

THE SUBSCRIPTORS OF LAELIUS AGAINST FLACCUS

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Resulta del todo evidente que el principal acusador de L. Valerius Flaccus (Pr. 63) en 59 fue el joven D. Laelius, uno de los acusadores auxiliares el joven Decianus y otro acusador auxiliar un cierto L. Balbus. En ocasiones, otros dos acusadores auxiliares, Caetra y Lucceius, se han considerado inexistentes. El hecho de que estén atestiguados para esta causa judicial más acusadores que para cualquier otra en la historia de la república romana suscita un problema. Un cuidadoso estudio de toda la evidencia existente, el discurso, los fragmentos y el comentario, aportan mayor certeza sobre la acusación.

It is abundantly clear that the chief prosecutor of L. Valerius Flaccus (Pr. 63) in 59 was the younger D. Laelius, that one of the assistant prosecutors was the younger Decianus and that another assistant prosecutor was a certain L. Balbus. Two other assistant prosecutors, Caetra and Lucceius, have sometimes been emended out of existence. The presence of a problem is suggested by the fact that more prosecutors are attested for this court case than for any other court case in the history of the Roman republic. Greater confidence about the prosecution team can be gained by a careful study of all the extant evidence, the speech, the fragments, and the commentary.

Governor of Asia in 62 B.C., L. Valerius Flaccus was prosecuted for and acquitted of extortion in 59. Alexander gives the following alphabetical list of prosecutors: C. Appuleius Decianus (22), Caetra (1), L. Cornelius Balbus (69), D. Laelius (6), Lucceius (2)¹. Numerous references to Laelius and Decianus place their roles as chief prosecutor and assistant prosecutor beyond doubt. Problems

¹ M. C. Alexander, *Trials in the Late Roman Republic* (Toronto 1990) 122.

of identification plague the three remaining men. The nomen of Balbus is in dispute, but we can be certain that a man named L. Balbus did exist and was a subscriptor at this trial; the very existence of both Caetra and Luceius has been called into question, a skepticism for which the size of the prosecution team is partly responsible, or so one would suppose².

For reasons which will become apparent, it is best to start with Caetra. The second Bobiensian fragment of the speech for Flaccus contains the only extant reference to this man, but this fragment has been interpreted in light of the succeeding fragment and the first scholion to the speech. Let us then quote the relevant evidence.

The beginning of the Scholia Bobiensia on the speech for Flaccus is lost; the commentary opens with a scholion to chapter two. The first extant note of the scholiast, the very first extant words of the commentary on this speech, we now quote in full.

(§2) ...<subscri>bentibus L. Balbo et Apuleio Deciano, quos vult obtrectatores intellegi, invidos gloriae huius Valerii Flacci magisque cupientes destruere virtutem quam ullum crimen ostendere; quorum personas onerat invidia, quasi nihil aliud adfectent quam coniurationem illam Catilinae quae hoc adiutore oppressa sit vindicare (Schol. Bob. 93.28-32St).

Since the whole of chapter two is preserved, with reasonable certainty one can supply the lemma which has been lost. The scholiast with *quos vult obtrectatores* and *invidos gloriae* is clarifying the first clause in chapter two, *sed si forte aliquando aut beneficii huius obtrectator aut virtutis hostis aut laudis invidus existitisset* (§2). But inasmuch as the scholiast identified two subscriptors,³ he might have taken as his lemma the second clause in chapter two, *existimabam L. Flacco multitudinis potius imperitae nullo tamen cum periculo quam sapientissimorum et lectissimorum virorum iudicium esse subeundum* (§2), which refers more directly to the trial.

² Alexander in the work cited collects evidence for 391 trials; for no case does he list more than five prosecutors, and for no case other than this does he list as many as five prosecutors. Four prosecutors are listed for six separate cases, tried in 63, in 61, in 54, in 54 again, in 52, and in 52 again (Alexander, *Trials* 111, 116, 143, 148, 151, 152). These cases are famous ones and include the trial of the consul-designate Murena *de ambitu*, the trial of Clodius *de incestu*, the trial of Scaurus *de repetundis*, and the trial of Milo *de vi*. Since these cases are not ordinary ones which by happenstance are preserved, but instead extraordinary in their importance, we should conclude not that four prosecutors were usual and are known only for these cases because they are well documented, but that four prosecutors were not unusual in important cases. In other words, there is some justification for getting rid of one of the prosecutors and bringing the number down to four, but to get rid of yet another prosecutor and to bring the total down to three we must have very good reasons.

³ No slightest doubt may be attached to the correctness of <subscri>bentibus. L. Balbus perhaps is not otherwise attested as a subscriptor, but Decianus certainly is; quite apart from our knowledge of Decianus, it is not possible credibly to complete ...*bentibus* in any way other than that first suggested by Angelo Mai (ed. Romana 1828).

The second and third Bobiensian fragments of the speech, with the commentary accompanying them, we now quote in full.

Fr. II. *quid sibi meus necessarius Caetra voluit?*

subscriberat hic inter ceteros Decimo Laelio accusatori (Schol. Bob. 95.10St).

Fr. III. *quid vero Decianus?*

et hic subscriptor fuit, Apulei Deciani filius iam nuper damnati, cum tribunus pl. esset et in ultionem Apulei Saturnini nec minus etiam C. Servilii Glauciae multa improbe seditioseque committeret: quam tamen damnationem passus in Pontum se et ad partes Mithridaticas contulit. quo ipso infamiam generis eius perstringit orator, ut imitatus quodammodo patrem omnia pro hostibus sentire videatur (Schol. Bob. 95.12-16St).

At the beginning of Fragment II *quid* is an emendation of Orelli for *quod* in the manuscript; we may safely ignore this dispute⁴. Inasmuch as Caetra is a rare name, Oetling proposed “Caelius” and Orelli proposed “Chaerea”⁵. To “Caelius” (M. Caelius, no. 11 in *RE*: not the famous M. Caelius Rufus) Schöll objected that he was a witness rather than a subscriptor; to “Chaerea” he registered the objection that a role for him in the trial is not otherwise attested⁶. Schöll however did not like “Caetra” any better: “Gerade hier aber giebt die Folge dieses Satzes und des *quid vero Decianus* einen Fingerzeig. Wenn die Scholien dazu sagen *et hic subscriptor fuit Apulei Deciani filius* und zu dem ersteren *subscripserat hic inter ceteros Decimo Laelio accusatori*, und wenn sie schon vorher in dem allerersten Satz schreiben <subscri>bentibus L. Balbo et Apuleio Deciano –was liegt da näher, als auch bei der zweiten Nennung vor Decianus an L. Balbus zu denken?”. This line of reasoning makes a certain amount of sense, until we remember that the lemma mentions Caetra rather than Balbus. Or does it? Because he thought the name unattested, Schöll had no qualms about emending it: “*caetra* aber ist gar kein Name, weder ein wirklicher noch ein verdorbener, sondern wohl vielmehr *caet*<*e*>*ra* und der Satz lautete etwa: *quod sibi meus necessarius cetera voluit...committi* oder *mandari* oder *reservari* mit entsprechendem Nachsatz,

⁴ Though we may note it was inconsistent of Schöll to maintain that *quod* should not be changed on the basis of the next fragment, which begins with *quid*, since he went on to associate the two fragments closely. Cf. F. Schöll, “Zu Ciceros Rede pro Flacco”, *RhM* 51 (1896) 387.

⁵ Alexander, *Trials* 122, actually listed Caetra among the prosecutors in the following fashion: “Caetra (1),= C. Fannius Chaerea (17)”. The apparatus of Stangl is misleading since he attributes *Chaerea* as well as *Caelius* to Ötling (1872), but the credit or blame for *Chaerea* belongs to Orelli (1833), who printed the transmitted text but in his apparatus noted, tentatively, “fort. *Chaerea* Or.”

⁶ Schöll, “Ciceros Rede”, 387. We may add in favor of Schöll that Chaerea also is not otherwise attested as a *necessarius* of Cicero. Fannius Chaerea is mentioned in the speech *pro Roscio comoedo*, delivered some years earlier, and is “sehr verächtlich geschildert und verspottet” (F. Münzer, Fannius 17, *RE* 6 [1909] col. 1994). Cicero in the space of a very few years could roundly criticize and lavishly praise the same man in public speeches, so the earlier criticism does not rule out a later friendship between Cicero and Chaerea, but neither does it predispose us to believe that such a friendship did develop.

während der Name des *necessarius* schon vorher genannt war...wenn man nicht an *meus necessarius* <L. Herennius> denken will”⁷. The great weakness in this argument is of course the fact that the name Caetra is “ein wirklicher”. Schulze found epigraphic evidence for the name (CIL V 3819, from Verona: ...*M. f. Caetra*) and realized that by the inscription “*Caetra* in den Fragmenten von Cicero’s Rede pro Flacco...gegen vorschnelle Verdächtigung ...geschützt wird”⁸. Webster knew that the name was attested, but was not dissuaded from following Schöll because the name was uncommon and he found the emendation *cetera* attractive⁹. Stangl on the other hand must have believed with Schulze that the inscription obviated the necessity of or even precluded the emendation of “*Caetra*”.

Both Schöll and Webster believed that “*Caetra*” was not the name of a subscriptor, and they believed that the fragment containing the name “*Caetra*” actually referred to L. Balbus. Since both men also believed that the nomen of Balbus was Herennius rather than Cornelius, the strongest argument in favor of their thesis did not occur to either of them. L. Cornelius Balbus was an Iberian, a native of Gades, and the *caetra* was a Spanish shield: without resort to emendation one could argue that Cicero substituted the name of a Spanish shield for the cognomen of the Iberian among the prosecutors. This would be a stronger argument in favor of reducing the number of subscriptors to two than that provided by Schöll,¹⁰ but still it would not be convincing: if “*Caetra*” were an epithet, the scholiast almost certainly would have dilated upon it¹¹.

The argument actually made by Schöll is weaker than the one we have made on his behalf. It is plainly wrong to take the remarks of the scholiast to Fragment III as “die zweite Nennung” of Decianus. Since the scholiast had just identified Decianus as a subscriptor at the bottom of p. 93, why would he bother to identify him as a subscriptor again at the top of p. 95? The most cursory reading of the scholion to Fragment III shows that it focuses on Decianus pater, not Decianus filius: this is new information, not dull repetition. Unless the scholiast is simply showing off his knowledge of the 90s B.C., he thought Cicero in the lost text was alluding to the exile of Decianus pater, or that the reader made aware of this history would understand the text of Cicero better. We should perhaps not translate the first four words “And this man was a subscriptor” (that information

⁷ Schöll, “Ciceros Rede”, 387-88.

⁸ W. Schulze, *Zur Geschichte Lateinischer Eigennamen* (Berlin 1904) 351.

⁹ T. B. L. Webster, *M. Tullii Ciceronis pro L. Flacco oratio* (Oxford 1931) 56. Dr. Adolf du Mesnil, *Ciceros Rede für L. Flaccus* (Leipzig 1883) 17, judged the suggested emendation of Ötling “durchaus irrig”, reported the conjecture of Orelli without comment, and called *Caetra* “diesen wahrscheinlich entstellten Namen”. F. Münzer, *Caetra* 1, *RE* 3 (1899) 1321, wrote: “der Name ist vielleicht verderbt”.

¹⁰ Especially since Cicero from the beginning until the end of this speech harps on the fact that most of the accusers of Flaccus were foreigners (Asian Greeks).

¹¹ Unless Cicero himself explained to the jurors why he was calling an Iberian *caetra*: but the insult we have imagined is not so abstruse as to require explanation, and an oral gloss of this sort would of course destroy the rhetorical force of the insult.

had already been given), but remove the comma after *fuit*¹² and translate the first seven words “And this subscriptor was the son of Apuleius Decianus”. It does not seem necessary to consume pages arguing against an emendation undertaken in the belief that “Caetra” was not a name,¹³ so let us cut to the heart of the matter. The most important words in this whole context are contained in the short scholion to Fragment II and have been overlooked: *inter ceteros*. These words prove that there were at least three subscriptors under Laelius,¹⁴ at least two in addition to Caetra¹⁵. The attempts to reduce the number of subscriptors to two, L. Balbus and Decianus, even though these two are mentioned alone on p. 93St, are bound to fail¹⁶. And once we realize that there were at least three subscriptors, the urge to emend *Caetra* fades. We cannot replace *Caetra* with a common noun; if it is to be replaced, it must be replaced by another personal name¹⁷. In favor of such a change, however, it is not possible to adduce any evidence or arguments, but only the uneasy feeling we have about so uncommon a cognomen¹⁸.

There is an obvious difference to the scholia on Fragments II and III. The scholion to Fragment III gives us personal information about a subscriptor, his filiation, and immediately commences a discussion of his father. The sole purpose of the scholion to Fragment II is to identify the man named in the lemma as a subscriptor to Laelius. Thus even if this scholion lacked the crucial words *inter*

¹² Orelli (p. 230) does print the text so that the first comma is placed after *filius*. This punctuation however does not necessarily result in a translation different from that to which the punctuation of Stangl leads; Orelli with his comma after *filius* perhaps wanted to set off the words *iam nuper damnati*.

¹³ Though, as we have seen, Webster clung to the emendation even after Caetra was shown to be an authentic cognomen.

¹⁴ If the man named or to whom allusion is made in Fr. II had been one of two subscriptors and identical with L. Balbus, the scholion would read “subscripserat hic cum Deciano”.

¹⁵ Perhaps Caetra logically is included among the *ceteri* in the phrase *inter ceteros*.

¹⁶ We do not want to appear to be beating this horse to death, but a work of some importance states as a fact that Laelius was “assisté de deux *subscriptores*, L. Balbus et Apuleius Decianus”, and in a note to this asseveration we are told: “Comme, selon toute vraisemblance, le scholiaste n’avait pas d’autre source que le discours même, il est très vraisemblable que les noms des deux *subscriptores* de la page 93 lui ont été fournis par les passages du plaidoyer correspondant à la page 95 de son commentaire; à cet endroit Cicéron passait en revue les accusateurs et, comme il n’y est question que de deux *subscriptores*, il semble qu’il faille rétablir dans le lemme le nom de L. Balbus”. Cf. J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris 1925) 222 and n. 2.

¹⁷ Those still dissatisfied with Caetra might want to take Caetronius into consideration, since there were republican Caetronii (v. F. X. Ryan, “C. Vibius Pansa Caetronianus, and his Fathers”, *Mnemosyne* 49 [1996] 186-188) who are not known to have borne a cognomen. But there would seem to be no point in the emendation of an attested name when it is not possible to show that anyone with a similar name was connected with the trial (not to mention a *necessarius* of Cicero).

¹⁸ Some visceral feelings are right, some are wrong: but we should have better grounds than a visceral feeling if we want to emend a transmitted cognomen which is otherwise attested. D. R. Shackleton Bailey, *Onomasticon to Cicero’s Speeches*, 2nd ed. (Stuttgart 1992) 28, was undisturbed by the cognomen: “The name...has been suspected...without good reason. Schulze...thought it Etruscan. But why should it not come from the shield so called?” It may be noted, lest it be thought that a friend of Cicero should be well attested, that Cicero called L. Sempronius Atratinus *meus necessarius* (Cic. *Cael.* 2), yet never mentioned him outside of this speech; cf. C. P. Craig, “The Accusator as Amicus”, *TAPA* 111 (1981) 34, n. 12.

ceteros, which by themselves suffice to prove that there were at least three subscribers, it would seem that there were at least three subscribers since it would seem from the note of the scholiast that he had not previously identified the man named in the lemma as a subscriber, whereas he had already identified Balbus and Decianus as subscribers (Schol. Bob. 93.28St)¹⁹. The scholiast admittedly does repeat himself, if one translates the opening of the note on Fragment III “also this man was a subscriber”, since Decianus had previously been identified as a subscriber. But repetitiveness at this point can be justified as a parallelism: after identifying the *Caetra* of Fragment II with the words *subscriberat hic*, it was natural to identify the *Decianus* of Fragment III with the words *et hic subscriptor*, even though he had already been so described. We may conclude that the scholiast can be depended upon to identify a man as a subscriber upon his first mention in the speech, unless he has already identified him as a subscriber in a note to a chapter which does not mention the man by name, as when he mentioned Balbus in his note to chapter two, and perhaps even then, as in the case of Decianus.

It is perhaps worth noting that it was a mistake all along to make the number of subscribers mentioned in Fragments II and III match the number mentioned by the scholiast at the beginning of the commentary. If the scholiast had had nothing to say about Decianus pater, he would not have preserved the lemma *quid vero Decianus?* And it is possible that a lemma reading “*quid vero Balbus?*” went unrecorded because the scholiast had nothing further to say about him. We cannot know the purport of these questions, so we cannot claim that Balbus was also placed in one of them. At first glance they appear to be nothing more than that usual lawyerly question, *cui bono?* But *volo* is put in the past tense, and the preceding (Fr. I) and following (Frr. IV-V) fragments clearly refer to the Catilinarian conspiracy, so one might argue that Balbus would not have been placed in a rhetorical question unless he had had some connection with the Catilinarian conspiracy. But if Cicero could place Decianus, who had lived abroad for thirty years, in one of these questions, it should have been possible for him to place Balbus in one of these questions as well.

The subscriber Luceius is mentioned in just one chapter of the speech: *velut quod ait Luceius, L. Flaccum sibi dare cupisse, ut a fide se abduceret, sestertium viciens* (§83). The very next sentence, which was taken as a lemma by the scholiast, reads: *et eum tu accusas avaritiae quem dicis sestertium viciens voluisse perdere?* (§83). The scholion reads: *cum stomachi asperitate proscidit Luceium, qui tam nullius eloquentiae sit, ut Flaccus eam pecuniam fuerit perditurus eo parcente qui tam inani esset ingenio, ut, etsi maxime cuperet, tamen nocere non posset* (Schol. Bob. 106St). When there appears to be a problem in a text to which a scholion is extant, it would be hoped that the problem in the text could be resolved on the

¹⁹ Those still wishing to emend *Caetra* should note that the emendation: 1) must be a personal name; 2) must denote a person not previously identified as a subscriber.

basis of the scholion. In this case, unfortunately, the scholion adds to the confusion because it contains a worse error than the text itself. As far as the text of Cicero is concerned, the name Lucceius is the paradosis²⁰. The nomen is not common, but it is well known and not nearly so uncommon as the cognomen Caetra. Some scholars have therefore accepted the subscriptor Lucceius²¹. By others the nomen is found wanting because of the suddenness with which it appears: “Lucceius est bizarre, car nulle part dans le plaidoyer il n’est question d’un individu de ce nom”²². But in the text of the Scholiasta Bobiensis *Laelium* is the paradosis and *Lucceium* is an emendation proposed by Rau and accepted by Stangl²³. It is clear from the text of chapter 83 that the man there denominated Lucceius is a man different from and subordinate to Laelius: Cicero asks the man if he was bribed so that he would disclose the *consilia Laeli*. Since the nomen in the scholion is certainly wrong²⁴ and the nomen in the text of the speech might possibly be right, the former has been changed to accord with the latter²⁵.

Before we proceed to consider the emendations of *luceius* (§83) which have been proposed, let us, as former President Hoover used to say, “Stop, Look, and Listen”. It is clear that “quod ait Laelius” was not in the text of Cicero used by the scholiast, and that the scholiast himself did not mean to write that which the copyist wrote, *Laelium*. We cannot know how the text of Cicero used by the scholiast read in the place where the text available to us reads *quod ait Lucceius*. But one thing we can know for certain: since the scholion to this chapter is extant and since it imparts no information about the identity of this man, the scholiast was not troubled by what was in the Ciceronian text he used. It is very clear from the context of the speech that the man there denominated Lucceius was a subscriptor: he is said to be knowledgeable about the plans of Laelius, he is said to be someone who could be bribed to make fewer accusations against Flaccus (*ne copiose accusares*), and someone who could be bribed to change sides (*ut...transires*). And we have already enunciated the principle that the scholiast can be depended upon to identify subscriptors. Since Lucceius was a subscriptor and since the scholion fails so to identify him, it is as certain as such things can be that the scholiast had already identified Lucceius as a subscriptor. If the

²⁰ The app. crit. of F. Zucker (A. Mondadori, 1963), who prints *Apuleius* in his text, gives *luceius* as the reading of the mss.; both Clark (Oxford 1909) and Boulanger (Paris 1959) print *Lucceius* in their text without giving any variant in their apparatus. Webster, *pro Flacco* 56, stated that “several MSS. have *Lucium*”, but he had nothing to say about §83 in his “Additions to Critical Apparatus of Oxford Text” (pp. x-xi).

²¹ Before Alexander, F. Münzer, Lucceius 2, *RE* 13 (1927) 1553.

²² Humbert, *Plaidoyers* 223.

²³ Orelli (p. 244) had retained *Laelium* in the scholion; P. Hildebrandt (p. 52) anticipated Stangl in adopting *Lucceium*.

²⁴ The error is so patent it would seem to be a certain conclusion that the copyist working on this page of the commentary did not have the speech of Cicero open before him, and “corrected” something resembling it to *Laelium*.

²⁵ As Humbert, *Plaidoyers* 223, put it, “*Laelium* étant inadmissible, les éditeurs ont écrit *Lucceium*, d’après le texte du *pro Flacco*”.

speech delivered for Flaccus were extant in its entirety, we could maintain that the man *luceius* must be identical with either Balbus or Caetra. But the speech is not wholly extant, and in one place we are missing both the speech of Cicero and the commentary of the Scholiasta Bobiensis: between Fragments V and VI preserved in the Scholiasta Bobiensis, four pages of text are missing²⁶. For the identity of the man denoted by *luceius*, there are then two alternatives: he is a subscriptor we have already met or he is a subscriptor we have not yet met. In the former case, we may on the basis of *luceius* award the praenomen Lucius or the nomen Lucceius to a subscriptor we know; in the latter case, it would be most natural to conclude that *luceius* indicates that the nomen of this man was Lucceius. If Cicero mentioned a Lucceius by name in the portion of his speech lost between Fragments V and VI, the scholiast would have taken this clause as a lemma, and his silence in his commentary on §83 is perfectly understandable; if Cicero did not mention Lucceius by name, the scholiast might have anticipated Cicero by naming Lucceius in his notes, just as he had anticipated Cicero in mentioning Balbus and Decianus, and in that case the silence in the commentary to §83 is equally understandable²⁷.

Since it is not possible for us to learn whether a subscriptor with a name resembling Lucceius was mentioned in the lemmata or scholia missing between Fragments V and VI, we cannot flatly deny the existence of a subscriptor named or with a name resembling Lucceius. The existence of this fourth subscriptor is a matter which must be decided with probability rather than certainty, and probability is against his independent existence, since we know of no other republican trial in which there were as many as five prosecutors. While it remains theoretically possible that there was a fourth subscriptor whose independent existence is proved in the lost portion of the Scholia Bobiensia, it is a probable conclusion that *luceius* denotes a subscriptor otherwise attested in the extant portions of the Scholia Bobiensia, and we shall proceed on the basis of this probable conclusion.

Four members of the prosecution team subsist: Laelius, Decianus, Balbus, and Caetra. Which one lurks behind *luceius*? It is absolutely impossible that Laelius or Decianus does so: the context at §§82-83 reveals that *luceius* was a subscriptor of Laelius and a subscriptor different from Decianus²⁸. About Caetra we know three

²⁶ The four pages missing from the Schol. Bob. indicate the loss of about ten chapters of the original speech. Between §9 and §12, II pag. are lost; between §21 and §33, IV pag. are lost; between §53 and §77, VIII pag. are lost.

²⁷ Once we admit that *luceius* might have been mentioned for the first time in a scholion to a chapter which does not name him, it becomes possible that he was mentioned in one of the lost sections of the commentary discussed in the preceding note.

²⁸ At the start of §83 Cicero makes a transition from discussing the possibility that Decianus was bribed to discussing the possibility that *luceius* was bribed: *ita scitote esse cetera*.... These words prove the utter impossibility of the emendation of *luceius* to *Apuleius*, as proposed by Humbert, *Plaidoyers* 223: "C'est de Decianus qu'il s'agit. Par suite Cicéron a dû écrire: *vel quod ait Apuleius (Decianus) et, le groupe Ap étant tombé, uleius a été corrigé en luceius*". For some reason *Apuleius* was adopted by L. Fruechtel (Teubner 1932) and by Zucker (1963), and approved by W. C. McDermott,

facts only: his cognomen, his service as a subscriptor in this trial, and his status as a *necessarius* of Cicero. Since we know neither his praenomen nor his nomen, nothing would stand in the way of the suggestion that his praenomen was Lucius or that his nomen was Luceius. But the nearly complete lack of information about Caetra is a two-edged sword: it renders the suggestions that he was a Lucius or a Luceius incontrovertible, but it also denies these suggestions verisimilitude; their plausibility is due not to the presence of corroborating evidence but to the absence of contradictory evidence. Let us set aside Caetra and take up Balbus; if we decide to let *luceius* represent the praenomen Lucius, it is sounder method to identify *luceius* with Balbus, since for him the praenomen Lucius is attested and therefore does not have to be invented²⁹.

Webster argued that *luceius* represented the praenomen Lucius, and that the cognomen Balbus had dropped out of the text³⁰; we then would have to suppose that the praenominal initial was written out after the cognomen was lost. This argument cannot be accepted quite as it stands. Shackleton Bailey has shown that Cicero in his speeches avoided the conjunction praenomen + cognomen “with very common *cognomina* such as Rufus or Balbus”³¹. Webster believed that the subscriptor was L. Herennius Balbus, and the correctness of the observation of Shackleton Bailey can be confirmed by checking the references to L. Herennius Balbus in the *pro Caelio*: there he is named five times, but never as “L. Balbus”³². The argument of Webster can however be put into an acceptable form: the text of Cicero in chapter 83 might originally have read “L. Herennius”, and the nomen dropped out. But of course, it would be just as easy for the nomen Cornelius to drop out. Since we know that the subscriptor Balbus was named Lucius, it is a reasonable supposition that his praenomen is represented by *luceius* and that his nomen has been lost,³³ but in identifying this missing nomen we must offer arguments rather than opinions³⁴.

“De Luceiis”, *Hermes* 97 (1969) 234, n. 3. Even without the proof that Decianus and *luceius* are separate individuals, the emendation to *Apuleius* would have to be rejected since every other reference to Appuleius Decianus in this speech (nineteen in all) calls him by cognomen alone: Schol. Bob. Fr. III, §§70 (bis), 72 (ter), 73 (ter), 75, 79, 80, 81 (ter), 82 (bis), 93, 94.

²⁹ Of course it is theoretically possible that the subscriptor was named “L. Luceius Balbus”, but we have no independent knowledge of such a man.

³⁰ Webster, *pro Flacco* 56.

³¹ Shackleton Bailey, *OCS* 6.

³² He is named *L. Herennius* three times (Cic. *Cael.* 25, 49, 56), and *Balbus* twice (*Cael.* 27, 53).

³³ It is to be emphasized that the reference to this man as *L. Balbus* is a reference of the scholiast, not of Cicero.

³⁴ We do not need to consider “L. Laelius Balbus”, in whose existence Drumann-Groebe (*GR* 5.614) believed. No scholar to our knowledge has seconded them in crediting such a man with existence, and no “L. Laelius Balbus” appears in the *RE*. Historians hate to impeach the reliability of texts, so Drumann offers a solution which is attractive insofar as it allows us to judge the text of the scholiast sound; but if there had been two Laelii on the prosecution team, the scholiast would not have written *Laelium* in his notes and failed to give any further identification. Alexander, *Trials* 123, n. 5, reports the suggestion of D.-G. as an alternative to L. Cornelius Balbus, but fails to report the fact that some scholars have favored identification of L. Balbus with L. Herennius Balbus.

The case for identifying L. Balbus (Schol. Bob. 93.28St) with L. Herennius Balbus was set out by Schöll, but has been vitiated by our defense of the existence of a third subscriptor who is named in Fragment II. Schöll by emending *Caetra* to *cetera* made that Fragment refer to L. Balbus, and then pointed to the words *meus necessarius* as proof that the L. Balbus concerned was L. Herennius Balbus: for in a speech delivered three years later, Cicero spoke the words *meum familiarem, L. Herennium* (Cic. *Cael.* 25). But since Fragment II must refer to a third subscriptor, a man not previously mentioned, the evidence that the subscriptor L. Balbus was a *necessarius* of Cicero vanishes. Or does it? What if Balbus was referred to by praenomen alone in chapter 83? We could take the use of the praenomen alone as a sign of intimacy rather than contempt. Since this is the sole possible reference by Cicero to L. Balbus,³⁵ the thesis cannot be disproved, but it is not persuasive: it does not seem likely that Cicero would have spoken the words “quod ait Lucius, Lucium Flaccum”. We are back to square one; we cannot claim that L. Balbus was a friend of Cicero³⁶.

The question is whether we may reasonably identify the subscriptor L. Balbus with a known L. Balbus, or whether we should suspend judgment about his gentilicium. The activity as subscriptor is not in itself significant since both L. Cornelius Balbus and L. Herennius Balbus were active in the courts. The evidence in favor of identifying the subscriptor with L. Cornelius Balbus was apparently considered decisive by Alexander, since he did not add a query to show he had doubts about the participation of L. Cornelius Balbus³⁷. *L. autem Valerius, cui cognomen Heptachordo fuit, togatum hostem Cornelium Balbum expertus, utpote ope<ra> eius et consilio conpluribus privatis litibus vexatus ad ultimumque subiecto accusatore capitali crimine accusatus, praeteritis advocatis et patronis suis solum heredem reliquit* (Val. Max. 7.8.7). Here we find a L. Valerius being prosecuted by a Cornelius Balbus; in 59 B.C. a L. Balbus joined in prosecuting L. Valerius Flaccus. The identity of L. Balbus seems to be solved –if we read the passage of Valerius Maximus very quickly and then refrain from thinking about it very much. It has recently been argued that “it is unlikely that Balbus was in Rome before 60”³⁸; the criminal case Valerius Maximus describes was the culmination of many private suits which must have consumed some years. Then we notice that the cognomen of the L. Valerius described by Valerius Maximus was Heptachordus rather than Flaccus, though attempts have been made to explain this

³⁵ There is no reference by Cicero to L. Balbus unless *luceius* denotes L. Balbus.

³⁶ It is unfortunate then that we are missing a question probably asked by Cicero in the lost portion of his speech, “quid vero Balbus?” Such a question might have contained the words *meus necessarius* if the Balbus in question was L. Herennius.

³⁷ Alexander, *Trials* 122; 123, n. 5; his confidence might stem from the fact that identification with L. Cornelius Balbus was favored by F. Münzer, Cornelius 69, *RE* 4 (1901) 1262-63; *idem*, Laelius 6, *RE* 12 (1925) 411.

³⁸ K. E. Welch, “The Office of Praefectus Fabrum in the Late Republic”, *Chiron* 25 (1995) 136.

away³⁹. But no special pleading can overcome two facts: that Cornelius Balbus is attested as a plaintiff against Heptachordus only, or at most, in private suits, and that in the one criminal case the prosecutor was not Cornelius Balbus but another man (*subiecto accusatore*)⁴⁰.

In short, the case previously made for identification with Herennius is unacceptable, and the case previously made for identification with Cornelius is no better. We must start afresh. In political histories Flaccus is portrayed as an enemy of Pompeius being prosecuted by Pompeians⁴¹, since Laelius the chief prosecutor has been deemed a staff member of Pompeius in Asia⁴². If all this were true, then we would favor identifying the subscriptor L. Balbus with L. Cornelius Balbus, who owed his Roman citizenship to Pompeius (Cic. *Balb.* 6, 19, 38). But it turns out that Laelius served in Asia on the staff of Flaccus, not on that of Pompeius, and that Laelius was merely the son of a Pompeian and had himself not been associated with Pompeius⁴³. Since Laelius had never been a subordinate of Pompeius, we have no warrant for assuming that he was prosecuting Flaccus in that capacity, and no grounds for supposing that the subscriptor should be a Pompeian.

Let us keep in mind the close connection between Pompeius and L. Cornelius Balbus and turn to chapter 14. So far we have removed preference for identification with Cornelius, but we have not uncovered evidence which gives preference for identification with Herennius. In chapter 14 however Cicero reports that in Asia it was rumored that Pompeius had persuaded Laelius to prosecute Flaccus. The scholiast notes that Cicero wanted to overcome the impression that Pompeius was

³⁹ Münzer, *RE* 4, col. 1263, was not deterred by the cognomen: “daß der Spitzname *Heptachordus* sonst nicht überliefert ist, hat nichts Auffälliges (vgl. den Spitznamen des C. Antonius *Hybrida*, den nur Plin. n. h. VIII 213 angebt”. We concede that we cannot expect a cognomen of a given man to be attested in more than one source. But we maintain that if Valerius Maximus had been speaking of L. Valerius Flaccus and if he had wanted to use *cognomen* to mean “nickname”, he would have written that L. Valerius Flaccus had the cognomen Heptachordus; the phrase *cui cognomen Heptachordo fuit* is not intended to confuse but, quite oppositely, to help the reader distinguish this particular L. Valerius from all the others. Nor can the information preserved by Valerius Maximus be associated with the trial of Flaccus by the suggestion (e.g., C. MacDonald, Loeb. ed., p. 430) that Heptachordus is the joke which was present in the oral version of the speech and absent from the written version of the speech (Macrob. *Sat.* 2.1.13); the joke must have been aimed not at the defendant but at one of the prosecutors or one of the witnesses for the prosecution.

⁴⁰ It would not save the case for identification with L. Cornelius Balbus if we take *subiecto accusatore* as a reference to a damaging witness rather than a prosecutor, so that Cornelius Balbus might be the prosecutor: a cursory glance at the speech for Flaccus will reveal not one prosecution witness nor one especially prominent prosecution witness, but a legion of prosecution witnesses. It is unlikely in the extreme that the words *subiecto accusatore* in the account of Valerius Maximus are due to the fact that L. Balbus technically was a *subscriptor* rather than the *accusator*. Such a careful distinction would have to be ascribed to the source of Valerius Maximus rather than to Valerius Maximus himself. The phrase *subiecto accusatore* means that Cornelius Balbus had someone else act for him, not that he assisted this someone.

⁴¹ So E. S. Gruen, *The Last Generation of the Roman Republic* (Berkeley 1974) 110, 290.

⁴² Münzer, *RE* 12, col. 411.

⁴³ This matter will be discussed in another place; v. “Three Problematic Persons in the Defense of Flaccus” (forthcoming).

behind the prosecution of his client, and to discomfit Laelius by implying that he started the rumor in order to elicit testimony from the Greeks of the province (Schol. Bob. 98St). If so prominent an adherent of Pompeius as L. Cornelius Balbus was among the subscribers, it would have been the more difficult for Cicero to suggest that the enmity of Pompeius for his client was a mere rumor⁴⁴. This chapter then gives us some reason to prefer identification with Herennius.

Since we are operating on the assumption that *luceius* and L. Balbus are the same man, in our attempt to find a nomen for L. Balbus we should not fail to make use of what little we know about *luceius*. One thing we know about him is that he was bribable: we do not know that Flaccus attempted to bribe him, but we know that he claimed Flaccus had done so. L. Cornelius Balbus is usually portrayed as one of “Caesar’s wealthy equestrian friends”, and as a man whose “financial backing” made possible the rise of Octavian⁴⁵. At any rate we know that the Balbi were one of the leading families of Gades (Cic. *Balb.* 41), and that Balbus during the dictatorships of Caesar helped direct both the personal finances of the dictator and state finances⁴⁶: a strange role for a penurious and therefore bribable man to play. Though in ancient times the richest of men might be temporarily short of cash because of the illiquidity of his assets, the evidence we have does not predispose us to believe that L. Cornelius Balbus was bribable. Since the subscriber L. Balbus was a man who could credibly claim to have been bribed, chapter 83 provides us with another reason to prefer identification with Herennius.

The chapter which mentions *luceius* and reveals his susceptibility to bribery also details the advantages his tergiversation would have brought to the defense. His significance consisted entirely in his knowledge of the prosecution case against Flaccus: he knew the *consilia Laeli*. He is not said to be important on account of his friends or his own influence, and Cicero clearly believed that he refuted the charge of bribery when he pointed out that the strategy and witnesses and evidence the prosecution would use were sufficiently well known to the defense⁴⁷. Now if in fact L. Balbus was important to the other prosecutors because he ranged the authority of Pompeius or Caesar on their side, then the attempt of Cicero to refute the charge of bribery levelled by *luceius* falls flat; the jurors would be thinking to themselves: Flaccus would not try to bribe *luceius* to get the benefit of his knowledge, but to get the benefit of his friendship with Pompeius and Caesar,

⁴⁴ More difficult but, one might argue, also more necessary. Yet we should not think of L. Cornelius Balbus in 59 as a future consul: in 59 he was still a man of foreign birth who could not hope for so much as a quaestorship; he was a man dependent on others, a lackey, and his presence on the prosecution team would have offered irrefragable evidence about the attitude of Pompeius toward Flaccus.

⁴⁵ K. E. Welch, “The Praefectura Urbis of 45 B.C. and the Ambitions of L. Cornelius Balbus”, *Antichthon* 24 (1990) 62, 64.

⁴⁶ Cf. Welch, “Ambitions of Balbus” 66, 68.

⁴⁷ I.e., he argued that the defendant would not be so foolish as to pay for information which the defense already possessed.

and so actually might have tried to bribe *luceius*. Thus chapter 83 furnishes yet another reason to prefer identification with Herennius.

If we flip back to the beginning of the speech, to chapter 2, we see Cicero possibly describing the prosecutors in the highest terms, calling them the wisest and rarest of men (*sapientissimorum et lectissimorum virorum*)⁴⁸. It is impossible to believe that Cicero in this speech would have been so complimentary about a group which included the foreign-born Cornelius. Those familiar with the speech know that the *pro Flacco* is the place to go for a healthy dose of Roman chauvinism, yet the prejudice in the speech is limited to the Asian Greeks who testified against Flaccus⁴⁹. But Cicero gives so much emphasis to the foreign status of the witnesses that we would not expect him to speak highly of the subscriptors if one of them was an Iberian and conceivably one with some Phoenician blood⁵⁰. It is after all clear enough that Cicero gave himself the liberty to attack the subscriptors as well as the witnesses⁵¹. This chapter, too, seems to fit Cornelius badly and gives us reason to prefer identification with Herennius.

In sum, the extant portions of the speech offer several arguments against identification of the subscriptor L. Balbus and L. Cornelius Balbus. It is rather certain that our L. Balbus was not the famous Cornelius, but it does not follow with equal certainty that he was a Herennius, since the arguments against Cornelius do not necessarily constitute arguments in favor of Herennius; e.g., if Herennius was rich, the corruptibility of *luceius*/L. Balbus counts just as much against Herennius as it does against Cornelius. But inasmuch as Cornelius can be ruled out with some confidence, with some confidence we could proceed to maintain that the subscriptor was Herennius, if Balbus had been a rare cognomen. It was not. Herennius (setting aside Cornelius) was the most prominent L. Balbus of the 50s, and the L. Balbus whose identity with the subscriptor would have the greatest probability if the reference to him were found in a contemporary source, but he is not the only L. Balbus other than Cornelius attested for this period⁵².

⁴⁸ Du Mesnil took these words, dependent on *iudicium*, as a reference to the jurors. In no other passage does Cicero conjoin *sapientissimi* and *lectissimi*, but it is hard to see why jurors, who definitely were *lecti*, might justifiably have been called *lectissimi*. The possibility that these words refer to the prosecutors is suggested by the way in which Cicero refers to Laelius a little later in the same chapter: *D. Laelium, optimi viri filium, optima ipsum spe praeditum summae dignitatis*. Repetition of the verb *existimo* seems to strengthen the connection between the two sentences (*existimabam...numquam tamen existimavi*).

⁴⁹ One could assert that Cicero dilated upon the foreign birth of L. Balbus in the missing portion of the speech: but this supposition is gainsaid if the argument we make in the text is accepted.

⁵⁰ In the case of L. Cornelius, it has been suggested that the cognomen Balbus is taken from the Phoenician god Baal; cf. Münzer, *RE* 4, col. 1261, who thought it likely that he was of Iberian rather than Phoenician blood.

⁵¹ To discredit the subscriptor Decianus, a citizen by birth, Cicero brought up the fact of his residency abroad (§70).

⁵² To deal with strictly attested individuals first: L. Octavius Balbus, senator in the 70s (v. Shackleton Bailey, *OCS* 72-73), might still have been alive in 59; L. Cornelius P. f. Balbus (*RE* no. 70), nephew of the L. Cornelius Balbus who was consul suffectus in 40, was alive in 59 and had been born by 72, but perhaps not long enough before 72 to be a subscriptor in 59. To take unattested

The cognomen Balbus is moreover historically linked with a nomen which might be corrupted to *luceius*, Lucilius; the Lucilii Balbi are attested for the Ciceronian era with the praenominal initials L. and Q.⁵³ We cannot be certain that a “L. Lucilius Balbus” was active in the courts or in politics precisely in 59, but rather than taking *luceius* as a hypercorrection of the praenomen Lucius, it is simpler to take *luceius* as a corruption of the nomen Lucilius, especially since Cicero is likely to have addressed L. Balbus, a man with such a common cognomen, by his nomen. It seems best then to place under the accuser D. Laelius three subscribers, denominated as follows: L. (Lucilius?) Balbus, C. Appuleius Decianus, Caetra⁵⁴.

individuals: it would not shock us to learn that the senator L. Octavius Balbus had a homonymous son, nor to learn that M. Atius Balbus (Pr. by 60) or T. Ampius Balbus (Pr. 59) had a relative named Lucius.

⁵³ Cf. Broughton, *MRR* 3.129. A senator of high rank in 35 B.C., of uncertain nomen (perhaps a Lucilius, since the Lucilii Balbi used the praenomen Lucius), was a L. Balbus L. f. (*MRR* 3.129): he or his father could be the subscriber of 59.

⁵⁴ The initial draft of this paper was penned at the Center for Hellenic Studies.