the elder Decianus had been in any sense a partisan of Mithridates: the relationship would have been an embarrassment to the younger Decianus, and Cicero clearly purposed to embarrass Decianus before the jury¹⁷. Since the information of the scholiast does not have to be accepted, we should seek a reason for the apparent ten-year delay between leaving Rome and reaching Pergamum¹⁸. The whereabouts of Decianus in these ten years we can discover only by guesswork¹⁹.

In the belief that the number XXX should be emended only as a last resort, and in the absence of further ancient evidence, we must turn to historical reasoning²⁰ in our attempt to make the figure XXX comprehensible. The possibility that XXX approximates the

¹⁶ Cf. Cic. *Rab. Post.* 27, where it is said that P. Rutilius Rufus survived by wearing Greek clothing (*soccas habuit et pallium*); in the context Cicero is defending Rabirius against the charge of eschewing the wearing of Roman clothing in Egypt, and so we have to wonder whether it was the change of clothing alone which saved Rutilius. At the time in question Rutilius was not yet living in Smyrna, where Cicero later visited him (Cic. *Rep.* 1.13, *Brut.* 85), but in Mytilene; it was on account of the disturbances there that he moved to Smyrna (Dio fr. 97.3-4).

¹⁷ The concession by Cicero of an honorable birth to Decianus *filius* (*sis isto loco natus*) might be counted as another indication that his father was guilty of nothing more than a miscalculation in domestic politics.

¹⁸ It would not be possible compellingly to argue that the information about removal to Pontus derives from the lost text of Cicero, while the information about joining Mithridates is the responsibility of the scholiast himself. The scholion under discussion is attached to Fr. III, so it is true that the context of the lemma is lost, but the mention of Pontus by the scholiast tends to prove that this destination was not recorded in the speech.

¹⁹ From § 51 it emerges that Decianus had spent some time at Temnos, but we know not when or how long.

²⁰ Less generously, to “speculation”, but speculation undertaken to avoid the necessity of emendation would seem to require no justification.

age of Decianus deserves consideration. We have seen that Decianus must have been at least thirty-two, but we have also admitted that *XXX* need not be taken as a precise figure. No objection to a birthdate as late as 91 can be raised on the ground of the age of his father: if a plebeian tribune of 99, he would have had to be born by 127, but was not necessarily born considerably earlier²¹. No objection to a birthdate as late as 91 can be raised on the ground of the words *sis isto loco natus*²²: the rhetorical question does not really require that the elder Decianus was still a senator at the precise moment when his son was born, but means only that the son should not be satisfied with a career in business, inasmuch as he was of senatorial stock. And if Decianus *filius* was as young as thirty-two in 59, the question about his future political career is deprived of its perplexity: though the minimum age for the quaestorship was thirty, it was not uncommon for a man to be thirty-two years old at the start of his quaestorship²³. But ultimately the notion that the number *XXX* was chosen because it approximates the years lived by Decianus is hard to credit: for then we are making Cicero maintain that the proclivity of Decianus for loitering in the forum commenced in infancy. And the question about the start of his political career begins with *quo usque*, a sign of impatience which suggests that the delay was already slightly greater than the common delay of one or two years.

Whence, then, the number *XXX*? It is time to consider the possibility that the figure *XXX* approximates the number of years Decianus had lived outside of Rome, and, on the assumption that he accompanied his father into exile, the number of years

²¹ Cf. G. V. Sumner, *The Orators in Cicero's Brutus*, Toronto 1973, 120, who assigned the lower terminus of his birth to 126 on the basis of a plebeian tribunate in 98.

²² As one of my referees thought: "'isto loco,' i.e. born into senatorial rank, surely excludes being born in exile".

²³ In addition to P. Lentulus Sura and M. Lucullus, it can be demonstrated that four other men were at least thirty-two when they took up the quaestorship: P. Autronius Paetus, C. Iulius Caesar, L. Aemilius Paullus, and Cn. Plancius. Cf. F. X. Ryan, "The Minimum Age for the Quaestorship in the Late Republic", *MH* 53, 1996, 39-41.

which had elapsed since the condemnation of his father. If it had proved possible to account for the figure *XXX* in any other way, we would hesitate to lower the date conventionally assigned to the trial of Decianus *pater*. About this trial we know very little, and even less than some scholars claim. We know that C. Decianus was convicted (Schol. Bob. 95St: *damnati*) and that he suffered a severe penalty (Cic. *Rab. Perd.* 25: *naufragium fortunarum*), exile (Cic. *Flacc.* 77: *non potuerit privatus in civitate consistere*). We do not know the crime with which Decianus was charged, although Gruen has suggested *maiestas*²⁴. No ancient source records the date of the trial, yet scholars insist that it took place in the year following his tribunate²⁵. Without commenting on the charge involved or on the date of the trial, Cicero on one occasion did offer an explanation for the verdict: *C. Decianus...quia ...queri est ausus in contione de morte Saturnini, condemnatus est* (Cic. *Rab. perd.* 24). Since this explanation was given publicly, we cannot reasonably deem it preposterous, but it does not follow that the statement must be free of every trace of disingenuity: some scope for tailoring his account of the facts was provided to Cicero by the remoteness of the trial; some reason to suspect tailoring of the facts is provided by the tendentious context, which requires Cicero to portray L. Saturninus as negatively as possible. It might be thought that the interpretation of the conviction left by Cicero lends support to a trial in 98 or 97, since the hatred for Saturninus may be presumed to have cooled with the passage of time. But if the trial was essentially political rather than criminal, the accusation might first have arisen long after the alleged offense. And if the trial was essentially political, it becomes quite possible that the

²⁴ E. S. Gruen, "Political Prosecutions in the 90s B.C.," *Historia* 15, 1966, 38, noting that *Schol. Bob.* 95St ties the conviction to his tribunate.

²⁵ Alexander, *Trials* 42: "The date is the year after the defendant's tribunate". Decianus *pater* as tribune prosecuted the *tribunicus* P. Furius, and of Furius we are told that the prosecution took place in the year after his magistracy (App. *BC* 1.33): perhaps scholars have confused Furius and Decianus. The trial was also placed in 98, without qualms, by Gruen, "*Political Prosecutions*", 37-8.

offense, while recent, was chosen mainly because it was actionable, and perhaps also because it seemed likelier than others to result in conviction. If we ask ourselves what activity of Decianus *pater* ca. 90 might have provoked an accusation, we notice that it was perhaps only in 91 that he became old enough to seek the aedileship. A charge of *maiestas* might then have been brought by a *competitor* during or after a campaign for higher office²⁶.

The trial of Decianus *pater* ca. 90 for words uttered in 99 or 98 need not disturb us; C. Rabirius after all was tried in 63 for actions committed in 100. Since Decianus *filius* was old enough to serve as a *miles* by 74, in all probability he was born in Rome before the trial of his father, and his thirty-year span *in foro...Pergameno* commences in his boyhood and not in his infancy: better to take *versaris* then as indicating presence in the forum rather than activity in the forum. The *termini* for the birth of Decianus have already been established; if we were to approximate his date of birth, we would guess that he was born in or shortly before 95: in that case his prospective political career in Rome would be getting off to a late start, but not to a ridiculously late start²⁷. And if the figure XXX is simply an oblique way of referring to the time elapsed since the exile of his father, we are excused from believing that he spent all those years in Pergamum; the years of his military service, whether ten or fewer, can be included in the figure XXX, since *in foro...in Pergameno* was added to humiliate Decianus and was not literally true: it is true only insofar as he did not spend those thirty years *in foro Romano*. In sum, by taking XXX as a reference to the exile of Decianus *pater* and allowing Decianus *filius* to be at the time of the speech still a younger man, the rhetorical force of the passage is increased while its historical sense is not decreased. As we have interpreted the passage, the figure XXX is a joke, not an inside joke, but one which Cicero

²⁶ By no means is Decianus *pater* to be considered an addendus to the prosopography of defeated candidates compiled by Broughton; a candidacy would explain a delay of ten or so years between the commission and the prosecution of the offense, but it is not the only possible explanation for such a delay.

²⁷ Pompeius started his political career at age thirty-five, but he more than made up for the delay by starting at the top.

intended his auditors to understand. In 59 Cicero could still treat exile as a laughing matter. A year later he had a different and more mature understanding of the subject.

§ 81. The homonymous father of the *accusator* D. Laelius had lost his life when a legate to Pompeius in the war against Sertorius²⁸, and Cicero could describe Laelius as the *paternus amicus ac pernecessarius* (§ 14) of Pompeius²⁹. In an attempt to impeach the reliability of the Greek-speaking Asian witnesses testifying against Flaccus, Cicero took note of a rumor going around the province, which held that Pompeius had prevailed upon Laelius to prosecute Flaccus. Cicero went on to say that the rumor was believed by the Greeks because Laelius and Flaccus, just a short time before the prosecution was initiated, had been on good terms in the province (§ 14: *paulo ante in eadem provincia familiarem Laelium Flacco viderant*). The scholiast has analyzed the strategy of Cicero: the orator wanted to counteract the opinion that Pompeius was against his client, and to undercut the prosecutor by suggesting that he started the rumor as an aid in gathering testimony from the obsequious Greeks (*Schol. Bob.* 98St). It is not the strategy of Cicero in the chapter mentioning the good relations between Laelius and Flaccus (§ 14) which is of interest to us, but the historical information he provides; in one sentence he reveals that there existed between Pompeius and Laelius a friendship which the latter had inherited from his father, and in the next he discloses that Flaccus and Laelius had been friendly when the two were in Asia at the same time. Münzer acquainted himself with this evidence and came to a not unnatural conclusion. Inasmuch as Laelius “stand von seinem Vater her in guten Beziehungen zu Pompeius...vermutlich diente er unter ihm im mithridatischen Kriege, denn er war 692=62 in Asien, während

²⁸ Cf. Broughton, *MRR* 2.95, 3.116-17; C. F. Konrad, *Plutarch's Sertorius*, Chapel Hill 1994, 161, 163-4.

²⁹ MacDonald (“Laelius, a friend and close acquaintance of his father”) and Boulanger (“Lélius, ami très intime de son père”) by mistranslation create a relationship between the father of Pompeius (who died in 87) and the prosecutor Laelius (born perhaps as late as 86). Maselli (“Lelio—era infatti amico strettissimo di suo padre—”) seems to have made the same mistake.

der Propraetor L. Valerius Flaccus die Provinz verwaltete (Cic. *Flacc.* 14)³⁰. But in the chapter which is our focus here Cicero addresses Laelius in these words:

sicine tu auctor tandem eum, cui tu in consilio fuisses, apud quem omnes gradus dignitatis tuae retinuisses, pudentissimum hominem, nobilissima familia natum, optime de re publica meritum in discrimen omnium fortunarum vocavisti? (§ 81)

If the question broke off with the words *cui tu in consilio fuisses*, we would have enough evidence to disprove or cast grave doubts upon service by Laelius in the Mithridatic war: we would not expect a man serving on the staff of a military commander to appear in the *consilium* of a provincial governor, and we certainly would not expect such a man so to appear with regularity, and regularity is what the statement of Cicero implies³¹. But the question does not break off, and we learn that Laelius was accusing a man *apud quem omnes gradus dignitatis tuae retinuisses*. Here we have proof that Laelius had not served Pompeius or any man other than Flaccus in an important capacity as of 59³².

³⁰ F. Münzer, "Laelius 6", *RE* 12, 411.

³¹ Decianus, too, was a *consiliarius* of Flaccus in Asia, though his advice was sought since he was a Roman citizen who had resided in the province a long time. In a passage which focuses on Decianus, Cicero says: *accusamur ab eis qui in consilio nobis fuerunt* (§ 78). The plural *eis* shows that Decianus was not the only whilom *consiliarius* to turn on Flaccus, so this statement also implies that Laelius regularly joined the provincial *consilia* of Flaccus.

³² Münzer did not say in what capacity he thought Laelius served Pompeius. It is surprising that Münzer missed the historical information at § 81, and the explanation might be not that he overlooked it, but that he misunderstood it or relied on a mistranslation; Boulanger has wrongly translated the passage so that Decianus is being addressed rather than Laelius. The same error was made by A. du Mesnil, *Ciceros Rede für L. Flaccus*, Leipzig 1883, 187, and then by T. B. L. Webster, *M. Tulli Ciceronis pro L. Flacco oratio*, Oxford 1931, 99. Similarly, Maselli, *Flacco*, 189, n. 159,

The recognition of the closeness of the past association between Laelius and Flaccus allows us to look at § 14 with new eyes. We are to take quite literally the description of Laelius as a *paternus amicus ac pernecessarius* of Pompeius; these two men before the trial were not so much friends on their own account, but were well disposed toward each other on account of the elder D. Laelius³³. And when we glance at § 14 a second time, we notice that Cicero in relating the content of the rumor does not portray Pompeius as merely asking Laelius to prosecute Flaccus; instead we see Pompeius wheedling and cajoling, so that Laelius seems to have been won over by the generous offer of help: *Cn. Pompeium...omnemque ei (sc. Laelio) suam auctoritatem, gratiam, copias, opes ad hoc negotium conficiendum detulisse*. There are bounds to the exaggeration possible in a public speech, but when the content of a rumor is reported the orator is probably at liberty to exaggerate; certainly it served the rhetorical purpose of Cicero to make the relationship between the prosecutor and the great general seem a distant one. But the fact that Cicero felt that he could with credibility report the rumor in such a way is significant: it shows that any friendship which existed between Laelius and Pompeius before the trial was far from intimate. The phrase *paternus amicus*, often misunderstood by translators, has been correctly understood but perhaps too readily accepted by historians: it was perhaps added by Cicero to explain on what ground Pompeius would have felt entitled to approach Laelius, despite their previous lack of association. Pompeius apparently

states in a note that Cicero here is directly addressing Decianus. We are told in § 81, before the quotation reproduced in our text, that Laelius had made many complaints about Decianus, and that Laelius spoke these words: “*qui mihi auctor fuit...is a Flacco corruptus est*”. Since Laelius terms Decianus *auctor*, it is an understandable mistake to make Cicero address Decianus with the words *tu auctor*, but it is a mistake none the less. The address continues in § 82, where we find the words *subscriptoris tui*; only Laelius could be addressed in this way, since he was the sole *accusator* at the trial, the sole man being served by *subscriptores* (*Schol. Bob. 95St. of Caetra: subscribserat hic inter ceteros Decimo Laelio accusatori*).

³³ The service of the younger D. Laelius as a prefect of the Pompeian fleet in 49-48 tells us nothing about the relationship of the two men ca. 61.

did nothing much to make the job of Laelius easier or the job of Cicero harder: Cicero did not feel able to range Pompeius on his side, but he wanted the jurors to understand that Laelius could not fairly claim that Pompeius was on his side.

The historical information contained at § 81 allows us better to appreciate the rhetorical challenge faced by Cicero throughout the speech. His careful attempt to disjoin Pompeius and Laelius and then rejoin them through the father of Laelius is interesting, but even more interesting is his gentle treatment of Laelius. We would expect Cicero to wax eloquent about the ingratitude and infidelity of Laelius, but the anticipated vitriol is nowhere to be found. There are two brief hints of a friendship gone awry before this chapter. Cicero stated that the Greeks in Asia had seen Laelius as a friend of Flaccus (§ 14: *familiarem Laelium Flacco*), but the point is not developed. And later, without mentioning Laelius by name, Cicero noted that Flaccus was being prosecuted by men whose advice he had sought (§ 78: *nunc accusamur ab eis qui in consilio nobis fuerunt*); this observation was addressed to Decianus, who had served Flaccus both as *miles* and as *consiliarius*, but the indignation of Cicero was limited to one lifeless sentence (§ 77: *quae quidem quam sancte solita sint observari scitis omnes*)³⁴. The most interesting silence of all is found at § 81. The complaints of Laelius about Decianus, which immediately precede the question quoted in our text, are introduced with the following words: *nam ita questus est Laelius, cum de perfidia Deciani diceret*. Cicero describes Laelius as complaining *de perfidia Deciani*, but he passes up the opportunity to complain on his own account about the *perfidia* of the *accusator* or his *subscriber*. Indeed, Cicero denies that Decianus was disloyal to the prosecution team, i.e., that he was bribed by Flaccus; about the disloyalty exhibited by either Decianus or Laelius toward Flaccus, nothing at this juncture. To our wonderment about the absence of comment on the perfidy of the prosecution, it might be objected that the very passage under discussion is tantamount to leveling a charge of

³⁴ The sentence is certainly remarkable and even admirable for its alliteration, but as a condemnation of perfidy it is disappointing.

perfidy at the accusers for their prosecution of Flaccus: it might be argued that the attack on Decianus by Laelius enabled Cicero to tar the prosecution with perfidy subtly and indirectly. But the word *perfidia* is used only of the subscriber, not the accuser, and Cicero immediately exonerates the former of perfidy; the ungratefulness and disloyalty of Laelius is clearly implied by the question posed to him, which notes the previous association of Laelius and Flaccus, but not even mere ungratefulness is attributed to Laelius explicitly.

Since the subtle attack was not a hallmark of either Roman or Ciceronian oratory³⁵, the failure of Cicero to excoriate Laelius and Decianus demands explanation. We might suppose that the defense did directly and spiritedly address the treachery of Laelius and Decianus, but that this animated attack has not survived: either because this task was assigned to Hortensius, who spoke before Cicero (§§ 41, 54), or because the attack was lodged in the part of the speech of Cicero which is now lost³⁶. One might speculate that neither Cicero nor Hortensius dwelt on the treachery because it was too embarrassing to Flaccus, that the defense counsels felt that the issue would do as much damage to Flaccus as it would to Laelius and Decianus, even if they should be successful in maligning the characters of those two men. But if Cicero and Hortensius had decided to refrain from a full-scale attack for this reason, we would expect Cicero to suppress all mention of the previous association between Flaccus and the other two, and this he does not do. It is even possible that Cicero and Hortensius were excused from confronting the issue because it

³⁵ One referee warns, “If we decide in advance not to look for subtle attacks, we shall never find them”, but here we seem to have found one without looking for it.

³⁶ A considerable part of the speech, between what we now call § 5 and § 6, is lost: the text in this lacuna was long enough to furnish the *Scholiasta Bobiensis* with twelve lemmata. Fr. II (*Schol. Bob. 95St*) reads: *quid sibi meus necessarius Caetra voluit?*; Fr. III: *quid vero Decianus?* These two fragments seem to paraphrase the question *cui bono?*; it is legitimate to infer that Cicero impugned the motives of the prosecution, but the scholion does not permit us to infer that Decianus was under attack for disloyalty to Flaccus.

was not raised by the prosecution, and that Laelius and Decianus felt their desertion of their former commander to be as damaging to themselves as it was to Flaccus. Cicero, when he was opposing rather than supporting a man abandoned by his subordinates, admittedly did not fail to make use of this fact: *legati qui una fuerunt alienati, tribuni militum inimici...* (Cic. Pis. 96). But we do not know that these legates or military tribunes, if they themselves had brought Piso to court, would have been as willing to advertise their own tergiversation³⁷. Whether the disloyalty of Laelius and Decianus was attacked by Hortensius alone, by Cicero alone, by both defense counsels, or by neither, we cannot know, but the puzzling restraint in the extant part of the speech is made a little less puzzling inasmuch as it is possible to discern one Ciceronian strategy for offsetting the embarrassing problem of faithless subordinates: the edifying prospect of faithful superiors. Flaccus had served as a military tribune under P. Servilius Isauricus and as a legate under Q. Metellus Creticus; both men appeared in court on behalf of Flaccus. Their appearance in court is taken as proof that they had broken with Pompeius and that they were “opponents of the triumvirs”³⁸. Maybe so. But Cicero did not want Isauricus and Creticus in court because of their political colors; he wanted them in court simply because they were old commanders of Flaccus. The jurors were being presented with a stark choice: subordinates of Flaccus vs. superiors of Flaccus, men who had not made a name for themselves vs. men who had won an additional cognomen by their achievements. Cicero might have said, as the elder Scaurus once did: *utri vos, Quirites, convenit credere?* (Ascon. 22C).

In addition to enabling us to appreciate the style of the speech, the historical information in § 81 is important in its own right; it gives us the opportunity to write a much fuller biography of Laelius. The first addition to his life is straightforward; he was a

³⁷ L. A. Thompson, “The Relationship between Provincial Quaestors and their Commanders-in-Chief”, *Historia* 11, 1962, 339-55, provides an antidote for the notion that the prosecution of a superior by a subordinate was always considered improper.

³⁸ E. S. Gruen, *The Last Generation of the Roman Republic*, Berkeley 1974, 290-1.

consiliarius of the governor L. Flaccus in Asia in 62. The further additions are to be extracted from and are conditioned by the phrase *apud quem omnes gradus dignitatis tuae retinuisses*. Boulanger translates “auprès de qui tu avais conservé une situation digne de ton rang”; MacDonald translates “in whose company you had held all your public offices”. The rendition of Boulanger seems at once too weak, because *omnes gradus* indicates, at the very least, two conceivably separate positions; the rendition of MacDonald seems at once too strong, since *gradus dignitatis* would be a vague and peculiarly understated way of referring to magistracies. The translation of Maselli comes closer to the mark: “hai conservato presso di lui tutti gli onori del tuo rango”. The fact that he held the tribunate only in 54 tends to confirm what the phrase *gradus dignitatis* leads us to suspect, that the positions in question were pre-senatorial ones³⁹. The birthdate of Laelius cannot be later than the first few weeks of 86: since he was plebeian tribune in 54, he must have been quaestor by 56, and the quaestors of 56 were not elected until sometime after the beginning of the year⁴⁰. In all probability he was born by 87, and it would not surprise us if he was born ca. 90.

The positions of responsibility Laelius held under Flaccus were not exalted ones. The determination we have made about his age tends to rule out a legateship. The plural *omnes gradus* indicates either that he served in more than one position or that he served in the same position more than once. He might have been a *contubernalis* of Flaccus when the latter was a legate under Q. Metellus Creticus for most of the period 68-65⁴¹. He might have been a *contubernalis* again, or for the first time, when Flaccus was praetor in 63⁴². By 62 he might have advanced to a military

³⁹ It can be shown that he did not serve Flaccus as quaestor; cf. “A Lately Missing Quaestor: D. Laelius D. f.”, *Acta Ant. Hung.* 45, 2005, 471-3.

⁴⁰ The curule aediles of 56 were elected around 20 January; cf. T. R. S. Broughton, *Candidates Defeated in Roman Elections*, Philadelphia 1991, 44. For the delay in the election of quaestors: Dio 39.7.4.

⁴¹ M. Caelius Rufus, around age twenty-eight, was a *contubernalis* of the African governor Q. Pompeius (Cic. *Cael.* 73).

⁴² The young L. Torquatus is termed a *contubernalis* of the praetor Cicero in 66 (Cic. *Sull.* 34), a year which the latter spent in the city, far from tents.

tribunate⁴³; the appointive military tribunate was recognized as a pre-senatorial post⁴⁴, and we know that Laelius was aiming at a senatorial career⁴⁵. Flaccus was, along with two others, an ambassador to various Gallic tribes in 60⁴⁶, and it is possible that Laelius accompanied him then. These additions to the biography of Laelius must, unfortunately, be written in the subjunctive; all we know with certainty is that he had served under Flaccus more than once by 60⁴⁷. It is perhaps best to fit him out with an earlier *cursus* which retains the Latin of the sources and its vagueness: “*in consilio* to L. Valerius Flaccus by 62; *omnes gradus dignitatis* until mid-59 held under Flaccus by 60”.

§ 102. Cicero did not wait until the end of his speech to advert to his favorite subject, the vile conspiracy exposed and the unspeakable atrocities averted during his own consulship; no, the matter was raised in the first chapter, and in the first sentence of the first chapter. But in this chapter he praises Flaccus once again for the role he played in the suppression of the conspiracy when praetor in 63. And then he asks a rhetorical question. *quis tibi, quis C. Pomptino, fortissimo viro, quemquam bonum putaret*

⁴³ Of the fourteen men in the *consilium* of L. Cornelius Lentulus Crus in 49 (*Ios. Ant.* 14.229, 238), the rank of three is attested: the first was *legatus pro praetore*, and the fifth and seventh were *tribuni militum*. A military tribunate then should have secured Laelius his place as a *consiliarius*, but the example of Decianus reminds us that an official position was not a prerequisite for inclusion in a *consilium*.

⁴⁴ As the *praefectura fabrum*, for example, was not; cf. K. E. Welch, “The Office of Praefectus Fabrum in the Late Republic”, *Chiron* 25, 1995, 133, 135, 138, 145.

⁴⁵ It is worth noting that Cicero, who refers to Laelius as a *familiaris* of Flaccus in 62 (§ 14), described the young L. Torquatus as being in 63 a *familiaris* and *contubernalis* of himself: Laelius himself then might have been a mere *contubernalis* in 62 (when he probably was no older than M. Caelius Rufus was while *contubernalis* in 61).

⁴⁶ Cf. Broughton, *MRR* 2.185-86.

⁴⁷ If one admits the possibility that *omnes gradus* indicates just two positions, and the possibility that his service as *consiliarius* was one of these, then it would be necessary to find just one further capacity in which Laelius served Flaccus.

umquam non salutem, verum honorem ullum denegaturum? The “safety” (*salus*) of the defendant is under discussion here. This statement is preceded by a reminder that Cicero in 63 had entrusted to Flaccus the safety of the city and of the citizenry (*salutem urbis et civium*), and followed by the declaration that the Nones of December were for the city the day of deliverance (*diem...salutarem*). The carefulness with which this passage was constructed is obvious.

It is not the style of this chapter which interests us but the substance, to the extent that the two can be separated. What requires explanation is the mention of C. Pomptinus. Cicero had mentioned the two men together in a speech once before, when recounting the contents of a senate decree: *deinde L. Flaccus et C. Pomptinus praetores, quod eorum opera forti fidelique usus essem, merito ac iure laudantur* (Cic. *Cat.* 3.14). Pomptinus had not only been the colleague of Flaccus in the praetorship, but had worked with him in suppressing the Catilinarian conspiracy. Such good service might justifiably be praised at any time, but the chapter of the speech for Flaccus under examination is a highly specific and not a general statement of praise. We happen to know that Pomptinus requested a triumph upon his return to Rome from his governorship in Transalpine Gaul, that he returned probably in 60-59, and that he was not successful in gaining permission for this triumph from the senate until 54⁴⁸. Although *honos* in Cicero can mean “office”, it would seem that the denial of a triumph to Pomptinus is here expressed by the words *honorem ullum denegaturum*⁴⁹. On a cursory reading one might suppose that Pomptinus is named as an example of a man being denied a *honos*, and that Flaccus is named (*tibi*) as an example of a man who might soon be denied *salus*. But the sentence is so

⁴⁸ Cf. Broughton, *MRR* 2.185, 191, 225.

⁴⁹ In only two further passages of the speeches is *ullus* conjoined with *honos*: Cic. *Verr.* 2.2.172 and *Pis.* 96. The latter passage is also a rhetorical question and is also a case in which *honos* does not mean “office”, since the only office Piso might think of holding as a *consularis* was the censorship: *quis enim te aditu, quis ullo honore, quis denique communi salutatione dignum putat?*

constructed that *non salutem, verum honorem ullum* must be read both with *tibi* and with *Pomptino*. The *honor* being denied to Flaccus in all probability was the consulship: *sperabam, iudices, honoris potius L. Flacci me adiutorem futurum quam miseriarum deprecatores* (§ 1)⁵⁰.

Since the *salus* of Pomptinus was every bit as threatened as that of Flaccus, we must add to his biography information now missing from the books which should record it⁵¹, that he was a defendant in a criminal case which had been initiated by 59. Since the charge greeted him upon his return from his province, it is likely to have been *de repetundis*, and this further parallel in the careers of Flaccus and Pomptinus would explain why it occurred to Cicero to add *quis C. Pomptino* after *quis tibi*. In all likelihood a trial on the charge never took place, but our late realization that he was accused of *repetundae* does do damage to the reputation of Pomptinus. Not because we think him capable of such a crime, but because we must revise the modern estimate of his "Persönlichkeit". Under that heading Gundel adduced "die Anstrengungen um die Bewilligung eines Triumphes" as proof that he was "in der Durchführung eines einmal gefaßten Planes unbeirrbar"⁵². Pomptinus had to remain outside the *pomerium*, and therefore in possession of *imperium*, in order to triumph, and while he did so he was technically *absens*. Those *qui rei publicae causa abessent* (Val. Max. 3.7.9) could be accused but not tried; under the Memmian law a citizen was entitled to submit a *postulatio*, but the president of a court was not allowed to make a *nominis receptio*⁵³. It so happens that the absence which alone preserved the possibility of a triumph alone preserved his immunity from prosecution. By entering the city he would

⁵⁰ It matters not whether *honoris* here denotes the consulship or some other honor; the important point is that Cicero believed Flaccus deserving of some *honor* which he had not yet obtained. A. du Mesnil, *Rede für Flaccus* 55, took *honoris* as a reference to the consulship.

⁵¹ The *Realencyclopädie* and Alexander, *Trials*.

⁵² H. Gundel, "Pomptinus 1", *RE* 21, 1952, 2424.

⁵³ Cf. E. J. Weinrib, "The Prosecution of Roman Magistrates", *Phoenix* 22, 1968, 38.

certainly lose the triumph and possibly lose his civic status; he had nothing to gain and everything to lose by crossing the *pomerium*. What kept him outside the city was not an admirable persistence but just plain common sense⁵⁴.

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⁵⁴ The initial draft of this paper was written during a stint as Summer Scholar at the Center for Hellenic Studies.

