The *Verrines*:
Cicero’s Masterful Prosecution, Hortensius’
Hypothetical Defence, and the False Conclusions of
Grain Production Models

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Abstract

This thesis addresses issues concerning Cicero’s prosecution of Verres over the course of three chapters. The first chapter examines the case and clarifies what actually happened at the trial, what form of defence Hortensius raised, and why Cicero was so successful at overcoming his opposition’s ploys. As Cicero had modified the trial’s format, and Verres had fled from Rome before it had concluded, modern scholarship has not established the details of the trial clearly. The second chapter analyses the case from the perspective of the defence, putting forward the most likely arguments Hortensius would have considered. These are formed from anecdotes in the Verrines, Cicero’s defence speeches, and the recommendations of the rhetorical handbooks. By taking each probable argument in turn, Cicero’s prosecution is shown to negate their effectiveness in advance. Although this chapter can extend no further than the hypothetical realm, it illustrates that Cicero carefully crafted his prosecution to counteract any defence. This implies that rhetorical brilliance was at work in his performance, a proposition at odds to scholarship’s tendency to attribute his success solely to his overwhelming evidentiary advantage. The final chapter utilises the scepticism in Cicero’s reliability that the first two chapters have developed, and focuses on the analyses of economic scholars. The De Frumento is a central source in studies of Roman grain production, yet has received little critical analysis from rhetorical scholars. Economic scholars therefore utilise its figures literally, which has resulted in a slight miscalculation as Cicero manipulated the statistics he presented in court.
Preface

I would first like to thank Dr Jon Hall for his support, guidance, and mentoring, both during the completion of this thesis, and in years prior. Your advice, patience, and faith in my abilities have helped me to achieve what I have. You always give constructive and helpful criticism and I particularly thank you for not getting frustrated when I rambled about grain too much. I am eternally grateful.

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To the other Postgraduate students in the Department, thanks for the advice and support that you all provide. I wish you all the best for your future endeavours.

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<tr>
<td>Rhetorica Ad Herennium</td>
<td>Rhet. Her.</td>
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<td>Asconius</td>
<td>Asc.</td>
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<td>Pro Milone</td>
<td>Mil.</td>
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<td>Cassius Dio</td>
<td>Dio</td>
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<td>Cato</td>
<td>Agr.</td>
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<td>Cicero, Marcus</td>
<td>Cic.</td>
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<td>Ad Atticum</td>
<td>Att.</td>
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<td>Ad Quintum Fratrem</td>
<td>Ad Fr.</td>
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<td>Brutus</td>
<td>Brut.</td>
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<tr>
<td>De Imperio Gnaei Pompei</td>
<td>De Imp. Cn. Pompe.</td>
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<tr>
<td>De Inventione</td>
<td>Inv. Rhet.</td>
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<td>De Oratore</td>
<td>De Or.</td>
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<td>Divinatio In Caecilium</td>
<td>Div. Caec.</td>
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<td>De Officiis</td>
<td>Off.</td>
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<td>In Verrem</td>
<td>Verr.</td>
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<td>De Lege Agraria</td>
<td>Leg. Agr.</td>
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<td>Orator</td>
<td>Or.</td>
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<td>Pro Archia</td>
<td>Arch.</td>
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<td>Pro Caelio</td>
<td>Cael.</td>
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<td>Pro Cluentio</td>
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<td>Pro Flacco</td>
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<td>Pro Fonteio</td>
<td>Font.</td>
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<td>Pro Milone</td>
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<td>Pro Murena</td>
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<td>Pro Roscio Amerino</td>
<td>Rosc. Am.</td>
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<td>Pro Scauro</td>
<td>Scaur.</td>
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<td>Topica</td>
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<td>Author</td>
<td>Abbreviation</td>
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<tr>
<td>Cicero, Quintus</td>
<td>Q. Cic.</td>
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<tr>
<td>Commentariolum Petitionis</td>
<td>Comment. Pet.</td>
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<tr>
<td>Columella</td>
<td>Col.</td>
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<td>De Re Rustica</td>
<td>Rust.</td>
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<td>Diodorus Siculus</td>
<td>Diod. Sic.</td>
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<td>Julius Obsequens</td>
<td>Jul. Obs.</td>
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<td>Pliny the Elder</td>
<td>Plin.</td>
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<td>Naturalis Historia</td>
<td>HN</td>
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<td>Plutarch</td>
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<td>Life of Caesar</td>
<td>Caes.</td>
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<td>Life of Cicero</td>
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<td>Life of Crassus</td>
<td>Cras.</td>
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<td>Pseudo-Asconius</td>
<td>Ps.-Asc.</td>
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<td>In Verrem</td>
<td>Verr.</td>
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<td>Quintilian</td>
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<td>Institutio Oratoria</td>
<td>Inst.</td>
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<td>Tacitus</td>
<td>Tac.</td>
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<tr>
<td>Dialogus de Oratoribus</td>
<td>Dial.</td>
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<tr>
<td>Varro</td>
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<td>De Re Rustica</td>
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Introduction

Marcus Tullius Cicero’s prosecution of Gaius Verres, (commonly known as The Verrine Orations), is without question an extremely useful cache of information to historians on issues concerning Roman imperialism, provincial administration, and legal procedure.\(^1\) Although the material’s ability to illuminate our understanding is formidable, the source is not without its difficulties. Scholarship has generally bestowed a relatively high degree of trust on Cicero’s account assuming that, for the most part, a strong evidentiary foundation supported his accusations.\(^2\) Of particular note is what appears to be an unquestioning degree of faith from modern scholars in the area of ancient grain economics; their default stance is to assert that Cicero was incapable of embellishing his statistical figures.\(^3\) This thesis will account for issues of bias, rhetorical embellishment, and evidence in the Verrines over the first two chapters. In the third chapter, I will apply these findings to the analyses of grain economists to assess the validity of their proposals, which are so dependent on the speeches. I have chosen to focus on the issue of grain and the De Frumento for two key reasons: rhetorical scholars omit any serious critique of this section’s reliability more than any other; and economic historians cite Cicero’s account with little concern for the accuracy of his claims. This will culminate in addressing the issue of whether the reliance and faith that economic scholars place on the Verrines can be defended.

As an oratorical publication, Cicero’s prosecution is exceptional most markedly in its extreme length.\(^4\) In the Loeb Edition, two complete volumes are required to include the Verrines in their entirety. The significance of this becomes most resonant when it is compared to another Loeb Edition which contains within one volume the Pro Milone, In Pisonem, Pro Scauro, Pro Fonteio, Pro Rabirio Postumo, Pro Marcello, Pro Ligario, and Pro Rege Deiotaro.\(^5\) It was a published oration on a different scale to any of his other

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1 Broughton (1952) details the political careers of both Cicero and Verres. On Verres see 61, 64, 70, 81, 85, 102, 112, 119, and 124; on Cicero see 98, 132, 152, 165, 205, 233, 243, 251, 264, 278, 289, 331, and 356. On Verres’ name, see Smith (1954) 231-3.
2 Note that this is despite Cicero himself admitting that for some parts of his case he has no evidence to support his claims, such as Cic. Verr. 2.3.109-10.
3 Scramuzza (1937) 260, Evans (1981) 429-30, Garnsey and Saller (1987) 79-80, and Erdkamp (2005) 36 all utilise Cicero’s Verrines as a basis for their conclusions on Roman grain. In the case of each of these scholars, little more than superficial concern for the potential bias of the ancient account can be found; Scramuzza and Evans omit even this formality.
4 Tac. Dial. 20 stresses the deterioration over time that had occurred in oratory, claiming that nobody bothers to read all the books of the Verrines any more. This shows that, even in ancient times, the publication was notably lengthy.
works. Moreover, the fact that he never delivered the majority of the speech makes it all the more fascinating.\(^6\) Sometime after Cicero’s first part (actio) of the trial had been completed, Verres fled into voluntary exile.\(^7\) Consequently the trial concluded early, leaving Cicero with no opportunity to present the content of his second actio. The second actio was only a hypothetical speech, published after the trial.\(^8\) Verres’ early retirement shows just how successful Cicero’s prosecution was, and is noted as the moment he surpassed Hortensius as Rome’s foremost orator.\(^9\) Regardless of its obvious success, this document is fraught with difficulty for modern historians. Verres’ voluntary exile can perhaps be viewed as an admission of guilt; it is not however a licence to believe all of the charges. We cannot take all of Cicero’s statements at face value; the speech is not a purely historical document, but a dialogue of persuasion.\(^10\)

Before establishing to what degree a position of trust is foolhardy, a clear understanding of the historical situation, events of the trial, and publication of the speech is necessary. Cicero’s prosecution of Verres occurred in 70 B.C. for the charge of extortion. Extortion was a common problem in the Roman administrative machine and such a charge against a governor was not a novel occurrence; rather it was a fairly typical procedure.\(^11\) Verres’ tenure as Sicilian governor was originally intended to last for the

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\(^6\) Ps.-Asc. Verr. I (Stangl 205), Verr. II.1 (Stangl 224-5), and Plin. Ep. 1.20.10 indicate that the Verrines’ actio secunda was never delivered and only resembled a delivered speech. Alexander (1976) 47, Potter (1999) 26, and Dyck (2008) 150, 2; note that the actio secunda and the Second Philippic were never actually delivered. Of similar issue is the Pro Milone, the surviving version being markedly different from what was delivered on the day.


\(^8\) Dugan (2005) 224 describes the actio secunda as representing what Cicero would have said had he not won so quickly.

\(^9\) Stockton (1971) 43 claims the success and publication of the Verrines “boosted Cicero into the foremost place among the advocates of his day.” Similarly, Enos (2005) 104 asserts that upon the conviction of Verres, Cicero became the pre-eminent orator in Rome. Steel (2005) 24 suggests the publication of the Verrines as self-marketing was most successful and it is no coincidence that Cicero had his first defence of a senatorial client the following year. Dyck (2008) 153 notes that following his loss in the trial of Verres, Hortensius may have developed a form of depression, indicated by a lack of activity. Furthermore, his oratorical ability appears to have gone into decline. See also Knapp (1928) 51 and Wiedemann (1994) 36.

\(^10\) Perhaps the best warning against trusting what Cicero says at face value is Quint. Inst. 4.1.15 who states that when discussing one’s opponent, it is necessary to exaggerate all possible points. He claims that the case provides the facts; it is the orator’s job to enhance them. Pritchard (1969) 545 warns that although we are indebted to the Verrines for almost our entire knowledge of first-century Sicilian agriculture, one must always be careful to acknowledge that it is a document of persuasion and not historical fact. Similarly, Dillon and Garland (2005) 687 stress that in his speeches, Cicero is “giving a partisan viewpoint intended to convince a jury of his client’s innocence.” To this I would add that, in prosecution speeches such as the Verrines, he is driving home the guilt of the defendant at every opportunity.

\(^11\) Jones (1974) 117 stresses the history of extortion carried out by governors upon provincial allies and the many court cases that resulted. Looking only at the previous decade prior to Verres’ trial, a number of cases were held under the lex Cornelia de repetundis. P. Gabinius was charged and convicted for misconduct as governor of Achaea, the trial being held sometime between 76-70 B.C. P. Septimius
single year of 73 B.C., but was extended for an additional two years when his replacement was occupied with the uprising of Spartacus.\textsuperscript{12} Despite popular opinion presuming him to be guilty, Cicero suggests an acquittal was expected as Quintus Hortensius Hortalus, the foremost orator at the time, was Verres’ advocate.\textsuperscript{13}

Several key issues continue to plague modern interpretations of the trial. Scholars debate the timing of events in the trial, attempt to substantiate Hortensius’ defence, assess the implications related to the publication of the speeches, and determine how and why Cicero won the case. Each of these considerations has proved confusing and contradictory, with a variety of propositions being put forward. The first chapter will assess them in detail and establish what conclusions are most appropriate. The chronology of the case is a complex issue and scholarship has been uncertain of how the trial actually progressed. Spencer put forward the opinion that Verres fled into exile after only three days in court.\textsuperscript{14} Cowles’ assessment is ambiguous at best, similarly suggesting Verres fled after only three days in court, yet adding that there were nine days of witness testimony.\textsuperscript{15} Alexander produces a somewhat convincing argument for Hortensius to have delivered a speech in court, and pushes Verres’ abandonment of the case to later in proceedings. According to his interpretation, Verres fled sometime during the first adjournment for the public holidays, but prior to the resumption of the case.\textsuperscript{16} With so much doubt and ambiguity over the length of time Verres remained in Rome, it is helpful to examine the evidence and weigh up the scholarly arguments in an attempt to establish more clearly what happened. Even if the departure date of Verres can be clarified, there is a related issue that must be addressed: what defensive efforts, if any, did Hortensius enact?

The participation of Hortensius in the trial is a confused matter, scholarship putting forward a host of possible arguments and reconstructions. While the early


\textsuperscript{13} For details of Hortensius’ political career see Broughton (1952) 35, 97, 116, 131, 254, and 476. On his oratorical career, see Dyck (2008) 142-73.

\textsuperscript{14} Spencer (1917) 850.

\textsuperscript{15} Cowles (1929) 447.

\textsuperscript{16} Alexander (1976) 50.
propositions already mentioned of Spencer and Cowles would suggest Hortensius did not utter a word in court, more recent discussions propose his role was more active. Settle affirms that the Pro Verre (Defence Speech for Verres), which Quintilian cites, was published after the trial, and that its content prompted Cicero to disseminate his actio secunda.17 Alexander, in showing that Verres’ departure took place after the primary adjournment, declares that Hortensius delivered a full speech in court.18 In contrast, Frazel asserts that it was not a formal speech but an altercatio that Hortensius delivered and published.19 By no means has this matter been put to rest in scholarship as confusion is still evident. As recently as 2008, Lintott perpetuates, with apparent certainty, the notion that Hortensius presented a formal speech during the trial.20 With such indecision regarding what role Hortensius played in the trial, it is of vital importance to assess which theory, if any, can be held up as most likely, and what consequences this could have for an analysis of the case.

Cicero’s success in the case is typically attributed to two main factors: firstly, he successfully shortened proceedings with a Blitzkrieg strategy of a brief opening with evidence following; secondly, he prepared himself superlatively prior to the trial, bringing a monumental amount of both documentary evidence and witness testimony to support his charges.21 Both of these proposals have potential but the complete picture has not been achieved. A third element was also important; he presented his case masterfully using all of his oratorical skill and the rhetorical distortions that went with such an approach. Scholarship has not considered this factor enough. With a close examination

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21 Butler (2002) 57 asserts that the weight of evidence should be considered the cause for Cicero’s success in the case. Craig (2007) 269 supports Butler’s opinion on the matter. Taylor (1973) 21 proposes that evidence pertaining to Verres’ guilt was abundant in Sicily and was damning for the defence, while Lintott (2008) 89 implies that witness and documentary evidence was paramount in the trial. Similarly, Shackleton-Bailey (1971) 16 believes that Verres fled due to the overwhelming evidence presented against him. Pernot (2000) 108 and Rawson (1975) 42 blend the two traditions suggesting that his exile resulted from a combination of a shortened opening speech followed by the overpowering degree of evidence. Kennedy (1972) 160 and Mitchell (1986) 10 stress the importance of Cicero’s shortened format as the driving force behind his victory. Some scholars have acknowledged Cicero’s rhetorical skill as a key component of his winning formula; however, such a position is not the dominant viewpoint and has been overshadowed by the other two positions. Clarke (1953) 79 notes that, despite the technical nature of the trial, Cicero used every possible moment available to enhance his case and arouse indignation in his audience. Stockton (1971) 47 acknowledges that boredom was kept at bay with Cicero’s variation and enhancement of the facts, while Steel (2007) 37, discussing Cicero’s speech on grain, emphasises Cicero’s ability to elevate the subject from a completely tedious list of facts. Despite these examples where the orator’s skill is considered, the majority tend to consider the evidence base and change of format as the more important features, particularly as only a small proportion of the surviving speech was ever actually performed.
of Cicero’s prosecutorial strategy, this becomes clear. Therefore the final part of the first chapter will review the arguments he proposed, evidence he provided, and strategies he employed to overcome the obstacles of his opponents. As a result, the first chapter will provide an understanding of the complexities of the case, events of the trial, and Cicero’s case strategies. Consequently, his skill will be recognised alongside his impressive evidence base and modified procedure. Acknowledging the rhetorical brilliance of his prosecution will generate valuable doubt concerning the credibility of the Verrines.

With the events of the trial and Cicero’s actions illuminated, the second chapter will build upon the newly acquired understanding of the case by examining the defensive strategies afforded to Hortensius. Most notably, Alexander in *The Case for the Prosecution in the Ciceronian Era* reconstructed the strategies prosecutors employed based on Cicero’s handling of his defence speeches, a similar method to what will be applied to the Verrines.\(^{22}\) Having considered likely lines of argument for Hortensius, a reconstruction of what he would have wished to say, and an explanation of how Cicero pre-empted these arguments, will illustrate just how skilfully Cicero handled the case, and enhance our appreciation of his efforts. Thus complete trust in Cicero’s claims will become a problematic position to hold. In essence, the first two chapters are intended to work cumulatively to foster a perspective of healthy scepticism, aiding readers in understanding the skilful way Cicero weaved his arguments to make situations appear more sinister than they actually were. Although not entirely rehabilitating Verres’ reputation, character, and actions, a more developed estimation of Cicero’s exaggerations will come to fruition, and readers will appreciate that by no means is the Verrines an objective, or wholly trustworthy, version of events.

At least at face value, when scholarly opinions of the first half of the twentieth-century are compared to subsequent interpretations, the sensitivity of scholarship to the tone and nature of the source material has dramatically improved. Early in the twentieth-century, scholars tended to take an extremely literal reading of the speeches. For those of us now wise to Cicero’s ability to trick and deceive, we would say that they had swallowed his rhetoric hook, line and sinker. Spencer suggests that Verres’ obscene fascination with art was cultivated under Dolabella, never questioning to what degree this

\(^{22}\) Alexander (2002) *passim*. One important difference is the reactionary nature of defence speeches as opposed to the controlling nature of a prosecutorial speech. As Cicero spoke first in the Verrines, Hortensius’ arguments could not have shaped his *actio prima*; however, the *actio secunda* makes reference to defensive points and, as we shall see, Cicero’s arguments were largely concerned with anticipating Hortensius’ lines of defence. Steel (2001) 24-6, Lintott (2008) 97-100 and Dyck (2008) 152 use a similar line of investigation for the Verrines.
was simply a device Cicero employed to corrupt the jury’s perception of Verres.\textsuperscript{23} Furthermore, he suggests Verres had “bad blood in his veins” and that “neither the Punic war nor the two recent servile wars had been so ruinous to the island as the lawless oppression of this official and his friends.”\textsuperscript{24} Similarly, Oldfather describes Verres as treating Sicilian subjects with “spectacular indifference.”\textsuperscript{25} Cowles shows a comparable whole-hearted trust in Cicero stating:

The next three years, 73-71 B.C., present a story of maladministration, corruption, injustice, robbery, extortion, inefficiency, wantonness, and cowardice that is almost in-credible. That the fundamental facts are essentially as stated by the prosecutor, can hardly be doubted. Unquestionable as it is that he purposely distorted and enlarged upon certain phases of the defendant’s character … still the actual occurrences were too fresh in the public mind to make possible any very extensive falsification or misrepresentation.\textsuperscript{26}

Cowles does concede that an element of character assassination was involved in Cicero’s account, but he also makes the bold suggestion to trust Cicero’s version concerning events and actions.

Damning appraisals of Verres’ conduct and character from the first half of the twentieth-century can be contrasted with more recent scholarly evaluations. Mitchell notes the formulaic way in which Cicero attacks all legal and political opponents with labels of licentiousness and corruption, and his complete inversion when appraising friends and supporters.\textsuperscript{27} Jolowicz suggests that Verres was not an extreme example because the burden of any Roman magistrate was a heavy one on the provincial population: taxes were farmed; Romans enriched themselves at the expense of locals; and all the while the governor, and his staff, made money from their positions.\textsuperscript{28} Braund also proposes that, rather than Verres being an exceptional or out of the ordinary villain, the system of Roman imperialism itself led to widespread corruption; he stresses that often

\begin{itemize}
\item \textsuperscript{23} Spencer (1917) 840.
\item \textsuperscript{24} Spencer (1917) 840-1.
\item \textsuperscript{25} Oldfather (1928) 409.
\item \textsuperscript{26} Cowles (1929) 431. Morey (1893) 32 also stresses that Verres was an exceptionally vile magistrate claiming: “In Sicily the entire judicial and financial system of the king of Syracuse was maintained; the old method of taxation by tithes was preserved, and afforded no cause of complaint until the scandalous governorship of Verres.” Admittedly, not all scholars of the first half of the twentieth-century have such limited views. McKinlay (1926) 247 notes not only the contrast between Cicero’s handling of provincials in the \textit{Pro Fonteio} and \textit{In Verrem} but also the startlingly different appraisals of the characters of Verres and Fonteius.
\item \textsuperscript{27} Mitchell (1991) 42.
\item \textsuperscript{28} Jolowicz (1952) 70 states that corrupt governors were relatively common because the Roman system failed to control the governor, the only threat of consequence for his actions coming at the end of his tenure in the form of a prosecution.
\end{itemize}
the magistrate’s retinue could be as damaging as the governor himself, and that Cicero’s portrayal of Verres is rife with exaggeration and fictitious claims.29

This more critical view of Cicero’s speeches has certainly become the default stance of modern scholars; nonetheless, exceptions survive. Kennedy, for example, writing in 1972, retains much of the blackening rhetoric of his scholarly predecessors stating that: “[Verres’] basic quality was greed, set as a jewel among the lesser vices of lust, gluttony, cruelty, and cowardice, and polished by a love of art.”30 His assertion is the exception to the norm, and on the whole, the account for Ciceronian exaggeration is evident from almost all scholars. Whether they be rhetoricians studying his speeches for a greater understanding of how and why he was successful, historians trying to enhance our understanding of the political situation and legal process, or economists examining the nature of Roman grain (a scholarly approach particularly significant to the third book of the actio secunda and the focus of my final chapter), they all universally accept the need to question Cicero’s account. Nevertheless, even these more modern perspectives lack detail or close analysis of his techniques with few concerted efforts to distinguish the truth from exaggeration. The final chapter will apply the newly developed appreciation for Cicero’s distortions to his account of grain taxation. On the whole, there has been little attention paid to establishing how and when he twists the truth for his own ends in this part of his prosecution.

One scholar in particular is leading the pack on this matter. Steel has been on the front lines of this conflict, indicating narrative sections of the Verrines which, although convincing when taken at face value, are not what they appear once examined more closely. Her investigation of the events at Lampsacus as reported by Cicero, is most illuminating in just how easily he can create an impression on a reader; he presents Verres as a corrupt and vile individual, when, upon close analysis, he is devoid of guilt and actually competently handles a testing situation.31 This revelation of the susceptibility of

29 Braund (1988) 4-7. Johnston (1999) 9 also notes that Cicero’s account of the governor is likely to be full of exaggeration.
30 Kennedy (1972) 156 shows that even in more recent times, some scholars have continued to take Cicero’s words at face value. Nowhere in Kennedy’s analysis is there room for the allowance of what Borkowski (1994) 58 would suggest is standard practice in Roman oratory; to blacken the name of one’s opponents. Similarly, see Rigsby (2004) 165- 85 on the standardised manner of attacking legal opponents based on their character. Swarney (1993) 137, 139 stresses that in his study of the Cic. Rosc. Am., Clu., and Cael. “demonstrating a defendant’s place in society – and conversely the prosecutor’s inferiority or deviation – was a primary objective of the defence in each of the cases studied here.” He proposes that social standing and character was more influential in Roman court cases than the actual facts of the case. However Rigsby (1997) 239 also presents a valid argument to remind readers that, at the heart of any trial, the determination of truth concerning the criminal act was most important, factors of character, politics and corruption distracting from, but not overshadowing the importance of the facts.
readers to Cicero’s persuasive techniques illustrates just how skilful he was, and how careful we must be today whenever we find ourselves trusting his claims. If anyone doubts Cicero’s skill, his greatest achievement is perhaps not his talent of bringing the jury over to his way of thinking in court, but the fact that his persuasive eloquence has that very same effect on modern readers two millennia later. Steel’s chapter was an inspiration and springboard for my own analysis; it was her interpretations which helped to shape my own perspective of scepticism to Cicero’s narrative. Steel’s subsequent work on the structure of the De Frumento is equally illuminating and inspiring; this piece enhanced my suspicion about Cicero’s words further still, making it all too clear that the third book of the Verrines is not a straightforward statement of facts.32 The crowning analysis comes from Pittia who assesses the De Frumento, dissecting the various numerical figures supplied to establish criteria to justify the lack of reliability of the speech as a source.33 Marshall’s analysis of the laws Verres passed shows that, removed from Cicero’s rhetorical colouring, they were as much prudent regulation as the mechanisations of a corrupt tyrant.34 Cicero’s handling of his fourth book on Verres’ appropriation of art has also received scholarly attention; Petrochilos and Frazel for example, illustrate that even in a list of art works, Cicero carefully frames his delivery to work towards his objective.35

Despite these advances, no more than lip service is typically paid to the presence of exaggeration and embellishment in Cicero’s delivery. Almost all scholars caution that the source is a legal speech and not an expression of unbiased opinion; I suggest they make such concessions to safeguard themselves from any accusation that they do not understand or appreciate the nature of the evidence. Few go further than this however, tending to assume that their cautionary note does not apply to the passages they quote from the Verrines. To take scholars examining Cicero’s account of the grain taxes as an example, having recognised that Cicero would have good reason to under-quote the returns in the ager Leontini, Erdkamp feels that the orator’s figures can be trusted.36 Garnsey and Saller likewise acknowledge Cicero’s motives for manipulating the figures,

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33 See Pittia (2007b) 57-65. Lushkov (2009) describes Pittia’s contribution as “one of the highlights” of Sicilia Nutrix Plebis Romanae.
34 Marshall (1967) 408-13 presents the laws as logical measures to take when viewed individually and devoid of the suspicion Cicero casts over them. In contrast, Pritchard (1971) 230-1 sees these laws as mechanisations of Verres used to intimidate and control farmers along the lines of Cicero’s presentation.
35 Petrochilos (1974) 78-80 and Frazel (2005) 372. Note that Rosenmeyer (2007) 294-6 also identifies a strong tone of rape being connected to Verres’ acquisitions of statues of the female form. This strengthens the link between Verres and a lack of self-control concerning sexual urges, further exemplifying that Cicero elevated his handling of the art-works from a simple catalogue of thefts.
but also quote them with little question of their reliability. Scramuzza cites the figures of Cicero without even providing a cautionary note regarding their possible bias, and assumes their infallibility. Similarly, Evans also does not even concede the potential of distortion in Cicero’s evidence, merely citing it as irrefutable fact.

Their leaps of faith may not be unfounded. Although the *De Frumento* is an undelivered document of persuasion, Cicero supports his allegations with many documents and witnesses. Even with this apparent abundance of proof however, each argument Cicero makes must be assessed on its merits; a general use of evidence does not allow complete trust in all of his statements. For academics examining issues concerning rhetoric and persuasion in the ancient world, such statements of wholehearted trust should cause concern. Little has been done to assess whether this reliance and faith is appropriate because rhetorical scholars have, for the most part, overlooked the *De Frumento* and preferred to examine passages with more memorable and rhetorically flamboyant content. While the third book is cited regularly for studies in grain, it has had almost no appraisal on a rhetorical level. Its consistent use of numbers and figures, and copious references to witness testimony and documentary evidence, leaves it rather bland in the eye of the rhetorician. It is perhaps for this reason alone that this section of the speech is on the whole disregarded.

38 Scramuzza (1937) 260.  
40 Hall (2007) 232 cites Cic. *Verr.* 2.1.40-54. 64-70, 2.4.26-54, 2.5.160-3 as important moments of emotional appeal; of note is his exclusion of Book 3. By no means is this a criticism of Hall’s analysis or a suggestion that his list is lacking; however, it does show that, due to the other books containing more exciting and rhetorically colourful passages, it has been neglected. The *De Frumento* lacks obvious embellishment, emotional appeal, and rhetorical flavouring, leading it to being considered somewhat devoid of value for rhetoricians. In contrast, from an economic perspective, the third book is one of the most influential pieces of evidence available. This clear division between the utility of the *De Frumento* for grain studies, and the almost complete pardon provided to it by rhetorical scholars is an issue. Craig (2007) 269 points out that even Cicero described the *De Frumento* as a “taxing” subject and singles it out as the only part of the speech which fails to engage the interest of the audience. Petersson (1963) 156-7 describes the tite speech as “far less spectacular” when compared to the rest of the speeches noting its position at the middle of the whole presentation. Steel (2001) 23 describes the third book of the *Verrines* as consisting of “largely dry and technical subject matter.” However Steel (2007) 45 also notes, when assessing the structure of the third book, that in a most calculating manner, Cicero skilfully varies the delivery of this dry material through the use of digressions, emotional appeals, and variations in pacing, tone and content. Stockton (1971) 47 similarly indicates that in the *Verrines*: “Boredom would easily set in with so long a catalogue of crimes to tell. It was kept at bay by a subtle variation of pace and superb narrative skill.” However, such appraisals are in the minority and most rhetorical scholars tend to omit the third book completely from their analysis or make statements concerning the lack of excitement in its content. The best critical appraisal of Book 3 comes from Pittia (2007b) *passim* but her quality study, unquestionably a significant contribution for studies of the *De Frumento*, is only the beginning of what needs to be done. Note also that the only English commentaries readily available are for 2.1, Mitchell (1986) *passim* and 2.5, Levens (1946) *passim*.  
41 Although rhetorical scholarship has tended to overlook the significance of the *De Frumento*, a renewed interest has emerged in recent years. Pittia (2007b), Steel (2007), and Andreau (2007) have each probed the speech in order to better establish its reliability and identify the rhetoric within the numbers of its text. Vasaly (2009) has also provided refreshing insight into the *actio prima* and its evidentiary issues, and the
Due to the limited rhetorical analysis of the *De Frumento*, the final chapter will examine economic conclusions based on Cicero’s figures in light of a more critical perspective on his strategies and embellishments. The *Verrines* has been a most influential source in the field of Roman grain studies due to the revealing data it provides concerning the taxation of grain producing farmers in the province of Sicily. With a sceptical approach to the evidence developed over the previous two chapters, the literal interpretations of economic scholars will be questioned. This will work as a case study to show just how important the work rhetorical scholars are doing is, but also show the deficiencies in their focus, and their failure to influence other areas of scholarship with their analyses. Finally, implications for the current estimates proposed for seed-to-yield ratios in Roman grain production will be addressed.

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recent publication of Frazel (2009) *The Rhetoric of Cicero’s “In Verrem”* shows that the *Verrines* is of considerable interest to current scholarship. Unfortunately Frazel’s publication is too recent to be included in this analysis, becoming available too near to the date of submission to be considered. With scholarly interest in this topic rejuvenated, this analysis seeks to follow the lead of these insightful explorations and extend them further. In particular, these previous studies have focused little on the actual conclusions of grain economists. In this analysis, having questioned the credibility of the evidence base, the final chapter will turn to the topic of grain economics and attempt to amend the commonly accepted conclusions based on this new appreciation of the difficulties of their sources.
Conspiracy Theories and Stumbling Blocks: Case Chronology, the Role of Hortensius, and the Plots of the Defence

In 70 B.C., Cicero was presented with a difficult prosecution case against Gaius Verres, the governor of Sicily from 73-71 B.C. Verres’ initial mandate was for 73 alone, but his tenure was extended when his replacement was tied up with the revolt of Spartacus. It was held in the *quaestio de pecuniis repetundis*; literally translated as the (court of) inquiry into moneys claimed back, more simply referred to as the extortion court. It appears from Cicero’s speech that the general populace supported his case: (Cic. Verr. 1.2) *reus in iudicium adductus est C. Verres, homo vita atque factis omnium iam opinione damnatus ... Huic ego causae, iudices, cum summa voluntate et expectatione populi Romani actor accessi.* (“Gaius Verres appears, to stand his trial before you: a man already condemned, in the world’s opinion, by his life and deeds ... In this case, gentlemen, I appear as prosecutor, backed by the strong approval and keen interest of the nation.”) We have to take this comment with a grain of salt as it was in Cicero’s best interest to suggest the public would approve a conviction. It was a particularly valid strategy when the standing of the court had fallen into disrepute in recent times due to corruption; Cicero, as any skilled advocate would, tried to use this circumstance to suggest that only a conviction could show no malfeasance was at work.

Despite this image of public support, the case was not a foregone conclusion. My description of Verres’ prosecution as “difficult” reflects in no way the degree to which he was guilty of the charges, nor the degree to which there were willing witnesses. Rather, the case was difficult due to the complications that came with prosecuting a well-connected and wealthy magistrate. The defendant not only obtained testimonials from leading public figures, but also called on the leading orator of the time to speak on his

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42 Cic. Verr. 2.4.42. De Souza (1999) 151 notes that Verres’ replacement for 72 B.C., Q. Arrius, was diverted to assist in the war against Spartacus. See also Petersson (1963) 123 and Finley (1968) 127. See Broughton (1952) 109, 117 on the political career of Q. Arrius.
43 Greenwood (1928) ix. As Jolowicz (1952) 329 claims, it appears that this court was first established in the *Lex Calpurnia* of 149 B.C. Lintott (1999) 148, 158 puts forward that the court was established to compensate non-Roman subjects for unjust exactions made by Roman Magistrates and Pro-Magistrates. Sherwyn-White (1972) *passim* discusses the effect of the *lex Glaucia* on the procedure of the jury. Prior to this decree a trial could be reheld multiple times, a verdict only having effect if more than two-thirds of the jury were ready to vote. Following the law’s enactment, a trial was limited to two hearings known as the *actio prima* and *actio secunda*. The recess dividing the hearings was known as the *comperendinatio*. See also Lintott (2004) 71. Craig (2007) 269 uses the term *ampliato* for the same meaning as *comperendinatio*.
44 All translations of the *Verrines* are supplied from the Loeb Edition of Greenwood (1928-1935) *passim* except for passages from the first book of Cicero’s second *actio* which are from the translation of Mitchell (1986) *passim*.
45 Such a line of argument can be seen in Quint. *Inst.* 4.1.31.
46 Cic. Verr. 1.1-3 uses such an argument to his advantage.
47 Shelton (1998) 275 also uses the adjective “difficult” to describe the prosecution of Verres.
behalf. These influential contacts were particularly problematic when most of the prosecution witnesses and complainants were considerably less-influential, non-Roman provincials.\textsuperscript{48} Securing a conviction against corrupt governors was most definitely not guaranteed; Julius Caesar, also an accomplished orator, failed to secure a conviction against Dolabella in 77 B.C. for his governorship of Macedonia.\textsuperscript{49}

Verres had several powerful individuals as associates and supporters; hence Butler proposes that the common expectation in Rome was an acquittal.\textsuperscript{50} Cicero’s speech suggests a “conspiracy” on the part of Verres’ side, implicating several leading aristocrats and relating a complex plot involving several stages. It is vitally important to understand the obstacles Cicero had to overcome in order to win the case; these difficulties inevitably shaped how he carried out his prosecution and can inform an analysis of the trial.\textsuperscript{51} I will initially consider these various complications. An attempt to establish at what stage in proceedings Verres fled Rome, and whether or not Hortensius offered any reply will follow; scholars have failed to clarify these issues. Finally, having clarified issues regarding the actual events of the trial, the discussion will return to the obstacles placed in front of Cicero, and examine how he overcame them. Through this process, an enhanced appreciation of the issues of the case and the great skill Cicero employed will become evident.

\textsuperscript{48} As Braund (1988) 3 points out, the greatest limitation of the extortion court was “the ultimate inadequacy of Roman concern for non-Roman victims of magistrates in the provinces – however loudly and powerfully that concern might be declared – is indicated by recurrent (though not total) failure to prosecute and to convict the guilty.” There was an inherent bias from the all-Roman jury in favour of the magistrate. Brunt (1990) 316-17 shows how Cicero successfully undercut provincial witnesses when defending corrupt governors. Finley (1968) 129 notes that it was expected that Roman governors would place matters of Roman rule and personal ties ahead of provincial concerns. Dyck (2008) 150 indicates that, not only did Hortensius step forward to represent Verres, but also L. Cornelius Sisenna and the young Q. Metellus Pius Scipio. See also Alexander (1990) 88, Case No. 177.


\textsuperscript{50} Butler (2002) 27 admits that Cicero’s speech may exaggerate the difficulty of the scenario, but proposes that those who thought Cicero would win were in the minority. Butler is right to suspect Cicero may well have been exaggerating when we see that Quint. \textit{Inst.} 4.1.8 suggests showing weakness and disadvantage in order to win sympathy from the judges.

\textsuperscript{51} Alexander (2002) 4 proposes a similar approach when examining Cicero’s defence speeches; considering the case and tactics of his opposition can give us a far greater appreciation of his abilities and understand more fully why and how he won each case. Steel (2001) 24, Lintott (2008) 97-100 and Dyck (2008) 152 each use a similar form of analysis for the \textit{Verrines}. Note that my use of the word “conspiracy” both here and in the title is intentional. According to the Shorter Oxford English Dictionary (2002) 495, a conspiracy (from the Latin \textit{conspirare}) is when parties join together to achieve a common interest. Secrecy is implicit in their nature. Cicero’s account of the plots and schemes of the defence is a good example of a “conspiracy theory” as it involves allegiances between many individuals, which cannot be proven due to the nature of the groups involved. See Pigden (2006) 20, Keeley (2007) 140, and Coady (2007) 195.
The Rival Prosecutor

The first complication placed in front of Cicero was the competition of a rival prosecutor. The Roman courts had no official prosecutors; initiating and presenting the case against a defendant was a private enterprise.\(^\text{52}\) According to Cicero, Verres and his supporters put forward this rival with the intention that he would fail to achieve a conviction, either due to lack of ability or complicity with the defence.\(^\text{53}\) The man in question was Quintus Caecilius Niger.\(^\text{54}\) Cicero claims the Sicilian people did not want Caecilius as prosecutor because he intended to destroy the evidence, rather than mount a successful prosecution.\(^\text{55}\) Modern scholars describe him as a “straw accuser” and label him “inept and possibly sympathetic” to Verres’ case.\(^\text{56}\) Yet as Settle points out, he had some valid reasons for pursuing the case. He states: “himself a Sicilian, and having suffered injury at the hands of Verres, [Caecilius] had every reason to possess full knowledge of the defendant’s crimes, for he had served as quaestor under Verres.”\(^\text{57}\) There were also rewards for successful prosecutors, further validating him as an individual with reasonable motivation for pursuing the case.\(^\text{58}\) As was standard procedure

\(^{52}\) See Bauman (1996) 23, Lintott (1999) 161, Berry (2000) xxvii, and Bablitz (2007) 32. Like the Athenian system, it was up to individuals to prosecute. However see Carey (1997) 13 who notes that in Athens the defendant had to also mount their own defence, no advocate being allowed to represent them.

\(^{53}\) Cic. Div. Caec. 28, 71 claims that Caecilius wished to obtain the evidence not to prove Verres’ guilt, but to hide the facts that verified that Verres was guilty and that implicated himself in the misdeeds. Additionally, Cicero stresses that Caecilius was a relative unknown with little credibility.

\(^{54}\) May (1988) 34 notes Cicero’s assertion that Caecilius planned to collude with the defence. Also see Greenwood (1928) xv, Settle (1962) 83-4, and Butler (2002) 27. See Broughton (1952) 117 on what we know of the political career of Caecilius.

\(^{55}\) Cic. Div. Caec. 28, 32.

\(^{56}\) Settle (1962) 90 and Butler (2002) 27.

\(^{57}\) Settle (1962) 91. Petersson (1963) 125 and Lintott (2008) 85 propose possible motivations for Caecilius’ desire to prosecute Verres other than collusion with the defence, but both lean toward Cicero’s appraisal of his objective. Epstein (1987) 97 declares that Caecilius’ inimicitia toward Verres was genuine. See Pittia (2007a) 60 on Caecilius’ questorship under Verres.

\(^{58}\) Lintott (2004) 71 notes that there were rewards for prosecutors but does not verify exactly what such rewards entailed. Berry (2000) xxvii indicates that successful senatorial prosecutors were awarded with the insignia of the convicted individual. Swarney (1993) 149-50 attests that Cicero gained greater praise for the Sullan connections of his opponents in the Rosc. Am. as the case was fought against tough odds. Caecilius’ situation was comparable; a young orator fighting against seemingly unsurmountable odds from which a win would be most creditable and even a loss would bring some recognition. Beard and Crawford (1985) 21, and Hopkins (1978) 85 indicate that political advancement could be promoted through oratorical success. Vasaly (2009) 114-15 emphasises the benefits the case had for Cicero’s own political career providing him with an opportunity to extend his client base and enhance his public persona through his performance. Similarly, Alexander (2007) 105 points out that, as evident in Cicero’s own career, oratory was a means of attaining political success regardless of any material gains immediately resulting from the case. Therefore, even if Caecilius had little to gain from a successful prosecution, the oratorical success itself could be a means for advancement as evident in Q. Cic. Comment. pet. Concerning the disputed authorship of Comment. pet. see the comments of Morstein-Marx (1998) 260-1 and Tatum (2002) 395. However the two possibilities are of no major concern; whether penned by Q. Cicero himself or by a student as part of a rhetorical exercise, the deep knowledge of Republican political machinery suggests that, as a source on electioneering, it is reliable.
when more than one individual desired the case, Cicero competed against him in a *divinatio*, in January, in order to win the right to prosecute Verres. Through a speech which is included in the published *Verrines*, Cicero succeeded in convincing the court that he was the right man for the job.\(^{59}\)

This is typically seen as a victory for Cicero over the plots and schemes of Verres’ defence and supporters, Caecilius viewed as nothing more than a puppet for the defence.\(^{60}\) Such an interpretation becomes a little more difficult when we see that Caecilius also participated unsuccessfully in the *divinatio* for a case of the same charge against P. Gabinius sometime between 76-70 B.C., as Cicero notes in the *Verrines*.\(^{61}\) This does not completely rule out his complicity with Verres’ defence, but does add weight to an argument against this situation. Rather than a stooge for the prosecution, he can be seen as an inexperienced orator trying to get his big break, the case against Verres not being his first attempt at leading a prosecution.\(^{62}\) Caecilius’ desire to prosecute appears less suspicious when one considers the potential rewards, and his personal knowledge of Verres’ criminality. To assert that he could not possibly have been colluding is unjustifiable; however, to assert emphatically that he was a crony for the defence is equally so. At best, we can say that there is evidence to support both interpretations and neither should be stated too strongly.

**Friends in High Places**

Regardless as to whether or not Caecilius was part of Verres’ defence strategy, Cicero’s battle was far from over. He relates that he was then confronted with delaying tactics. Due to the makeup of the court and magistrates for the following year, (in particular the newly elected praetor de repetundis), Verres knew he had a much better chance of being acquitted if he could delay the trial.\(^{63}\) If he pushed the commencement of


\(^{60}\) Petersson (1963) 125 claims outright that Caecilius was on the side of Verres. Following suit, Dyck (2008) 150 asserts without any doubt that Caecilius was aiding the defence. Pernot (2000) 107 describes Caecilius as a non-entity whom the defence wanted as the prosecutor while Poteat (1933) 172 sees Caecilius as aiding the side of the defence. Stockton (1971) 44 proposes that Caecilius was put forward “undoubtedly in order to collude with the defence.” Berry (2000) xxvii adopting a similar interpretation
describes Caecilius as Verres’ “crony.” In contrast, Lintott (2008) 85 is more critical in his assessment, stating only that Cicero could easily make an argument that Caecilius was helping Verres, not going as far as the others who claim that his complicity with the defence was a certain fact.

\(^{61}\) Cic. Div. Caec. 64. Also see Alexander (1990) 86.

\(^{62}\) Crook (1995) 138-9 stresses that prosecutors were usually inexperienced orators trying to enter into the world of legal advocacy; rarely did an established orator prosecute.

\(^{63}\) The *praetor de repetundis* was selected by lot from the elected praetors each year. His job was to preside over this court.
the trial back so that it could not be completed before the end of 70 B.C., the trial would restart the next year with a new judge and jury. Postponement was advantageous because Hortensius, the leading defence counsel, would then be consul. Cicero reports Gaius Curio openly congratulating Verres on Hortensius’ election, implying that the weight of a consul as advocate would all but guarantee an acquittal. (Cic. Verr. 1.19) Videt ad ipsum fornicem Fabianum in turba Verrem; appellat hominem et ei voce maxima gratulatur; ... “Renuntio” inquit, “tibi te hodiernis comitiis esse absolutum.” (“Just near the Arch of Fabius, he noticed Verres among the crowd, called out to him, and congratulated him loudly. ... ‘I hereby inform you’ he said, ‘that to-day’s election means your acquittal.’”)

Not only would Verres’ counsel be a consul, but Hortensius’ co-consul, Quintus Metellus, was also sympathetic to Verres’ cause. Cicero questions why Metellus was such a passionate supporter of Verres, suggesting that Verres had used his new-found wealth to bribe voters for Metellus’ consular election. Furthermore, only a few days after the election of the consuls, Quintus Metellus’ brother Marcus was chosen to preside over the Extortion Court for 69 B.C. (Cic. Verr. 1.21) Ecce autem illis eis diebus, cum praetores designati sortirentur et M. Metello obtigisset ut is de pecuniis repetundis quaereret, nuntiatur mihi tantam isti gratulationem esse factam ut is domum quoque mitteret qui uxori suae nuntiarent. (“But to my surprise, only a few days later, when the praetors-elect were casting lots, and it fell to Marcus Metellus to be president of the Extortion Court, I received news that Verres had been so warmly congratulated on this that he even sent off slaves to his house to carry the news to his wife.”) Cicero sums up the advantages that Verres would have if a postponement occurred and it is on this basis that he proposes the plan of his opponents. They intended to stall for time until the end of the year so that a fresh trial could be held in 69 B.C. with these beneficial conditions in place: (Cic. Verr. 1.26)

Reperio, iudices, haec ab istis consilia inita et constituta, ut, quacumque opus esset ratione, res ita duceretur ut apud M. Metellum praetorem

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64 Frael (2004) 130 relates the line-up of important positions aristocratic sympathisers of Verres would hold in the following year. Dyck (2008) 147 proposes the strategy of purposefully delaying the trial to “run out the clock” may well have been employed in 75 B.C., the case being restarted in 74. Hortensius’ was defence advocate in this case also. See also Settle (1962) 94 and Alexander (1990) 73 and 79, Case No. 144 and 158.

65 May (1988) 2 stresses the importance of the advocate’s character. See also Paterson (2004) 79-95.

66 Rawson (1983) 41. Note Cic Verr. 2.2.64 clearly states that Verres is a kinsman of the Metelli (cognationem). See also Petersson (1963) 124. On the career of Q. Metellus see Broughton (1952) 102, 114, 131, 139, 145, 154, 159, 185, and 206.


68 Dyck (2008) 148 indicates that Hortensius held this position in 72 B.C. On the career of M. Metellus see Broughton (1952) 131-2.
causa diceretur. In eo esse haec commoda: primum M. Metellum amicissimum; deinde Hortensium consulem non solum, sed etiam Q. Metellum, qui quam isti sit amicus, attendite;

(“I now discovered, gentlemen, that the plan of action formed and adopted by Verres and his friends was this: so to prolong proceedings, by whatever method might be necessary, that the trial should take place under the presidency of Marcus Metellus as praetor. This would have several advantages. First, the strong friendly support of Marcus Metellus. Next, not only Hortensius would be consul, but Quintus Metellus too, the strength of whose friendship for Verres I will ask you to note.”)

Although Cicero names several men of influence who could assist Verres the following year, his support base did not end there. Lucius Metellus, another of his supporters, held the pratorship of Sicily. Cicero reports a comment the Metellan consul-elect (Quintus) made to the Sicilian subjects; Metellus’ intention was to intimidate them and make them feel that testifying would be futile due to Verres’ many influential contacts. Addressing the Sicilians, he said: (Cic. Verr. 1.27) se consulem esse; fratrem suum alterum Siciliam provinciam obtinere, alterum esse quaesitum de pecuniis repetundis; Verri ne noceri possit multis rationibus esse provisum. (“I am consul; one of my brothers is governing Sicily, the other is going to preside over the Extortion Court; many steps have been taken to secure that no harm can happen to Verres.”) He attempted to make Cicero’s witnesses feel that the only possible result of journeying to Rome to testify against Verres was discrimination from the pro-Verres governor, a conviction being impossible. 

The Achaean Trial

It appears that it was in Verres’ interests to delay the trial until the next year, when he would have several powerful friends to influence the trial. The first measure to slow down proceedings was having another case begin before their own to push it back on the calendar. The ex-governor of Achaea was prosecuted in the same year under the same charge. Cicero requested 110 days to gather evidence; the prosecution for the Achaean governor, having initiated their case the following day, coincidently asked for 108. Consequently, the duration of the other extortion case would take place before Verres’

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69 Gruen (1971) 9 states that there is no doubt that Verres enjoyed the support of the Metelli brothers. On the career of L. Metellus see Broughton (1952) 122, 128-9, and 137.
own trial, provided Cicero used all of his allocated time to collect evidence. According to Greenwood’s interpretation however, Cicero gathered his evidence most efficiently and had finished much earlier than his opponents expected, negating the strategy of the defence by being ready to start his case earlier than the prosecutor for Achaea. Butler suggests: “Cicero’s ratio of evidence collected to time spent investigating must indeed have been far from typical.” Cicero himself recounts his collection of evidence in Sicily showing how thorough and speedy his progress was, the time spent in Sicily amounting to a mere fifty days: (Cic. Verr. 1.6) ego Siciliam totam quinquaginta diebus sic obii ut omnium populorum privatorumque litteras iniuriasque cognoscerem. (“I covered the whole of Sicily in fifty days, so effectively, that I took [cognisance] of the wrongs, and the documents recording the wrongs, of all the communities and individuals concerned.”)

Cicero proudly proclaims his haste and diligence when obtaining his evidence, but he is also careful to stress the upright nature of his collection, ensuring that his evidence is seen as credible, never tarnished with any suspicion of distortion, manipulation, or the shortfalls of a job rushed: (Cic. Verr. 2.1.16)

In Siciliam sum inquiendi causa profectus; quo in negotio industrium meam celeritas reditionis, diligentiam multitudo litterarum et testium declaravit … vim in inquirendo tantam habui quantam mihi lex dabat, non quantam habere poteram istorum studio quos iste vexarat. (“I set out for Sicily to gather evidence. My energy in this task was shown by the speed of my return, my thoroughness by the multitude of documents and witnesses … I used as much authority in conducting my investigation as the law allowed me, but not as much as I could have as a result of the eager co-operation of those whom Verres had injured.”)

Following Greenwood’s interpretation, we can deduce that due to Cicero’s great speed, he had assembled his evidence ready to prosecute before the Achaean case, successfully thwarting Verres’ attempt to delay the trial’s commencement. This explanation is not wholly satisfying as Cicero did not overcome this obstacle completely unscathed. He states he lost three months of time due to this rival case. Lintott has subsequently updated our understanding of the Achaean prosecution. As he points out, the three months which Cicero claims he lost were not convenient for him anyway, due to the time required to gather evidence and the distraction of his election for aedile. This was so, despite Cicero disingenuously describing the lost three months as: (Cic. Verr.

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72 Greenwood (1928) xvi.
73 Butler (2002) 57.
74 Note, as mentioned at the beginning of this chapter, all quotes from Book 2.1 of the Verrines are from the translation of Mitchell (1986) passim.
75 Cic. Verr. 2.1.30.
Therefore, it is best to propose that Cicero experienced only a slight delay, if any, and his opponents failed to stop the trial from starting.

**The Trial Begins**

Following the delaying rival prosecution, Cicero suggests that the defence had a strategy to continue to prolong the trial upon its commencement. If Verres’ counsel could bring the trial to a standstill with long speeches, and slow down the case at every opportunity, the trial would still be in progress at the end of the year. The busy schedule of official holidays and games, which would close the court for many days in the latter stages of the year, facilitated Hortensius’ alleged strategy. The final months of the year had a full schedule of games and holidays. The trial began on 5th August at the eighth hour (2 o’clock in the afternoon). Cicero had only 10 days of court time before Gnaeus Pompeius’ votive games started on the 16th of August, finishing on the 2nd of September. The *ludi Romani* then began immediately after on the 4th and concluded on the 19th of September. After these games, the trial would have 35 days before the *ludi victoriae Sullae*, which ran from the 26th of October to the 1st of November. Finally, the *ludi Plebii* would last from the 4th to the 17th of November, leaving little of the year left for Cicero to close the trial.

This busy public schedule is the reason Cicero provides to justify his unique *actio prima*. He moved immediately to the interrogation of witnesses and presentation of documents after only a brief speech. Cicero suggests that this method reduced the time
needed to prove Verres’ guilt, and in the process rendered the delaying tactics of his opponents ineffectual: (Cic. Verr. 1.34) Tua ratio est ut secundum binos ludos mihi respondere incipias: mea, ut ante primos ludos comperendinem. (“Your plan is, that you should not begin your speech for the defence till both the festivals are over. My plan is, to reach the adjournment of the case before the first festival begins.”) Plutarch suggests that Cicero did not win the case by speaking; rather, he won by not speaking. Perhaps this supports Cicero’s proposal that he required this strategy to shorten the trial’s duration. Greenwood complicates this view pointing out that it is hard to see where Cicero would have gained time with such a structure; he would have interspersed the content of the case he did not deliver in the *actio prima* between the witnesses anyway. The colouring and amplification of his speech, which normally preceded the witnesses in order to heighten their testimony, would now be inserted amongst their statements. Therefore, with regard to saving time, the benefit of the shortened speech may not be as significant as first thought; if Cicero had used a longer continuous speech, he would have had to make fewer additions during his witnesses.

The shortened speech did however grant another potential boon. By moving quickly onto his vast array of witnesses and evidence, (a part of the case which was most certainly in Cicero’s favour), he could use the sheer weight of evidence to render the audience and jury entirely hostile to any defence; an effect which appears to have proved successful. Hortensius lost the ability to deliver a speech of any considerable length prior to the introduction of witnesses. As a result, he could not launch the typical pre-emptive strike against their testimony to create doubt of their credibility. Cicero reduced him to similar short speeches and the cross-examination of witnesses, a situation which made any attempt to win over the audience a near impossible task.

little discussion of the charges other than indicating that the defendant’s guilt would be clearly illustrated based on the evidence. For the difference between the actual and expected speaking time see notes 107-8.

83 Greenwood (1928) xvii-xviii. Settle (1962) 95 agrees that enhancement would have taken place during the testimony but disagrees with Greenwood’s statements regarding the duration of the long speeches proposing his speech would have taken days or weeks without the shortened format which did save time. Vasaly (2009) also envisions emotional appeals and enhancements taking place during the witness examination and Cicero’s “miniature orations” that were connected to each charge.
84 *Cic. De Or.* 185-201, using the famous orator Marcus Antonius as a mouthpiece, relates the defence of Gaius Norbanus. As defence speaker, Antonius stressed that in a case where his defendant’s crimes, and the skill of the prosecutor, had naturally turned the court against his case, he had to use a gradual build up of persuasion to create an atmosphere where his case could be heard fairly. By restricting Hortensius’ ability to speak at length, Cicero had essentially removed the possibility of him being able to swing the momentum of emotion back towards his side.
Verres’ Exile: When Did He Flee?

Cicero’s success is evident from Verres’ premature voluntary exile, as he relates early in the actio secunda. He states: (Cic. Verr. 2.1.20)

ut primo die testium tanto numero citato populus Romanus iudicaret isto absoluto rem publicam stare non posse; ut alter dies amicus istius ac defensoribus non modo spem victoriae sed etiam voluntatem defensionis auferret; ut tertius dies sic hominem prosterneret ut morbo simulato non quid responderet, sed quem ad modum non responderet, deliberaret.

(“I managed on the first day by the mass of witnesses I summoned to convince the Roman people that the state could not survive his acquittal; I managed on the second day to deprive his friends and defenders not only of the hope of victory but of the will to defend him; I managed on the third day to demolish the fellow to such an extent that, feigning illness, he began to consider not how to answer the charges but how to avoid answering them.”)

Cowles incorrectly asserts that Verres capitulated on the third day, producing the contradictory images of a third-day abandonment with a parade of witnesses lasting nine days:

The prosecutor proceeded immediately to the examination of witnesses, and at the end of the first day, had made a profound impression upon the jury and the assembled crowd. For nine days the examination of witnesses was carried out, the hopes of the defence gradually fading, as the incontrovertible testimony of the Sicilians wove the net tighter and tighter about the indicted governor. On the third day Verres, pretending illness, withdrew from the court and, without even awaiting verdict, left Rome for voluntary exile.85

This last sentence is more than a little confusing. It appears to suggest that Verres left on the third day, the prosecution strategy suddenly overwhelming him; yet the previous sentence implies Verres’ hope gradually diminished over the nine days of witness testimony, his voluntary exile occurring sometime after. This ambiguity arises from the misinterpretation that Verres’ retirement occurred on the third day. He did not abandon the case altogether, but either requested a recess or retired from the court due to sickness. Spencer had none of the ambiguity of Cowles, suggesting quite plainly that Verres fled to Marseilles on the third day.86 More recently, Shelton oversimplifies the events of the trial stating that “On the first day of the trial, [Cicero] presented such

85 Cowles (1929) 447. Oldfather (1928) 409 also attests to the nine day parade of witnesses and Verres’ early retirement from the trail.
86 Spencer (1917) 850.
damning evidence against Verres, and presented it so brilliantly, that Verres knew he would be convicted and so retired from Rome in voluntary exile.”

Cicero’s own speech complicates the assumption that Verres fled into exile after only three days. He suggests that the case had not been decided during the adjournment: (Cic. Verr. 2.1.20) *Deinde reliquis diebus his criminiibus, his testibus, et urbanis et provincialibus, sic obrutus atque oppressus est ut his ludorum diebus interpositis nemo istum comperendinatum, sed condemnatum iudicaret.* (“Then during the remaining days he was so overwhelmed and crushed by the charges and by the witnesses from both the city and the provinces that, when the days of the festival intervened, everyone considered he had not achieved a postponement but was already convicted.”) Stockton advances our knowledge somewhat by firmly proposing that Verres did not flee until the 14th of August, immediately after the nine days of witness testimony, a sure improvement on Cowles. Alexander sheds further light on the matter, removing the confusion of Cowles’ analysis and suggesting Stockton’s appraisal does not go far enough. He points out that Pseudo-Asconius does not claim that Hortensius abandoned the defence altogether, but that he gave up on his planned defensive strategy: (Ps. Asc. Verr. I.153.24-8 (Stangl 223))

*Multis autem diebus prima Actio celebrata est, dum testes Verris producuntur criminiunt diversorum, dum recitatur publicae privataeque litterae: Quibus rebus adeo stupefactus Hortensius dicitur, ut rationem defensionis omitteret, adeo perculsas Verres, ut abiret in exilium sua sponte.*

(“However the first actio was conducted over many days. As the witnesses of Verres’ diverse crimes were brought forward, and while public and private documents were read out, Hortensius is said to have been so stunned by these tactics that he abandoned his defensive strategy, while Verres was so overwhelmed that he departed into voluntary exile.”)

The key phrase is *rationem defensionis.* Hortensius did not refuse to speak, but rather gave up his plan of attack. It would be incorrect to interpret such a phrasing as evidence that Hortensius did not speak at all. Alexander expands this, providing anecdotes from Cicero’s speech that imply Verres remained in Rome for some time. Cumulatively, these points suggest that despite earlier scholarly opinion, Hortensius may well have delivered a speech in Verres’ defence. Cicero reports during the *actio secunda*

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87 Shelton (1998) 275. Her statement is not totally incorrect but more suffers from ambiguity. She does not actually state that Verres fled on the first day but does fail to clearly indicate that it was on a later day that his desertion occurred, leading to potential confusion.

88 Stockton (1971) 44. Powell and Paterson (2004) 56 also warn against assuming that Verres fled on the third day.


that even though he was accused of stealing works of art and silver in Sicily, Verres was unable to subdue his addictive fascination with all things decorative, and handled the silverware of L. Sisenna with great enthusiasm.\footnote{See Alexander (1976) 52 who notes Sisenna as part of the defence team. Cicero refers to Sisenna as Verres’ \textit{defensor} at Cic. \textit{Verr.} 2.2.110 and 2.4.43. Also see Dyck (2008) 150.} (Cic. \textit{Verr.} 2.4.33)

\begin{quote}
\begin{flushright}
\textit{ut nuper – videte hominis amentiam – posteaquam est comperendinatus, cum iam pro damnato mortuoque esset, ludis circensibus mane apud L. Sisennam, virum primarum, cum essent triclinia strata argentumque expositionum in aedium, cum pro dignitate L. Sisennae domus esset plena hominum honestissimorum, accessit ad argentum, contemplari unum quidque otiose et considerare coepit.}
\end{flushright}
\end{quote}

(“Only the other day – to show you what a fool the fellow is – after the adjournment of the trial, when he was already as good as condemned and done for, early on one of the days of the games in the Circus, dinner being laid and the silver plate put out in the house of our honoured fellow citizen Lucius Sisenna, who had a houseful of such distinguished guests as befitted a man of his rank, Verres went up to the silver and proceeded to a leisurely and attentive inspection of one piece after another.”)

Two points are most important in this section from the speech: firstly, Cicero indicates that this incident took place during the Games, after the adjournment of the initial stages of the trial; secondly, the trial had not yet been decided. This implies that Verres was still in Rome when the witnesses had given their testimony, debunking the belief that he went into voluntary exile after only a few days.\footnote{Marinone (2004) 67 suggests that Verres fled Rome sometime around the 10\textsuperscript{th}-15\textsuperscript{th} of September with the \textit{litis aestimatio} beginning on around the 20\textsuperscript{th} of the same month. See also Dyck (2008) 151.}

One potential issue is raised from this passage: could this be evidence supporting the proposal that Cicero wrote the entire \textit{actio secunda} after the trial had finished? He appears to be reacting to an event which occurred after the first \textit{actio}. A more probable supposition is that he pulled small sections and anecdotes from recent events, but had already prepared the vast majority before the trial.\footnote{Frazel (2004) 128. Greenwood (1928) xix also supports the idea that the majority of the \textit{actio secunda} would have already been written as Cicero could not have predicted for sure that the trial would end early.} Alexander stresses that the majority of a prosecutor’s work was done before the case began, the key to his success being how well he could predict, and counteract in advance, the defence’s strategy. Essentially, he had to try to make his charges faultlessly so that there would be no way for the defence speaker to undermine his credibility or pick holes in his arguments. Cicero would have spent time considering the order, content, and delivery of his speeches prior to presenting them in court, with an eye to Hortensius’ likely reply. In contrast to the \textit{Verrines}, when speaking for the defence his speeches were much more reactionary; the points of the
prosecution determined what content he covered or ignored. As prosecutor and the first speaker, Cicero could write the majority of his speech in advance, taking advantage of speaking without any risk of the defence undercutting his points before he made them, his only concern being to nullify possible defensive angles. Therefore, it is reasonable to assume that the majority of his prosecution was already crafted prior to the commencement of the trial; if it was not in its finished form, at least a framework and basic strategy would have been worked out.

Incidents like the one reported involving Sisenna’s silverware are most probably based on actual events, with a degree of distortion to heighten their effect. Note that Cicero took care to mention that Verres handled the silver in plain sight of a large group of onlookers; he refers to them as plena hominum honestissimorum and maximo conventu. Cowles believes that all the “fundamental facts” of the speeches are trustworthy with some allowance for exaggeration and distortion. This is too generous; we must always examine Cicero’s account with a critical eye. That being said, in this instance it seems credible to claim that Cicero was telling the truth. The event occurred recently in Rome before many witnesses. The context and colouring of the event may well be Cicero at his rhetorical best, and it is probably unlikely that Verres actually acted in this way, but his presence at Sisenna’s home is believable. When establishing the guidelines for evaluating Roman rhetoric, Alexander advises only believing narratives outright when they involve public events in the recent past, or charges the defence do not refute. We cannot know if Hortensius would have refuted this statement, but it is an incident which Cicero states occurred in view of many witnesses, was not from the distant past, and was not at a location far removed from Rome. It is for these reasons that this probably did occur; as an extension, it is more than likely that Verres had not left Rome before the holidays had commenced.

**Did Hortensius Speak?**

Due to the aforementioned evidence, it is reasonable to conclude that Cicero delivered his entire actio prima, presented some or all of his evidence and witnesses, and at some stage over the adjournment for the games, won the case with Verres’ voluntary

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95 As Quint. Inst. 10.7.30 points out, in some instances Cicero created his speeches with short notes as a guide.
96 Cic. Verr. 2.4.33-4.
97 Cowles (1929) 432.
exile. Despite his apparent success, as Alexander suggests, the case was certainly no pushover and Hortensius may have delivered a speech in defence of his client, perhaps evident in Quintilian’s reference to a Hortensian *Pro Verre*. Frazel prefers to omit the *Pro Verre* entirely from his analysis, its structure and reliability being completely unknown. His view is rather unsatisfying; to merely remove this piece of evidence from the equation citing unreliability is of little help when there are no obvious causes for concern. With a rhetorical specialist like Quintilian, we should not discount his evidence no matter how troubling or inconvenient it may be, without compelling reasons.

It is difficult to pinpoint when this speech would have actually occurred; modern scholarship shows a degree of uncertainty. Lintott, although not focusing on this issue, shows the lack of clarity that still plagues scholarship. He emphatically proposes that Hortensius delivered a speech during the trial: “[Hortensius] did deliver at the beginning of the trial an oration: a published version of [his] speech for Verres was still available in Quintilian’s time.” Greenidge’s interpretation of the speaking order and procedure of such trials appears contradictory to that of the *Verrines*. Confidently stating whether Hortensius had an opportunity to speak before the admission of evidence is not straightforward. Cicero’s speech suggests he proceeded with witness testimony immediately after his *actio prima*, yet standard procedure was for each side to deliver

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99 Quint. Inst. 10.1.22-3. See Alexander (1976) 46, 53. He suggests that the *Pro Verre* was delivered in court. In contrast, Settle (1962) 108 proposes that the *Pro Verre* was a written response Hortensius made after the trial, attacking Cicero’s unorthodox approach to the case and prompting Cicero to write the *actio secunda*. Meanwhile Frazel (2004) 134 does not focus on the *Pro Verre* as it has not survived and its authenticity and form are totally unknown, refusing to attempt to classify it as a delivered or undelivered speech. I personally prefer to include it in any analysis on the basis that Quintilian is relatively reliable as a source on ancient rhetoric; to simply disregard him both distorts our view of the case and belittles our endeavours to clarify the cases nature. As modern scholars, if there is no evidence to suggest that the *Pro Verre* was a fabrication, we have no reason to suggest that Quintilian made a mistake when citing it. In a field where so many pieces of evidence do not survive, we would have little ability to advance our knowledge if we were limited to analysis which involved only surviving documents. Dyck (2008) 142, 151 rightly feels that in the case of Quintilian, he is “unlikely to have been imposed upon by a forgery”, discrediting the approach of Frazel. He also notes the contrast between Cicero’s numerous extant speeches and Hortensius’ speech which appears to have survived to Quintilian’s day, but has been subsequently lost. For details of the difficulties involved in the nature of ‘publishing’ documents in the ancient world, and the distortion created by modern scholars in their use of the term ‘publish,’ which would perhaps more appropriately be phrased disseminated, circulated or distributed, see Kenney (1982) 4-20, Phillips (1986) 228, Starr (1987) 213-15, McDonnell (1996) 486, Murphy (1998) 492, 495-501, and Potter (1999) 29-35.

100 Lintott (2008) 89. Lintott is guilty of over-simplification rather than simply being incorrect. By equating the existence of Quintilian’s citation with a delivered speech at the trial, he has passed over all previous discussion of this evidence which relate the difficulty in making such an assumption. At the opposite end of the spectrum, Kamm (2008) 38 proposes that Hortensius “threw up his brief while evidence was still being called” implying that no defence at all was given. More appropriately, Powell and Paterson (2004) 56 do not overstate their opinion, only claiming that there is much doubt over whether a defence was mounted.
their speeches prior to the evidence. On this issue, Cicero’s own description of what he expected would follow his *actio prima* is most revealing: (Cic. *Verr*. 1.55)

Faciam hoc non novum, sed ab iis qui nunc principes nostrae civitatis sunt ante factum, ut testibus utar statim: illud a me novum, iudices, cognoscetis, quod ita testes constituam ut crimen totum explicem; ubi id interrogando argumentis atque oratone firmavero, tum testes ad crimen accommodem: ut nihil inter illam usitatam accusationem atque hanc novam intersit, nisi quod in illa tum cum omnia dicta sunt testes dantur, hic in singulas res dabantur: ut illis quoque eadem interrogandi facultas argumentandi dicendique sit.

(“My calling of my witnesses at once will be no novelty; that has been done before, and by men who now hold leading positions in the country. The novelty that you will note, gentlemen, is this: I shall so deal with the evidence of my witnesses as first to state each charge in full, and after supporting it by questioning, argument, and comment, then to bring forward my witnesses to that particular charge. There will thus be no difference between the usual method of prosecution and this new one of mine, except that in the former the witnesses are not called until all the speeches are over, whereas in the latter they will be called with reference to each charge in turn: so that, further, our opponents will have the same facilities as ourselves for questions, arguments, and comments.”)

Settle suggests that the *Pro Verre* was the publication of Hortensius’ *altercatio* and lines of questioning during the interrogation of witnesses. He places Hortensius’ arguments, which Cicero refers to in his second *actio*, in this part of the trial proposing that Hortensius published these arguments as a challenge to Cicero’s victory. Therefore, he sees the published *Pro Verre* as bearing a strong or complete resemblance to the points Hortensius raised in the *altercatio*. His interpretation works, provided we assume Cicero had his way and moved immediately onto his evidence. In contrast to Settle, Alexander proposes that it cannot be ruled out that Hortensius delivered a full speech in defence of his client. Rather than a mere *altercatio*, Alexander envisions Hortensius delivering his speech in court. Determining whether the *Pro Verre* was published or delivered, and its form, can be established from the Hortensian arguments evident in Cicero’s content.

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103 Alexander (1976) 52-3. Lintott (2008) 89 also suggests that Hortensius may well have delivered a full speech based on the reference of Quint. *Inst* 10.1.23 to Hortensius’ *Pro Verre*.
Cicero refers to several instances where Hortensius objects to his procedure, tries to refute his arguments, or attempts to discredit witness testimony. Cicero states at the beginning of the *actio secunda* that his task was to ensure that Hortensius had no reason to complain. It appears that one point Hortensius argued was that they could not adequately investigate the evidence without full discussion. (Cic. Verr. 2.1.25)

*Hic tu fortasse eris diligens ne quam ego horam de meis legitimis horis remittam; nisi omni tempore quod mihi lege concessum est abusus ero, querere, deum atque hominum fidem implorabis, circumveniri C. Verrem quod accusator nolit tam diu quam diu liceat dicere.*

(“At this point you will, no doubt, keep careful watch in case I should forego any of my legally allotted hours, and if I fail to use all the time permitted me by law, you will complain and call on heaven and earth to witness that Verres is being unjustly condemned because the prosecutor is unwilling to speak for the full period allowed him.”)

This refers to the fact Cicero shortened his opening speech considerably, did not use his entire allotted time, and did not let Hortensius deliver his speech before he presented evidence. The delivery time of the *actio prima* can be roughly estimated by comparing its length to the *Pro Archia*. Based on this assumption, the delivery time for the *actio prima* was around 20 minutes. In contrast, the *actio secunda* has been roughly estimated to last eight hours. The *actio prima*, regardless of the exact timing of delivery, was dramatically shorter than expected for such a complex case involving so many charges.

Note that Cicero’s refutation of any allegation of unfairness over his shortened speech is weak. He proposes that his reduced speaking time helps the defence. At face value this seems to be fair logic: a prosecutor’s reason for speaking was to incriminate the defendant, choosing to not speak therefore meant he was not incriminating him. On the

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104 At this stage, a mere overview of the evidence for a Hortensian speech is required in order to establish the nature of Hortensius’ reply and confirm when it is most likely to have happened. A more in-depth analysis of the apparent objections of Hortensius will be carried out in the following chapter to assess potential arguments Hortensius made, their effectiveness, and the consequences these would have had for the case of Cicero; at this point a simple examination of what Cicero claimed Hortensius said is necessary. Note Kennedy (1972) 161 suggests that, although Cicero included references to reactions of Verres and objections of Hortensius, it is an imaginary procedure and therefore such reaction shots may have absolutely no basis in reality.
105 Cic. Verr. 2.1.24.
106 Note Greenidge (1928) 748 believes Cicero’s modifications were minor, while Dyck (2008) 152 regards the changes as more significant.
107 Hall (2008) delivers the *Pro Archia* in full, in Latin, in 36 minutes. The *Pro Archia* is 32 sections long, the *actio prima* of the *Verrines* being considerably shorter at only 18 sections. This makes the average time taken to deliver a section of the *Pro Archia* 1.125 minutes per section. If it can be roughly assumed that the average time for a delivered section is on average the same between the two speeches, then the *actio prima* can be said to be around 20 minutes. See note 81.
contrary however, Hortensius would have had fair grounds to complain that, especially in a case which had such a great amount of testimony against the defendant, it was particularly necessary for the advocates to discuss the evidence at length to establish its relevance, credibility, and legality. By removing the discussion of these charges and moving immediately onto proof, there was no opportunity to lay bare issues or allegations which were not accurate or questionable in some other manner.¹¹⁰ Frazel supports Alexander’s acknowledgment that it was unfair that Cicero forced Hortensius to argue against half-made charges.¹¹¹

In addition, Hortensius apparently argued that although money may have been stolen, there was no verification that Verres had received it. Cicero responds to this in the *actio secunda*, evident in an episode involving the inheritance of a deceased man from Agyrium and his two sons. (Cic. Verr. 2.2.26) *At enim ad Verrem pecunia ista non pervenit. Quae est ista defensio? utrum asseveratur in hoc an temptatur? mihi enim res nova est.* (“But, we are told, the money did not reach Verres. What manner of defence is this? A serious plea, or an experiment? I ask, for it is something new in my experience.”)

This seems to be Cicero’s response to Hortensius’ point, but could also be what Frazel refers to as the “literary fiction of a trial.”¹¹² It is difficult to distinguish upon which this or any of the other references Cicero makes to Hortensius’ complaints are based: they could be instances from the trial itself; examples from a published speech; or literary fabrications Cicero concocted to make his *actio secunda* more riveting. Regardless of the situation, these arguments have some validity, and therefore, it is not inconceivable that Hortensius did make such an utterance. Moreover, the direct relevance of this argument to the evidence base of the trial makes it highly plausible that he raised this point during the *altercatio* or witness interrogation.

Cicero states that Hortensius complained about the aggressive testimony of Artemo of Centuripa.¹¹³ Similar to Hortensius’ remarks regarding the lack of evidence to show that Verres was profiting, this claim against Artemo’s testimony could simply be Cicero including trial like moments to add flavour to his publication to maintain the façade of a real trial, could be evidence that Hortensius spoke in court, or could represent a point he made in a published, but undelivered speech. Nevertheless, arguing that witnesses were

¹¹⁰ Alexander (1976) 52.
¹¹¹ Alexander (1976) 52 and Frazel (2004) 131. For more detailed analysis of these arguments see the following chapter in which Hortensius’ defensive arguments are reconstructed.
¹¹² Frazel (2004) 141-2. Note that Frazel argues that all of Cicero’s oratorical publications require such a literary fiction as they are all reconstructions produced after the event, the term being not only applicable to the *Verrines*. See note 120.
coached in what to say, were overly aggressive, and were biased was a reasonable claim; a claim that Hortensius could have made during witness examinations. Although it could never be definitively determined if Hortensius made this objection in court, it appears to be a likely argument to make and fits easily into Cicero’s modified format of witnesses preceding Hortensius’ oration.

Continuing with witness testimony, Hortensius also complained that the younger Iunius should not have appeared in court. He said that to present the boy in court was to deliver the case in a demagogic manner.\(^{114}\) It was not only notable that the boy appeared, but came dressed in shabby clothes and without his \textit{bulla} in order to represent his destitute state that Verres created.\(^{115}\) The interpretation of this account is the same as the previous example; such an incident seems tenable as it involves an argument Hortensius was likely to make, and would easily fit into the amended format of the trial during the interrogation of witnesses.

Yet another example of Cicero responding to Hortensius’ argumentation is the claim that Verres, even if he did overcharge cities in their taxes, did so in order to maximise the grain supply for Rome. As Steel points out, this was a compelling argument when it is considered that in these matters, the concern for Rome tended to over-ride any for provincial interests.\(^{116}\) Verres claimed that he sold the tithes for much more than they had previously been sold for, in the process benefitting Rome. Cicero’s counter to this argument is twofold: Verres profited more than Rome did; and the damage to the Sicilian infrastructure was, on balance, substantially worse than extra grain. The nett result was that Verres’ actions threatened to disrupt the long-term stability of the Roman grain supply for very little benefit to the state.\(^{117}\) In the same manner as the previous points, although one cannot prove outright that Hortensius made this statement in court, it appears a valid argument and again could easily have arisen during the interrogation of witnesses to counteract testimony concerning the grain tithes.

Finally, there is the reported incident between Cicero and Hortensius involving the mentioning of riddles and a sphinx. Both Plutarch and Quintilian refer to this


\(^{117}\) Cic. \textit{Verr.} 2.3.44-7, 49. Verres’ successor Metellus wrote to the Sicilians pleading for them to sow their crops guaranteeing that he would over-turn Verres’ corrupt systems; Cicero provides this as evidence that Verres severely damaged the Sicilian grain industry, in the process jeopardising the steady supply of grain to Rome.
Although both cite this event as occurring during the trial, there is some confusion regarding the exact placement of it temporally. Plutarch places it in the *litis aestimatio* while Quintilian proposes it occurred during the questioning of witnesses. I concur with Alexander’s assessment that we should trust Quintilian’s version over Plutarch’s as he was a rhetorical specialist. The credibility of Quintilian’s opinion on the matter is in direct contrast to Plutarch’s tendency to twist facts to suit his purposes and use unreliable evidence. Quintilian, the more reliable of the two sources, recalls the incident stating: (Quint. *Inst.* 6.3.98) *Ex historia etiam ducere urbanitantem eruditum est, ut Cicero fecit cum ei testem in iudicio Verris roganti dixisset Hortensius: ‘non intellego haec aenigmata’; ‘atqui debes,’ inquit ‘cum Sphingem domi habeas.’* (“It shows learning also to take a joke from history, as Cicero did when Hortensius said to him as he was examining a witness in the trial of Verres ‘I don’t understand these riddles’; ‘You ought to, however,’ Cicero said, ‘because you’ve got a Sphinx in your house.’")

Cicero makes multiple references to Hortensian lines of argument, as these examples show. In spite of this plurality of anecdotes, producing a definitive answer to the debate of whether or not Hortensius delivered a speech in court is fraught with difficulty. In his *actio secunda*, Cicero clearly responds to criticisms that may be attributed to Hortensius. As has already been noted however, it cannot be clarified with any real certainty whether these criticisms were Cicero’s own creations to enhance the ‘literary fiction’ of his publication, a response to a published *Pro Verre*, or a reaction to points Hortensius actually raised in court. Moreover, even if it can be said that they were allegations he made at the trial, establishing whether they were from a set speech or mere interjections is still troublesome. Most of the evidence from Cicero’s speech can be interpreted to fit any of the three hypotheses and other sources are contradictory and unreliable; consequently, Hortensius may have delivered a speech but it cannot be definitively determined.

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119 Alexander (1976) 50. See also Kellner (2005) 284-5 who notes that Plutarch prioritized moral issues ahead of all other concerns including historical accuracy. Additionally, due to the parallel nature of his biographies, facts are often manipulated to allow comparison of events occurring in vastly different historical contexts. As a result, his accounts are not always reliable historical records. See also Hammond (1993) 5, and Heckel and Yardley (2004) xxiii. See Lintott (2004) 73 for a discussion on the procedure of the *litis aestimatio*.

120 Settle (1962) 108 suggests the *actio secunda* was published as a response to Hortensius’ written *Pro Verre* limiting any delivery to an *interrogatio*. In contrast, Alexander (1976) 52 believes that Hortensius delivered a short and ineffective speech which fell flat. Dyck (2008) 152 acknowledges the difficulty in assessing whether these objections actually came from Hortensius.
Despite the difficulty of these equally tenable propositions, can the timing of Hortensius’ arguments be nailed down with any greater clarity? A crucial part of the equation are the comments Cicero makes at the end of the *actio prima*, an indicator of what he anticipates will happen following his brief opening speech.\textsuperscript{121} He expects that after his speech, his witnesses will immediately testify. If it can be assumed that the trial progressed as he expected, it suggests there was no opportunity for Hortensius to deliver a speech. Having concluded his shortened opening, Cicero began presenting his witnesses immediately, their testimony lasting for the next nine days. Through their testimony, the incriminating evidence piled on top of Verres; his guilt appeared more and more incontrovertible each day. Provided Cicero’s version of events for those first nine days can be trusted, he appears to have had his way. Early on in the *actio secunda*, when recalling the events of the trial, Cicero states that his witnesses appeared on the first day.\textsuperscript{122} Therefore, the earliest Hortensius could have presented a formal speech was after the 40 day break for Pompey’s *votive games* and the *ludi Romani*. During the witness testimony, his only opportunity to speak was in the form of witness interrogation and the *altercatio* between himself and Cicero. As Verres fled sometime during the games, the delivery of a full speech appears to have been impossible.\textsuperscript{123}

If Hortensius never delivered a speech, his arguments raised at the trial must have come about in conjunction with the interrogation of witnesses and *altercatio*. Admittedly, several of the noted arguments would perfectly suit the format of an *altercatio*: namely the use of the child; coached witnesses; and the lack of evidence linking appropriated funds to Verres.\textsuperscript{124} In spite of the likelihood of these arguments taking place during the trial, this does not immediately limit Hortensius’ published *Pro Verre* to this format.\textsuperscript{125} Rather than publishing only the comments made in court, he could have published the speech he would have delivered had the judges not allowed Cicero to modify procedure and swindle justice (in Hortensius’ eyes). Cicero declares that there was a precedent for his tactic stating that individuals who are now senior statesmen had used the same strategy in a case.\textsuperscript{126} Although an example of a shortened speech existed, Cicero himself

\textsuperscript{121} Cic. *Verr.* 1.55. Note these comments are provided in full earlier in the chapter.
\textsuperscript{123} Dyck (2008) 151 notes that Hortensius did have a brief opportunity to speak before the *comperendinatio* but that it would not have been a point by point discussion or anything resembling a full defensive oration for his client.
\textsuperscript{124} Cic. *Verr.* 2.1.151-2, 2.2.26, and 2.2.156. See notes 112-15.
\textsuperscript{125} Settle (1962) 108 proposes that Hortensius delivered his arguments in the form of an *altercatio* in court and it was this that was subsequently published.
\textsuperscript{126} See note 80.
admits that his new procedure was still innovative. Whereas in earlier instances of shortened speeches, the calling of witnesses occurred after both sides had given their presentations, in his new format he would call witnesses before the defence could present any of their case. Cicero is most certainly underplaying the modification, which was more than a slight technicality.

In light of the drastic change to procedure, Hortensius would have felt more than justified in publishing the defence he would have presented had Cicero left the trial’s format untouched, or had the judges objected to this innovation. This speech would have contained all of the arguments he would have provided if regular procedure was sustained. Following a more typical trial format, Hortensius could have presented his case at leisure before any witnesses’ testimony, and developed his arguments gradually. His publication may or may not have included his arguments against Cicero’s shortened speech. In sum, I propose that Hortensius published the speech he would have given had procedure been maintained.

If this publication is the case, it is not a complete anomaly in our surviving corpus of Latin oratory. The entire actio secunda of the Verrines was undelivered as was the Second Philippic. Furthermore, Cicero’s published Pro Milone, as is available to the modern reader, is vastly different from the speech he actually delivered. Cicero was not alone in publishing speeches that he did not deliver, or modifying those that he did. Marcus Brutus also saw fit to publish a speech in defence of Milo, despite not being his advocate. Although unsuccessful in arguing that the new format was unfair, Hortensius may well have felt that, if procedure had been adhered to, he would have been very persuasive; even if he thought he still would have lost, he may have believed that his prepared speech, though undelivered, deserved to be disseminated.

127 Cic. Verr. 1.55. Hortensius was allowed an opportunity to speak briefly on each charge in between each witness but not provide a substantive defensive speech. See Frazel (2004) 131.
128 Cic. De Or. 199-201 emphasises the need for a gradual build up of argument to win over a hostile audience.
131 Asc. Mil. 41.
132 Alexander (2002) points out that three main reasons can be given for publishing an oratorical work: firstly and primarily, to make political gains and help one’s reputation; secondly, for educational purposes to instruct young orators; and finally, due to the interest the public had in high profile cases. All three of these reasons can easily be attributed to Hortensius’ publication, restoring lost honour by showing how well he could have argued the case, showing young orators what lines of argument were most effective in the case, and allowing the public to hear both sides. Berry (1996) xi also stresses that speeches were not only written up and distributed to show the speakers point of view or success, but as “oratorical models for imitation and enjoyment.” In contrast, Finley (1968) 122 singles out political reasons as the only motivation for the publication of the actio secunda. Settle (1962) 108 proposed motivation of being embittered at Cicero’s cheating in the trial is not a requirement for Hortensius to publish this speech.
In addition to the other undelivered oratorical publications, the manner in which Quintilian refers to the *Pro Verre* adds further weight to the notion that the form of Hortensius’ publication was more than an *altercatio*. He recommends comparing the prosecution and defence to fully appreciate a case using the *Verrines* as his example. Quintilian has no bias toward unpublished speeches, often quoting the *Pro Milone* and *actio secunda*. With the liberal citing of the undelivered and hypothetical second half of the *Verrines*, it is not inconceivable that an understanding of an unpresented defence is what Quintilain is considering. Quintilian is not citing Cicero’s delivered *actio prima* alone when making this recommendation; if this is his intention, he needs to highlight this point due to the numerous references to the undelivered *actio secunda* elsewhere in his handbook. With such minimal information regarding Hortensius’ *Pro Verre* being available, uncertainty is unavoidable; however, I would suggest that Quintilian is referring to a published, but un-delivered set speech. Some of the arguments were formed over the course of the trial and are evident in the *Verrines*. When Cicero mentions Hortensius’ arguments, I suggest that these would have occurred during the *altercatio* and interrogation of witnesses; these lines of argument would have been included and expanded upon in the published *Pro Verre*. Hortensius would have also created some of his arguments after the trial; however, he would have conceived many ideas before the trial and many points, although not arising during the *altercatio*, would have been ready to use had the court granted him the opportunity.

Although I suggest that the *Pro Verre* was Hortensius’ undelivered set speech, its undelivered nature does not mean that viewing the case from Hortensius’ angle is of no use. Whether or not he delivered a speech, and whether or not the publication was a full speech or *altercatio*, his potential arguments and an analysis of their effectiveness is still a beneficial exercise. This analysis will be carried out in the following chapter. Through understanding the techniques he would have used, a greater appreciation of Cicero’s skill is possible. In the meantime, examining how Cicero overcame each obstacle put before him over the course of the case will develop an understanding of his prosecutorial technique and reasons for success.

Rather a motivation based on pride in his oratorical skill and a feeling that the pedagogical worth of the speech was still valid could have compelled him to disseminate the document.

133 For examples of Quintilian’s citations to both the *Pro Milone* and *actio secunda*, see Quint. *Inst. passim.*
How Cicero Overcame the Defence’s Strategies

The obstacles that Cicero overcame are most revealing as they help to illuminate how he approached his prosecution, what his objectives were in his speeches, and the areas he may have had the opportunity or need to mislead his audience. The way he handles these difficulties can help us to understand the role of prosecutor in general, and pinpoint why he was so successful in this particular case. The respective obstructions his opponents presented have already been outlined; now a more thorough examination of how he went about thwarting each of these strategies is required. After the affair, it can be easy to forget that at the time of the event, the decision hung in the balance. Cicero did not know for sure he would win or that he would be able to out-maneuvre his opponents. It is only with a greater understanding of the tactics he had to employ, and those which his opponents laid in front of him, that one can fully fathom why Cicero found success in this case and which strategies were of most importance to him.

Winning a Divinatio: Cicero Gives a Lesson in Prosecutorial Technique

As mentioned earlier, Caecilius was the first obstacle. Even though the majority of Sicilian citizens requested Cicero’s representation, he had to prove his superior ability in the divinatio. Cicero’s approach to the divinatio covers several topics and is very helpful in developing our comprehension of how a prosecutor approaches a case, and the tasks Cicero believes were lying ahead of him. Although Cicero had not been a prosecutor prior to this case, he places much weight on his experience as a defence advocate; this suggests his audience would have felt that, although not an experienced prosecutor, his legal background would make him a more than capable prosecutor.134 Perhaps most importantly, he had the support of the Sicilians who Verres had hurt.

Cicero explains that the Sicilians desired his representation because of his term as Sicilian quaestor five years earlier.135 He is careful to frame his request for the prosecution of Verres in the most agreeable terms. To play the part of prosecutor was seen as an ignoble position; Cicero therefore feels he must justify his desire for the role,

134 Note that Cicero was not yet the eminent orator that he would become; however, he had had several successful cases prior to the Verrines.
or rather, stress his lack of desire for it.\footnote{Alexander (2002) 7 comments on the Roman view that to make prosecution a habit was seen as improper as shown in Cic. Brut. 130 and Cic. Off. 2.50. Tempest (2007a) 23 points out that the role of the unwilling prosecutor has its roots in Attic oratory, an example being Demosthenes’ prosecution Against Medias. Habinek (2005) 26 shows that Cicero frames the case not as a prosecution of Verres, but as a defence of the aggrieved Sicilians. Crook (1995) 138-9 stresses that to take on a prosecution was typically a young man’s role and not wholly acceptable for an orator who was already successful. Moreover, he cites Quint. Inst. 11.1.57 who recommends showing reluctance when prosecuting. See also Rutledge (1999) 557.} Having explained the obligation that forces him to represent the Sicilian people he had once served, he relates his abhorrence for prosecuting and emphasises that his duty overrides any personal feelings.\footnote{Dyck (2008) 150. Lacey (1978) 18 points out that as he left Sicily, Cicero was given an unprecedented farewell and promised to represent them if the need ever arose. Settle (1962) 86 notes that Cicero was to a degree thought of as a patron to Sicily. Mitchell (1991) 6 claims that Cicero took on the prosecution of Verres because of amicitia to the people of Sicily.} Additionally, he twists his prosecutorial role into a defender (\textit{defensor/patronus}) of the Sicilian people; he shifts the focus of his role away from attacking Verres, to distance himself from the unsavoury label of prosecutor (\textit{accusator}): (Cic. Div. Caec. 5) \textit{quod haec quae videtur esse accusatio mea non potius accusatio, quam defensio est existimanda. Defendo enim multos mortales, multas civitates, provinciam Siciliam totam.} (“In form, it is an act of prosecution: but it may fairly be regarded as equally an act of defence. I am, in fact, defending a number of individuals, and a number of communities; I am defending the entire province of Sicily.”)

Cicero took this idea even further; by emphasising Verres’ monstrous character and questionable past actions, he proposes the case is not merely a defence of Sicily alone, but of the entire Roman Republic.\footnote{As Aubert (2002) 119 stresses, Verres showed great arrogance in his disregard for the rights of Roman citizens. As this was the case, Cicero asserts the case is not merely a defence of the allies of Sicily, but a defence of the rights of Romans throughout the Empire. Quint. Inst. 4.1.49 acknowledged this strategy of twisting a prosecution into a defence, using the term \textit{prolep\'sis}. Also see Vasaly (2009) 118.} He transforms the trial from a focus on Verres the individual to an examination of the overall ineffectuality of the courts that had enabled greedy villains to not only carry out such dastardly deeds, but expect an acquittal to boot. As a result, he expands the case from the scale of one provincial governor’s greed to an opportunity for the court’s judges to create a precedent against further evil and validate their judicial control in the process.\footnote{Dillon and Garland (2005) 553, and Mousourakis (2007) 79. Badian (1972) 96 asserts that the influence of Verres’ case on this restructuring has been overstated; the wheels were already in motion and the changes had been made before Cicero’s speeches were published.} Their domination over the law courts was already under threat and later in the year, a law (the \textit{Lex Aurelia}) was passed that diluted senatorial involvement of the law courts from total control to a one-third representation.
Having dealt with his own motivations for the case, he progresses to the contest between himself and Caecilius. He raises two fundamental queries that, when answered, reveal emphatically which of the two contenders would best fill the role of prosecutor: (Cic. Div. Caec. 10) quem maxime velint actorem esse ii quibus factae esse dicantur iniuriae, et quem minime velit is qui eas iniurias fecisse arguatur. (“Whom do the sufferers by the alleged doer of the injustice most desire to have conducting their case for them? And to whom the alleged doer of the injustice desire least?”) The answer is obviously Cicero. He highlights this point with his Sicilian supporters and the obstruction that he had experienced at the hands of Verres. He suggests that to give the case to Caecilius would allow Verres to be acquitted without incurring any discredit upon the court. In Caecilius was the opportunity for corrupt jurors to acquit Verres, not by producing a false verdict in the actual trial, but by sabotaging the prosecution so that his guilt could not be proven. Yet by stating this very point, Cicero put the current decision under the microscope and left the judges culpable for the consequences of this choice. A decision in favour of Caecilius effectively proved their corruption. Giving this point prominence, he removed the opportunity for Verres to manipulate the prosecution; rather, they would now have to acquit a man whom Cicero had shown to be thoroughly guilty. Nevertheless, Cicero casts enough doubt over his legitimacy, leading to the choice of Caecilius appearing inherently corrupt.

Cicero then proceeds to attack the inability of Caecilius to carry out a successful prosecution even if his attempt is sincere. This argument caters to jurors who do not accept that Caecilius is corrupt. Cicero proposes that, even if Caecilius were to apply himself entirely without any collusion, his attempt would be futile due to his lack of skill and experience. In the process, he reveals what he perceives to be the demands of prosecuting a prominent magistrate. This is most important as it describes what Cicero expects to have to prepare for over the coming months if he is prosecutor: (Cic. Div. Caec. 27)

Tu vere Caecili, quid potes? Quo tempore aut qua in re non modo specimen ceteris aliquod dedisti, sed tute tui periculum fecisti? In

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141 Cic. Div. Caec. 22-3. Note that such an interpretation relied on Cicero successfully convincing the jury that Caecilius was corrupt and in league with Verres. Although I have cast some doubt over the credibility of this notion, it does not remove its validity as an argument for Cicero in winning the right to prosecute.

142 Cicero delivers this material, not so much as an attack, but as a friend giving advice. Vasaly (2002) 88 notes that this section reads like a rhetorical handbook. This section implies that Caecilius’ lack of skill and experience would render his prosecutorial attempt futile.

143 Frazel (2004) 128 comments that the Verrines is most illuminating because it presents the tactics and preparations of a prosecutor against a powerful defendant.
mentem tibi non venit quid negotii sit causam publicam sustinere, vitam alterius totam explicare, atque eam non modo in animis iudicum sed etiam in oculis conspectuque omnium exponere, sociorum salutem, commoda provinciarum, vim legum, gravitatem iudiciorum defendere?

(“And now, Caecilius, I ask what you can possibly do. When or where have you done anything to make other people believe in you, or even tested yourself on your own account? It has probably never occurred to you what it means to bear on your shoulders the whole weight of a criminal trial. You must set forth in detail the whole history of another man’s life. You must not only make it clear to the understanding of the court: you must draw the picture so vividly that the whole of the audience can see it with their own eyes. You have to maintain the security of our allies and the prosperity of our dominions, the efficacy of our laws and the authority of our law-courts.”)

It is interesting that Cicero does not mention the importance of gathering evidence, organising witnesses and assessing the credibility of the sources, an aspect of a prosecution that some scholars emphasise. As cited earlier, Butler states that: “Cicero’s ratio of evidence collected to time spent investigating must indeed have been far from typical, and it comes as no surprise that Verres and Hortensius were dumbfounded by the quantity of evidence the prosecution produced.”

Alexander suggests Cicero gathered a great amount of evidence, and stressed the considerable industry required to prosecute.

A much earlier appraisal by Peaks reaches a similar conclusion; it was the weight of evidence that scared Verres into exile.

In contrast to their interpretations, Cicero does not see it as noteworthy enough to stress Caecilius’ inadequacy in this area. The previous quote from his speech has nothing to say of evidence gathering; it focuses on the delivery and presentation of evidence rather than the accountant like task of gathering and sorting it. He makes no mention of his great organisational skills or ability to efficiently gather documents, and does not see it as valuable to point out the disparity between himself and Caecilius in this area. Instead, the lessons he gives to Caecilius are primarily concerned with the persona and characteristics of a good prosecutor. He stresses the need for a prosecutor to have a

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144 Butler (2002) 57 suggests that it was sheer weight of evidence that won the case, being of vital importance to Cicero’s success. Craig (2007) 269 cites and supports Butler with regard to this point. Taylor (1973) 21 contends that there was plenty of evidence for Cicero to gather and it appeared to be damming for the defence. Lintott (2008) 100 describes the importance of witnesses and documents in such trials as “paramount.”

145 Alexander (2002) 46 suggests that prosecutors were required to engage in the hard grind of evidence gathering.

146 Peaks (1927) 577. Similarly Shacketon-Bailey (1971) 16 claims “The evidence which Cicero and his cousin Lucius were able to gather in a seven week tour of the island was so overwhelming that Verres exercised Roman’s privilege of retiring into exile in the middle of the trial.” Again this suggests that it was evidence alone which forced Verres into exile.
blameless and upright character, to exhibit firmness and honesty, and to have at least some experience in legal proceedings.\footnote{See Vasaly (2009) 115-16 for details of Cicero’s focus on the need for a prosecutor to have an unreproachable character.} With regard to the section on legal proceedings and the role of pleader, again there is no mention of evidence gathering: (Cic. Div. Caec. 35) *Quid? illa, Caecili, contemnendane tibi videntur esse, sine quibus causa sustineri, praesertim tanta, nullo modo potest? aliqua facultas agendi, aliqua dicendi consuetudo, aliqua in foro, iudiciis, legibus aut ratio aut exercitatio?* (“There are other qualities, Caecilius, which you may think of small account, but without which no man can possibly manage any case, and especially not one of this magnitude. He must have some little capacity as a pleader; some little experience as a speaker; some little training either in the principles or in the practice of the Forum, the law-courts, and the law.”)

It appears Cicero believed that gathering and organising evidence was not of primary importance, or he at least felt a claim of exceptional ability in this area would not sway the judges. He tends to focus more on the character of an ideal prosecutor and a need for general experience as an advocate. When he explains to Caecilius the importance of being able to relate the crimes of Verres, a glimmer of his opinion on evidence appears: (Cic. Div. Caec 38)

*Putasne te posse quae C. Verres in quaestura, quae in legatione, quae in praetura, quae Romae, quae in Italia, quae in Achaia Asia Pamphyliaque peccarit, ea, quem ad modum locis temporibusque divisa sint, sic criminibus et oratione distinguere? Putasne te posse, id quod in huius modi reo maxime necessarium est, facere ut quae ille libidinose, quae nefarie, quae crudeliter fecerit, ea aeque acerba et indigna videantur esse his qui audient atque illis visa sunt qui senserunt?* (“Think of the crimes that Verres has committed as quaestor, as legate, and a praetor, at Rome and in Italy, in Achaia and Asia and Pamphylia: do you think yourself able to charge him with all these, arranging and distinguishing them properly, according to the times and places at which they respectively occurred? Do you think you can do what is especially necessary in prosecuting a man on such charges as these – make all his acts of lust and impiety and cruelty excite so much pain, and as much indignation, in those who are told of them here, as they excited in those who underwent them there?”)

He stresses that a prosecutor needs to distinguish the crimes and arrange them by chronology and location. It is notable that Cicero actually did this for his undelivered *actio secunda*, dividing it into distinguished topics to facilitate his audience’s
understanding. However, although Cicero mentions the importance of displaying Verres’ crimes in a clear manner, he overshadows this with comments concerning imagery, embellishment, and the creation of emotional responses. He gives much more weight to matters concerning the art of rhetoric and concentrates less on the hard grind of collecting and organising evidence. He focuses on the need to make the audience see and feel the pain and indignation that victims felt, far from letting the evidence speak for itself along the lines of Plutarch’s comments. He stresses to Caecilius the difficult task ahead, but not that much work has to be done gathering evidence; rather, that great skill is required to present the evidence in a clear, concise, intelligible, and entertaining manner. He needs to evoke the maximum effect from each piece of evidence, and at times enhance the facts of the case. Studies from Steel, Marshall and Pittia are most illuminating to the fact that, upon further examination, many of Cicero’s claims are more than they first appear and are not a bare presentation of fact.

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148 As Cic. Inv. Rhet. 1.9 notes, this technique is standard rhetorical practice given the term arrangement (dispositio). Quint. Inst. 3.3.1-2 used the term disposition (dispositione) with the same meaning, stressing that it was not only important to consider what and how something was said, but also in what sequence. However, although dispositio was an established part of rhetorical theory, it was essentially the presentation of facts in a logical order and by itself would suggest a non-rhetorical, fact based approach to the case; only if coupled with other rhetorical techniques focusing on the delivery and heightening of evidence would it constitute a rhetorical focus. See Connolly (2005) 326 on Quintilian’s analysis of dispositio. Alexander (2002) 26-7 outlines the basic headings of each book of the second actio as: 1) Verres’ career before his Sicilian governorship, 2) Verres’ administration of justice while governor of Sicily, 3) Verres’ management of the grain tithes, 4) Verres’ art collecting, 5) Verres’ military actions in Sicily. Settle (1962) 84 provides the Latin names 1) De Praetura Urbana, 2) De Iuris Dictione, 3) De Frumento, 4) De Signis, 5) De Supplicis. See also Tempest (2007b) 13, 29 for the distinguishing topics of each book, although note that she also concludes that it is unwise to view each book as a separate speech and they should be taken as parts of a whole which, when assembled, form a single, cohesive speech.


150 This is in contrast to Alexander’s (2002) 46 contention that Cicero stressed the great deal of work required for the prosecution. Nisbet (1965) 54-5 is also somewhat misleading claiming that: “The Verrines have a firmer factual basis than any other Ciceronian speech.” In contrast Clarke (1953) 79 is much more accurate stating: “One has only to think of the Verrine orations, where Cicero does not confine himself to a bare narration of Verres’ misdeeds, but repeatedly takes occasion to arouse the indignation of his audience.” For another appropriate analysis, see Braund (1988) 4: “It is entirely probable that Cicero’s speeches against Verres and others contain much that is exaggerated and misleading (perhaps more than is often imagined).” Hall (2007) 232 notes that there are several instances where emotional appeal is employed to further Cicero’s case against Verres while Gotoff (1993) 296 reminds us that, for the orator, winning was everything, superseding any concern for the truth. In this way the speeches of Cicero are severely limited as historical documents. Additionally, Berry (2005) 265 suggests that above all else, the Verrines shows Cicero had: “the ability to give a coherent and convincing account of the facts under dispute in such a way as to bring over the audience unavoidability to [his] own way of thinking.” However Berry cautions against taking such a fact based approach too far reminding us that: “Cicero was particularly a master of emotional manipulation: it was because of his acknowledged effectiveness in this area that his fellow advocates always let him give the closing speech.” For Cicero’s perorations see Cic. Or. 130. Also see Crook (1995) 19 and Riggsby (1997) 248-9 who stress that Cicero’s focus was more on persuasion than facts.

151 Dyck (2001) 123-4 emphasises Cicero’s use of Greek clothing in his descriptions of Verres to alienate the defendant. However, Steel (2001) 46-7 notes the tight-rope Cicero walks in his presentation of Verres as acting like a Greek. He cannot attack this too strongly or he would also damage the sympathy developed for his Greek clients. Moreover, he was at risk himself of such a label due to his use of Greek at a Sicilian Senate meeting and being on friendly terms with the Sicilian-Greek Allies. Steel (2004) 233-48 examines Cicero’s presentation of the dinner party and riot at Lampscus, showing that upon further inspection,
So although Cicero mentions the importance of organising a narrative around the charges, he is more concerned with embellishing and enhancing the evidence to extract the maximum possible benefit from each point. Moreover, it is deceptive to see dispositio as simply organising the points of an argument into a coherent order; at times one could use the art of dispositio to manipulate the facts by placing truthful and verifiable statements in an order that generates false conclusions. Cicero concentrates on how the evidence could be rendered effective in its overall objective; this was not only to relate the crimes of the defendant, but to create anger and pain in the audience. This would make the jury not only feel they should convict the defendant, but make them desire his demise. In light of Cicero’s emphasis on embellishment rather than the facts themselves, it is dangerous to accept what he says as incontrovertible truth.

Yet there is another possibility; Cicero may consider evidence gathering to be important, but felt this issue did not play to his strengths. Consequently, he might have shifted the argument to an issue that he was confident he could win easily. Beating Caecilius in a battle of rhetoric was easier than verifying his superior evidence gathering abilities. There are two possible reasons that could create such a situation: the first

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Cicero appears to have blamed Verres for events out of his hands; with all the possibilities considered, Verres appears as the competent magistrate handling an unfortunate situation well, rather than a vile and corrupt tyrant. Corbeill (2006) 146 reviewing the book containing Steel (2004), notes the similarity between her approach and Alexander (2002). Marshall (1967) 411-13 shows that, what Cicero presents as evidence of corrupt legal amendments can be interpreted, as Verres stamping out corruption and solidifying the rule of law. Pittia (2007b) 57-65 classifies Cicero’s evidence helping to determine which figures are reliable and which cannot be taken lightly. Frazel (2005) 372 shows that Cicero’s presentation of the works of art Verres allegedly stole has a great deal of posing in it, Cicero feigning a complete lack of knowledge in the area to avoid being tarnished with the art loving slander he was attempting to smear Verres with. Rosenmeyer (2007) 294-6 also notes the rhetorical flavour added to Cicero’s account of art, imagery of rape being associated with Verres’ acquisitions of female statuary.


De Angelis (2006) 38 stresses that: “Cicero had really good reasons to exaggerate Verres’ behaviour as governor of Sicily, and taking Cicero’s speeches at face value is altogether misleading if we want to get a sense of what was going on historically in Sicily and Rome beyond the arena of rhetoric.” Notable is Arena’s (2007) 150 list of standard invective topics. Among these are gluttony and drunkenness, eccentricity of dress, taking bribes, sexual conduct, cruelty to citizens or allies, and plunder of public or private property. All of these are obvious lines of argument Cicero made against Verres and one cannot help but feel that, on the majority of occasions, Cicero was shaping these points for rhetorical effect. Gotoff (1993) 297 indicates that: “every aspect of a speech must be read with suspicion and analysed for its inventio, presentation, and purpose.”

Quint. Inst. 4.1.27 recommends that an orator focus on points that are favourable.
possibility is that Caecilius had superior credentials in gathering evidence; the second is that Cicero was superior, but could not provide any concrete proof to substantiate this. Although Cicero had not carried out a prosecution prior to this trial, he had some experience in defence cases. In a broadly general sense, the majority of a defence advocate’s arguments discredited evidence. This was because, while prosecutions focused on the presentation of evidence, defence advocates spent their time trying to refute and undercut the credibility of what the prosecutor had already proposed. As a result, Cicero’s legal experience may well have been quite limited in terms of evidence gathering, certainly nothing on the level of the *Verrines* existing in his résumé at the time. For this reason, Cicero may have shifted the focus of the decision onto oratory alone, because of his ability to argue his superior oratorical skills, rather than a lack of value being attributed to evidence gathering.

### On Winning the Case: Shortened Format, Stacks of Evidence, or Rhetorical Skill

Regardless of Cicero’s attitude to the gathering of evidence and its priority within the case, he had a great deal to present at the trial. The testimony and examination of witnesses went on for nine days. Based on his presentation of the case, it appears at first glance that the evidence was compelling with little need for oratorical skill to weave a plot around the facts. Collecting and presenting such a large mass of evidence would have been a huge undertaking, and Butler asks how Cicero would have learnt to handle these vast and diverse forms of proof. He puts the shortening of Cicero’s opening speech down to his equestrian background; since his family was equestrian, an appreciation of accounting and thorough management had been fostered from an early age. According to Butler’s interpretation, this equestrian background can also explain his success at sourcing documentary proof, accounts, and valid witnesses. I prefer Frazel’s interpretation that the shortening of the speech was to gain an advantage over his opposition, not a habit borne out of his equestrian upbringing. To attempt to transmit Cicero’s equestrian past as a means of accounting for his prosecutorial technique appears to be a stretch at best.

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156 Lintott (2008) 94 claims that the examination of witnesses may have taken as long as 30 hours, certainly a much more considerable fraction of the case’s total duration than the very brief opening speech he presented. Also see Cowles (1929) 447.
Cicero’s own reasons for his shortened presentation are evident in the speech itself. He stresses the disadvantage he would have if he alone spoke before the first adjournment. In his own words: (Cic. Verr. 1.54)

Non sinam profecto, causa a me perorata, quadraginta diebus interpositis, tum nobis denique respondi cum accusatio nostra in oblivionem diuturnitatis adducta sit; non committam ut tum res iudicetur cum haec frequentia totius Italiae Roma discesserit, quae convenit uno tempore undique comitiorum ludorum censendique causa.

(“Assuredly I will not suffer the reply to our case to be made only when forty days have passed after I have ended my speech for the prosecution, and the lapse of time has blurred the memory of the charges we bring. I will not permit the settlement of this case to be delayed until after the departure from Rome of these multitudes that have simultaneously assembled, from all parts of Italy, to attend the elections, the games, and the census.”)

Frazel suggests Cicero’s reasoning is not wholly convincing. It is hard to see how to end with his speech and evidence as the sole testimony would be a disadvantage. Those in attendance would only have Cicero’s version of events because Hortensius would not have had an opportunity to refute his allegations or suggest other possibilities. Cicero would have 40 days in which people would be talking about his statements with his embellishments unanswered. Following this interpretation, it appears that to finish his speech and go into a recess for the games would present a distinct advantage. Hortensius would have to win over a crowd whose knowledge of the case was ingrained over time leaving them irrevocably in agreement with Cicero. That being said, it could just as easily be argued that the delay would help Hortensius, the raging fires of anger subsiding over the 40 days. Hortensius would then encounter a much less aggressive audience after the break than if he had presented his case immediately after Cicero’s evidence. It is easy to imagine bias in Cicero’s version; he would want his case to appear disadvantaged. In spite of this possibility, on this occasion I believe Cicero to be fair in his appraisal. Although he had an agenda which would give him a reason to exaggerate or invent disadvantages, logically it would appear that the momentum he had built up would dissipate rather than increase over the break.

160 Lawrence (1994) 63 cites a model for rumour suggesting forty percent of the original incident was carried over through rumour spreading, the rest being lost or embellished. Frazel appears to have assumed that such embellishments would favour Cicero’s case, the weaker points forgotten. However, this can easily be inverted, the audience becoming forgetful of his most compelling arguments. For a discussion of the nature and effectiveness of popular speech during the Roman period in political matters, see O’Neill (2003) 162.
Cicero also suggests that he shortened his speech to counter his opponent’s delaying tactics. By cutting his speech drastically short, he severely reduced the duration of the trial as a whole to achieve a result before the year’s end; however, his claims of delaying tactics cannot be trusted indefinitely. He could easily be fabricating this narrative to win sympathy for his case. Modern scholars have, on the whole, believed Cicero’s version of events on this matter without question. He proposes that the defence employed delaying tactics as early as January. He attributes the prosecution of the Achaean governor to Verres and his supporters, a means of pushing back his own trial to the following year.\footnote{Cic. Verr. 1.6. Such a strategy has been wholly accepted in scholarship. See Greenwood (1928) xv-xvi. Frazel (2004) 131 claims that Cicero would have recognised such delaying tactics early in the year. Petersson (1963) 126 at least acknowledges that it is Cicero who links the other prosecution to his opponents.}

It would not be the only instance of a trial being postponed to the next year; Hortensius himself had deferred Terentius Varro’s case for the same charge from 75 to 74 B.C.\footnote{Alexander (1990) 73, 79. Case No. 144 and 158.}

Furthermore, in Cicero’s defence of Caelius, the prosecutor’s (Lucius Sempronius Atratinus) attack was partly motivated to delay Caelius’ own prosecution of his father.\footnote{Berry (2000) 125. See Alexander (1990) 134, Case No. 275 for details of the case.}

These examples imply a delaying strategy was certainly not unthinkable.

The believability of Cicero’s plot however is somewhat questionable; perhaps the most troubling aspect is its chronology. The request for a prosecution of the Achaean governor was made in January.\footnote{Marinone (2004) 65 suggests Cicero obtained the right to prosecute around the 20\textsuperscript{th} of January. Dyck (2008) 151 cites Marinone’s dating of the trial.}

Is does not seem plausible that Hortensius and his team felt the case was un-winnable this early in the year. The advantages for Verres if the case was delayed to 69 B.C. do form a compelling list. But the elections for consul were still many months away when the prosecutor lodged his application against the Achaean governor. The lot for the praetor of the \textit{quaestio repetundis} was also many months after this. It seems unlikely that Verres and Hortensius could have predicted these conditions would arise. The possibility of bribery perhaps would allow Verres to increase the chances of favourable outcomes; but at the same time, if Cicero’s accusation that Verres tried to buy a loss for him in the election for \textit{aedile} is anything to go by, (admittedly, I would give this claim limited credence), the use of bribes was no guarantee. The question must be asked; with a long delay between the enactment of the rival prosecution and favourable conditions for 69 B.C. arising, can the Achaean prosecutor’s case really be attributed to defensive delaying tactics?\footnote{Lintott (2008) 87 stresses that “The problems [Cicero] had in the management of the prosecution to a great extent resulted from the complexity of the case and his own pursuit of a magistracy,” implying that the delaying strategies were perhaps not as dominant as has been assumed.}
It indeed seems a stretch to interpret the Achaean trial in this way, and if this part of Cicero’s version is suspicious, all of his claims regarding delaying strategies become troublesome. Doubt has already been cast over the intentions of Caecilius; valid arguments are available to portray him as a defence team crony or legitimate prosecutor. With uncertainty over the mechanisations of his opponents, it is perhaps best to view Cicero’s shortened actio prima as purely a stratagem to put his opponents on the back foot. By shortening the trial’s format, he removed Hortensius’ opportunity to speak at length and allowed his own weight of evidence to play its part early on. Regardless of the effect of the procedural change and the reason for Cicero’s shortened opening speech, Cicero was triumphant in making the audience and jury unreceptive to Hortensius’ pleas. He (unsuccessfully) changed his strategy to compensate, and his client went into voluntary exile assuming a successful defence had become impossible. Cicero’s success was due to three components: his shortened format for the trial; considerable quantity of evidence; and his rhetorical skill that enhanced this proof.

Conclusion

The chronology of Verres’ trial is difficult to confirm and the alleged conspiracy of the defence and their delaying strategies may not have as firm a basis in reality as many scholars suppose. Scholarship’s complete trust in both the delaying tactics and Caecilius’ complicity is not as well-reasoned as it at first appears. Establishing the nature of Hortensius’ involvement in the trial is also complex but it appears the format limited him to the interrogation of witnesses and altercatio. Despite his limited role in the physical trial, Quintilian’s reference to his Pro Verre shows that he could at least make some defensive arguments. I suggest that, contrary to current scholarly opinions, his Pro Verre was in the form of a full speech that he published but did not deliver. Upon examination of Cicero’s arguments, it seems that his approach was not solely evidence based. His arguments against Caecilius in the divinatio imply an approach far from simple accountancy and documents. He invokes the image of a skilled orator, enhancing testimony and adding flavour to the proceedings for the benefit of both his case and the audience. Finally, his justifications for shortening his actio prima are not entirely persuasive. They appear to be a strategic device rather than a tactic borne from time limitations; an advantage he enjoyed rather than a disadvantage he endured.

166 Ps.-Asc. Verr. I.153.24-6 (Stangl 223) notes Hortensius adopted a change in strategy.
Having a viewpoint that Cicero’s case was firmly rooted in documented fact and devoid of substantial rhetorical enhancement appears somewhat untenable. The case may have ended prematurely, but it was still not an easy win for the prosecutor; rather, he fought for his cause with great voracity, shutting his opponents out of the case. The opposing counsel appears to have provided little resistance; they felt that the case was lost after only a short period of time. Therefore, the following chapter will turn to the defence case, the situation they found themselves in, and the likely defensive avenues they would have considered. This will help to uncover why their appraisal of the case was so pessimistic.
The Devil’s Advocate: Hortensius’ Defence of Verres

On the Ropes: The Case of Hortensius

With the case and Cicero’s prosecutorial methods clear, examining his opponents’ likely tactics is also useful. Recently, scholars have attributed his success in the trial to two determining factors: his astounding parade of evidence collected in Sicily; and the abbreviated procedure adopted for the trial, which allowed this mass of evidence to accumulate prior to the defence’s presentation. As the previous chapter has suggested, a third aspect of the case should also be acknowledged: Cicero’s impressive, and at times deceptive, oratorical display. His presentation of the case, and methods used to overcome obstacles has proved revealing; but another means of assessing the case is to dissect it from the defence’s perspective. The options Hortensius had available can help to develop a comprehensive understanding of both the case and Cicero’s success within it.

Before beneficial arguments for Verres’ defence are proposed, of paramount concern is the situation in which the defence would present their case. Therefore, with the help of the ancient rhetorical handbooks, the setting for the defence will be classified. Having clearly established what Hortensius needed to achieve based on this classification, hypothetical defensive arguments will be projected using three forms of evidence: the references Cicero makes in the *Verrines* to Hortensius; the defensive strategies Cicero employs in his own defence cases; and the suggestions of the rhetorical handbooks. This will create a range of arguments that Hortensius would have considered when defending Verres. The next step will be to assess how Cicero counteracted these strategies in advance explaining why Verres fled before a verdict was given, and also implying that Cicero carefully crafted his prosecution. By showing that his speech had intention and specific objectives behind it, a view that his prosecution was a simple presentation of facts will become even less valid.

Classifying the Case: The Exordium and the Cause

Rhetorical handbooks are a useful tool when interpreting ancient legal speeches. For this analysis, they prove beneficial in two ways: firstly, they can clearly classify the nature of a case in terms of the audience’s likely reception to argumentation; secondly, they can indicate what would be prudent strategies in these circumstances. Therefore, the
The defence case will be initially evaluated using rhetorical handbooks as a guide to establish the situation and likely solutions.\textsuperscript{167}

Hortensius’ defence would have begun with an introduction (Latin terms include \textit{principium} or \textit{exordium}).\textsuperscript{168} In essence the \textit{exordium} serves one purpose; to prepare the listeners to be favourably inclined towards the speaker for the duration of their speech.\textsuperscript{169} An \textit{exordium} can be categorised under two headings: the direct (\textit{prooimion}), and the subtle (\textit{ephodos}).\textsuperscript{170} It is the audience’s attitude that determines the required \textit{exordium}. When the audience are already sympathetic only a direct introduction is needed, outlining facts and facilitating the listeners’ understanding of the speech to come. When all factors influence the case favourably, a speaker can sometimes skip the \textit{exordium} altogether, and move immediately to the \textit{narratio}.\textsuperscript{171}

In this case, Cicero had won over the audience wholeheartedly with his shortened speech, the compelling testimony of his witnesses, and his colouring of that testimony. Therefore, Hortensius would have to apply a subtle approach to his introduction to foster trust and compassion from his audience. Furthermore, Cicero’s speech alone did not determine the style of Hortensius’ \textit{exordium}; the inherent bias of the case also contributed. What rhetorical theorists term the type of cause (\textit{genere causae}) to which a case belongs. Quintilian divides up the different types of causes under the following criteria: honourable (\textit{honestum}); mean (\textit{humile}); doubtful or ambivalent (\textit{dubium vel anceps}); paradoxical (\textit{admirabile}); and obscure (\textit{obscurum}).\textsuperscript{172} Honourable cases automatically win the audience’s support due to the nobility of their content; for example, the defence of a war hero. A mean case appears to be of little importance, and the most crucial requirement of the speaker’s opening is is that it create a sense of gravitas and request the audience’s attention. A doubtful or ambivalent case contains both honourable

\begin{itemize}
\item \textsuperscript{167} Cicero’s De Inventione (\textit{Inv. Rhet.}), the Rhetorica Ad Herennium (\textit{Rhet. Her.}), and Quintilian’s Institutio Oratoria (\textit{Inst.}) will be used as the basis for this initial examination. These sources will be utilised later in the chapter to propose arguments Hortensius would have likely considered, but at this stage their comments on introductions is the focus. For a more detailed examination of the nature of each source, see notes 179-82. The inclusion of this discussion may appear unnecessary and obvious to scholars from a rhetorical background; however, it is provided for the benefit of scholars from other areas such as grain economists, for whom this subject is relevant despite being outside of their area of expertise.
\item \textsuperscript{168} Quint. \textit{Inst.} 4.1.3 illuminates readers on the possible Greek origins of the introduction (\textit{prooemion}). Possible traditions include the musical pieces played by lyre players prior to the commencement of a formal competition in order to win favour from the judges, or the term for a road, suggesting that the \textit{prooimion} was what was said before the speaker entered into the real matter.
\item \textsuperscript{169} Quint. \textit{Inst.} 4.1.5.
\item \textsuperscript{170} Ad Her. 1.6. Cic. Inv. Rhet. 1.20 uses a similar division but with the different terms of introduction (\textit{principium}) and insinuation (\textit{insinuatio}).
\item \textsuperscript{171} Quint. \textit{Inst.} 4.1.41, 62.
\item \textsuperscript{172} Quint. \textit{Inst.} 4.1.40. Note that this translation has been taken from Russell (2001).
\end{itemize}
and dishonourable elements and requires the speaker to emphasise the positive aspects while diminishing any negative points. A paradoxical case is one in which the nature of the case is contrary to public expectation and requires a speaker to produce an open-mindedness in his audience to subdue the prejudice that they already possess. Finally, in obscure cases the audience does not have any pre-formed opinion and therefore, like the mean case, the speaker must garner the audience’s attention.

The *Rhetorica Ad Herennium* also divides possible causes under the terms of honourable (*honestum*), petty (*humile*), doubtful (*dubium*), and discreditable (*turpe*).¹⁷³ Honourable cases possess the same connotations and requirements as their equivalent in the tradition of Quintilian, as do the doubtful. A discreditable case is comparable to Quintilian’s paradoxical, while the petty case corresponds to the mean.

The *De Inventione*, the last handbook to be considered, defines the various causes as honourable (*honestum*), difficult (*admirabile*), mean (*humile*), ambiguous (*anceps*) and obscure (*obscurum*).¹⁷⁴ In the honourable, mean, ambiguous and obscure cases, they all share their tone with the model of Quintilian, while the difficult matches the paradoxical. The easiest way to understand the similarities and differences between the various causes is in a table as shown in Table 1.

**Table 1: Types of Causes in the Rhetorical Handbooks**

<table>
<thead>
<tr>
<th>Quintilian</th>
<th>Rhetorica Ad Herennium</th>
<th>De Inventione</th>
<th>Attitude of Audience</th>
<th>Desired Effect of Speaker</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Honestum</em> (Honourable)</td>
<td><em>Honestum</em> (Honourable)</td>
<td><em>Honestum</em></td>
<td>Sympathetic and attentive</td>
<td>Facilitate understanding</td>
</tr>
<tr>
<td><em>Humile</em> (Mean)</td>
<td><em>Humile</em> (Petty)</td>
<td><em>Humile</em> (Mean)</td>
<td>Uninterested</td>
<td>Facilitate interest</td>
</tr>
<tr>
<td><em>Dubium Vel Anceps</em> (Doubtful or Ambivalent)</td>
<td><em>Dubium</em> (Doubtful)</td>
<td><em>Anceps</em> (Ambiguous)</td>
<td>Both supportive and in opposition</td>
<td>Emphasise the case’s positives and downplay negatives</td>
</tr>
<tr>
<td><em>Admirabile</em> (Paradoxical)</td>
<td><em>Turpe</em> (Discreditable)</td>
<td><em>Admirabile</em> (Difficult)</td>
<td>Audience’s pre-conceived views in opposition to arguments to be presented</td>
<td>Appeal for sympathy, receptiveness and an open mind</td>
</tr>
<tr>
<td><em>Obscurum</em> Obsecure</td>
<td>[No term provided]</td>
<td><em>Obscurum</em> Obsecure</td>
<td>No preconceived notions on case</td>
<td>Facilitate interest</td>
</tr>
</tbody>
</table>

¹⁷³ Rhet. Her. 1.5. Note that this translation has been taken from Caplan (1964).
¹⁷⁴ Cic. Inv. Rhet. 1.20. Note that this translation has been taken from Hubbell (1949).
One important point becomes apparent when comparing the Latin terms with their respective English translations. Based on the English forms alone, the similarity between the handbooks is under-represented. In several instances, differing translations are provided for identical Latin terms. In reality, all three provide practically identical advice with only minor and relatively inconsequential differences.

Hortensius’ case fell under the category of *turpe* or *admirabile* as Cicero had portrayed him as defending a dishonourable cause. Hortensius had to contend with both the preconceived notions of his listeners, and the distortion that Cicero had imparted onto the subject matter. Hortensius was therefore delivering his speech in hostile conditions to an audience that he would have to convince to listen objectively before attempting to bring them onto his side.\(^{175}\) In this atmosphere, if he wished to have any success, he would need to have a compelling and convincing introduction. For this reason, although general arguments will be considered, of particular importance to a defensive reconstruction are lines of reasoning recommended to introductions.

According to the *Rhetorica Ad Herennium*, there were four possible avenues for conducting a subtle introduction. To be effective, the orator’s arguments should include some or all of the following components, depending on the situation. A speaker could discuss their own character, the character of their adversaries, the character of the audience, and/or the facts of the case.\(^{176}\) Quintilian provides the same advice and particularly emphasises the significance of the speaker’s own influence.\(^{177}\) He also stresses that a speaker should play to the strengths of their case; if the facts of the case are damaging, attention should be shifted to the defendant’s character, and vice-versa.\(^{178}\) With these recommendations in mind, the means of determining Hortensius’ arguments must be clarified, and the relative worth of each method established.

\(^{175}\) *Rhet. Her.* 1.9 suggests three situations where a subtle approach is crucial: when the cause is discreditable; the previous speaker has wearied the listeners; or the previous speaker has won over the jury. In this instance it is the first and third situations which are predominant. Similarly, Quint. *Inst.* 4.1.42, 48 advises letting insinuation “worm its way into the judges mind” when a case lacks honour or is scandalous.\(^{176}\) *Rhet. Her.* 1.8. Note Cic. *Inv. Rhet.* 1.22 provides the same advice.

\(^{177}\) Quint. *Inst.* 4.1.7. Cic. *Inv. Rhet.* 1.22 also notes the speaker’s character as a possible avenue but warns against appearing arrogant in the process. Cic. *De Or.* 2.181 emphasises his thoughts on character in oratory. See also May (2002) 53 for the importance of a speaker’s character and May (1988) 4-12 on the significance of an orator’s own character (*ethos*), particularly in winning favour from the audience.

\(^{178}\) Quint. *Inst.* 4.1.44.
The Evidence Base for a Reconstruction

Three avenues are conveniently available to shed light on Hortensius’ likely arguments. The first is the many references Cicero makes in his *actio secunda* to points Hortensius had apparently made. As discussed in the previous chapter, there are three possible theories to explain these references: either Hortensius delivered a speech that was wholly unsuccessful in undermining Cicero’s case; or he published an undelivered speech, from which Cicero pulled such arguments; or Cicero invented arguments for him to maintain the appearance of a real trial in his undelivered speeches. In reality, none of these suggestions can be wholly disregarded; but whichever was the case, the value of these arguments to Verres’ defence is high.

The second means of gaining insight into potential oratorical strategies is to examine Cicero’s comparable defence cases. Although these cases had not actually occurred at the time of Verres’ trial, many of the arguments are relatively standardised and commonly used. It cannot be stated emphatically that Hortensius would have utilised these points. A degree of doubt must be given to any reconstruction; despite this uncertainty, however, this analysis still proves helpful as many of these lines of thought were likely to have been considered for the case.

The third way of establishing a likely defence is to utilise the recommendations of the rhetorical handbooks. The *Rhetorica Ad Herennium* and *De Inventione* can both give some useful insights into what strategies Hortensius would use to win over a hostile audience. The other handbook which will be applied is Quintilian’s *Institutio Oratoria*, written near the end of the first century A.D., over 150 years after the trial.

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179 As Enos (2005b) 333 notes, rhetorical handbooks have a strong focus on practical functions of rhetoric. Consequently their application to the investigation of probable lines of argument available to Hortensius is most appropriate. Katula (2003) 7-8 emphasises that Quintilian’s advice is not limited to the theoretical realm but also deals with the issues of when and how to use various strategies.

180 Calboli and Dominik (1997) 4-5 propose that the *Rhetorica Ad Herennium* and *De Inventione* are derived from the same Greek sources. Kirby (1997) 14 describes the two handbooks as “cousin-german” to each other. Clarke (1957) 11 identifies the strong resemblance between the two handbooks. See also Hubbell (1949) viii. For a more substantive examination of both the similarities and differences between the handbooks see Gaines (2007) 171-80. Due to the remarkably similar content of these two works, they will often be considered simultaneously; however, when their treatments differ, individual analysis will be used.

181 Both the *Rhetorica Ad Herennium* and *De Inventione* are assumed to have been composed prior to the trial of Verres. Enos (2005a) 106 suggests the *De Inventione* was published ca. 86 B.C. Additionally Enos (2005b) 331-3 proposes that the *Rhetorica Ad Herennium* was published sometime shortly after ca. 86-82 B.C. with uncertain authorship. Corbeill (2007) 72 is in relative agreement suggesting the *De Inventione* was published around 90 B.C. and the *Rhetorica Ad Herennium* sometime in the 80s B.C. In contrast,
composition means Quintilian could not have directly influenced Hortensius’ thinking; however, the concepts that Quintilian was a proponent of would have been, at least to some extent, in existence in 70 B.C. Therefore, although perhaps the *Rhetorica Ad Herennium* and *De Inventione* are of greater relevance, and less likely to mislead analysis of rhetorical strategy, Quintilian’s comments are also of significance.

All three of these methods can extend no further than hypotheses. Each conclusion has a high degree of uncertainty with only tentative validity. This by no means removes the value of exploring the probable arguments and potential angles that Hortensius could have taken. Whether or not Hortensius had an opportunity to voice his opinions on the case, Cicero would have always been conscious of his defence, and would have tailored his arguments to counter it. Cicero’s case was only as successful as his ability to weaken his opponent’s speech in advance. Just as a sports team must defend as well as attack, he had to ensure he not only eloquently disclosed his own points, but also guarantee that Hortensius’ rebuttal would prove ineffectual. An understanding of Hortensius’ side of the case will enhance appreciation of Cicero’s speech, and credit him with successes not immediately evident. Alexander uses a similar approach for understanding the prosecution in Cicero’s defence cases, while Lintott and Steel apply this analysis to the *Verrines*.

Some useful information emerges from Cicero’s second *actio*, even though it was undelivered. The points from the *actio secunda* are still valid indicators for two reasons: firstly, many of the arguments Cicero intended to make in the second part of the trial would have been evident, not only from the witness testimony delivered immediately after his shortened first *actio*, but also from his own statements and insinuations made during that testimony; secondly, even if they were not evident, Hortensius could still predict many of Cicero’s points based on his oratorical experience.

Quintilian’s composition is attributed to the following century. Clarke (1967) 33 dates the work at A.D. 96. while López (2007) 308 suggests a slightly earlier date of A.D. 88.

182 The late publication relative to the trial of Verres should not be a cause for great concern. Connolly (2005) 325 states that Quintilian’s great contribution was not innovation; rather, his achievement was clearly outlining the various rhetorical traditions. Consequently, his views should not be vastly different from those of the previous century. Russell (2001) 5 also notes that Quintilian’s great achievement was the completeness of his work.

183 Alexander (2002) 4 proposes such an approach to Cicero’s defence trials, examining the prosecution in order to gain a greater appreciation of Cicero’s achievements as a speaker. Steel (2001) 24, Lintott (2008) 97-100 and Dyck (2008) 152 each use a similar form of analysis for the *Verrines*. Although these scholars adhere to this manner of investigation, this thesis goes further. I also apply Cicero’s own cases and the rhetorical handbooks to the reconstruction to develop a more complete hypothetical defence.

184 Cic. Verr. 1.13-14 mentions the extortion of grain, torture of Roman citizens, issues of piracy, and theft of art works. Therefore, despite not being covered in great detail, Hortensius would have known, based
Arguments Evident from the *Verrines* Themselves

Of the three sources of evidence, the moments in Cicero’s *actio secunda* that show concern for, or explicitly reference Hortensian arguments, are the most useful and have the least historical doubt. At best Hortensius presented or published them; the worst case scenario for this reconstruction is that Hortensius never raised such points, but Cicero considered them pertinent and supplied them. Regardless of the actual situation, any of these possibilities makes it likely that Hortensius considered these arguments. For each proposal, the evidence from the *Verrines* themselves will be considered first; where concurrent arguments can be found in Cicero’s own cases, or the rhetorical handbooks, these will be added as further evidence. The subsequent sections will examine arguments from Cicero’s other speeches and the handbooks that do not appear in the *Verrines*.

**Military Arguments for Verres**

Despite Cicero’s defamatory depiction, Hortensius could have utilised Verres’ character and actions advantageously. Militarily, the imminent danger of piracy, revolts of Spartacus, and Sertorian uprising were all very real threats during Verres’ governorship.\(^{185}\) Just as Cicero uses the exigencies of military dangers to excuse Fonteius’ questionable actions as governor of Gaul, Hortensius could have done the same for Verres.\(^{186}\) Lintott notes how aware Cicero was of this.\(^{187}\) Indeed, his counter-claim in his *actio secunda* is not wholly satisfying. He proposes that during the Sicilian slave war, as uprisings did not occur on mainland Italy, it is consequently reasonable to assume the same of Sicily during the Spartacan revolt.\(^{188}\) This is rather misleading when, as Green

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\(^{186}\) Cic. *Font.* 13-14, only a year after the trial of Verres, uses military considerations, including the Sertorian War in Spain, to excuse Fonteius. Wiedemann (1994) 38 notes that “in the *Pro Fonteio*, Cicero shows that he can marshal all the arguments that Hortensius might have used for the defence in Verres’ trial” and that “while denigrating Verres militarily, he extols [the actions] of Fonteius.”

\(^{187}\) Lintott (2008) 98. Cic. *Verr.* 2.5.32 shows he considers such arguments likely. He asks if Hortensius will plead that Verres is a great military commander and will bare his client’s chest to show his battle scars, as M. Antonius the Orator did. Cicero mocks such a thought suggesting that only love bites will be revealed, but this anecdote still shows that Cicero felt this military defence was probable. See also Cic. *Verr.* 2.5.3.

\(^{188}\) Cic. *Verr.* 2.5.6.
points out, there were several uprisings in Rome and other areas at the same time as the First Sicilian Servile war.\textsuperscript{189} There was no guarantee authorities could contain an insurrection in one area. As a matter of fact, in several episodes Verres appears to have thwarted situations that, if left unchecked, might have developed into slave uprisings. Cicero discounts these as a strategy Verres implemented to exploit the local farmers, threatening resistant farmers with false charges of slave revolts so they would comply with his demands.\textsuperscript{190} Conversely, Hortensius could have argued that these examples support Verres, particularly with what was happening concurrently in Italy; for example, when Cicero reports Gavius’ crucifixion, he states that Rhegium is visible from Messana.\textsuperscript{191} According to Cicero’s logic then, Spartacus and his forces were in sight of Sicily whilst camped at Rhegium. In addition, Spartacus had intended to cross the strait and incite uprisings on the island.\textsuperscript{192} Cicero’s proposal that there was no chance of revolt spreading to Sicily is undoubtedly deceptive. Therefore, Hortensius had some latitude for placing a positive spin on the account. He could depict the movement of Spartacus from Italy to Sicily as a real threat; a threat that Verres aided in preventing.\textsuperscript{193}

Hortensius could have also excused Verres’ actions deeming them necessary in times of military danger and suggest that he was only acting in the best interests of the state.\textsuperscript{194} Adding to the defence concerning slave uprisings, Hortensius evidently stated

\textsuperscript{189} Green (1961) 17. See Diod. Sic. 34-5.2.19, 34-40.2.19, Jul. Obs. 27 Orosius 5.9.4-8.
\textsuperscript{190} Cic. Verr. 2.5.8-18. Cicero turns what could have been viewed as diligent and thorough work by the governor, into suspicious profiteering. Hortensius could easily have put his own twist on these points to support the image of Verres the defender of Sicily, upholder of order and suppressor of slave uprisings. Trow (2006) 180 comments that it is difficult to wholeheartedly believe Cicero’s version of events concerning Verres’ actions against Spartacus and slave uprisings. It is likely that Cicero exaggerates Crassus’ efforts in order to make Verres appear to have offered no assistance. In contrast, Pritchard (1969) 553 describes the possibility of revolt on the island as “remote.” Note Sicily was infamous for its slave uprisings due to its extensive \textit{latifundia}. However, the view of completely slave run \textit{latifundia} is questioned by Rathbone (1981) 12-15, Purcell (1985) 3, and Howgego (1992) 26 who suggest such a system was not economically viable and needed to be supplemented with local, non-slave labour. As a result, large \textit{latifundia} were not the sole component of the agricultural landscape, small landholders also playing an important part.
\textsuperscript{191} Cic. Verr. 2.5.160. Cicero stresses that, in a touch of tragic irony, the unjust crucifixion of this Roman citizen was carried out in sight of his motherland.
\textsuperscript{192} See Cic. Verr. 2.5.5 and Plut. Cras. 8-10. Shaw (2001) 134 and Trow (2006) 178, 181 not only place Spartacus at Rhegium but suggest he intended to cross over into Sicily in order to incite slave revolts. Pritchard (1971) 225 stresses the small size of the strait when discussing the transportation of agricultural produce from Sicily to Italy. See also Howorth (1908) 108 and Baldwin (1967) 290.
\textsuperscript{193} As already noted, Trow (2006) 180 proposes that Cicero may have overstated the actions of Crassus in order to remove any possibility of credit for the containment of Spartacus being attributed to Verres.
\textsuperscript{194} Steel (2001) 24 suggests that Hortensius attempted to argue a defence along military lines. Cic. Verr. 2.5.3 comments directly on the tradition of such a military argument noting Marcus Antonius’ defence of Manius Aquilius in which he ripped open his clients shirt to reveal the scars he had received in defence of the state.
that Verres crucified Gavius because he was a spy for runaway slaves.\textsuperscript{195} With Hortensius’ rhetorical spin on Spartacus, he could have developed the suppression of slaves and punishment of Gavius positively. Although Gavius’ crucifixion was not totally appropriate, Cicero found success using a similar argument in his cases; his cases for Flaccus and Fonteius show that governors could often be pardoned due to an imminent threat to state security, proposing that circumstances had compelled them to make undesirable decisions.

The potential military defence afforded to Hortensius was of course not limited only to the quelling of slave uprisings. The menace of piracy was ever present around Sicily, posed a serious military threat, and had been a prominent topic for Rome in years prior and would continue to be significant in future years.\textsuperscript{196} Moreover, though occurring in Spain, the Sertorian uprising was a threat that required vigilant resistance; no governor could afford to appear sympathetic to the rebel forces. Verres claimed that he seized ships docked at Syracuse, confiscated their wares, and sentenced their crews to the stone quarries because they were Sertorian fugitives.\textsuperscript{197} In the case of Roman citizens executed or sentenced to the mines, having been denied due process, a defence was somewhat difficult; yet, the argument that Verres operated outside of the law due to necessary expediency had some validity and could sway some jurors.\textsuperscript{198} Cicero acknowledges that when Lucius Domitius, an earlier Sicilian governor, crucified a slave for using a weapon while hunting, the action was perhaps cruel and overly severe; however, he did not criticise the act and deemed it better to appear merciless than lax as governor.\textsuperscript{199}

Something else that is encompassed within a military defence, as Cicero had foreseen, is the loss of several Roman ships against the pirates. Hortensius could have used this to show how powerful the pirate forces had become; they were a particularly

\textsuperscript{195} Cic. \textit{Verr.} 2.5.161-4. See Aubert (2002) 119. Cicero attacks Verres on this action as Gavius was a Roman citizen.

\textsuperscript{196} Bringman (2007) 214, 218 points out the powers bestowed upon Pompey to combat piracy in 67 B.C. and acknowledges that the problem of piracy in the Mediterranean was not a new one. Rickman (1980) 50-2 makes a similar case.

\textsuperscript{197} Cic. \textit{Verr.} 2.5.146-7. Note that Cicero has the Roman equestrian Lucius Suettius to verify his account. However, other than this single witness’ testimony, he has no real evidence to verify his claims, making determining with certainty if very many citizens were sent to the mines difficult.

\textsuperscript{198} Macdonald (1977) 26-7 acknowledges Cicero’s involvement in the execution of Catilinarian conspirators as Consul in 63 B.C. It is with a sense of irony that we wonder if Cicero, at this later date, would have reason to sympathise with administrators forced to take illegal actions in the name of national security, as Verres’ actions could be portrayed. Cic. \textit{Verr.} 2.3.213-16 shows that M. Antonius Creticus had behaved similarly while battling the pirates on Crete, enriching himself at the expense of the Sicilians.

\textsuperscript{199} Cic. \textit{Verr.} 2.5.7. The story is that a great boar was killed and presented to the governor as a gift. Upon learning that a shepherd killed it, he summoned the slave. He came enthusiastically expecting a reward, but was sentenced to death as the law stated that no slave was allowed to bear arms.
problematic scourge at a time when the bulk of Rome’s forces were concerned with taming Sertorius and Spartacus. This appears to have great historical validity as pirates sailed up the Tiber toward Rome itself and plundered the port of Ostia only a few years later. On another occasion, Verres’ had actually captured a pirate ship along with its captain, crew, and cargo. Hortensius could have favourably depicted the initiative and success of Verres’ navy under trying circumstances, as opposed to Cicero’s slanted description. Cicero mockingly states: (Cic. Verr. 2.5.63) navem quandam piratarum praeda refertam non ceperunt, sed abduxerunt onere suo plane captam atque depressam (“they did fall in with one of the pirates’ ships, which they cannot be said to have captured, for already it was completely overpowered by the heavy load it carried, but at least they towed it off.”) His portrayal of events uses every means available to undercut the potentially favourable interpretation of these incidents, showing how conscious he was of their value to Hortensius’ case.

To turn to Cicero’s own defence speeches when he excuses crimes on military grounds, in the defences of Fonteius and Flaccus, he attempts to mitigate their actions citing military expediency to negate irrefutable testimony. He justifies his clients’ misdemeanours through matters of military security and supply causing the Roman jury, which was largely unconcerned with the wellbeing of non-Roman provincials, to take his side. At the expense of the local population, Fonteius supplied the army of Pompey that would go on to defeat Sertorius and mop up the final remnants of Spartacus’ revolt. Cicero justifies Flaccus’ extra taxation for fleet construction invoking the threat of

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200 Cic. Verr. 2.5.86-92. Vasaly (2009) 108-9 notes the military operations being carried out in other parts of the empire during Verres’ governorship. Rickman (1980) 50-1, 168 points out M. Antonius Creticus was given the role of removing the pirates stationed on Crete in 74 B.C. which did little to alleviate the problem. A similar role was taken by Q. Caecilius Metellus Creticus in 68 which was equally ineffective before Pompey moved to subdue the pirates in 67. Rome took official action against piracy both prior to and after Verres’ governorship, but none was taken while Verres was responsible for Sicily. Also see Southern (2007) 205. Refer to Broughton (1952) 101-2, 111, 117 and 123 for the career of M. Antonius Creticus; and 102, 131, 139, 145, 154, and 159 for the career of Q. Caecilius Metellus Creticus. Note that Cic. Verr. 2.5.73-4, 90 refers to witness testimony concerning piracy which was given during the first actio; therefore the topic was raised, at least in part, during the first stage of the trial.


202 Cic. Verr. 2.5. 28-32, 62-75 employs racial stereotypes to invoke the audience’s discriminatory perception of Greek culture, as well as vivid description and moral allusions to adultery, gluttony, greed, drunkenness, corruption and laziness to remove any possibility that a positive appraisal of Verres’ actions could be reached.

203 See Alexander (2002) 64-5 who notes the importance of Gaul as a link to Spain, and therefore, the conflict with Sertorius. Cic. Font. 13 stresses that the requisitioning of corn, cavalry troops, and money was only enacted to help Pompey. Fonteius also allowed Pompey’s army to spend the winter in Gaul, a further strain on the local economy, but Cicero justifies this as services for the Roman military effort.
piracy.\footnote{Cic. Flac. 27.} In the \textit{Pro Murena}, he praises his client’s military record to justify his client’s success in the election and as a reason to pardon any misdeeds.\footnote{Cic. Mur. 86 warns that Catiline desires that Rome be deprived of a great general and implores the jury to consider that Murena is needed as Consul to ensure the security of the state and the lives of Rome’s citizens. Note that Murena faced a different charge and that, to a degree, Cicero was forced to discuss his client’s military record as the prosecution had attacked it.} This same argument was also conveniently open to Hortensius. Verres had battled pirates and dealt with potential slave uprisings; all during a turbulent period in the Republic with both the uprising of Spartacus and Sertorian revolution occurring contemporaneously with his governorship. Hortensius could have eulogised Verres’ exploits as a general to win him favour, emphasised the demand for grain that the current military operations had heightened, and argued that measures unfavourable to the provincials were required to ensure public safety during such troubling times.

The cumulative effect of Cicero’s concern for a military defence, and use of comparable arguments in his own cases, provides strong grounds to assert that Hortensius considered this defensive strategy. Slaves, pirates, and rebels were all potent components in what could have been a compelling narrative. Military concerns would have without doubt been utilised.

\section*{The Modified Format}

In addition to military issues, Hortensius also appears to have raised less dramatic, but equally potent arguments. In his \textit{exordium}, he could have argued that Cicero’s modified format was unfair, both to him and his client. Cicero refutes this sentiment by stating at the beginning of the \textit{actio secunda} that his task is to ensure that Hortensius has no reason to complain. Alexander describes Cicero’s rebuttal that evidence from the first \textit{actio} need not be fully discussed as “long and unsatisfactory.”\footnote{Alexander (1976) 52.} Cicero states that, if anything, keeping silent is disadvantageous and does not hurt Verres. It seems Hortensius had argued that full discussion was required to adequately examine the evidence. Cicero relates his complaint during the \textit{actio secunda}: (Cic. Verr. 2.1.25)

\begin{quote}
\textit{‘Causam enim’, inquit ‘cognosci oportet’: ea re quidem, quod alter condemnari reus, quamvis sit nocens, non potest. Id igitur tu moleste tulisti, a me aliquid factum esse quo minus iste condemnari posset? nam causa cognita possunt multi absolvi, incognita quidem condemnari nemo potest.}
\end{quote}
(‘‘Yes,’ he says, ‘but the case should be heard.’) Indeed, and for the reason that a defendant, however guilty he may be, cannot otherwise be convicted. Is it this then that has upset you, that I have done something to make the conviction of Verres impossible? For while many may be acquitted when a case has been heard, certainly no one can be convicted when it is not heard.”)

This anecdote shows that justifying the fairness of his strategy is difficult.\(^{207}\) His reply fails to vindicate his actions and implies that Hortensius’ complaint was valid. He talks in absolutes when in reality the matter is not clear-cut and could favour either side depending on the circumstance. Lack of evidentiary analysis could just as easily lead to the conviction of an innocent man as the acquittal of a guilty one, a conclusion which Cicero does not allow his audience to consider. He continues to defend the modified format of the trial, arguing that the advocates’ speeches are of little or no importance, an equally unconvincing statement. He stresses that the weight of the evidence is the primary concern of the judges, while the rhetoric of the representatives plays a very limited role in proceedings: (Cic. Verr. 2.1.27) \textit{Dissimulamus, Hortensi, quod saepe experti in dicendo sumus. Quis nos magnopere attendit umquam in hoc quidem genere causarum, ubi aliquid ereptum aut ablatum a quopiam dicitur? Nonne aut in tabulis aut in testibus omnis expectatio iudicum est?} (“We keep quiet, Hortensius, about something that we have often experienced in pleading. Who ever pays much attention to us advocates, especially in this type of case, where someone is alleged to have seized or stolen something? Is the expectant attention of the jurors not centred entirely on records and witnesses?”)

Letting the evidence speak for itself may sound noble and some scholars have adhered strongly to this interpretation of the trial.\(^{208}\) Yet, one cannot help but assume Cicero too would have been up in arms had the prosecution stated this in the cases of Fonteius and Flaccus, where the shoe was on the other foot. In these cases, Cicero defends his clients on the same charge Verres faced. He undermines the weight of evidence that witnesses and documents provide using nothing more than facile

\(^{207}\) Mitchell (1986) 173-4 notes the clumsy argumentation Cicero uses in this section to dispel the argument that his procedural changes were unfair, describing Cicero’s handling of the issue as: “protracted and somewhat laboured”, and “tedious.” He also notes the weakness of Cicero’s reasoning that the purpose of a prosecution speech was to prove guilt, and so, dispensing with the prosecutorial speech inherently gives the defence an advantage.

\(^{208}\) Butler (2002) 27. Lintott (2008) 92-100 also stresses the vast quantity of evidence used in the trial and that the prosecution’s evidence base was of great importance to the case.
prejudice. Had his prosecutorial approach been used against him when defending Fonteius and Flaccus, he would have been powerless against the weight of documentation, and the outcome for his clients would have been similar to Verres. Moreover, as has already been stated in the previous chapter, Cicero accentuates the need for an advocate to embellish and flavour evidence when substantiating his superior claim over Caecilius in the *divinatio*. When a push for a purely evidentiary presentation is juxtaposed with Cicero’s *divinatio* and future defence cases, the comments imply Cicero is trying to have his cake and eat it.

With such apparent need for discussion of issues, it appears that not only did Hortensius raise this point, but Cicero had difficulty dismissing it. This declaration could have not only pardoned Hortensius’ loss retrospectively, but also generated sympathy for the defence case during the trial, helping the jury to view the facts of the case with an open mind. Endearing oneself to the audience was important and the rhetorical handbooks advise it. If Hortensius had suggested he was pleading at great disadvantage, ill-prepared and blindsided by Cicero’s stunning manoeuvre, this would have worked as an appeal for pity and sympathy from his spectators. Not only did the handbooks recommend this approach; it is also seen in Cicero’s own career. In the *exordium* of the *Pro Roscio Amerino*, an early defence case of Cicero, he uses his youth and lack of experience to evoke sympathy from his listeners. He emphasises that he is not the best or brightest of orators and questions his ability to carry out the case. He also stresses the influence and intimidatory force that the prosecution exhibited emphasising his position as the underdog: he is pleading from an invidious position. A similar effect is achieved via different means in the *Pro Milone*, where the presence of armed guards fills Cicero with unease and hampers his ability to speak. This strategy was available to Hortensius, although not in the exact same form. He could not plead for sympathy based on a lack of ability or experience, but could complain that his position was unfavourable, not due to the facts of the case or his oratorical ability, but because of Cicero’s unconventional procedure.

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209 May (1988) 80 describes Cicero’s attacks on Greeks in the *Pro Flacco* as reliant “on a generalised, stereotyped portrait of the provincials.”

210 Quint. Inst. 4.1.8, 4.1.11. Rhet. Her. 1.8.


212 Cic. Mil.1-2.
Payments, Accounts, and Witness Testimony

A further part of the trial which appears to have provided great difficulty for Cicero is proving Verres actually profited. Hortensius claimed that no money ever came to Verres to refute Cicero’s accusations concerning the grain tithe; the money was paid to the tithe collectors and not the governor. In an episode involving two brothers of Agyrium and the inheritance of their father, Cicero argues, in a not wholly convincing manner, against the point that the money never actually reached Verres: (Cic. Verr. 2.2.26)


(“But, we are told, the money did not reach Verres. What manner of defence is this? A serious plea, or an experiment? I ask, for it is something new in my experience. Verres put up the false claimant, Verres summoned the defendants, Verres tried the case, Verres pronounced the judgement; a large sum of money was paid; the payers won the case. Is my opponent to reply: “The cash was not paid to Verres?” Quite true; my own witnesses endorse this statement; they tell us they paid it to Volcatius.”)

This issue of the money trail and who actually profited was a tricky area for Cicero to fully satisfy. It was one thing to prove that tithe collectors took more grain or money than was appropriate; it was another to prove that those surplus gains either directly or indirectly benefited Verres. A similar issue occurs in the Pro Fonteio, the defence arguing that it was his subordinates who oversaw the relevant administrative functions. The charge against Fonteius is connected to his monitoring of roading projects in Gaul. He would only give his official approval to a constructed road upon the receipt of a bribe; as governor, he had the power to certify that a road was acceptable deeming the contract fulfilled, or unacceptable demanding the construction team repair or reconstruct the road.

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213 Cic. Verr. 2.3.40 promises to do this, but the resulting argument at 2.3.51-2 is not overly compelling. He suggests that Verres’ profit can be seen in the way he manipulated the laws, no motivation other than personal gain being possible. Cic. Verr. 2.2.186-90 and the allegations concerning the erasures in the account books, although dramatic and somewhat evidence based as it concerns actual documents, relies heavily on assumptions.

214 Cic. Verr. 2.3.109 acknowledges that no accounts were accessible for Cicero concerning the taxation of farmers at Leontini. As a result there was no money trail.
as he saw fit. Cicero retorts that Fonteius had nothing to do with these projects, his staff taking care of all issues related to road construction.\textsuperscript{215}

A parallel to the crime of Fonteius can be found in Cicero’s charge against Verres concerning repairs to the temple of Castor.\textsuperscript{216} Verres was to certify if the contractors had repaired it adequately; he demanded they do it to an unreasonable standard. Cicero adds an extra element to his exposition by including Chelidon, Verres’ mistress. Despite her scandalously sordid reputation, she had a formidable degree of authority; her atrium appears to have been as busy as a powerful senator’s.\textsuperscript{217} The result was that the repairs were contracted to an associate of Verres for ten times the repair cost, Verres’ victims having to pay the sum. A response along the lines of Cicero’s in the Pro Fonteio would have been applicable to both of Cicero’s accusations. In the case of the grain tithes, Hortensius could have shifted the blame to the collectors pleading that Verres was not involved in their criminality and did not benefit. Similarly, in the charges concerning the temple of Castor, although the price may have been exorbitant, Verres did not receive the payments; based on religious sentiment, he could have presented demanding high standards for sacred structures as patriotic and creditable.\textsuperscript{218}

\textbf{Attacks on Witnesses and Documents}

The final refutations that Hortensius appears to have raised concerned Cicero’s use of witness testimony. According to Cicero’s speech, Hortensius complained that the testimony of Artemo of Centuripa more resembled a prosecutor’s speech, and that using the child witness Iunius was demagogic and inappropriate.\textsuperscript{219} Cicero uses Artemo’s apparent prejudice to his advantage, suggesting it proves Verres was an enemy to the

\textsuperscript{215} Cic. \textit{Font}. 17-19 stresses that Fonteius was not directly responsible for the monitoring of road construction in the province. However, Cicero does not simply reassign blame but also makes an argument in defence of those actually responsible.

\textsuperscript{216} Cic. \textit{Verr.} 2.1.131-48.

\textsuperscript{217} Cic. \textit{Verr.} 2.1.137. Fascinating as the descriptions of this powerful female socialite are, they betray a degree of embellishment on Cicero’s part which raises concerns about his account. He is likely exaggerating the hectic hustle and bustle of her atrium, but she must have wielded a degree of political power to justify Cicero’s attention.

\textsuperscript{218} Powell (2001) 514 notes the importance of the Dioscuri in Roman thought as they were seen as protectors of the Roman state, having appeared on horseback to aid Roman forces in a fifth century battle. Also see Shelton (1998) 359 on the Roman mentality concerning religion in general and its importance for ensuring the prosperity of the state.

Sicilians, and that therefore, his guilt is a foregone conclusion. Hortensius’ attacks on witness credibility may appear weak and undeveloped, but this is more a symptom of the modified format than the fault of the arguments themselves. Hortensius’ responses, as we see them, are limited to Cicero’s relating of them; therefore, interpretations are reliant on the fullness and accuracy he provides. Cicero simplified and abbreviated them and Hortensius’ actual arguments would have been much more developed and convincing. With a lengthier speech, attacking witness integrity is a potent force, often applied in Cicero’s own cases. Witnesses are smeared in both the *Pro Roscio Amerino* and *Pro Flacco*.\(^{220}\) The rhetorical handbooks also recommend this strategy to negate a disparity in evidence.\(^{221}\) In addition to discrediting individual witnesses, general attacks on groups of witnesses are also standard practice in Cicero’s defence speeches. Discrediting the character of provincial witnesses minimises the potency of their numerically superior claims. In the *Pro Fonteio*, Cicero paints a damning picture of the Gallic witnesses testifying against his client.\(^{222}\) He uses a similar strategy in the *Pro Flacco* and *Pro Scauro* against Asiatic Greeks and Sardinians.\(^{223}\) This strategy plays directly into the hands of what Braund describes as “the ultimate inadequacy of Roman concern for non-Roman victims of magistrates in the provinces – however loudly and powerfully that concern might be declared.”\(^{224}\)

Hortensius, facilitated by Cicero’s content devoted to works of art, could have made such discriminatory remarks with little difficulty.\(^{225}\) Sicilian witnesses bewailing their

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\(^{221}\) Both Rhet. Her. 2.9 and Quint. Inst. 5.7 note defence advocates could propose that witnesses are only testifying due to partiality, bribery, or threats.


\(^{224}\) Braund (1988) 3. This disregard for provincial concerns was not limited to solely an aristocratic viewpoint. Such views are likely to have been held by the working poor, and destitute of Rome also. Mouritsen (2001) 4 notes that the plebeian population of Rome lived a “precarious existence dominated by frequent food-shortages, poor housing, high mortality and a daily struggle for economic survival.” Under these conditions it is difficult to see the general population of Rome showing concern or sympathy for the wellbeing of Sicilian provincials with such difficult living conditions in their own environment.

\(^{225}\) Cic. Verr. 2.4.16-19 refers to the testimony of Heius of Messana as having occurred during the first *actio*. In addition, the perfect tense *laesit* of the verb *laedo, laedere* (to hurt) is used to suggest the result of his damning testimony. The use of this perfect indicates that his testimony had already occurred during the first *actio*. Therefore, despite no lengthy discussion of art works occurring in Cicero’s opening speech, based on the testimony of witnesses it would have been obvious to Hortensius that such arguments were part of Cicero’s case.
artworks would have been easy fodder for Hortensius. His inflaming of prejudice was not however limited to the character of witnesses alone; he could also discount compelling documentary evidence based on its provincial origin.\footnote{Cic. Verr. 2.2.187-90 stresses that a crowd of leading citizens witnessed and signed the documents Cicero had obtained to ensure their validity. This incident shows how conscious Cicero was of an attack against the credibility of his documents.} In the Pro Flacco, Cicero mirrors the deceitful Greek actor with the unreliability of any Greek document.\footnote{Cic. Flac. 36-40.} It is therefore probable that an attack on the credibility of witnesses, and their documents, was a defensive strategy Hortensius would have employed. Not only are inferences included in the Verrines, but Cicero utilises the tactic and Quintilian advises its use.\footnote{Quint. Inst. 5.5 notes that documents are often easier to discredit than witnesses as they cannot speak in defence of themselves as witnesses can.}

In summary, based on references to Hortensian arguments in the Verrines, it appears plausible that a defence of Verres would have included arguments along military lines, excusing Verres for bad behaviour. Relevant topics would have included slave uprisings and the revolt of Spartacus, the threat of piracy, and the need to show a strong resolve against the Sertorian revolutionaries. The uncertain nature of the money trail and Cicero’s inability to link Verres to the profits were also likely points. Finally, an attack on the testimony of witnesses was also alluded to in Cicero’s speech. In each of these instances, the references in the Verrines suffice to indicate their inclusion in a defence; in addition, parallels are found in Cicero’s own defence cases and the rhetorical handbooks. Consequently, these lines of defence can be proposed with a high degree of assuredness as arguments available to Hortensius.

Arguments Based on Cicero’s Other Cases

Less certain than allusions made in the Verrines, but equally suggestive, are arguments Cicero used in his own defence cases when he found himself in a predicament similar to Hortensius.\footnote{Note that defensive strategies Cicero uses in other cases that are the same as those alluded to in the Verrines itself have been included in the previous section. In this section, of concern are defensive strategies evident in Cicero’s defence speeches which are not evident in the Verrines.} Most obvious are Cicero’s defences of Fonteius, Flaccus, and Scaurus for the same charge as Verres; in addition are Cicero’s many cases pertaining to different charges. The majority of these cases occurred after 70 B.C., hence Cicero’s speeches could not have inspired Hortensius’ approach. Nonetheless, many of Cicero’s strategies were not wholly innovative; they are best viewed as standard rhetorical...
approaches that any competent orator would employ. Therefore, Cicero’s speeches can suggest what Hortensius considered.

In conjunction with attacking Cicero’s witnesses, Hortensius could have also presented his own witnesses with the opposite treatment. Cicero attacks hostile testimony with predictable regularity in defence cases, while imploring that his own witnesses are reputable to the highest degree. Hortensius too could have presented Cicero’s witnesses as degenerate, while suggesting his own were the pillars of their community. While the importance of Cicero’s testimonials could be questioned, his own could be bestowed with prestige and honour. As noted in the previous chapter, Hortensius had several highly influential supporters to call upon as witnesses. The three Metelli brothers, all of whom held esteemed positions within the Roman political system, could have provided character references for Verres. Friendships with individuals of such prestige and importance inherently improved the perception of a defendant. Hortensius would have also had other witnesses to call on; most obvious was the laudatory deputation from Messana, whom Cicero alleges are only supportive of Verres because of his partnership with them.

Interestingly, just as Cicero uses Sicily’s close proximity in comparison to other provinces to imply that its loyalty and importance is stronger, Hortensius could have made similar comments emphasising the closeness of Messana to the Italian peninsula. Furthermore, he could have discussed Messana’s unwavering loyalty during the Punic wars, when many of the cities now testifying for Cicero had revolted.

Much as Cicero praises the supporters of Archias and Roscius in the Pro

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230 As Kennedy (1972) 166 explains, Cicero’s defence speeches show just how Cicero could rebut the very charges he had made against Verres. Additionally, Hortensius would have had extensive time in the forum to learn from speakers who had presented prior cases as well as personal experience in such cases. Dyck (2008) 144 notes his early prosecution on the same charge against a governor of Africa. Alexander (1990) 46-7, Case No. 90 suggests a date of 95 B.C. Also, Alexander (1990) 62, Case No. 120 documents the first of Hortensius’ known defence cases (on a different charge) in 86 or 85 B.C. As a result, Hortensius’ experience in legal cases should not be underestimated.

231 See Swarney (1993) 137-9, and 154 on the importance of character in Roman trials and the objective of an orator to build up their own side’s supporters, while doing the inverse to their opponents. Alexander (2002) 34 also comments on the large part character plays in trials.

232 See Cic. Verr. 2.2.13, 2.4.3, 150-1 on the official deputation from Messana.

233 Cic. Verr. 2.2.2-3 emphasises the loyalty and tradition connected to the province of Sicily in order to win support from the purely Roman jury for his provincial claimants. Verbrugge (1972) passim paints a vastly different picture concerning the loyalty of Sicily, several cities revolting against Rome and having to be suppressed. Messana, loyal to the Roman nation at a time when most of Sicily was causing trouble, could be presented as taking higher priority due to such history. Note the similarity between Cicero’s overly honorific take on Sicily in general, and his portrayal of the people of Lampsacus as Steel (2004) 244-5 shows.
Archia and Pro Roscio Amerino, Hortensius could have mentioned the important supporters of his client, both Roman and provincial, to add weight to his words.\(^{234}\)

As Cicero’s speech indicates, Hortensius was the Consul-elect. As well as the supporters of Verres, this too would have been a valuable point to utilise in order to add credibility to his words. Cicero uses both his and his client’s consular status to bolster the authority of his speech in the Pro Murena, beginning with a religious tone based on the swearing in of the newly elected Consuls.\(^{235}\) Although the case was not for the same charge, it does reveal how a speaker could use their own position to give greater power to their words: (Cic. Mur. 1)

\[
\text{Quod precatus a dis immortalibus sum, iudices, more institutoque maiorum illo die quo auspicato comitis centuriatis L. Murenam consulem renuntiavi, ut ea res mihi fidei magistratuique meo, populo plebique Romanae bene atque feliciter eveniret, idem precor ab isdem dis immortalibus ob eiusdem hominis consulatum una cum salute obtinendum,}
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(“On that day, gentlemen of the jury, on which after I had taken the auspices I announced Lucius Murena’s election as consul to the assembly of the centuries, I prayed to the immortal gods according to the traditional usage of our ancestors that his election should bring good fortune to myself, my trust, my office and to the people and commons of Rome.”)

It is compelling that the first matter Cicero chose to raise was the fact that he was a Consul and his client a Consul-elect.\(^{236}\) It is not a stretch to imagine Hortensius commencing the Pro Verre similarly. As has already been mentioned, this strategy is recommended in the handbooks, the character of the speaker being deemed a most important element to any case.\(^{237}\) Indeed turning to the Verrines, Cicero confesses his

\(^{234}\) Swarney (1993) 154 stresses that the orator’s objective in legal speeches was to present his client’s social circle as respectable and denigrate those of his opponents. Cic. Arch. 1-3 mentions the great talents of Archias, suggesting the poet had taught him some of the abilities which make him a distinguished orator. Arch. 6 includes a list of Archias’ supporters, a list that reads like a who’s who of Rome including some of its most eminent aristocratic families. Cic. Rosc. Am. 4 does not provide names but states that men of great position asked Cicero to represent Roscius. At Cic. Rosc. Am. 49 he relates the honourable nature of the relatives supporting Roscius, while Cic. Rosc. Am. 77 mentions P. Scipio and M. Metellus, deliberately slipping powerful supporters into his speech. Berry (2000) 227-8 notes that in the case of M. Metellus the M. praenomen is a conjecture as it is absent from the text. Cic. Rosc. Am. 149 includes the names Caecilia and M. Messalla to acknowledge other influential supporters of Roscius.


\(^{236}\) Note that Cic. Mur. 1-2 emphasises that as Consul, he had validated his client’s election in accordance with religious doctrine; therefore, to undo this would be an act of impiety. Although this element of the defence is not applicable, using an advocate’s political position to add weight to a speech is most relevant.

\(^{237}\) Rhet. Her. 1.8., Cic. Inv. Rhet. 1.22, and Quint. Inst. 4.1.7. Cic. Inv. Rhet. 1.22 also warns against appearing arrogant in the process. See also May (1998) 4-12, (2002) 53 for the importance of a speaker’s character in a trial.
concern upon learning of his opponent’s electoral victory: (Cic. Verr. 1.21) *cupiebam dissimulare me id moleste ferre; cupiebam animi dolorem vultu tegere et taciturnitate celare.* (“I did my best to pretend that I felt no uneasiness myself; I did my best, with the help of calm looks and silence, to mask and conceal the anguish that I felt.”) Thus the weight of Hortensius’ consulship was a most likely point to make; Cicero admits his concern for the influence of the position in the *Verrines* themselves, and capitalises on his own consulship in his defence case for Murena less than a decade later.\(^{238}\) Additionally, the rhetorical handbooks advise utilising an orator’s character. As a result, it can be assumed Hortensius’ own character was a likely means of winning over his audience.

**Arguments Based on the Rhetorical Handbooks**

The recommendations of the rhetorical handbooks are yet another means of establishing likely lines of argument.\(^{239}\) The resulting arguments cannot be held up with certainty and their reliability as evidence is much weaker than the previous two methods. Despite these doubts however, the correlation between arguments used in trials and the advice of handbooks implies their comments are highly indicative of actual oratorical practices. Several suggestions that are evident in the *Verrines* or Cicero’s other cases, as already discussed, include the use of an orator’s own character, arguing that the facts of the case are in dispute, using positive character references from friends and supporters, and attacking opposing witnesses’ credibility. Based on the advised approaches for a subtle *exordium*, those that have not already been addressed are: attacking the character of the opposing counsel; and addressing the audience directly in order to win favour.

**Attacking Cicero**

The rhetorical handbooks propose that a character attack on the opposing counsel could win support and stifle their case. Hortensius had several possible arguments to launch against Cicero’s character; perhaps the most obvious was a smear of bribery and corruption.\(^{240}\) Interestingly, Cicero blackens Verres and his supporters several times with

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\(^{238}\) Berry (2000) 59 dates the *Pro Murena* at 63 B.C. See also Alexander (1990) 111, Case No. 224.

\(^{239}\) Note that where such recommendations have already arisen over the course of the previous two sections, and have therefore been discussed, they are now omitted. At this stage, only rhetorical advice pertaining to strategies not otherwise evident for the *Verrines* is to be considered.

\(^{240}\) Borkowski (1994) 58 points out that it was standard procedure for advocates to blacken the name of their client’s opponents. Similarly, see Riggsby (2004) 165-85 on the standardised manner of attacks based
little or no proof to substantiate his allegations. That is not to say that he is lying, merely that he does not verify his accusation; however, whether true or false, he achieves his intention of tarnishing each target’s reputation: (Cic. Verr. 1.16) Ut primum e provincia redit, redemptio est huius iudicii facta grandi pecunia. (“No sooner was he back from his province than he bought up this Court for a large sum of money.”) Cicero proposes that Verres arranged to bribe the court upon returning to Rome. He then adds that when he learnt the makeup of the jury, Verres lost hope as too many jury members were honest. His efforts of bribery ceased until his defence advocate was elected consul: (Cic. Verr. 1.17) Ecce autem repente his diebus paucis, comitiis consularibus factis, eadem illa vetera consilia pecunia maiore repetuntur (“And now behold, equally suddenly, within the last few days, since the result of the consular elections has been known, the same old methods are being set going again, and more money than before is being spent upon them.”) Of special importance is Cicero’s complete lack of tangible evidence. He has absolutely no documentation or testifying witnesses to support his charge, his only explanation of how he learnt of this activity coming from an unknown source: (Cic. Verr. 1.17) Quae res primo, iudices, pertenui nobis argumento indicioque patefacta est: post aperto suspicionis introitu ad omnia intima istorum consilia sine ullo errore pervenimus. (“This fact was first revealed to me by a slender thread of circumstantial evidence; but once the door was opened to admit suspicion, a direct path led me to the inmost secrets of Verres and his friends.”) Cicero uses nothing more than

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241 As Gruen (1974) 32 states: “Where Cicero lacks hard facts, he naturally speaks of attempted bribery, would-be prosecutors, or penurious victims who possessed the will, but not the means for bribery.”
insinuation to implicate Verres in bribery allegations; with no real proof, Cicero still
manages to slander his character generating added suspicion of his guilt.\footnote{Bauman (1992) 66 notes that similarly, Cicero’s tarnishing of the character of Chelidon is “long on
generalisation, short on detail” showing that even with little substance to accusations, it is relatively easy to
destroy a character’s credibility.}

The defendant is not his only target, also alleging that Sicilian money was used to
derail his own candidacy for aedile, and buy a consulship for Quintus Metellus. He
relates the corruption in his own electoral race citing undisclosed sources: (Cic. Verr.
1.22)

\begin{quote}
Unum illud ex hominibus certis, ex quibus omnia comperi, reperiebam:
fiscos complures cum pecunia Sicilensi a quodam senatore ad equitem
Romanum esse translatos, ex his quasi x. fiscos ad senatorem illum
relictos esse comitiorum meorum nomine, divisores omnium tribuum
noctu ad istum vocatos.
\end{quote}
(“One thing I did learn from certain persons who were my regular
detectives: that a number of baskets of Sicilian money had been
transferred from a particular senator to a particular knight, that some ten
or more of these baskets were left at this senator’s house for a purpose
connected with my own candidature, and that a meeting of the bribery-
agents for all the tribes was held one night at Verres’ house.”)

When Verres proposed interfering with Cicero’s election, many bribery agents
refused to help. But this was not universal; a relative of Verres (Q. Verres) agreed to his
plan and several others followed suit.\footnote{Mouritsen (2001) 114 proposes Verres’ bribery against Cicero’s election is historically correct when
studying the role of the plebeian population in the political process. See Smith (1954) 231-3 on this relative
and the importance of his name for understanding Verres’ name.} Cicero’s vague source and complete lack of hard
evidence is again notable: (Cic. Verr. 1.23)

\begin{quote}
inventum tamen esse fortem amicum ex eadem familia, Q. Verrem
Romilia, ex optima divisorum disciplina, patris istius discipulum atque
amicum, qui HS quingentis millibus depositis id se perfecturum
policeretur; et fuise tamen nonnullus qui se una facturos esse dicerent.
Quae cum ita essent, sane benivolo animo me ut magno opere caverem
praemonebat.
\end{quote}
(“However a stout ally turned up from among his own kinsmen, Quintus
Verres of the Romilian tribe, a fine old specimen of the bribery-agent,
who had been the pupil and friend of Verres’ father; this man undertook
to manage the business for [500,000HS] down, and some of the others
said after all that they would join him. In view of all this my friend very
kindly warned me to take every possible precaution.”)

Cicero then suggests that through bribery, Verres assisted Q. Metellus in winning
the consulship, discrediting Verres further still and negating his supporter’s influence
through nothing more than hearsay: (Cic. Verr. 1.26) \textit{Q. Metellum, qui quam isti sit}\
amicus, attendite; dedit enim praerogativim suae voluntatis eius modi ut isti pro praerogativis iam reddidisse videatur. (“Quintius Metellus too, the strength of whose friendship for Verres I will ask you to note: he has indeed given so clear a preliminary token of goodwill that Verres feels himself already paid in full for those preliminary votes at the election.”) In this way, he undermines the credibility of Verres and his supporters without calling upon any concrete proof or reliable sources. Despite lacking documentation and evidence, he is able to not only bring up the matter subtly, but focus his attention on the subject multiple times. It takes very little imagination to see Hortensius attempting a similar tactic. He could have easily concocted an allegation against Cicero and his key witnesses; the important point was that like the prosecutor, he need not sustain his points with evidence. The only requirement is that he frame his points in a way that makes the jury doubt his opponent’s credibility. Furthermore, Cicero was a relatively easy target having just won the election for his aedileship. He had emphasised his disadvantages both in the case and his election, bribery working against him and his efforts divided between the two: (Cic. Verr. 1.24) Agere quae ad iudicium pertinebant libere comitiorum metu deterrebar; petitioni toto animo servire propter iudicium non licebat (“I was deterred by concern for my election from giving my mind freely to the business of the trial; the trial prevented my devoting my whole attention to my candidature”). Hortensius could suggest that only bribery could have overcome such odds to turn Cicero’s cries of hardship against him.

In addition to a discussion of bribery, another potent attack against Cicero’s character concerned his apparent fondness of the Sicilian people and Greek culture. Steel stresses that Cicero had to carefully attack Verres for embracing the lavishness of Greek opulence and vice, as the same prejudice could be applied both to him and his witnesses. He had shown great compassion for his clients and speaking to the Syracusan Senate in Greek had generated controversy. Hortensius could have presented this sympathetic stance negatively, suggesting this concern for provincials diminished his patriotism for

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244 Note that Lintott (2008) 83 proposes the case was not merely a legal battle of rhetoric but “a fight against the corruption rife among Hortensisus and his like.”

245 Suggestions of bribery against Cicero could extend to slandering his witnesses also. Note that Cic. Flac. 13-18 stresses the force with which his opponents gathered their evidence and suggests that the witnesses are appearing motivated by the fear of threats, or the lure of potential rewards and generous travel allowances. Hortensius could have depicted the Sicilian witnesses similarly.

246 Steel (2001) 46-7. Dyck (2001) 123-4 identifies Cicero’s strategy of Hellenising Verres’ image through the clothing that he wore. Hortensius could have turned this invective on the prosecutor, alienating him from the jury. See also Dillon and Garland (2005) 283. Butler (2002) 83 notes that there was a threat of Cicero being labelled a “Greekling.”
Rome and brought his character into disrepute. In light of these points, Hortensius could have made good headway attacking these apparent betrayals of Roman culture.

The lack of evidence used to substantiate accusations of bribery, along with Cicero’s apparent amicability with Sicilian subjects, opened up another attack against him. Cicero appears to have approached the case with impressive industry showing diligence and motivation in gathering evidence; however, the vehemence with which he pursued his case allowed the defence to suggest that his motivation was based on a deep seated hatred of Verres. Personal enmity could be depicted as the driving force behind his case.\(^{247}\) In a malicious frame of mind, his desire to obtain proof could have clouded his judgement leading him to include baseless evidence.\(^{248}\) Accusations such as the bribery allegations, which had no documentary proof, could become Cicero’s downfall, revealing the resentment that motivated his prosecution. His use of aggressive and impartial witnesses could additionally imply that the charges against Verres were the result of provincial anger rather than actual criminality.

**Addressing the Audience**

The *Rhetorica Ad Herennium* also suggests directing attention towards the audience to make them more amenable to argumentation. This is shown in the *Verrines* when Cicero praises the upright nature of his listeners and suggests that their selection as jurors rendered Verres’ plans of corruption impossible.\(^{249}\) (Cic. *Verr.* 1.16-17)

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Praeclare se res habebat. Libelli nominum vestrorum consiliique huius in manibus erant omnium; nulla nota, nullus color, nullae sordes videbantur his sententiis adlini posse; cum iste repente ex alacri atque laeto sic erat humilis atque demissus ut non modo populo Romano, sed etiam sibi ipse, condemnatus videretur.
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(“Everything now promised well. The list of your names, as members of this Court, was accessible to everyone: this verdict, it seemed, could be given without any fear that special signs, colours, or smudges could be marked upon the voting-tablets. Verres, from looking lively and cheerful, had been plunged suddenly into so gloomy a state of..."

\(^{247}\) *Rhet. Her.* 2.9 notes that it is a standard trope to allege the prosecutor is guilty of slander. *Quint. Inst.* 11.1.57 stresses that a prosecutor needs to appear unwilling so as to avoid an accusation that they are prosecuting the defendant out of personal enmity.

\(^{248}\) Note the similarity of this argument to *Cic. Flac.* 13-15, as already mentioned.

\(^{249}\) Vasaly (2009) 117-18 notes that Cicero praises the jury, but also warns that, if corrupt decision making prevails, he will follow up the trial with prosecutions of deceitful jurors. He also emphasises the need for the jury to rectify the poor reputation of the senatorially controlled courts.
depression, that he was looked on as an already condemned man by everyone in Rome, himself included.")

Hortensius too could have used this approach, reminding the jury of their upright status in order to win them over and make them agreeable to his persuasive techniques. Quintilian asserts that advocates should not just compliment the jury, but link their positive characteristics to the case. As examples, he advises appealing to the jury’s nobility with an honourable client, while humbler ones should ask for the jury to consider their sense of justice. With the unfortunate, the advocate should request mercy, and when the client is the victim, he urges an appeal for severity. Cicero demands that the jury be unforgiving and use the verdict to affirm their own non-corrupt status. He approaches his defence cases similarly, often addressing the audience directly. In the Pro Roscio Amerino he implores the jury to stand up to evil, defend the innocent, and protect all members of the Roman state. Similarly, in the early stages of the Pro Milone, he requests that they reward meritorious character. For Hortensius’ purposes, he could stress the jury’s reverence for Rome and its official positions, and in a similar manner to the Pro Milone, request that they grant Verres clemency for his loyalty to Rome. Influencing them in favour of the Roman defendant, and prejudicing their judgement of non-Roman provincials, would have been helpful; as mentioned earlier, Cicero himself uses this strategy regularly.

Hortensius’ Defence

These points assemble to form a hypothetical reconstruction of Hortensius’ case. He would have primarily attempted to make the audience, if not supportive, at least somewhat agreeable to his arguments. From this position, he could potentially convince them to acquit Verres; but without diminishing the hostility that Cicero had generated,

250 Quint. Inst. 4.1.16. May (1988) 2-3 emphasises the importance of directing some focus of a speech to the audience themselves.
251 Cic. Verr. 1.3. See Vasaly (2009) 104-8 who discusses the political situation regarding the makeup of the jury at the time of the Verrines.
252 Cic. Rosc. Am. 7-8. He then proceeds to present his opponents as the evil to stand against and his own client (the defendant) as the victim.
253 Cic. Mil. 4. Note Cic. Flac. 2 stresses that he is surprised Lucius Flaccus is being prosecuted at all based on the devotion he has shown to Rome, again requesting that the jury sympathise with a Roman defendant rather than the provincial interests of the aggrieved subjects.
254 Cic. Font. 15 asks the jury which statements they value more; those of loyal allies and trade interests or those who showed animosity to Roman rule; those of virtuous, unimpeachable individuals or the common judgement of lowly Gauls. Cic. Flac. 3 proposes that a jury needs to consider the good of Rome as well as the facts of the case. Cic. Scaur. 44 addresses the nature of the Sardinian race, the large majority lacking in honour and possessing no link or fellowship to the Roman nation.
argumentation would prove utterly futile. Placing oneself in Hortensius’ shoes, the following lines of reasoning appear as the best options to reduce the jury’s opposition and hostility to his case.

1. Arguments Based on Character:
   a. Use his own political record and consular election to win support. Exaggerate his concern for Cicero’s eloquence and claim he is ill-prepared to handle the case in light of the adjusted procedure, thus generating sympathy.
   b. Use the character of Verres to his advantage, rehabilitate his image as a military general, and excuse his actions through reference to the Republic’s turmoils including: Spartacus, Sertorius, piracy, and the threat of further slave revolts. Through this reformed military persona, request that, even if some of the charges cannot be refuted, excuse them due to this military record.
   c. Make reference to Verres’ numerable and high-profile Roman supporters, which were in stark contrast to Cicero’s motley mob of provincials. Additionally, refer to the deputations that had come to support Verres.
   d. Attack the character of Cicero and his arrogance. Make bribery and corruption allegations to undercut any advantage from his election as aedile. Also question his motivations for taking on the case to attribute doubt to the legitimacy of his evidence, and suggest his support for the Sicilian subjects and alarmingly Greek behaviour is unpatriotic, alienating him from the jury.
   e. Attack Cicero’s witnesses. Emphasise their provincial nature and the little weight that can be given to provincials who are prone to lying; equally stress that their documents are just as likely to be tarnished with corruption. Show the Sicilian people to be disloyal, with the exception of Messana, attacking Verres only because of actions which were in the best interest of Rome.
   f. Compliment the jury in order to ingratiate oneself with them, applaud them for their patriotism, and implore them to consider the well-being of Rome ahead of the interests of lowly provincials.

2. Arguments Based on Procedure and Facts:
   a. Argue that the military issues have been misrepresented and produce a series of events in support of Verres.
   b. Claim that Cicero’s insistence on shortening the speaking time and not fully discussing each charge resulted in justice being perverted.
c. Suggest that the witnesses have been coached; they are not giving unbiased testimony because Cicero has told them what false charges to make.

d. Even if illegal acts occurred, argue that they were not carried out by or for Verres, and therefore, he cannot be held responsible. Furthermore, stress that Cicero has not directly linked any ill-gotten gains to Verres.

Assessing the Defensive Arguments

In light of this reconstruction, it appears Hortenius had a variety of arguments which together could have proved quite convincing. Yet he appears to have not given a formal speech and Verres fled from Rome early. This begs the question; why did Hortenius feel that resistance was futile? It is here that the fruits of such an analysis are harvested. For each possible argument, Cicero had already undercut Hortenius’ line of reasoning in advance. By taking each point in turn, it becomes clear that Cicero’s master stroke was not the volume of evidence he produced alone; nor was it the shortening of his opening speech which independently sealed him victory. It was the combination of these two factors along with, and perhaps most importantly, his ability to weaken all of Hortenius’ strategies before he could present his case. Quintilian notes that Cicero preempted any objection to his taking on the case.\footnote{Quint. Inst. 4.1.49.} I would develop this to suggest that, not only did he anticipate objections to being a prosecutor, but he foresaw and counteracted all likely defensive arguments afforded to his opponents. Cicero executed a prosecution that was practically perfect; he left no opening for Hortenius to successfully exploit. As the prosecutor and first speaker, his objective was to predict his opponent’s possible refutations and negate them with arguments of his own. He did this all too well, as will become clear as each defensive argument is taken in turn.

1 (a) Use his own political record and consular election to win support. Exaggerate his concern for Cicero’s eloquence and claim he is ill-prepared to handle the case in light of the adjusted procedure, thus generating sympathy.

When Hortenius would have risen to speak, Cicero had already presented him with all of the prestige, Verres with all of the power, and his friends with all of the
influence. Through his description of their ploys, he presented them as forcing his hand; he suggested his shortened speech indicated that it was his opponents that were in control and dictating the course of the case. As shown in the previous chapter, Cicero put a sinister slant on what could have been innocent events in the lead up to the trial, enabling his audience to envisage the swaggering authority of his opponents. Cicero’s accusations of bribery and corruption generated *invidia* toward both Hortensius and his supporters, undermining any authority they hoped to garner. These also made appeals to prestige appear arrogant; the handbooks warn against this. This is a prime example of Cicero masterfully turning what should have been a series of advantages for his opponents into cause for suspicion.

(b) Use the character of Verres to his advantage, rehabilitate his image as a military general, and excuse his actions through reference to the Republic’s turmoils including: Spartacus; Sertorius; piracy; and the threat of further slave revolts. Through this reformed military persona, request that, even if some of the charges cannot be refuted, excuse them due to this military record.

Cicero had belittled any interpretation of Verres as defender of Sicily against the pirates, derided any move to claim him as suppressor of slave uprisings, and ridiculed any link between his actions and the Sertorian defection. Ironically, though he was careful to defend the character of his Sicilian clients, many of whom had Greek cultural backgrounds, he attacked Verres’ character using the very attributes that a Roman would use to slur a Greek. As Steel points out however, Cicero was careful not to overstate Verres’ Greekness. He stressed that Verres’ role as protector of Sicily was simply not carried out, and denigrated his military exploits in the tone of a farce. In fact, Cicero went further than merely suggesting Verres was ineffectual at protecting Sicily from pirates. He also used the imagery of piracy to subtly imply that Verres reflected piracy at

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257 Rhet. Her. 1.8.

258 Cic. Verr. 2.5.27-32 shows Verres travelling via litter when carrying out his duties, enjoying incredibly opulent and debauched dinner parties, and dressing in purple coloured Greek garb.


260 Bringman (2007) 216 indicates that, as evident in the Verrines, it was the governor’s job to prepare the island’s defences against the pirates. Cicero’s presentation shows that Verres abused his office and profited by neglecting this responsibility. De Souza (1999) 154 also notes the failure Cicero’s description implies.
its worst, and at times surpassed a pirate’s villainy. As a result, further irony would have been added to any attempt to claim Verres competently defended Sicily from them.\footnote{De Souza (1999) 152-3. Similarly, May (1988) 23 notes the use of allusions to gladiators in the Pro Roscio.}

In addition, Cicero discounted any credit for Verres’ successful capture of a ship and suggested corruption tarnished the achievement.\footnote{Cic. Verr. 2.5.64-5. See De Souza (1999) 155.} Cicero understood that the seizure of a ship was a potent argument for Hortensius; the captured ship could present Verres as both active and successful in his defence of the island. To nullify this, Cicero proposed that any governor could have captured such an overloaded ship. This created a two-fold effect: on the one hand, it belittled the effort required to capture the ship; on the other, its full load indicated that pirates had already ravaged the island. In a similar manner, Cicero turned the quelling of potential slave uprisings into sinister profiteering, detracting from Verres being presented as diligently overseeing slave activity.

\textit{(c) Make reference to Verres’ numerable and high-profile Roman supporters, which were in stark contrast to Cicero’s motley mob of provincials. Additionally, refer to the deputations that had come to support Verres.}

Cicero had already linked Verres’ friends to corruption, suggested that they covered up documents and hindered the collection of evidence, and implied that their recent political successes were not based on merit but Verres’ ability to pay bribery agents. By creating a plot involving the delay of the trial, and subsequent inequitable influence that he and his friends would have over proceedings, it invoked Quintilian’s desired effect of envy against the powerful.\footnote{Quint. Inst. 4.1.14. As previously noted, see May (1988) 27-8 on the rhetoric of “influence (gratia) and power (potentia)” with reference to the character of Chrysogonus in the Pro Roscio Amerino. See note 256.} Cicero masterfully made Verres’ high profile supporters, who should have been a potent advantage, into a disadvantage.

\textit{(d) Attack the character of Cicero and his arrogance. Make bribery and corruption allegations to undercut any advantage from his election as aedile. Also question his motivations for taking on the case to attribute doubt to the legitimacy of his evidence, and suggest his support for the Sicilian subjects and alarmingly Greek behaviour is unpatriotic, alienating him from the jury.}

As Quintilian notes, Cicero successfully addressed the question of why he was playing the role of prosecutor, countered any complaint against the honour of his position,
and twisted his prosecution into a defence of loyal allies. Cicero had already assumed a weak and powerless position to invoke sympathy for his case. He stated that he was incapable of countering the power and influence of his opposition. Hence it was impossible for Hortensius to make a similar appeal to pity. Also, having accused Verres of corruption in the pursuit of his own career, bribery in the aid of his associates, and fraudulence in an attempt to thwart Cicero’s own attempts at election, Cicero had beaten him to the punch. Hortensius could attempt to smear Cicero, but the best possible result would be a draw, both casting doubt over each other. It could be argued that he would not cause as much damage as Cicero had already done with his multi-faceted bribery charges as these not only tarnished Hortensius’ credibility, but that of Verres and his other supporters as well. It seems that in the area of mudslinging, it was Cicero who had more ammunition.

(e) Attack Cicero’s witnesses. Emphasise their provincial nature and the little weight that can be given to provincials who are prone to lying; equally stress that their documents are just as likely to be tarnished with corruption. Show the Sicilian people to be disloyal, with the exception of Messana, attacking Verres only because of actions which were in the best interest of Rome.

This was perhaps Hortensius’ most promising opening. The success of an appeal along these lines is evident in Cicero’s use of this very argument in his own repetundae defence cases. But for the purposes of Verres’ defence, the potential of this approach was limited. Cicero had already gone to great pains to paint the Sicilians as loyal allies and was particularly careful to stress that they did not want revenge against Rome, or any recompense; they simply wished to return to their homes and live free of Verres’ oppression. Of particular note, as already mentioned, was the way Cicero excused the Greek heritage of his witnesses; he emphasised that they had, on the whole, adopted

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265 Cic. Verr. 2.2.7-8 stresses Sicilian loyalty in the past. Steel (2001) 244-5 notes Cicero’s positive description of the peaceful people of Lampsacus which totally omits the rebellions Mithridates had fostered in the area. Finley (1968) 122-3 points out that Cicero was careful to undercut any notion that Sicilians were disgruntled with Roman rule in general by presenting a distorted, unduly peaceful, and unchanging tax system for Sicily. Cic. Verr. 2.4.17 further emphasises that the Sicilians were not begrudging stating that Gaius Heius of Messana, having had many artworks stolen, does not care about repayment and is not motivated by money; all he wishes for is the return of his heirlooms. To a degree, this removed the effectiveness of a defensive argument along the lines of Cic. Flac. 13-15 in which Cicero alleges that the witnesses are only testifying in the hope of financial reward.
Roman practices and discarded those Greek attributes that were unsavoury:

(Iam vero hominum ipsorum, iudices, ea patientia vir tus frugalitasque est
ut proxime ad nostram disciplinam illam veterem, non ad hanc quae
nunc increbruit, videantur accedere. Nihil ceterorum simile Graecorum;
nulla desidia, nulla luxuries; contra summus labor in publicis privatisque
rebus, summa parsimonia, summa diligentia. Sic porro nostros homines
diligunt ut iis solis neque publicanus neque negotiator odio sit.

(“And then again, the character of the inhabitants is such, so hardy and
upright and honest, that it really reminds us of the stern old Roman
manners, rather than of those which have come to prevail among us to-
day. They have none of the failings found elsewhere among Greeks; they
are neither slothful nor self-indulgent; on the contrary, they are highly
industrious, for their own and for the public good; plain-living and
conscientious folk. Such, moreover, is their attachment to our own
people that among them, and nowhere else, neither tax-collector not
capitalist is an object of dislike.”)

What is more, Cicero had been diligent in showing that Verres’ actions, far from
being of any benefit to Rome, actually hurt her interests; the extra profits, taxes, and
goods he exacted went straight into his own coffers rather than the Roman treasury.

Therefore, regardless of the jury’s feelings toward the provincials, the damage to Rome’s
interests would lead to a guilty verdict anyway.

(f) Compliment the jury in order to ingratiate oneself with them, applaud them for their
patriotism, and implore them to consider the well-being of Rome ahead of the interests of
lowly provincials.

Cicero transformed the trial from an occasion concerning the extortion of
provincials to the flaunting of Roman citizen rights and damage inflicted upon the Roman
State. Cicero’s incorporation of the crucifixion of Gavius is a prime example of this, as is

266 Note the similarity of this to Cic. Flac. 64-5, 100 and his own distinction between good and bad Greek
characteristics. Cicero states that Asiatic Greeks adopt the worst of these traits, while other Greeks,
including those in Sicily, retain the noblest of Greek practices and take Roman virtues to replace the
negative ones. Lintott (2008) 104 notes the Roman preference for Senates over Assemblies. Cic. Flac. 15-
18 shows the contrast between Greek Assemblies, where the whim of an unruly mob determine the correct
path, and the Sicilian senates where the wisest men in the city decide what was best. Also see Alexander
(2002) 84.

267 Cic Verr. 2.3.49, 117 alleges that Verres kept more than half of the tithe collections for himself. Cic.
Verr. 2.3.122 appeals to the jury that, even if they do not hold the concerns of provincials highly, they
should think of the ways in which Verres’ actions damaged Roman interests. Cic. Verr. 1.13 mentions
briefly the fact that Verres ravaged the farming communities of Sicily but does not go into detail; however,
allegations would have been raised during the witness testimony, so Hortensius would have had at least
some idea of Cicero’s argument on this matter.
Verres’ damage to the Roman grain supply. As has already been noted, Cicero stressed the loyalty that his provincial clients had exhibited and emphasised that no grudge would be maintained against Rome on their part. The concern was not the feelings of these provincials, but the devastation Verres had inflicted on a region largely responsible for Rome’s food supply. Regarding the ingratiation of Hortensius toward the jury, again Cicero had beaten him to the punch, negating the effect of any attempt.

2. (a) Argue that the military issues have been misrepresented and produce a series of events in support of Verres.

   Cicero parodied Verres’ efforts against the pirates by asserting that cost-cutting caused the fleet’s failure. He also cast doubt over the image of Verres suppressing slave revolts. He both suggested (unfairly) that Spartacus could not affect Sicily, and that the slave uprisings were simply a mechanism for self-enrichment. When relating episodes where he was successful, such as the capture of a pirate ship, he described them achieved despite Verres’ bad leadership, not as a result of positive actions. He also tarnished any favourable results with allegations of corruption to further remove the possibility of Verres receiving any credit.

   (b) Claim that Cicero’s insistence on shortening the speaking time and not fully discussing each charge resulted in justice being perverted.

   As discussed earlier, Hortensius evidently presented this argument and Cicero’s reply is strained at best; however, having mentioned the plot of delay, whether actual or invented, Cicero had made the jury suspicious of any lengthy defensive arguments. Therefore, the jury would have seen this objection not as an appeal to fairness, but an attempt to prolong proceedings and stall the trial’s progress. They would cynically meet any request to examine the case in detail, interpreting it as evidence to support Cicero’s allegations.

   (c) Suggest that the witnesses have been coached; they are not giving unbiased testimony because Cicero has told them what false charges to make.

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268 Note that, although there is no evidence to suggest Cicero spoke extensively about incidents such as the imprisonment and execution of Roman citizens, it is likely that the topic was discussed at length during the delivery of witness testimony. Cicero does directly refer to such issues during the actio prima, but only briefly at Cic. Verr. 1.13-14.

269 Cic Verr. 1.13 briefly mentions the under-supplying of Sicily’s naval forces under Verres. Cicero discusses the issue at greater length at Cic. Verr. 2.5.61-3, 87-91.
Quintilian recommends an accusation like this as a means of negating the testimony of a multitude of witnesses.\textsuperscript{270} To counter this defensive line, Cicero stressed the upright nature of his evidence to establish credibility; he insisted his desire to obtain evidence at no time overrode his wish to provide truthful testimony.\textsuperscript{271} When describing his collection of documents, he emphasised the presence of a crowd and obtained the signatures of leading individuals to ensure that the documents were accurate.\textsuperscript{272}

\textit{d) Even if illegal acts occurred, argue that they were not carried out by or for Verres, and therefore, he cannot be held responsible. Furthermore, stress that Cicero has not directly linked any ill-gotten gains to Verres.}

Cicero’s refutation of this claim, like that concerning the shortened format, appears to have been weak. With no records of Verres, or any documentation of the transactions or accounts of his tax collectors, he could only link Verres to appropriated funds with insinuations.\textsuperscript{273} Nevertheless, arguing that Verres would not have risked allowing such corrupt practices to occur unless he profited would have convinced some jury members of his guilt. Others would not accept that Verres was not culpable believing that the governor should take responsibility for the actions of his staff and associates, as Cicero stresses in a letter to his brother.\textsuperscript{274}

\textbf{Conclusion}

What is remarkable about Cicero’s prosecution is that although delivered before Hortensius had presented his speech, it undercuts any argument he could make. Some defensive lines were better accounted for than others, but he had addressed them all. Perhaps Cicero’s success was due to his numerable defence cases, his defensive mentality to legal cases allowing him to predict Hortensius’ arguments exceedingly well. Although this proposition is attractive, he had not had a great deal of experience at the time of the \textit{Verrines}. We should avoid projecting his future successes onto this early trial. What is obvious, however, is that his prosecution is much more than a simple, clear, and succinct

\begin{footnotesize}
\textsuperscript{270} Quint. \textit{Inst.} 5.7.33-4 stresses that to have a witness’ testimony disregarded, an orator should describe it as biased by “influence, fear, money, anger, hatred, friendship, or bribery.” Furthermore Quint. \textit{Inst.} 5.7.23 also notes that when an orator is confronted with a seemingly overwhelming multitude of witnesses, the best tactic is to suggest a conspiracy is afoot, the only explanation for such numerical disparity.

\textsuperscript{271} Cic. \textit{Verr.} 2.1.16.

\textsuperscript{272} Cic. \textit{Verr.} 2.2.187-90.

\textsuperscript{273} Andreau (2007) 88 suggests that Apronius was lying when claiming he kept no accounts.

\textsuperscript{274} Cic \textit{Ad Fr.} 1.1.10.
\end{footnotesize}
presentation of evidence. To merely frame Cicero as an accountant presenting his figures is to belittle what a masterful prosecutorial effort the *Verrines* was. On closer inspection, we see just how thoughtful Cicero was in choosing his lines of argument. Not only had he considered which pieces of evidence served him best, and presented them eloquently; he had also predicted which areas were potential liabilities, assessed how Hortensius might take advantage of them, and calculated how he could counteract or minimise this.

To view cases as simply the prosecution presenting facts and the defence undermining their points is to oversimplify the intricacy of the situation; each side’s strategies were far more complex than that would imply.\(^{275}\) In Cicero’s prosecution of Verres, when viewed with a critical enough eye, we see he set forth his case with impeccable skill. With this appreciation for the (at times hidden) art of Cicero’s persuasion, attention will now turn to an area in which scholarship has sorely lacked acknowledgement of this. Grain economists have tended to take a most literal appraisal of Cicero’s comments on the Sicilian grain industry. In light of just how flexible his truth is, and the rhetorical effort he utilised to win the case, a question arises; is this literal approach really appropriate? This will be the focus of the final chapter.

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\(^{275}\) Alexander (2002) 9, 15 refers to the typical model of modern cases, in which the prosecution attempts to present a clear narrative while the defence undermine that clarity; however, he also stresses that a good speaker cannot be simplified in this manner and will both attack and defend.
The Ager Leontini: The Reliability of Cicero’s Data

Cicero’s Evidence from Leontini: A Piece of the Puzzle for Grain Economists

Cicero’s De Frumento is fundamentally important to studies of Roman grain, providing unparalleled insight into the administration of a grain producing province during the Republican era. Cicero’s cunning and deceptive trickery is evident when we examine the case carefully, as I have established over the course of chapters one and two. In spite of this, economic scholars persist in taking Cicero’s account literally when formulating their projections for grain production. Rhetorical scholars contribute to this problematic situation by, on the whole, neglecting to examine the De Frumento in any real detail. They view it negatively and describe it as bland, tediously filled with numbers, and devoid of rhetorical interest. Their reception has a grain of truth. Cicero’s trademark appeals to the emotions and heightened tone are limited to a few scattered moments; however, I suggest excitement can be found in the text. The riveting elements are not as obvious as they are in other parts of the speech, and for this reason, a dramatic reconstruction can prove helpful in highlighting the intrigue occurring in the case. Such a narrative should work to set the tone for the speech and encourage a renewed interest in its content.

The year is 70 B.C. and Gaius Verres, former governor of Sicily, is on trial for extortion. He sits in the heat of the forum with a plethora of influential supporters at his side. His legal advocate is Hortensius, the foremost speaker of the time; with the aid of his oratorical brilliance, acquittal appears inevitable. One of the most important sections of the trial concerns extortion of extra grain from the local Sicilian farmers; Verres took three or even five times more grain in taxes than he was entitled to. His methods included rigged court cases, physical intimidation, and the manipulation of laws. These measures ensured that his collectors met no resistance.

The most revered grain producing area of Sicily was Leontini, which would have to feature for the prosecutor to successfully show the governor’s rapacity. Its omission would be far too suspicious as it had great potential for profit if extorted. If no evidence could be found, the prosecution’s case would prove less effective as a loophole would be left for the defence to exploit. Verres and his supporters were confident that not a word would be said of Leontini, having seen to it that no assistance came to the prosecutor.
Verres had won over the citizens of the town, probably by means of bribery or coercion. He also had numerable influential friends to call on in support of him. His advocate had been elected Consul for the following year. The succeeding governor of Sicily was also a steadfast supporter, as were his two brothers: one was the consul-elect; the other would be the judge next year. They intimidated Verres’ victims to abstain from testifying. They stressed that Verres would be acquitted in Rome, and their only reward for speaking out would be discrimination and abuse upon returning to Sicily. Undoubtedly this influence had helped to control the citizens of Leontini and ensure they kept their silence.

With the town of Leontini under their control, the next task for the defence was to have incriminating records hidden or destroyed. Therefore, as well as having no cooperation from the citizens of the area, the prosecutor would also be denied access to the accounts of Apronius, Verres’ stooge tax collector who had enforced his will. Finally, Verres had still not submitted his own accounts to the Roman treasury. The defence team had successfully quashed the prosecution, starving Cicero of documents like a general starves a town during a siege. With no documents, Leontini would not even enter into the prosecution’s attacks. As the prosecutor rose to deliver his speech on the grain tithes, it became clear that documents or not, he would link the crimes of Leontini to Verres by any means.

Hopefully this recreation encapsulates some of the drama of this section of the trial, and helps to reveal that more was occurring than at first appears. The *De Frumento* is often cited as the basis for modern economic theory concerning the rate of grain production in the Roman Empire, despite the fact that Cicero could not verify all of his figures.\(^{276}\) As the previous chapters and this fictional reconstruction suggest, readers of the *De Frumento* are not merely dealing with the straight-forward documentation of agricultural practices. This speech was an undelivered part of a complex and hard fought legal battle. Specifically concerning Leontini, the defence were covering up facts, while the prosecution presented hypothetical evidence to counter this. For this reason, it must be asked: how reliable is the data Cicero supplies as a fair representation of farming systems in the Roman period? It is a cornerstone upon which modern economic theories on Roman grain rest, but how solid a foundation does it set? It is questionable whether the figures he provides for the *ager Leontini* can be given any weight, yet modern scholars base their economic models heavily on its content. Before addressing the issues

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\(^{276}\) Cic. Verr. 2.3.109-10 admits that he has had minimal assistance from the local population of Leontini, no access to the accounts of Apronius or Verres, and is inventing his statistics.
concerning the evidence base, the context of this evidence and the Sicilian taxation system needs clarification.

_De Frumento: The Sicilian Grain Tax System_

A central focus of the _De Frumento_ was the collection of taxes on grain production; these were known as grain tithes. The Roman Empire was much too vast relative to its scant bureaucratic resources for a centralised, state operated, tax system. They instead turned to the private sector to provide the service, individuals and companies acting as collectors in return for a profit. As governor, Verres oversaw tax collection from Sicilian farmers, a most important service in view of the volatile food supply that Rome endured. Roman supplies of food were precarious with limited grain storage to smooth price fluctuations over time, or transport options to minimise price discrepancies through geographical space. Therefore, it was a major role for the governor of Sicily. Grain

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277 Badian (1972) 21 proposes that the Roman Empire could not have expanded and maintained its provinces without the private contracting of taxation. Rickman (1980) 38 puts forward that the tithe system shows “the lack of any direct state machinery for such tediously detailed work.” See also Hopkins (1978) 45, Shelton (1998) 269, and Kiser and Kane (2007) 193-4.

278 Brunt (1966) 17-18 mentions the strain of Rome being cut off from foreign supplies for most of the period 43-36 B.C. and claims the grain supply was precarious due to bad harvests, military conflicts and piracy. Garnsey and Rathbone (1985) 22 point out that the grain shortages of 150-123 B.C. were not constant but periodic shortages due to crop failures, rebellion or piracy. They also stress that these shortages often coincided with major troop deployments, which would have drained food reserves. Aldrete and Mattingly (1999) 174 indicate that from 201 B.C.-31 B.C. there are 31 food shortages recorded. Rickman (1980) 2 claims “famine, or threat of [famine] was [a] permanent fact of life.”

279 Erdkamp (2005) 60, 147 notes that the Roman grain market was one of high price volatility as a result of its low market integration and inelasticity of supply and demand. See O’Connor (2000) 31-41, 45-8 for a general overview of the concepts of supply/demand and elasticity/inelasticity. Although Varro 1.69.1, as indicated by Halstead (1987) 86, mentioned storing grain to sell when prices rose, few suppliers had the luxury of such measures. See Hopkins (1980) 104 and Erdkamp (1999) 556, (2005) 144, 151-2, 159 for the limitations of both suppliers and producers in the market, and the high proportion of Romans involved in agricultural production to safeguard against food shortages. Cf. Benirshka and Binkley (1995) 512-24 for their analysis of modern grain storage and the relevant economic considerations. Also see McCloskey and Nash (1984) 174-7, and Komlos and Landes (1991) 36-9 who examine the storage of grain in the Medieval period. Similarly, transportation of grain supplies from areas of high supply to areas of low supply was equally rare in the Roman period. As Benirshka and Binkley (1995) 513 note, for the financially viable transportation of goods from one area to another, the price difference per unit must be greater than the cost of transportation per unit. Garnsey and Rathbone (1985) 22-4 examine the institution of the grain laws by Gaius Gracchus which show the _ad hoc_ manner in which regional shortages and surpluses were attended to, showing that the infrastructure was totally ineffective. Temin (2001) 179 uses evidence for delays in the communication of information to Egypt to show that, based on the lack of communication between different regions, arbitrage was incapable of smoothing discrepancies in the grain supply. See Casson (1965) 31-2 for a discussion of issues concerning the transport industry into Rome, and Fulford (1987) 66 for a study of inter-regional trade based on the movements of basic household goods. In a reaction to the tendency to focus on the transport of goods via sea, scholars have shifted toward acknowledging the importance of local sales of grain based on land transport. Erdkamp (1999) 566-7 notes the importance of land transport while Andreau (2002) 116 examines the importance of _nundiae_ (peasant market days). MacMullen (1970) 333, 340-1 and Temin (2001) 178-81 investigate the finds of coins in rural areas to show that even in non-urban areas, monetary transactions were common indicating the Roman economy was a market economy. Also see Crawford (1970) 43-5 on rural coin finds.
was the most important industry of the province, and the collection of grain taxes was a crucial responsibility of his post.

State officials did not carry out the collection; this was subcontracted to private tax collectors who were known as *decumani*. These *decumani* would bid at auctions held in the Sicilian capital of Syracuse for the right to collect from each town. The amount the collector bid was the quantity of grain he agreed to give to Rome.\(^{280}\) The tax was collected in kind; they seized a percentage of the harvest rather than taxing income.\(^{281}\) As their name would suggest, a *decumanus* was entitled to 10% of the total yield of each farmer, which was largely based on the system in place prior to Roman control under Hiero II of Syracuse.\(^{282}\) As a consequence, the system worked to protect the farmer when a poor harvest occurred as all risk lay with the collector.\(^{283}\) When the harvest was small, the collector could still only take a tenth of the harvest. If his bid at auction was higher than this amount, it was up to him to purchase additional grain to make up the difference. In contrast, the 10% entitlement would be greater than the quantity bid in years of plenty and collectors could sell the surplus for a profit.\(^{284}\)

Cicero claims this system was severely abused during Verres’ governorship and a collector typically appropriated 30% or even 50% of a farmers total crop yield.\(^{285}\) It reveals the danger of giving collectors a vested interest in the amount of tax they accrue.\(^{286}\) Verres allegedly also misused the secondary tithe. It can perhaps be better

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\(^{280}\) Note that as Brunt (1990) 364 suggests, the governor did not necessarily have to choose the highest bidder as collector; factors such as a bidders ability to carry out the task and past experience could influence his choice. See Cic. *Verr.* 2.3.14 on the unique nature of the auction, carried out in Sicily; auctions were held in Rome for the other provinces.


\(^{282}\) See Richardson (1976) 139 and Bringman (2007) 108 on the Roman taxation system for Sicily and its predecessor. Finley (1968) 122-3 emphasises that probably the most disingenuous part of Cicero’s speech against Verres was his constant description of the taxation system as a continuance of the previous one. Although based on the local formula, it had been amended over time by the Roman governmental machine including the extension of the 10% tithe to a purchase of another 10% of the yield. Additionally, the entire island was placed under the system; previously this system had only been applied to a portion of it. See also Rickman (1980) 37-8.

\(^{283}\) See Hopkins (1978) 44. Note that the figure of 10% was certainly not exact. As the tithe figure was typically agreed upon between the collector and farmer in advance, the actual yield was not known at this stage and the agreed figure may have been different. Allowance was also made for a little extra to be taken as profit for the collector. Rickman (1980) 38 indicates that when a figure could not be agreed upon before the harvest, the collector would come to the farm at harvest time and take a measure of the grain.

\(^{284}\) Rickman (1980) 39. This system was in contrast to the typical procedure in other provinces where a set amount was taken from the farmers each year, the size of the yield being irrelevant. See Cic. *Verr.* 2.3.12.

\(^{285}\) Cicero *Verres* 2.3.117. Marshall (1967) 408-13 successfully shows that, taken independently of Cicero’s rhetorical manipulation, the laws that Cicero suggests Verres used to oppress the local farmers to gain more than the entitled 10%, appear far less sinister. Note the similarity between the linking of two separate edicts for ominous effect and the linking of two separate events at Lampascus, as Steel (2004) 241-7 reveals. Spencer (2001) 14 points out that the *De Frumento* is a part of the prosecution in which: “Verres’ mismanagement of office and his active use of *imperium* for personal gain” is highlighted.

\(^{286}\) Hopkins (1978) 44 suggests that the governor and collector could easily collude for mutual profit, to the detriment of provincial subjects.
phrased as a compulsory purchase; the term tithe is attached only because it amounted to the same quantity of grain as the tax. While the first was taken without any form of compensation, the second tithe was a compulsory purchase the governor made on behalf of the Roman treasury. The farmers were to receive payment for the second 10% purchase from treasury funds. Verres allegedly ignored the proper enactment of the second tithe purchase and did not compensate the farmers for this grain. He instead claimed that the grain was substandard and demanded cash payments so that he might purchase acceptable grain. He then used the extra tithe grain he had requisitioned to ship to Rome and pocketed the treasury funds that were intended for the farmers.\textsuperscript{287}

His contrivances did not however end there. The treasury also provided him with a fund that he could use to supply his own needs while carrying out his role as governor. He could buy grain to support himself and his staff using this grant. As he was entitled to do, he chose to save rather than use the money; he opted to use the surplus he had accumulated in his previous dealings to sustain himself and his retinue. He then demanded payment in the form of money from the local farmers, which was not justifiable: these demands amounted to sums three or four times the market price of grain.\textsuperscript{288}

A One Sided Viewpoint

These matters of grain taxation are the central theme of the \textit{De Frumento} and are a major source for modern economic theory on grain production in the Roman era. Cicero’s narrative presents Verres as a villainous autocrat using any means necessary for self-enrichment at the expense of the local population. He appears indefensible in Cicero’s prosecution. But that is just the point; we only have Cicero’s prosecution to inform us. Without also considering the perspective of the defence, (as Quintilian 10.1.22-3 recommends), a distorted perception of the situation is inevitable. Readers of the speeches need to be sensitive to the fact that Cicero was prone to exaggerate, distort, and manipulate facts in order to help his case; the previous chapters have reinforced this point. Grain economists show a lack of sensitivity for the nature of his speech and are far too trusting of his account. His depiction of the \textit{ager Leontini} is of particular importance.

\textsuperscript{287} Cicero \textit{Verr.} 2.3.163-4, 171.
\textsuperscript{288} Cicero \textit{Verr.} 2.3.163, 194. Oates (1934) 112 and Scramuzza (1937) 262 provide summaries of the grain collections carried out during Verres’ governorship. See Rickman (1980) 145 and Duncan-Jones (1982) 51, 146 who point out the yearly swing of prices from low immediately after a harvest to a peak price just before the next harvest.
to their interpretations, despite the fact that he did not always have proof to verify his figures. Cicero’s speech was not simply an upfront and factually accurate documentation of agricultural practices; he was pursuing a case and success was all that mattered.\(^{289}\) Truth was not an issue. With this considered, can a position of complete trust really be defended? Grain economists declare reliability when considering the evidence for Leontinian grain. An investigation of the literary evidence base that these economic hypotheses are based on will establish whether such an opinion is foolhardy or acceptable. Two key issues emerge upon examining the evidence base: the first concerns the proposed model of tax documents, which enhances the credibility of Cicero’s data on Roman grain; the second is the total faith that economic scholars place in Cicero’s numerical accounts, their interpretations following his proposals closely.

**Investigating the Evidence Base: The Proposed Document Model**

The currently accepted model of documentation that tithe bidders were provided with is an example of the potential dangers of blindly trusting a modern theory while paying little or no attention to the ancient sources. Butler, Scramuzza, and Rickman create a system of documentary records to account for Cicero’s figures; this system has helped to generate trust amongst modern scholars for his data.\(^{290}\) Cicero openly admits that whatever documents existed for Leontini, he did not have any to hand.\(^{291}\) These scholars attempt to account for what documents he had failed to obtain for Leontini, but had access to in other parts of the island. As already stated, each year the tithe collector duties were auctioned off at Syracuse under the governor’s supervision. In their modern reconstructions, bidders were provided with three pieces of information to help them assess what was a prudent bid: the number of farmers in each town; the number of *iugera* cultivated; and the amount of seed they had planted.

These three scholars’ reconstructions are provided in full as their interpretations need to be subjected to close examination. Their proposals have been accepted without any real opposition. No detailed critique is evident in scholarship, a situation that I will now rectify. First in 1937, Scramuzza cites the *Verrines* directly to propose his model:

> According to Hiero’s system (*Lex Hieronica*, as Cicero calls it, 2 *Verr.* 3, 102) the officials of each city-state drew up a yearly list of all who

\(^{289}\) Riggsby (1997) 235, 242 acknowledges that Cicero’s speeches have an inclination to involve limited discussion of the actual facts and did not “consist of ‘the facts’ or even the most favourable facts.” Instead he presented a purely rhetorical construct, entirely aimed at persuasion.


actually raised a crop under their jurisdiction (ibid., 3, 120), whether owners or renters, taking account of three things, first the extent of the property involved (ibid., 3.38; 3.112) second the area of each crop under cultivation; third, the amount of seed planted (ibid., 3.20; also see Cambr. Anc. Hist., VII, 795). These records were then inspected by the prospective contactors (decumani). This information, together with a study of the weather, the quality of the soil, and the competence of each cultivator, made a safe basis for their bids. 292

In 1980, Rickman appears to have based his own understanding on that of Scramuzza, but neglected to either cite him or make reference to the ancient sources:

The system revealed in these speeches is that in each year the officials of each city-state, liable to the tithe, compiled a careful census of the farmers in their area, whether they were land-owners, or merely renters of private or public lands. The men so listed were obliged to declare (profiteri) the number of iugera under cultivation, the kind of crop, and the amount of seed planted. These records were open to inspection by the prospective collectors of the tithe (decumani). In the light of the information in the records and their knowledge of the conditions in the area, weather, quality of soil, competence of the farmers, those competing for the contract to collect the tithes made their estimate of the likely crop and made a bid on the basis of the tithe that this would yield. 293

Finally, Butler based his interpretation in 2002 on Rickman and quoted him directly. Moreover, he did well to identify the similarity between the accounts of Rickman and Scramuzza including this point in his notes. 294 Despite this admirable acknowledgment of the earlier modern theories, like Rickman, Butler failed to turn to the Verrines itself and investigate the primary source Scramuzza had relied upon.

All three scholars put forward the same concept; in the case of Rickman and Scramuzza they use remarkably similar words. As the only scholar to directly reference the Verrines to back up his assertions, Scramuzza refers to three passages. Firstly, in connection to the annual recording of farmer numbers in each town, he cites: (Cic. Verr. 2.3.120) id adeo sciri facillime potest ex litteris publicis civitatum, propterea quod lege Hieronica numerus aratorum quotannis apud magistratus publice subscribitur. (“The truth of this statement can be confirmed with ease from the public records of the various communities, because by a law of the code of Hiero an official return of the number of farmers is made to the local magistrates each year.”) Secondly, Scramuzza also accounts

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292 Scramuzza (1937) 237. See also Frank (1928) 795.
293 Rickman (1980) 38.
for the acreage that each farmer had under cultivation. As the *Verrines* indicates, this figure was also recorded annually: (Cic. *Verr.* 2.3.112) *Iugera professi sunt aratores omnes imperio atque instituto tuo; non opinor quemquam minus esse professum quam quantum arasset, cum tot cruces, tot supplicia, tot ex cohorte recuperatores proponerentur.* (“Well all the farmers made returns of their acreage under crop, in obedience to your orders and regulations: and it is not likely that any of them returned it as less than it was, with the prospect, if he did, of all those tortures, and punishments, and trials by the members of your staff.”) At this stage everything seems fine and Scramuzza’s model appears to have an evidentiary foundation. While the first two parts of the model remain convincing under focused scrutiny, the third part is less sound. Scramuzza cites Cic. *Verr.* 2.3.20 as proof that planting rates were recorded for prospective collectors. This passage has little relevance to his argument. In fairness to Scramuzza the entire passage has been supplied so it can be examined in full, and to ensure no misrepresentation is possible: (Cic. *Verr.* 2.3.20)

> At quam legem corrigit, iudices, atque adeo tollit! Acutissime ac diligentissime scriptam, quae lex omnibus custodiis subiectum aratorem decumano tradidit, ut neque in segetibus neque in areis neque in horreis neque in amovendo neque in asportando frumento grano uno posset arator sine maxima poena fraudare decumanum. *scripta lex ita diligenter est ut eum scrisisse appareat qui alia vectigalia non haberet,* ita acute ut Siculum, ita severe ut tyrannum; *qua lege Siculis tamen arare expediret; nam ita diligenter constituta sunt iura decumano ut tamen ab invito aratore plus decuma non posset auferri.*

(“And I bid you note, gentlemen, the character of the law with which he tampers, which in face he wholly abolishes: note the ability and care with which it was framed. It subjected the farmer to all possible safeguards, and gave the tax-collector such power over him that, whether the corn were in the field, or on the floor, or in the barn, or being taken to the coast, or being exported, he could not, without incurring the heaviest penalties, defraud the collector of a single grain. The carefulness of this law’s provisions shows that its author had no other resources of taxation; their shrewdness shows him a Sicilian, their severity an autocrat. None the less, it would be in the interests of the Sicilian farmer; for carefully as the rights of the tithe-collector are secured by it, the farmers cannot be forced to hand over more than the amount of the tithe.”)

The citation Scramuzza provides has no direct relevance to seed planting recordings. Again, I repeat that I have provided the passage in full to guarantee that no distortion has occurred. In this excerpt, although general points are made about mutual protection for farmers and collectors, there are no specifics; this does not prove his claim is accurate. Despite the irrelevance of this passage, he states the recording of seed
planting as fact using it as evidence. Rickman paraphrases Scamuzza in an uncannily similar manner without providing any reference to him or the ancient text. Butler follows suit, quoting Rickman and acknowledging the similarity between the interpretations of his two predecessors, but never turns to the primary source. Alarm bells should ring when recent explanations of how the tithes were carried out involve no engagement with the ancient text and rely entirely on the suppositions of an earlier modern scholar.

There are two possibilities to explain this anomaly other than concluding that Scamuzza’s assessment is based on no evidence, and that Butler and Rickman never bothered to check his sources: it could either be that he intended to cite the other type of section numbering or a typo. Addressing the first possibility, there are two section numbers published in Cicero’s speeches, Arabic or Roman numerals representing them respectively.\textsuperscript{295} Could 2.3.20 actually be 2.3.XX? Unfortunately, even if such an allowance is made, the resultant passage is equally unconvincing.\textsuperscript{296} But what of the second possibility: could 2.3.20 be a misprint? In close succession, Scamuzza makes three references to the \textit{Verrines}: 2.3.120, 2.3.112, and 2.3.20. These numbers are all quite similar with the potential to cause confusion. To assess the probability of a misprint taking place, it must be asked: are there any other passages in the \textit{Verrines} that indicate that farmers recorded their planting rates? Interestingly, two relevant moments in the speech stand out: 2.3.112 and 2.3.102. Both are numerically similar to 2.3.20, which Scamuzza cites, and 2.3.112 is cited as evidence for his preceding statement.

To take 2.3.112 as a possibility, Cicero states: (Cic. Verr. 2.3.112) \textit{in iugero Leontini agri medimnum fere tritici seritur perpetua atque aequabili satione}. (“Now on the soil of the Leontini district it is the regular and unbroken practice to sow about one bushel [6 modii] of seed wheat per acre.”) It is obvious from the language Cicero uses in this passage that he is saying this without supporting documentary evidence. The use of \textit{fere} indicates his proposal is approximate, while his use of the phrase \textit{perpetua atque aequabili} implies that he is only referring to a general rule of thumb. As already noted, Cicero himself even admits that he has no documentary evidence concerning the goings on in Leontini during Verres’ governorship.\textsuperscript{297} As a result, passage 2.3.112 cannot be used as evidence that farmers supplied their planting rates.

\begin{footnotes}
\textsuperscript{295} See Glucker (1984) 105-8 on the two traditions. The shorter divisions represented by Arabic numerals are attributed to Scot in 1588 while the longer divisions indicated by Roman numerals are attributed to Gruter in 1618.
\textsuperscript{296} Cic. Verr. 2.3.XX is not provided in full due to its length. The passage neither indicates that farmers declared the amount of seed they planted, nor that they recorded this figure.
\textsuperscript{297} Cic. Verr. 2.3.109-10.
\end{footnotes}
With this proposal ruled out, what of 2.3.102? Here Scramuzza can find some support. At 2.3.102 Cicero speaks of the tithes of the towns of Hybla and Menae, which were also subject to taxation. He states: (Cic. Verr. 2.3.102)


(“You will further see, gentlemen, from the settlements made by the town of Hybla with the collector Ganeus Sergius, that the amount of corn taken from the farmers there was no less than six times that of the seed sown. – Read, please, the passages from the town records dealing with the corn-sowings and the tithe settlements. – Listen to the settlements made by the people of Menae – with a temple slave; and also to the sowing returns [and settlements] made by the people of Menae.”)

This passage presents clear evidence that farmers disclosed their sowing rates, that Cicero had access to such information in towns other than Leontini, and that he could produce these documents in court. Thus it is fair to say Scramuzza’s model of documentation, which Rickman and Butler endorse, is correct. Though the truth of the model has been confirmed, by no means does this remove the confusion that is apparent in the current state of affairs. Scramuzza either never saw any relevant evidence to support his claims, or accidentally mis-cited them leading to an invalid reference. Subsequently, Rickman and Butler have shown a failure to critically inspect the work of those who have spoken before them, blindly following the suppositions of a previous scholar without inspecting his accuracy.

Scramuzza made a mistake in 1937, a mistake that both Rickman and Butler have emulated. Although the resulting conclusion is not incorrect, it is important to provide clarity as to where the supporting evidence comes from. Despite the accuracy of the model itself, I have corrected its evidence base. This is fortunate; the situation could easily have been much worse. When scholars blindly cite their predecessors without checking their precision, it can easily lead to one treading in the footprints of flawed conclusions. Additionally, even though the model is valid, it can only be considered for Sicily in general; it is not appropriate to apply it to the Leontini district. Cicero did not have these documents to hand. Was this procedure carried out in Leontini? Obviously yes. But does the existence of this system add credibility to Cicero’s figures? An

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298 Also note that this passage suggests that the seed-to-yield ratio in Hybla was greater than 6-fold. Cicero would not have passed up the opportunity to state that the collector had taken the entire yield as he does when speaking about Imachara at Cic. Verr. 2.3.100. This point will be useful later when recreations of soil returns are examined. See note 322.
emphatic no is the only appropriate answer. Scholars have not emphasised this enough; the credibility that this model rightfully bestows upon data from other parts of Sicily threatens to spill over onto the Leontinian episode, imparting undue integrity onto invented fictions. By stressing the documentary nature of the other areas’ data, it can often mislead readers into feeling that there was more substance to Cicero’s Leontinian figures than there really was. Hence it must be spelt out which Leontinian claims Cicero verifies with documents, and which he supplies without any evidentiary base.

**Roman Grain: The Ancient Evidence and Modern Reconstructions**

This leads to the second issue that I wish to highlight: the complete trust economic scholars show when they consider Cicero’s figures, in particular with regard to the *ager Leontini*. Any issues concerning his presentation of the grain production of Leontini are pertinent to grain economists as they often utilise this data. One concept that is largely dependant on Cicero’s reliability is the farmers’ expected seed-to-yield ratio. There has been much debate over what the typical yield of Roman farms was due to the varied and contradictory comments ancient sources make on the matter. 299 Four ancient sources in particular speak explicitly of seed-to-yield ratios, which was the primary way the ancients measured agricultural productivity. 300 Their figures are far from identical, varying considerably in some instances. Examining each source and its reliability will create a general picture of the agricultural situation during the Roman period.

Cicero mentions seed-to-yield ratios while discussing Leontini. He states that it is typical to plant 1 *medimnus* (6 *modii*) of grain per *iugerum* of land. From this a good yield would be 8 *medimnoi* or on rare occasions ten *medimnoi*. Therefore, according to his figures, the expected yield from each *iugerum* cultivated in the *ager Leontini* was between 48 and 60 *modii*. 301 Varro produces slightly different figures when comparing

299 Erdkamp (2005) 216 concludes that 6 or 7:1 yields constituted a typical harvest, 8-10:1 the yield in good/exceptional years. Evans (1981) 434 also proposes 10:1 as optimal, typical yields being lower. Mayerson (1984) 243 questions the reliability of the evidence and quotes Evan’s (1981) 429 statement that the information for Roman wheat yields “is at once meagre and plainly contradictory.” White (1963) 209-11 points out that Cicero and Varro’s figures are remarkably similar to those of pre-mechanised Italy and Sicily and are therefore reliable. Garnsey and Saller (1987) 80 accept that an 8-fold yield appears more likely in Leontini. Garnsey (1988) 101 also uses an 8-fold yield in his examination of Attica and Lemnos. Hopkins (2002) 118 suggests an average 4-fold yield across the empire for his taxation model. Pritchard (1972) 650 claims that Cicero’s figures for the *ager Leontini* are perhaps more in line with the island’s average as a whole.

300 Erdkamp (2005) 35.

301 Cic. *Verr* 2.3.112-13. As a reference point, Aldrete (2004) 188 points out that modern yields are around 50-fold. See Scramuzza (1937) 260 for this and many other economic investigations concerning Sicilian grain production. Garnsey and Saller (1987) 79-80 stress these figures are “worthy of close attention.” See
the yields of two different soil samples in Etruria. He planted each plot with the same seed to illustrate the importance of soil quality. He suggests that 5 modii is typically planted per iugerum and the expected seed-to-yield ratio varies between 1:10 and 1:15; this would produce a yield of between 50 and 75 modii per iugerum.\textsuperscript{302} In addition, Varro and Pliny also mention yields of legendary proportions. According to their accounts, one modius of seed can yield as much as 100 or 150 modii.\textsuperscript{303} In stark contrast, Columella has a much more conservative appraisal; he cannot recall when grain farms produced more than a 4-fold yield.\textsuperscript{304} He also suggests that planting 5 modii per iugerum is typical achieving a maximum total yield of around 20 modii per iugerum.\textsuperscript{305}

The figures these sources provide vary significantly and Evans groups them into three distinct sets. Columella alone belongs to the first group with his conservative 4-fold estimate of return. Cicero’s Sicilian and Varro’s Etrurian examples form the second group with yields ranging from 8 to 15 times the seed planted. Finally, the third group consists of Pliny and Varro’s legendary crop yields, with returns greater than 100-fold being achieved from a single modius of planted seed.\textsuperscript{306} It is easiest to understand and compare these figures using a table. Table 2 shows each ancient writer’s proposed planting rate, seed-to-yield ratio, and the expected total yield.

\textsuperscript{306} Evans (1981) 430.
Table 2: Ancient Figures for Grain Production

<table>
<thead>
<tr>
<th>Ancient Source</th>
<th>Planting Rate Modii/Iugerum</th>
<th>Seed : Yield Ratio</th>
<th>Total Yield Modii</th>
<th>Surplus Yield Allowing for Seed Modii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Columella</td>
<td>5</td>
<td>&lt; 4</td>
<td>&lt;20</td>
<td>&lt;15</td>
</tr>
<tr>
<td>Group 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Varro (1)</td>
<td>5</td>
<td>10-15</td>
<td>50-75</td>
<td>45-70</td>
</tr>
<tr>
<td>Group 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cicero</td>
<td>6</td>
<td>8-10</td>
<td>48-60</td>
<td>42-54</td>
</tr>
<tr>
<td>Group 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pliny</td>
<td>1</td>
<td>100</td>
<td>100</td>
<td>99</td>
</tr>
<tr>
<td>Group 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Varro (2)</td>
<td>1</td>
<td>150</td>
<td>150</td>
<td>149</td>
</tr>
</tbody>
</table>

As this table shows, there is a spread of figures which are certainly not uniform; they vary from a miserly 4-fold return to an astounding 150-fold. White describes analysing the grain yields of Roman farms as being “reduced to sifting a variety of scattered evidence from different periods and areas of cultivation,” not a glowing endorsement of their reliability.\(^{307}\)

The third of Evan’s groups can be discounted immediately as sound evidence based on their anecdotal nature and extreme figures.\(^{308}\) It is clear that both Pliny and Varro were speaking not from personal experience, but from what they had heard from unspecified sources. Additionally, these outlandishly large figures are impossible to believe. Dismissing Columella’s figure of a 4-fold return is not so easy and has found support in some comparative studies of medieval yields.\(^{309}\) Erdkamp suggests that the yields of Late Medieval Sicily were between 7 and 10:1, while White places first-century B.C. Sicilian yields at slightly above those of the 1950s.\(^{310}\) Scholars tend to diminish Columella’s importance as his agenda of convincing farmers to produce wine rather than grain biased his figures. Columella stresses the profitability of vines, meadows, pastures and woodlands while stating that grain hardly makes a profit.\(^{311}\) He understates its yields

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\(^{307}\) White (1963) 207.

\(^{308}\) Evans (1981) 430.


\(^{310}\) Erdkamp (2005) 40. See also White (1963) 208, 211, and Garnsey and Saller (1985) 80.

\(^{311}\) Col. Rust. 3.3.4. See Erdkamp (2005) 37.
in order to undermine its profitability; his pessimistic account at best represents the yields of only the least fertile areas. 312

The correlation of the figures of Varro and Cicero is prominent when comparing their resultant soil yields due to their differing sowing rates. Cicero’s 8:1 figure produces 48 modii yields when 6 modii are sown, while Varro’s 10:1 figure produces 50 modii when 5 modii are sown. Erdkamp notes the close results of these figures. He sees it as evidence that they are reliable; however, he also warns that they represent an above average yield rather than the norm due to the nature of the areas they are relating. The esteemed quality of soils and grain in Etruria and Leontini means that these are exceptional examples. 313 Mayerson shows reluctance to trust both Varro and Cicero’s figures for two reasons: their primary focus is not collecting accurate data on agricultural production; and both authors had “probably never sowed or reaped a modius of wheat.” 314 Refuting Mayerson’s second concern is easy as both men owned agricultural estates and had at least some knowledge of the running of them. 315 Arguing that Cicero misrepresented the fertility of Leontini because he lacked agricultural knowledge is ineffective; but his earlier caveat concerning Cicero’s lack of objectivity has greater weight. Cicero did have good reason to misrepresent his figures, an issue that I will address when assessing the validity of Cicero’s account.

Evans suggests 10-fold returns were optimal in areas of high fertility with considerably lower yields for other areas. He not only considers the evidence from Columella, Cicero, and Varro to reach this conclusion, but also the allotment of 10 and 12 iugera farms to families in Campania. 316 P. Servilius first proposed the allocation in 63 B.C. but was rejected. 317 Caesar successfully pushed the proposal four years later and limited recipients to fathers with three or more children. 318 Evans considers the subsistence needs of a five person family at 170-204 modii per year, but adjusts this to

313 Erdkamp (2005) 43 points out that these figures are referring to areas with highly fertile soils. Evans (1981) 430 notes that the district of Leontini was famed for its quality soil and Etrurian wheat held a high reputation. See Evans’ citations on the fertility of Leontini (Strabo 6.2.7) and on the quality of Etrurian grain (Livy 25.15.4, Columella Rust. 2.6.3 and Pliny HN 18.66, 86-7). Cicero Verr. 2.3.109 describes the ager Leontini as qui principes rei frumentariae (“that headquarters of corn-growing”).
315 Shatzman (1975) 404-6 lists the estates of Cicero covering areas from Pompeii to Cumae, Frusino to Puteoli. Shelton (1998) 171 presents Cato the Elder advising that estate owners regularly inspect their farms and the work of their slaves, suggesting that owners still oversaw their farms.
318 Cic. Att. 2.16.1.
220-254 to accommodate a surplus for dietary variation. They therefore needed a seed-to-yield ratio of 4.4-5.1 from their 10 iugera. A biennial fallow was typically practiced meaning only half the farm could be used at a time. Therefore, the necessary yield would actually have been 8.8-10.2:1.

The established scholarly opinion is that the yield for farmers in prime soils was between 8 and 10 times the seed sowed, with lower rates in less fertile areas. Erdkamp suggests that average yields of 6- or 7-fold seem plausible for the island of Sicily as a whole, with only areas of lowest fertility attaining miserly 3- or 4-fold returns. On this basis, Columella’s figures are seen as still within the realistic picture. Hopkins proposes the use of his model to estimate the Gross Domestic Product and tax rates within the Roman Empire, which assumes 4-fold yields. His reasoning for this assertion is that at a 6-fold yield, cultivating only 40% of the Italian peninsula would produce enough grain to feed the city of Rome, which is known to have been an importer. Moreover, farming would only require one-third of the population, yet 80-90% of Romans are typically considered agricultural in occupation. It is on this basis that Hopkins supports a low yield similar to Columella. His assertion does not contradict those of Erdkamp and Evans. Both see 8- to 10-fold yields as exceptional returns in premium conditions. Their view for the rest of the Empire fits happily into the framework of Hopkins’ model, and with

See Evans (1981) 434. However, note that Greene (2000) 47 warns against the use of terms such as “subsistence” and the “calorific prioritisation” of such studies as they tend to distort and oversimplify the nature of the Roman food supply.


Evans (1981) 434 suggests the 10-fold returns in areas such as Leontini were the exceptions and farmers in other areas would have found such yields impossible to achieve.

Erdkamp (2005) 43-4, 216 criticises Scramuzza’s use of a 10-fold average for the entire island of Sicily suggesting that 6- or 7-fold returns were more likely and that “only the worst conditions resulted in low average yields of 4:1 or 3:1.” As mentioned earlier, according to Cic. Verr. 2.3.102, the tithe collected at Hybla was six times the planted seed, yet cannot have constituted the total yield, suggesting that the area’s yield was significantly higher. Cicero would not have passed up the opportunity to stress that the entire, or almost the entire yield was taken in the tithe. Therefore the yield must have been significantly greater than 6-fold. See note 298.

Hopkins (2002) 119-20 shows the accuracy of his model showing that to change the values of each component pushes other parts of the equation to outrageous values in order to maintain balance. Aldrete (2004) 2, 187 proposes a similar distribution of agricultural employment. As Temin (2001) 169 notes, a model is “an abstract representation of reality.” He claims that the quality of conjecture produced from a model is dependant on the quality of the model. If all relevant parts are accounted for accurately, it can be a useful method of determining rough, but realistic, estimates for values within it.
their free acknowledgement that estimates of *Leontini* are well above the norm, they can agree.

**Modern Grain Reconstructions: Ignoring the Warning Signs**

The conclusion economic grain scholars propose appears to be acceptable with relevant evidence weighed, questionable historic accounts disregarded, and the best hypothesis applied. They use Cicero’s account extensively to reach this assessment. Unfortunately, at the same time, they apply very little scrutiny to establishing Cicero’s reliability. Scramuzza is content to simply cite his statistics without making any attempt to establish their accuracy. Evans also supplies no convincing reason to believe Cicero’s records and presumes they are reliable. Garnsey and Saller acknowledge Cicero had genuine motivation to manipulate the data, but are unfazed and happily quote his figures.

Grain economists are not alone in their inadequate critical appraisal of Cicero’s figures for the Leontini episode. The minimal assessment from the field of rhetoric is equally prominent. Steel merely states that the lack of documentation allows Cicero to “engage in a detailed exposition of the figures and their relation to a putative level of grain production in the area.” Lintott’s analysis is also limited. He states: “In order to make plain Verres’ excessive profits, Cicero calculates the maximum product of the *ager Leontinus* in light of the quantity of land (in *iugera*) declared to be under seed and compares this with the quantity of *medimni* for which the contractor had bought the right to collect the tithe.” In essence, these appraisals shed no light on the actual reliability of the calculations concerned, and to a degree grant free rein to grain economists. Scholarly assessments like these work as enablers, allowing economic scholars to perpetuate their conclusions. The Leontini episode is not the focus of their discussions, but regardless, this still highlights an issue. If rhetoricians, the very scholars who are best equipped to assess the validity of a speech’s claims, steer away from this topic, who will verify ideas produced from this source? With inadequate guidance from rhetoricians, and only superficial appraisals of the *ager Leontini*, it is no surprise to find scholars from

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324 Scramuzza (1937) 260.
327 Steel (2007) 44.
other areas of expertise applying little more than a basic interpretation of the data’s accuracy.

The situation is not totally lost despite these failures. Some recent efforts are meritable in their attempts to clarify things. Andreau, assessing the written documents of the De Frumento, indicates that in many instances Cicero was “fuzzy” in his handling of the evidence. For the areas which he does supply documents, Cicero never clearly explains their creation or reliability, and it is often difficult to know from what document he has the proof that he claims.\(^\text{329}\) Pittia emphasises the uncertainty that must be maintained when using the De Frumento. She notes that as modern historians, we ask too much of the surviving document.\(^\text{330}\) Additionally, she classifies the numerical figures of Cicero into four categories; this helps to create a system to assess the reliability of each statistic.\(^\text{331}\) Although these contributions are valuable additions to our understanding of the Verrines, and in particular the De Frumento, there has still been no adjustment to economists’ conclusions on agricultural productivity.

In a similar manner to Garnsey and Saller, Erdkamp pays lip service to Cicero’s agenda, but does little to assess to what degree his bias could lead to distorted figures. He admits Cicero accentuates the high fertility of the ager Leontini in order to have his audience understand that they are the best soils of Sicily. Cicero realised that if he could show that Verres and Apronius had ravaged an area of great fertility, the audience would naturally assume that less affluent areas suffered even more.\(^\text{332}\) It was not however in Cicero’s interests to exaggerate the yields. As Garnsey and Saller point out, in his role as prosecutor, Cicero’s objective was to make Verres and his henchmen appear as guilty as possible. It would have suited his argument to understate the total yield of the ager Leontini and, as a result, exaggerate the fraction of the yield that Verres took.\(^\text{333}\) Rather than giving the actual yield, if he could propose a lower total, he would increase the proportion that Verres appropriated and present him as more criminal than he actually was.

\(^{329}\) Andreau (2007) 84-5.
\(^{330}\) Pittia (2007b) 78-9.
\(^{331}\) Pittia (2007b) 57-9. The four categories are: conversion figures (les chiffres de conversion), where a figure is converted into another unit of measurement (e.g. modii into medimni) with the result being an equivalent value; hypothetical constructions (des constructions hypothétiques), in which a model or system is proposed and the reader cannot determine the source of evidence for its proposal; arithmetic calculations (calculs arithmétiques), where a figure is produced through a calculation of amounts already provided; and isolated figures (les données totalement isolées), where the reader has no ability to verify the figures accuracy and it is not used in conjunction with any other figure.
\(^{332}\) Erdkamp (2005) 36.
\(^{333}\) Garnsey and Saller (1987) 80. Erdkamp (2005) 35-6 also acknowledges it was in Cicero’s interests to show the tax farmers had taken more than the allotted one tenth.
When dealing with evidence from a legal speech, it is important to constantly remind oneself Cicero was not explaining facts to improve his audience’s understanding of Sicilian agriculture. He had an agenda of showing Verres to be guilty, and not merely to display his corruption, but to make it irrefutable and rouse indignation in his audience.\(^{334}\) In contrast, at times the views of modern scholars imply that his speech was written for our convenience, an aid for the study of Roman grain. Erdkamp goes no further than pointing out the potential bias in Cicero’s words and includes no concerted attempt to establish his figures’ accuracy. He simply finds a means of dismissing the bias as only a minor factor, if a factor at all. He argues that Cicero could not have distorted the figures for the yields of Leontini as his opponents could have refuted them:

Exaggerating the yield would have merely served to reduce the rapacious nature of the tithe that was actually gathered. The *ager Leontini* is purposefully emphasised as the most fertile region of the island. The point is that if this exceptionally productive region was hit hard by the actions of the tax farmers, the case will have been worse in other, less fortunate places. Equally, he had no reason to underestimate the yield, as his opponents would have easily disproved his figures if they had been too low. Cicero’s case would have been best served by sticking to the most reliable figures he could find, and hence he can be assumed to be trustworthy when he indicates a yield of 8:1 as the result of a successful harvest, and a yield of 10:1 of an exceptionally good harvest.\(^{335}\)

Erdkamp proposes that Cicero’s figures are to be trusted. To determine if this is a prudent conclusion, Cicero’s data and supporting evidence will be assessed. It is vital that the claims Cicero backs up with documents are distinguished from those which he does not.

### Cicero’s Figures for Leontini: The Evidence Base

Cicero provides a variety of numerical figures and calculations when he discusses the extortionate tax collection practices of Apronius, Verres’ henchman at Leontini. He supplies the total number of farmers operating in the area for both Verres’ first and third years as governor, and the price at which the tithe was sold in his final year. He also presents the total number of *iugera* cultivated in the area, typical seed planting rate per *iugerum*, and expected rate of return. This sounds like a convincing set of data, a

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\(^{334}\) See Lintott (2008) 31. As Craig (2004) 193 notes, the use of slanderous attacks to create anger in the audience was not only standard practice, but the jurors expected it.

\(^{335}\) Erdkamp (2005) 36. He does mention that Cicero’s figures are only an estimate; however, this being so, detailed analysis of the reliability of such estimates is vital, and Erdkamp’s attempt is inadequate.
comprehensive survey of the area’s agricultural system; however, not all of these statistics have proof to validate their authenticity, and in some instances, Cicero’s creative invention is apparent.

On the price at which the tithe was sold at auction, Cicero provides the figure of 36,000 medimni or 216,000 modii. Cicero supplies equivalent figures for many other areas during the speech and there is a degree of precision to Cicero’s phrasing that suggests that these figures are reliable. This document would have been well publicised and would have reached Rome; it was in Rome’s interest to know how much grain to expect. Although this auction figure was important, more precise details of how it was obtained or the contracts made between collectors and farmers were of less concern to the central Roman authorities.

As has already been established when assessing the documentation model of Scramuzza, Cicero does explicitly say at 2.3.120 that the public records could confirm the number of farmers, as under the lex Hieronica, each area is required to report this to the local magistrate: (Cic. Verr. 2.3.120) *Id adeo sciri facillime potest ex litteris publicis civitatum, propterea quod lege Hieronica numerus aratorum quotannis apud magistratus publice subscribitur.* (“The truth of this statement can be confirmed with ease from the public records of the various communities, because by a law of the code of Hiero an official return of the number of farmers is made to the local magistrates each year.”)

From this passage, it is clear that Cicero has access to this information and knows exactly how many farmers are operating in each area. The towns supplied this information to the bidders at the tithe auction as part of standard procedure. The detailed and extensive list that Cicero provides, along with his request for this evidence to be read aloud, indicates that Cicero has the records with him in court. Cicero explicitly declares that each farmer announced the number of iugera they had under cultivation, this information also accounted for in Scramuzza’s model of documentation: (Cic Verr. 2.3.112) *Iugera professi sunt aratores omnes imperio atque instituto tuo; non opinor quemquam minus esse professum quam quantum arasset, cum tot cruces, tot supplicia, tot ex cohorte recuperatores proponentur.* (“Well all the farmers made returns of their acreage under crop, in obedience to your orders and regulations: and it is not likely that

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336 Cic. Verr. 2.3.110. Pittia (2007b) 57 would term these figures les chiffres de conversion.
337 Note Cicero also states the tithe prices for: Henna, Cic. Verr. 2.3.100; Thermae, Cic Verr. 2.3.99; Halicyae, Cic Verr. 2.3.91; Cic. Petra, Verr. 2.3.90; Cic. Amestratus, Verr. 2.3.88; Lipara, Cic. Verr. 2.3.84; Acestus, Cic. Verr. 2.3.83; and Herbita Cic. Verr. 2.3.75-7.
338 Cicero requested for the records to be “read aloud” at 2.3.120 including the figure for Leontini. Moreover, Cicero not only supplied the farmer numbers for Leontini, but for many other parts of Sicily as well, showing the readily available nature of such information.
any of them returned it as less than it was, with the prospect, if he did, of all those tortures, and punishments, and trials by the members of your staff.”) Cicero is describing the procedure carried out across the island, in which the farmers would openly declare the area of land they each had under wheat cultivation, just as the number of farmers had been announced, to assist the decumani in their auction bids. Cicero supplies an argument to trust their figures which is weighty enough; if Verres had so much power, and was willing to use it, they would not understate their area and risk abuse.339

The manner in which Cicero speaks of the cultivated area of Leontini is at odds to this apparent level of documentation. Only a section later, Cicero claims: (Cic. Verr. 2.3.113) In Leontino iugerum subscriptio ac professio non est plus x̃ x̃ x̃. (“The signed return of acreage in the district [of Leontini] was at most 30,000 acres.”) The phrasing Cicero chooses to use is remarkably ambiguous, particularly his use of non est plus rather than supplying an exact figure; one must certainly wonder, if Cicero has the documents that prove this statement, why does he not present them? His phrasing appears equally uncertain shortly after: (Cic Verr. 2.3.116) Professio est agri Leontini ad iugerum x̃ x̃ x̃. (“The return of acreage under crop in the district [of Leontini] was about 30,000 acres.”) Similar to the previous reference on acreage, for a second time Cicero uses roundabout phrases rather than emphasising he is using documents or stating known fact. The use of ad iugerum x̃ x̃ x̃ presents the meaning of around about 30000 iugera; this is not the phrasing that an advocate who knows his assertion to be factually accurate would use. On the contrary, it gives the impression of a speaker who does not have the recorded figure on hand; he may not even know what this figure would actually be and is supplying a hypothetical one instead.

Even more doubt enters Cicero’s calculations when considering the rate of planting. As already established, although the seed planting rate was recorded as part of the auctioning process, when Cicero discusses Leontini specifically, he states: (Cic. Verr. 2.3.112) In iugero Leontini agri medimnum fere tritici seritur perpetua atque aequabili satione. (“Now on the soil of the Leontini district it is the regular and unbroken practice to sow about one bushel of seed wheat per acre.”) It is unmistakable from the language Cicero uses that he is again making statements without the support of documentary evidence. The use of fere betrays approximation while his use of the phrase perpetua atque aequabili indicates he is speaking very broadly.

339 Pritchard (1972) 649 agrees with this sentiment. “These returns were doubtless genuine since the farmers would not incite Verres to anger by false declarations.”
Adding to the suspicion Cicero’s fabricated planting rate and acreage figure creates is his expected rate of return; this account shows similar signs of invention. He is again unable to link documentation to his proposal and invokes religious connotations when attempting to show what is typical: (Cic. Verr. 2.3.112) ager efficit cum octavo, bene ut agatur; verum ut omnes di adiuvent, cum decumo. (“The land gives a yield of eightfold, under favourable circumstances; or tenfold, by the special blessing of heaven.”) The use of ut omnes di adiuvent, (literally translated as when all the gods assist) does not invoke an image of figures borne out of investigation and statistical analysis. Although this figure was not officially recorded or included in the information provided to bidders at the tithe auctions, it could have been calculated with ease based on what information was provided:

\[
\text{Seed \;/\; Yield Ratio} = \frac{\text{Total Yield}}{\text{(Acreage} \times \text{Planting Rate)}}
\]

As Cicero did not have substantiated figures for the area cultivated or planting rate, it was impossible for him to make this calculation.\(^{340}\)

At times Cicero has documentary evidence to support his account; in other instances however, he cannot verify his description and is inventing figures to sustain his case. He corroborates his figures for both the number of farmers in the Leontini area and the tithe value. In contrast, he doesn’t validate his proposals for: the planting rate; the area of land cultivated; or the expected seed-to-yield ratios in the area. These are instead hypothetical figures.\(^{341}\) This is no problem for Erdkamp’s current interpretation as he is not assuming that Cicero has evidence to backup his claims. Rather, he believes that, although Cicero is not quoting documents or evidence, he cannot manipulate the figures he presents lest his opponents prove him wrong.\(^{342}\) To a degree Erdkamp’s assertion is fair. Cicero’s ability to distort the figures he supplies has limitations. He cannot misrepresent the agricultural capabilities of the area too greatly as his audience, although unlikely to know the exact figures for the province, would have a rough estimate. If he deviates too far from what his audience feel are reasonable figures, he renders his account suspect, which damages his case; his audience from that point on would receive his

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\(^{340}\) Pittia (2007b) 57-9, if the figure had actually been calculated, would use the term calculs arithmétiques to describe it; however, as Cicero is inventing it, it is better termed constructions hypothétiques.

\(^{341}\) These could be classified under Pittia (2007b) 57 as constructions hypothétiques.

\(^{342}\) Note Brunt’s (1990) 288-9 contrasting opinion on taking Cicero’s speeches at face value: “It is astonishing that certain scholars freely quote from speeches … as if they are sufficient to attest his true beliefs.” Similarly, Swarney (1993) 140 states that in the speeches of Cic. Rosc. Am., Clu. and Cael. “The speeches are not models that instruct the novice student at law how to employ factual evidence but rather examples of how to avoid such evidence altogether.”
speech with a sceptical perspective, second-guessing all of his statements and approaching his comments with a critical eye.\textsuperscript{343} 

But Erdkamp is not only suggesting that Cicero had to keep his figures within reason, a situation that would allow him a degree of freedom. He is rather proposing that Hortensius could refute him if he manipulated the figures at all. This is by no means guaranteed. Erdkamp is assuming two things: that Hortensius had reliable documentation on hand, or could access such documentation with ease; and that if Cicero distorted the figures, presenting the actual figures would help his case. To simplify the issue: could Hortensius obtain the documents; and did he have good reason to present them in court?

**Could Hortensius Refute Cicero’s Statistics?**

The relevant documents were not available to Cicero during the case. As has already been mentioned, Cicero freely admits that the people of Leontini did not cooperate as only one local citizen was a farmer. All other farmers were lease holders from other areas. He even discloses that the citizens of Leontini, rather than having motivation to demand Verres’ demise, actually profited from his criminal behaviour: (Cic. Verr. 2.3.109)

\begin{quote}
\textit{Mirum fortasse hoc vobis aut incredibile videatur, in tantis aratorum incommodis Leontinos, qui principes rei frumentariae fuerint, expertes incommodorum atque iniuriarum fuisse. Hoc causae est, iudices, quod in agro Leontino praeter unam Mnasistrati familiam glebam Leontinorum possidet nemo. … Etenim non modo incommodi nihil ceperunt, sed etiam in Apronianis illis rapinis in quaestu sunt compendioque versati.} 
\end{quote}

(“You may think it strange, gentlemen, or even incredible, that, when the farmers have been suffering so heavily, the people of Leontini, that headquarters of corn-growing, should have suffered no loss or injustice. But the reason is this, that with the exception of the family of Mnasistratus not one of the citizens is the occupant of one clod of earth anywhere in the city’s territory. … Indeed they have not only suffered no harm from those Apronian forays; they have been by way of making a positive profit out of them.”)

This is Cicero’s explanation for his lack of documentary proof on Leontini. Therefore, his evidentiary base is limited to either complete invention or the tiny sample of agriculturally active landholders whom he had access to. The only local resident whom he cites is Mnasistratus, and he additionally refers to witnesses who were rent

\textsuperscript{343} Riggsby (1997) 248 emphasises that truth was all important in forensic oratory; that is not to say that there was a need to always speak the truth, rather, that it was necessary to present a positive version of events which was wholly believable to the jury.
paying land owners in the area.\textsuperscript{344} Even with these witnesses considered, the resulting sample is not reassuring for the statistical worth of Cicero’s investigations. Despite his limitations, documents which he had been denied may have been available to Hortensius. Butler divides the documentary evidence Cicero utilises into three categories based on their Latin terms: there were litterae publicae (public records) made up of litterae and tabulae; testimonium publicum (public testimony); and rationes (accounts).\textsuperscript{345} The rationes of Verres and Apronius are of relevance to the ager Leontini, along with the litterae publicae and testimonium publicum of the townspeople.\textsuperscript{346}

Verres’ official accounts as governor were to be stored in the temple of Saturn in Rome; however, Cicero did not have access to them as Verres had not submitted them at the time of the trial.\textsuperscript{347} Moreover, Cicero could also not access Verres’ private accounts, or those of his associate and tithe-collector Apronius.\textsuperscript{348} After searching for them unsuccessfully, he summoned Apronius but had no success through this avenue either: (Cic Verr 2.3.112) \textit{Quo modo igitur hoc assequar, iudices, ut sciam quantum lucri factum sit? Non ex Apronii tabulis, quas ego cum conquirem non inveni, et cum in ius ipsum eduxi expressi ut conficere se tabulas negaret.} (“How, therefore, gentlemen, am I to succeed in finding out the amount of the profit made? Not from the accounts of Apronius; these I failed to find when I searched for them, and when I haled the man himself before the magistrate, I extorted from him the statement that he had kept none.”)

Cicero had just as little help from the local population of Leontini and could not call on official documents in his attack on Apronius’ actions. Although he could not access these documents, it seems logical that all three forms of documentation were available to Hortensius for use in the trial. Both Apronius and Verres would have easily been able to supply Hortensius with their information, provided they had not destroyed it. Even if they had, the local government of Leontini still held copies. Hortensius may well not have them to hand unless he had the foresight to obtain them in advance, but they still could have been obtained during the games. It therefore appears that Hortensius had the ability to deliver this information and catch Cicero out. Although he had access to this

\textsuperscript{344} See Cic. Verr. 2.3.109 for Mnasistratus. Cic Verr. 2.3.60 discusses C. Matrinius, an equestrian whom Apronius abused in Leontini. Cic. Verr. 2.3.97 presents the wife of Cassius who had an entire farm’s worth of harvest taken as tithe. Alexander (1990) 89 includes Matrinius and Cassius in his list of the trial’s witnesses.

\textsuperscript{345} Butler (2002) 35-45.

\textsuperscript{346} Pritchard (1970) 355 states that copies of all transactions concerning tithe collection were placed in the archives of each town.

\textsuperscript{347} Butler (2002) 40-2. See Cic. Verr. 2.1.99 and 2.3.67

\textsuperscript{348} Andreau (2007) 86-8 suggests that Apronius’ claim to having kept no accounts whatsoever is almost certainly a lie and he either hid them or had them destroyed. There is also ambiguity as to whether Cicero is referring to tabulae (wooden tablets for transactions) or a codex (full account book).
proof, he still had to have been motivated to present such documents. This course of action would have been desirable only if it would have benefited the defence case. This is the stumbling block for Erdkamp’s assumption that the defence would refute any inaccuracy in Cicero’s report.

Ironically, the rhetorical technique of ‘dilemma’ is evident in Erdkamp’s proposition. The black and white presentation that, either Cicero’s presentation was accurate and the defence did not object, or it was distorted and the defence would have proved it to be so, is much too simple. In reality the situation was more complex than that. The issue was one of gradation rather than figures being either accurate or inaccurate. Cicero could have, either consciously or unwittingly, enhanced what was already an incriminating tithe quantity. Hortensius would have been caught between a rock and a hard place: he could show Cicero’s deceit, but prove his client’s criminality; or refute the charge without documentation and risk the jury believing Cicero’s exaggerated account. It is this situation that I propose allows doubt to continue to be cast over Cicero’s figures. Hortensius could access several documents showing the true yields of Leontini, but would not dare present them as they would still provide tangible evidence of the crime; the severity of the crime would be decreased, but they would nonetheless confirm a criminal act.

Cicero utilises the situation even further to his advantage. The lack of documentation allows him to explain that both Apronius and Verres had intentionally hid their accounts. Cicero could make much headway with this point as he could have it both ways. Without their documents, he was still able to establish their guilt for Leontini using assumptions and estimated figures. He could simultaneously simplify their guilt to a dilemma that “either they are guilty and will not show their documents, or they are innocent and will show their documents proving this.” If they continued to hide their documents, he could suggest it was proof that what he was saying must be true. He presents his rationale as follows: *Si mentiebatur, quam ob rem removebat, si hae tabulae nihil tibi erant offuturae?* (“If he was lying, why had he got rid of those accounts, unless they were likely to tell against yourself.”) It has to be conceded that their documents must have contained incriminating evidence; but it is not fair to emphatically claim that, because of document destruction and concealment, Cicero’s accusations are perfectly accurate.

For the most part, current scholarship has complete faith in Cicero’s figures. Grain Economists not only lean on these figures as the cornerstone of their theories, but also profess their reliability. Simultaneously, few scholars looking at the speeches from a
rhetorical perspective question his credibility. For rhetorical scholars interpreting his speeches, the phrase “assumed to be trustworthy” should sound like nails on a blackboard, unless complemented with a great deal of critical assessment. The notion that Hortensius would have presented documentation in court to refute Cicero’s Leontinian figures is not as clear-cut as Erdkamp’s assumption suggests. It is in fact more likely that, despite having access these documents, Hortensius would not have been able to use them. Cicero did not however have complete freedom to present any statistics he wished. Although no evidentiary refutation could come from the defence, Cicero’s proof was not entirely beyond reproach as he still had to maintain the jury’s confidence.

**Convincing the Jury**

Without documents to back up his allegations, Cicero’s assertions are either based on complete invention or a very weak sample. He presents his statistical information as fact without providing any concrete evidence. The defence team’s hands were tied, as has been shown, but Cicero still needed to maintain his audience’s trust while delving into hypothetical evidence even if his opponents were powerless. He had had a great deal of speaking time in which to generate trust from his audience and build up a degree of legitimacy in his account. When the Leontini episode is compared to other sections of the *De Frumento*, it is clear that it was of a totally different breed. Cicero documents the facts on matters leading up to the Leontini topic with a marked fervour, stressing the substantial proof which aids his case. The effect is that by the time he cites invented figures, the previous documents have already made their impression and the jurors are not questioning his accuracy. His continual references to documents and witnesses, which he uses to illustrate other points, allow him to get a free ride on the topic of Leontini. Cicero’s speech gives the impression he has considerable evidence during other sections. His references to this factual base reflect this image. During the *actio prima*, when questioning the validity of the court if Verres is acquitted, he stresses: (Cic. *Verr.* 1.20) *Quid igitur? quod tota Sicilia, quod omnes Siculi, omnes negotiatores, omnes publicae privataeque litterae Romae sunt, nihilne id valebit?* (“Why, is the presence at Rome of all Sicily and its inhabitants, of all its business men, of all its public and private records – is all this, then, to count for nothing?”) This description impressively implies that Cicero

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349 Steel (2007) 44-7 notes that Cicero uses a lack of evidence as an excuse to treat the topic at length while an abundance of evidence allows him to handle other subjects with brevity. Furthermore, Cicero’s transitions from one unit of measurement to another leads to an effect of his audience trusting his account, and the evidence he provides, despite not fully understanding the details of it.
possesses a “vast and diverse body of evidence.” Along with the previous quotation provided, Butler lists examples of the phrases that Cicero attributes to his evidence, a selection of which are provided below with translations:

(Cic. Verr. 1.6) omnium populorum privatorumque litteras iniuriasque cognoscerem. (“I took cognizance of the wrongs, and the documents recording the wrongs”)

(Cic. Verr. 1.33) nunc hominem tabulis, testibus, privatis publicisque litteris auctoritatibusque accusemus. (“Let us now prosecute our man by means of documents, and witnesses, the written statements and official pronouncements of private persons and public bodies.”)

(Cic. Verr. 2.1.10) sustinebunt tales viri se tot senatoribus, tot equitibus Romanis, tot civitatibus, tot hominibus honestissimis ex tam illustri provincia, tot populum privatorumque litteris non credidisse?

(“Will such gentlemen as these [the jury] succeed in disbelieving this multitude of Senators and Knights, of civic bodies, of respectable inhabitants of that noble province, of public and private records?”)

(Cic. Verr. 2.1.16) Multitudo litterarum et testium...

(“The crowd of documents and witnesses...”) These phrases produce a strong image of a prosecution based on fact and evidence. Many of Cicero’s defence speeches focus on character references and the refutation of incriminating documents through directing discriminatory remarks toward opposing witnesses. In contrast, this speech appears to be much closer to the ideal of modern legal proceedings, where concrete evidence backs up accusations and the weight of evidence determines the guilt of the defendant. Plutarch states that Cicero did not win the case against Verres by speaking, but by refusing to speak; this further emphasises that he won by letting the evidence and witnesses speak for themselves rather than weaving an eloquent narrative around Verres’ character. All in all, it appears that in the case of the Verrines, there was a huge reliance on documentary evidence and testimony. Cicero stresses this point, Plutarch verifies it, and modern interpretations agree that it was not Cicero’s persuasiveness that won this case, but the legion of witnesses and documents he called upon.

This trust in Cicero’s documents and their sole importance to the case appears to be well reasoned. However, it must be pointed out that Plutarch was writing over a century after the case took place. Furthermore, just because Cicero states that he had a vast body

352 See Swarney (1993) 139-40 on the use of character reference to win cases and the almost complete irrelevance of evidentiary weight in cases.
353 Plut. Cic. 7.3.
354 Butler (2002) 28 emphasises the impressive array of documents Cicero used to win the trial.
of reliable documents and evidence which could speak for itself, does not make it so. Although he had verifiable evidence to support many parts of his case, this does not automatically mean that he supports all of his points in this way. It was in his best interests to profess that he did not need to plead the case with any great skill or invention due to the evidence. By continually mentioning the monumental amount of material he had at his fingertips, it implies that invention is not part of his narrative. I suggest that interspersed between proven facts, which are backed up with documentary evidence, are insinuations, accusations, and narrative sections which have little or no evidence base and certainly distort the truth. Cicero’s account of the *ager Leontini* falls into this category.\(^{355}\)

He avoids exposure because he knows the defence counsel cannot prove he is lying, or more specifically, cannot discredit him without presenting incriminating information.\(^{356}\)

In addition, because of his evidence based approach for the surrounding sections, he has already won over his audience who believe him wholeheartedly at this stage, even if his evidence for a point is tenuous, fragmentary, or non-existent.

Placing unquestioning faith in Cicero’s figures for the *ager Leontini* is a foolhardy proposition. Allegations made in his speeches should be taken in the context of the trial, the objectives he had at the time, and possible bias in the case. Therefore, when grain economists show complete trust in him, it is up to scholars approaching the speeches from a rhetorical perspective to critique this faith, assess its validity, and make recommendations to the economists. Arguing that Cicero could not distort his figures because his opponents would refute him with documents appears wholly naïve.

### Leontinian Doubt: Consequences for Modern Theories of Roman Grain Economics

Examining the reliability of Cicero’s data has a resounding effect on modern perceptions of Roman agriculture. The diminishing credence for Cicero’s figures means that the proposals for grain production need re-examining. Cicero had both motive and opportunity to distort his presentation. His delivery is certainly not unbiased and with such a vested interest in the data he presented, Erdkamp’s black and white approach to the

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\(^{355}\) Steel (2007) 44 discusses the inverse relationship between the time Cicero spends on a topic and its evidence base: the more evidence the less explanation required; the less evidence available the more speaking time to validate the charge. The *ager Leontini* is provided as an example of Cicero discussing a charge at length because of the lack of evidence. I propose that the factually supported charges building up to the *ager Leontini* generate undue credibility on Cicero’s account.

\(^{356}\) Riggsby (1997) 248-9, based on the assumption that an advocate must present their arguments believably, proposes three expectations: first, the orator will avoid an account which conflicts with the morals of the jurors; second, he will go out of his way to emphasise the truth of his account; and third, he will produce an account almost always in which his client is not guilty. Hortensius would have broken the third rule if he presented incriminating documents.
evidence is disconcerting. As discussed earlier, the low figures of Columella are to a degree dismissed for two reasons: he cannot claim another ancient source in close agreement with his figures; and has a motivation which created bias. His desire to promote the growth of vines over grain renders his evidence too suspicious and it is assumed he is understating the true potential of grain. Cicero too had motivation to reduce the productivity of grain in Leontini; his reason for doing so was different but just as potent, if not more so.

Although the yield figures of Cicero and Varro do crossover, it is dangerous to simply see a degree of agreement as a reason to trust their figures unquestioningly. It is vital we scrutinise these accounts as much as the others that are popularly labelled less reliable. Examining these passages more carefully creates some healthy doubt of their reliability. Scholars state that the correlation between these two writers’ figures is considerable, and this is emphasised as a compelling reason to trust them. They are in fact quite different in several respects. Cicero’s ratio ranges from 8:1 to 10:1, describing 10:1 as a very rare occurrence. Varro’s range only coincides at the upper extreme of Cicero’s figures, when his own figures are at their very lowest; his range spreads from 10:1 to 15:1. These two sources are therefore in almost total non-agreement in their expectations of seed-to-yield ratios; Cicero’s figures require the assistance of the gods to achieve Varro’s minimum return. Moreover, their suggested planting rates also differ. Cicero proposes that 6 modii of seed is typically planted per iugerum, while Varro suggests 5 modii per iugerum. Scholars have worked this to their advantage by pointing out that when they calculate the total yield per iugerum, the yields have greater correlation. Cicero’s yield per iugerum ranges from 48 to 60 modii while Varro’s ranges from 50 to 75 modii. Like a skilled rhetorician, scholars have emphasised the similarity of the yield totals, while simultaneously minimising how much weight is given to the difference in planting rates in each of those iugera, and the varying yield ratios.

We cannot deny that the correlation between Varro and Cicero’s total yields is notable. At the same time, the differences contributing to these results are equally important. These differences suggest that to label these figures as completely reliable is imprudent. Rather than the complete picture, they present a tentatively feasible estimate; they provide a good indication of the reasonable range which would have been expected. Scholars have tended to trust Cicero’s maximum of 60 modii per iugerum seeing it as a

357 Col. Rust. 3.3.4. His figures are used but only to account for the worst agricultural areas of the Empire.
358 Erdkamp (2007) 43 acknowledges the compelling correlation between the figures of Cicero and Varro.
reliable production limit. As Cicero was relating the figures of a most fertile area, they assume that this was the upper limit and not the norm.

Scholars propose that Cicero’s account of Leontini is completely accurate and represents the pinnacle of Roman grain production, while continuing to include Columella’s figures as they represent the minimum yield. On the surface this appears to be a well considered, reasonable and evidence based conclusion; however, no account of Varro’s 10- to 15-fold yield is included. Why are scholars so sure that the potential yield of Leontini was not possibly higher than Cicero claimed? Cicero certainly wished to understate the figures as grain scholars freely admit. They counter this suggesting his opponents could have refuted any embellishment, and that Cicero therefore stuck to the most reliable figures. As has been shown, not only is Cicero’s evidence base weak, but his opponents could not refute his points without incriminating their client; this gave Cicero a degree of freedom. It casts doubt over Cicero’s figures implying that the true yields are higher than he makes out. If this is the case, this makes the grain models of Erdkamp and Evans questionable; or at least it renders the upper limits they propose for grain yields invalid. I recommend that rather than Cicero’s proposal, a more reasonable upper limit for fertile areas such as Leontini and Etruria is in line with Varro’s 15-fold return.

**Conclusion**

Upon reflection, the comments of White cited earlier ring ever more truthfully; the scant data and questionable reliability of all relevant sources leaves producing a concrete figure for a typical Roman seed-to-yield ratio a difficult task. It is reasonable to assume that the upper threshold is greater than Cicero presented. The Etrurian data of Varro is perhaps a more accurate upper limit, seed-to-yield ratios peaking at 15:1 as opposed to Cicero’s assertion that rarely is 10:1 achieved. This appears credible, but I must stress that no more than a tentative estimate can be given due to the limits of credibility on Varro’s account as well.359

It cannot be disregarded that the weight of evidence was on Cicero’s side; he did have a *multitudo litterarum et testium*. Furthermore, there are many instances where Cicero states factually-accurate, evidence-based accusations. But to take these admissions a step further, and state that all of Cicero’s points are beyond reproach; this is the ultimate mistake when approaching a work of this skilled rhetorician and orator. His

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359 Note Varro also proposed yields of 100-fold. In this light, his credibility as a source is also questionable.
skill in this case was not solely as an accountant as Butler would have us believe, organising the evidence meticulously.\textsuperscript{360} This was vitally important and without some ability in this area, his case would have floundered. As the rhetorical handbooks emphasise, advocates need to present a narrative which is clear, concise and gives all the necessary information in the minimum amount of time. However, they also advise enhancing the facts of the narration with inferences of suspicion to remove any doubt of motive or benefit for the accused.\textsuperscript{361} In such an evidence-based prosecution, Cicero had to organise his different elements of proof in a manner which allowed them to be ordered logically, each relevant to the point he was making. He had to structure his speech so that it was long enough to get his information across without losing the attention of the audience as well. But additionally, by using his evidence to appear completely factual in his narration, he could at times embellish his points with hyperbole, colour them with insinuations, and fabricate entire facts. Without the base of evidence and isolated from their surrounding statements, these distortions seem untenable; but when combined with so many proven facts, they appear at first glance to be irrefutable truth.

Grain scholars have been mistaken in their assessment of Cicero’s figures for the \textit{ager Leontini}. Varro cites greater yields and Cicero had a vested interest in understating his figures to exaggerate Verres’ guilt. He was free to manipulate his figures making the area appear less productive. He had an obvious motivation to diminish Leontini’s true productive capacity, didn’t supply evidence, and knew his opponents could not present documents to discredit his claims. Consequently, he could exaggerate the proportion of the yield Apronius exacted. Therefore, grain economists need to adjust their models for the most fertile areas. Cicero’s figure of a 10-fold yield is not an accurate upper limit for the rate of return. Varro’s figures of between 10- and 15-fold are more appropriate.

\textsuperscript{360} Butler (2002) 60 suggests that Cicero learned to be meticulous in his equestrian household where his mother sealed even the empty wine flasks; it was this upbringing that equipped him with the skills to carry out this case successfully. This severely underestimates the rhetorical skill Cicero employed.

\textsuperscript{361} \textit{Ad Her.} 2.3.
Conclusion

It is clear that to take a completely literal reading of all of Cicero’s claims in the *Verrines* is foolhardy; viewing the case as an easy win because of Verres’ early exit from proceedings is much too simplistic. Did Cicero win? Yes. Did he win convincingly? Yes. But was his case purely factual with no need for embellishment or distortion? To accept the opinions of most economic grain scholars, one would assume this was so. Despite the exile of Verres, Cicero still had a difficult task ahead of him. In publishing his second *actio*, not only did he need to promote his success for personal political advancement, but also justify his procedural modification and show that the verdict was just. As Quintilian knew of a *Pro Verre*, we can assume that Hortensius felt the case was not as clear cut as one might think. Moreover, even if we disregard the controversy and debate of the trial’s result, Cicero would have wished for his oratorical publication to be a model for young aspiring rhetoricians to emulate and pass onto future generations.

Cicero’s speech is not simply a presentation of facts. He colours it at every opportunity with exaggeration, emotional appeals, and character references. Scholarship often notes that the *De Frumento* is tedious in content and lacks excitement; yet Cicero even enhances this section wherever possible with digressions, manipulation of the emotions, and other means of rhetorical embellishment. To interpret Cicero’s prosecution with the tone of an accountant’s spreadsheet is far too limiting. Even in the most documentary moments there are subtle shades of rhetoric. For this reason, we should give only careful credence to even the most factually grounded narratives. Danger encroaches on our analysis as soon as we dispense with a perspective of scepticism.

The chronology of the case and reliability of Cicero’s version of events has many difficulties in interpretation. Both the exact timing of Verres’ departure from Rome and the degree to which Hortensius spoke are shrouded in doubt. It is also difficult to certify whether the defence actually did attempt to derail the prosecution. I agree with the most recent scholarly arguments that Verres fled during the break for the games. As a result, Hortensius could not present a full speech in court; he was limited to examining witness. I propose that, contrary to current analysis, Hortensius’ published *Pro Verre* took the form of a full, but undelivered speech. It was the speech he would have delivered if he had had the opportunity. It is difficult to pinpoint the origin of Cicero’s references to Hortensian arguments. Three possibilities stand out as the most likely prospects: Cicero may have invented them to add realism and drama to his publication, they could be points
Hortensius made in his published speech, or the might be arguments the defence produced during the trial.

Verifying the defence’s tactics outside of the courtroom is equally problematic. We can potentially dismiss both the rival prosecutor and the rival prosecution as coincidences rather than sinister mechanisations. Caecilius had motivation enough to prosecute Verres without collusion being involved, and the prosecutor for the Achaean case may have wanted his case to commence before Cicero’s for his own reasons. However, before we cast aside Cicero’s description of events as biased and inaccurate, as it very well might be, we must concede that we cannot conclusively refute his version. Examining how Cicero overcame the strategies of the defence is truly illuminating and helps to show that Cicero’s presentation is not a simple exposition of facts, but a carefully managed case. This dispels any thought that the trial was a forgone conclusion as he had to use all of his cunning and strategy to be victorious.

Cicero’s prosecutorial technique is helpful for establishing just how methodical and planned his approach was. But even more useful is turning to look at the trial from the perspective of the defence. A hypothetical defence for Verres can be formulated based on: anecdotes from the Verrines; Cicero’s own defence cases; and the advice of rhetorical handbooks. The second chapter shows that, with great skill, Cicero successfully undermined all of the arguments the defence were likely to make. Only through this type of investigation can we acknowledge the eloquence and rhetorical strategy Cicero employed in the case.

With Cicero’s rhetorical skill emphasised over the course of the initial chapters, the final section focuses on an area of scholarship that has tended to ignore the rhetorical issues in the speech. In the De Frumento, Cicero provides numerous statistics on grain production in Sicily. Economic historians use these figures enthusiastically and literally when attempting to form a picture of the Roman agricultural industry. Rhetorical scholars readily accept that, as a document of persuasion, the Verrines should not be taken at face-value; yet this is exactly what grain scholars are doing. Little has been done to correct their naïve assumptions. This is due to an almost complete lack of integration and critical assessment between these two areas of scholarship: on the one hand, there are rhetorical scholars who studiously dissect the truth from embellishment in the Verrines; at the same time, economic grain scholars use points from the speech literally, with what appears to be little genuine concern for the degree to which Cicero may have invented the facts himself.
Perhaps one of the most important criticisms against rhetorical scholars is their insufficient examination of the *De Frumento*. This evidence is a cornerstone of modern economic theories on Roman grain, yet has had minimal critical attention. There is an inherent bias in what rhetorical scholars choose to examine, preferring Cicero’s purple passages to this more subtle form of persuasion. While the *De Frumento* is cited regularly for studies in grain, it has had almost no appraisal on a rhetorical level. Its consistent use of numbers and figures, and copious references to witness testimony and documentary evidence, leaves it rather bland in the eye of the rhetorician. It is for this reason alone that this section of the speech is on the whole overlooked.

I would suggest that the current model of grain production that economic historians put forward is a slight under-estimate. They see Cicero’s proposed 10-fold yield as the maximum for the most fertile regions. When Cicero’s motivation to understate productivity is taken into account, it is likely that the maximum yield for such areas was in fact greater. Varro’s figure of a 15-fold return is perhaps more appropriate as a limit of productivity; with this figure as the upper extreme, Columella’s 4-fold yield would still be applicable as a yield for low quality farms. As a result, I do not disregard Cicero’s figures entirely; I only suggest that they do not represent the productive limit. The resulting hypothesis allows for a greater potential spread of productive capacity, with the areas of the greatest fertility obtaining better yields than scholarship has projected.

To a degree, the harder we examine the *Verrines*, the more questions develop which we cannot answer. Some scholars remove difficult factors to simplify the matter (evident in Frazel who disregards the *Pro Verre* claiming Quintilian’s opinion is unreliable). But we should avoid such an approach unless we have good reason to. The beauty of studying the *Verrines* is its complexity, its troubling moments, and its difficult pieces of evidence. Grain scholars omit any serious acknowledgement to such complexity in their studies while rhetorical scholars have simultaneously failed to criticise them on this shortfall. This is an attempt to rectify this failure, create the beginnings of a dialogue between the respective scholarly disciplines, and enhance the important analysis of each group. Without co-operation between the two, both will severely limit their ability to create complete interpretations and acknowledge all of the relevant issues. If left to their own devices, grain scholars will continue to be susceptible to Cicero’s façade of reliability, while rhetorical scholars will only focus on the rhetorically juicy parts of the speeches and neglect any thorough analysis of the *De Frumento*.

In essence my task is one of consciousness raising, making scholarship aware of a failure evident in their approaches to the *ager Leontini*, and a threat we must each be ever
vigilant of in our own areas of special interest. As scholars, we are not singular entities who should be given free reign to formulate our own hypotheses: we are a collective group of knowledge sharers. Rhetoricians and grain economists need to embrace this circumstance. Unless we, as classicists, co-operate in our respective fields, critique each other’s opinions, and engage with other scholars and their different skill sets, we will continue to have a limited and inaccurate view of the field to which we devote so much of our time and energy.
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