



1993

Roman Criminal Law and Legal Narrative in the Neronian Books of the Annals of Tacitus

John Warren Thomas
Loyola University Chicago

Follow this and additional works at: https://ecommons.luc.edu/luc_diss



Part of the [Ancient History, Greek and Roman through Late Antiquity Commons](#)

Recommended Citation

Thomas, John Warren, "Roman Criminal Law and Legal Narrative in the Neronian Books of the Annals of Tacitus" (1993). *Dissertations*. 3288.

https://ecommons.luc.edu/luc_diss/3288

This Dissertation is brought to you for free and open access by the Theses and Dissertations at Loyola eCommons. It has been accepted for inclusion in Dissertations by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](#).
Copyright © 1993 John Warren Thomas

LOYOLA UNIVERSITY OF CHICAGO

ROMAN CRIMINAL LAW AND LEGAL NARRATIVE
IN THE NERONIAN BOOKS OF
THE ANNALS OF TACITUS

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE GRADUATE SCHOOL
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF CLASSICAL STUDIES

BY

JOHN WARREN THOMAS III

CHICAGO, ILLINOIS

MAY 1993

© Copyright by John W. Thomas III, 1993
All Rights Reserved

To Kirsten

Fortuna spondet multa multis,
Praestat nemini.
Vive in dies et horas,
Nam proprium est nihil.

CIL 1.1219

ACKNOWLEDGMENTS

For the completion of this study I gratefully acknowledge the direction of Drs. James G. Keenan, John F. Makowski, and Fr. John P. Murphy S. J., whose criticism and advice have been invaluable. Loyola University most kindly provided a full-year fellowship for the completion of this project.

I gratefully acknowledge the suggestions and encouragement of Professors Alexander P. MacGregor, Jr., and Michael C. Alexander of the University of Illinois at Chicago. To Professor Carol Bates Penka of the University of Illinois at Urbana-Champaign and Professor Martin Helzle of Case Western Reserve University, special thanks for your assistance with my research.

Much gratitude is owed to Patricia Robertson and Diane Shaw who I think run the Graduate School, and to Mari O'Brien, who surely runs our department. Many thanks to Ed and Linda Menes for rescuing me from the 5th ward years before and bringing me to Loyola. I would also like to thank Mark McIntyre, who first suggested a dissertation in Tacitus. Thanks to all my Latin students from Loyola, especially Joanie Trimbach and Ted Somers, who took my first course specifically on the Neronian Annals, and were a sympathetic and thorough jury. Thanks to my fellow graduate students at Loyola, for their help and inspiration, especially William Wycislo for his unfailing friendship. Thanks to the many kind friends at Children's Hospital, especially Shari Simpson, and a special wish for Jennifer Lazarus and her family.

Thanks of course to my parents, who have been supportive and above all, patient. Very special thanks to my wonderful wife, Elizabeth, and our children Heather and Warren, for your steadfast love and encouragement. Without you I would not have completed this project in 100 years.

Finally, I must thank Mr. James Maddaloni, the finest Latin teacher and mentor a beginning student can ever have had, for introducing me to Latin in the eighth grade, and to Tacitus as a high-school senior. I hope that the work herein is worthy of the help and encouragement of all of the above mentioned friends.

TABLE OF CONTENTS

ACKNOWLEDGMENTS	ii
LIST OF TABLES	v
INTRODUCTION	1
CHAPTER	
PART I. HISTORICAL AND PARTLY-HISTORICAL TRIALS	
1. MASTERS, SLAVES, FREEDMEN, AND MURDER	11
The Case of Octavius Sagitta (13.44)	12
The Case of The 400 Slaves of Pedanius Secundus (14.42-45) ...	23
The Case <i>De Fraudibus Libertorum</i> (13.26-27)	40
2. MISCELLANEOUS CASES	52
The Case of "The Balbus Seven" (14.40-41)	52
The Case of Pomponia Graecina (13.32)	64
The Case of Publius Suillius (13.42-43)	73
The Case of Claudius Timarchus (15.20-22)	83
3. EXTORTION: <i>REPETUNDAE</i>	93
"The Six Cases," (13.30-33): A.D. 56-57	95
4. TREASON: <i>MAIESTAS</i>	117
Case of Fabricius Veiento (14.50)	121
The Case of Antistius Sossianus (14.48-49)	126

The Case of Burrus and Pallas (13.23)	137
The Case of Agrippina (13.19-13.22)	143
The Case of Octavia (14.60-64)	154
The Case of the Pisonian Conspirators (15.48-74)	170

PART II. FICTIVE TRIALS: THE TRIAL OF NERO

5. FAMILY MURDER: <i>LEX POMPEIA DE PARRICIDIIS</i>	221
The Case of Fratricide (13.14.2-13.18.1)	222
The Case of Matricide (14.1-13)	234
CONCLUSION	248
APPENDIX I: TACITEAN LEGAL VOCABULARY	251
APPENDIX II: OTHER TACITEAN TRIALS	256
APPENDIX III: TRIAL ELEMENTS IN LATE REPUBLICAN TRIALS	259
WORKS CITED	260

LIST OF TABLES

Table	Page
1. The Elements of a Tacitean Trial	6
2. Chronological Sequence of the "Case of the Balbus Seven."	61
3. Defendants and Charges in the "Six Cases"	99
4. Defendants and Informants in the "Six Cases"	103
5. Rhetorical Charges in Poppaea's <i>Relatio</i> against Octavia	162
6. Major Defendants in the Pisonian Conspiracy	178
7. Minor Defendants in the Pisonian Conspiracy	179
8. Major Defendants and Sentences (Pisonian Conspiracy)	206
9. Minor Defendants and Sentences (Pisonian Conspiracy)	206
10. Charges and Results in the Pisonian Conspiracy	211
11. Rewards for Informants and Supporters (Pisonian Conspiracy)	213
12. Charges Against Agrippina in Nero's <i>Relatio</i>	243

INTRODUCTION

Tacitus is arguably the most important historian Rome ever produced; certainly he is the best historian extant nearest in time to the tumultuous events during and just after the reign of the emperor Nero. He views these events with a keen legal eye, an eye which has influenced the selection and presentation of his material.

For any historian, possibly the two most important choices are the selection of material (for not all events can be included) and the presentation or organization of that material. The organization of an historian can be examined as to the grand scale, for Tacitus, his annalistic framework,¹ or as to the small scale, the organization of particular episodes. Each type of analysis sheds light on the selection and organization which color the historian's work.

This study will be an examination of the small scale; it aims to show that for a great number of episodes in the Neronian Books (Annals 13-16), Tacitus has used his legal eye and chosen a legal framework. This

¹ A recent and significant contribution to this analysis is Judith Ginsburg, Tradition and Theme in the *Annals* of Tacitus (Salem: Ayer Co. Publishers, 1984).

choice also extends to the selection of material, for he has chosen to make criminal trials a dominant feature of his domestic narrative.

A preliminary point of examination should be the reason for his choice of this framework. The most significant advantage that a legal type of analysis provides for an historian is the appearance of a balanced presentation: he can argue both sides of a question, narrating for both prosecution and defense. This is conceivably just the sort of balance Tacitus has in mind with his well-known phrase from Annals 1.3, *sine ira et studio*, "without anger or favor." With the trial format Tacitus can stand back from the arguments of the case and be a dispassionate judge.

It is possible that Tacitus' choice was based upon his life experience from his first years at school up to becoming consul of Rome, and before becoming a writer of history. With few details of his life secure (even the historian's years of birth and death and his *praenomen* are uncertain), one of the few attested facts from his life is an important prosecution he undertook in A.D. 100 against a former provincial governor of Asia. Pliny the Younger assisted him and records their assignment to prosecute for the provincials (Ep. 2.11.2):²

² This was a trial for *repetundae*, as an alleged abuse of power by a magistrate, tried in the Senate, with the *princeps* presiding as judge. For the discussion of *repetundae* in Tacitus, see p.95.

Marius Priscus accusantibus Afris quibus pro consule praefuit, ommissa defensione iudices petit. Ego et Cornelius Tacitus, adesse provincialibus iussi.

Marius Priscus, upon the accusation of the Africans whom he had charge of as proconsul, pleaded guilty, and petitioned for a select committee of judges. Cornelius Tacitus and I were ordered to serve for the provincials.

A striking feature of this letter that Pliny wrote to his friend Arrianus is the almost offhand manner in which the case is mentioned. It is as though Pliny only remarks upon it because it is recent news, and because his friend is interested in the machinations of the Senate.³ That this is the only case known involving Tacitus as an advocate should be less of a surprise than that it is known of it at all; that it is but one case of many which he undertook is a reasonable assumption.⁴

In one of his few personal remarks in writing the Annals, Tacitus at one point (11.11.1) gives a datable reference to his own service as praetor, in A.D. 88. Although most of the jurisdiction in criminal cases under the early empire was in the hands of the emperor and the Senate, a praetor might exercise jurisdiction in certain criminal cases.⁵

³ See 2.11.1

⁴ Tacitus had a retinue of apprentices about him, as shown in another letter of Pliny (4.13.10), where Pliny requests that Tacitus recommend to him some of his apprentices as teachers.

⁵ A.H.M. Jones, The Criminal Courts of the Roman Republic and Principate (Totowa, N.J.: Rowan and Littlefield, 1972), 97. The court of the praetor is one of the options in the "Case of the Balbus Seven," see note 93.

Even if Tacitus was not normally an advocate and had little or no experience on the bench, he was without a doubt a skilled orator. In this same letter, Pliny remarks upon his oratorical skill (2.11.17): *eloquentissime et, quod eximium orationi eius inest, σεμνῶς*. The two performed their assignment admirably and received the praise of the Senate for their efforts on behalf of their clients (2.11.19): *diligenter et fortiter functi*. Pliny again reports on the oratory of his friend in another letter. He mentions that Tacitus, then consul, was regarded as one of the greatest orators of his day, pronouncing the funeral oration for Verginius Rufus (Ep. 2.1.6).⁶

Since Tacitus served in his public career as praetor, consul, advocate, and public orator, the language of the courtroom and the

⁶ Apparently no inscription exists, or any corroboration for Tacitus' consulate being in 97. On this letter of Pliny seems to hang that date, for Verginius was *consul ordinarius* for that year, and Tacitus was one of the *suffecti*, and Pliny says that Tacitus pronounced the eulogy *as consul*. Schwabe, *PW* vol.4, pt.1, 1569, after citing this letter of Pliny as evidence for the date writes, "Die Zeit des Consulats ist nicht überliefert, wahrscheinlich war es im. J. 97." St. Borzsák *PW* supp.11 (1968),387, places Tacitus' consulship in the second half of 97. Ronald Syme, *Tacitus* 2 vols. (Oxford: Oxford University Press, 1956), 1:129, is of little help here; at 2:641 he lists Tacitus' colleagues in the consulship. Ronald Martin, *Tacitus* (Berkeley: University of California Press, 1981), 28, thinks it likely that Domitian appointed Tacitus to the post slightly before his assassination in September of 96. C.W. Mendell, *Tacitus: The Man and His Work* (New Haven: Yale University Press, 1957), 7, actually puts his consulate in the year 98. The date is by no means a certainty.

employment of oratory would have been well known to him: they were tools he could employ in writing where he wished.⁷ From that it may follow that the inclusion of legal terminology and structure in his historical writing is intentional, and that he has placed trials throughout the Annals using a forum in which he was at home.⁸

The Neronian books of the Annals contain more than fifty trials or cases, covering a wide range of criminal proceedings: insult, patrons' rights, attorneys' fees, forgery, collusion, forbidden religion, provincial extortion, treason, murder, fratricide, and matricide. All these trials have a similar basic structure, which can be outlined through a set of trial-elements, provided in Table 1:⁹

⁷ Syme, Tacitus, 67, "In the *Agricola*, Tacitus musters all of the resources of an advocate's art, mature in its command of innuendo..."

⁸ Modern commentators have not missed his legal abilities. Furneaux's commentary, The Annals of Tacitus 2d.ed., 2 vols. (Oxford: Oxford University Press, 1907), contains frequent comments on legal issues and will be referred to throughout. Syme, Tacitus, devotes chapters 25, 26, 27, and especially 340-363 to style and oratory in the Annals. He remarks (329) how Tacitus wrote "with a barrister's skill." Martin, Tacitus, 136, discusses political trials as a "recurring theme" in the reign of Tiberius.

⁹ This list is based upon the data as encountered, but owes much to a list of trial elements produced by Michael C. Alexander in Trials in the Late Roman Republic: 149 BC to 50 BC (Toronto: University of Toronto Press, 1990), pp.ix-x. His list appears in Appendix III, reprinted with permission.

Table 1.--The Elements of a Tacitean Trial

1	Historical introduction
2	<i>Crimen</i> : The charge or charges
3	<i>Reus</i> : The defendant (<i>rea</i> if female) is identified
4	<i>Delator</i> : The informant is identified
5	<i>Causa</i> : Examination of motive(s) of accused (and others sometimes)
6	Testimony for the prosecution
7	<i>Defensio</i> : Testimony for the defense
8	<i>Relatio</i> : Counter-charges by the accused against the accuser
9	<i>Iudex</i> and <i>Iudicium</i> : The judge identified, and sentence delivered
10	Historical conclusion and comments

The historical introduction (1) and conclusion (10) are Tacitus' narrative, often epigrammatic, comments on the case. They attempt to give the case some perspective within his history, and sometimes connect the case or defendant to subsequent events. The charge (2) and defendant (3) are almost always given together. The informant (4), a necessary feature in a trial, brings the charges against the accused.¹⁰ Tacitus rarely fails to speculate on the *causa*, "motive" (5) of at least some of the parties involved in crimes he examines. The testimony for the prosecution (6) and for the defense (7) is sometimes given in long speeches, and other times in very short speeches, some of which are disguised by virtual

¹⁰ Jones, *Criminal Courts*, 110-111, indicates that the *delator* often gave the main testimony for the prosecution.

indirect discourse. In the longer episodes, the bulk of the case usually consists of the testimony. One phase of the case for the defense merits listing as a separate feature: the counter-charges(8) by the accused against the accuser, termed as the *relatio*;¹¹ the best defense, then as today, in criminal as well as civil proceedings, is a good offense. The judge and judgment (and sentences) (9) round out the case.¹²

The elements in Table 1 are listed in what would arguably be their chronological order during a trial sequence; but Tacitus uses the historian's prerogative and orders the elements to suit the event. Most of the trials have all of the elements, and occasionally there will be multiple sets of some features in a case. Tacitus does not provide, nor does he aim to provide what could be considered "court records," but rather he relates the highlights of cases, according to the model in Table 1: a famous person involved, a notable speech, a remarkable crime or judgment, whatever has made the case worthy of inclusion in his history. Some elements, such as (1), (5), and (10) go where court records might not, into speculation and

¹¹ Digest 48.1.5 and OLD 4a, "the retorting of criminal responsibility upon one's accuser." The text of the Digest followed herein is The Digest of Justinian, Latin text ed. Theodor Mommsen and Paul Krueger; English trans. ed. Alan Watson, (Philadelphia: University of Pennsylvania Press, 1985).

¹² Jones, Criminal Courts, 111, "From the accounts of trials in Tacitus and Pliny it would appear that verdict and sentence were considered together."

interpretation; this is what makes Tacitus' work history rather than *commentarii*.

In addition to these structural elements, each Tacitean trial uses a number of legal terms. Many of these are essential to the description of a legal event: *absolvo* "to acquit," *condemno* "to convict," *reus* "defendant," *testor* "to bear witness," or their equivalents are the basic vocabulary for any trial. Some terms are specific to the particular crimes involved, such as *parricidium* "murder of a close relation," *relego* "to banish by non-capital exile," or *repetundae* "extortion." Other terms, such as the word *facinus*, used five times in the Case of Matricide against Nero, are used to enhance a trial's atmosphere. A complete list of the legal terms and their definitions as used by Tacitus is given in Appendix I. For each trial, a list of the specific terms used in that episode is given in the précis, which also indicates any deviations from the normal episode structure of Table 1.

While all of Tacitus' trials follow the basic structure which has been outlined, and use the various technical terms required, there is a significant way in which they are varied. Tacitus' trials come in three identifiable types. The first type consists of "historical trials," defined here as accounts of actual criminal proceedings, only embellished (if that is the accurate term) by speeches which may on more than one occasion be completely the work of Tacitus, and by Tacitus' introductions, conclusions,

and comments on motive. An example of this type is the Case of Publius Suillius (p.73).

The second type of trials is termed "fictive." These trials are not trials in any sense in which a legal historian might recognize them, but are rather quasi-literary creations of Tacitus. To his narration of a small number of incidents in which the emperor Nero commits real crimes, such as matricide (see p.234), Tacitus has imparted the elements, vocabulary and atmosphere of a trial. These accounts are narrated according to the structure in Table 1, and use the vocabulary typical of a Tacitean trial, but no actual trial has taken place. In these trials Tacitus was perhaps leading up to the actual trial of Nero by the Senate, which will be discussed in the conclusion.

Trials of the third type are "partly-historical." These are mixtures of the first two types, involving historical trials (or sham-trials), where one or more of the trial elements of an episode is solely the creation of the author. Two very different examples of this last type are the "Case of Octavia" (p.154), which has a number of fictive elements dominating the end of the trial, and the "Case of Octavius Sagitta" (p.12), which has a self-contained fictive sub-case, but also a full set of historical elements.

Tacitus presents his cases chronologically, included within his annalistic framework. This thesis groups the cases into five chapters according to

type, with one chapter consisting of miscellaneous cases, and presents these groups in an arbitrary order: the first chapter contains two murder cases, and a case involving patrons and freedmen; chapter two presents four miscellaneous cases; the third chapter covers a cluster of six cases for extortion; treason trials make up the fourth chapter; the final chapter contains two important fictive trials in which Nero is the defendant. The conclusion discusses the framework of the Neronian Annals as a series of historical and fictive trials, leading up to, in the lost portion after Annals 16.35, Tacitus' presentation of the actual "Trial of Nero" by the Senate.

CHAPTER ONE

MASTERS, SLAVES, FREEDMEN, AND MURDER

This chapter presents three cases, all involving loyalty and obligation between masters and slaves or freedmen. The first two cases are also both murder cases--very different murders: one an apparently open and shut case where a mistress is murdered by her lover, where the murderer's freedman risks death on his behalf; the second, a more complex case of a master's murder by his slaves, where all face death because of the guilt of one. The third case has no murder, but involves the legal relationship between masters and their former slaves.

Murder: *Lex Cornelia de Sicariis et Veneficis*

The Case of Octavius Sagitta (13.44)

[This case is an historical murder, and the introduction contains a sub-case, which is literary. The main case exhibits all ten features from Table 1 on p.6. The features of the literary sub-case are designated with the letter A, e.g.(5A). This case includes the key vocabulary terms: *adulterium, ambiguus, arbitrium, caedes, causor, condemno, conscius, convinco, facinus, iniuria, lex de sicariis, mando, manifestus, nuptiae, obtestor, paciscor, postulo, profiteor, satisfactio, sententia.*]

1. Historical Introduction The introduction to this murder case is supplied through the narration of the events leading up to the night of the crime.

Adultery is the prelude to murder (13.44.1):¹³

Per idem tempus Octavius Sagitta plebei tribunus, Pontiae mulieris nuptae amore vaecors, ingentibus donis *adulterium* et mox, ut omitteret maritum, emercur, suum matrimonium promittens ac *nuptias* eius *pactus*. sed ubi mulier vacua fuit, nectere moras, adversam patris voluntatem *causari* repertaque spe ditioris coniugis promissa exuere. Octavius contra modo conqueri, modo minitari, famam perditam, pecuniam exhaustam *obtestans*, denique salutem, quae sola reliqua esset, arbitrio eius permittens. ac postquam spernebatur, noctem unam ad solacium poscit, qua delenitus modum in posterum adhiberet. statuitur nox, et Pontia *consciae* ancillae custodiam cubiculi *mandat*. ille uno cum liberto ferrum veste occultum infert. tum,

During the same time, Octavius Sagitta, a tribune of the people, became deranged with the love of Pontia, a married woman. With a very great number of gifts he purchased an adulterous relationship with her, and later an agreement that she leave her husband, promising his hand in marriage to her, and having negotiated hers to him. But when the woman became available, she began to contrive delays, pleading as her excuse that her father's wishes opposed this, and when she had found hope of a richer husband, she threw off her promises. Octavius for his part complained one moment and threatened the next, calling as witnesses his ruined reputation, exhausted money, and finally, the only thing that was left for him, he said, his life, entrusting this to her judgment. And after he was rejected, he demands a single night for comfort, soothed by

¹³ Except where indicated, the text of the *Annals* followed throughout is H. Heubner, *P.Cornelius Tacitus: Libri Qui Supersunt* (Stuttgart: Teubner, 1983). Please note two typographical errors in this Teubner edition: 14.7.4 *ille praetorianos toti...*(not *illi*), and 14.44.1 *...omnibus nescis? multa sceleris.* (not *sceleri*). It is hoped that the text printed in this study has as few errors.

ut adsolet in amore et ira, iurgia preces, exprobratio *satisfactio*, et pars tenebrarum libidini seposita; et[†] quasi incensus nihil metuentem ferro transverberat et adcurrentem ancillam vulnere absterret cubiculoque prorumpit. postera die *manifesta caedes, haud ambiguus percussor*; quippe mansitasse una *convincebatur*. sed libertus suum illud *facinus profiteri*, se patroni *iniurias ultum esse*. commoveratque quosdam magnitudine exempli, donec ancilla ex vulnere refecta verum aperuit. *postulatusque apud consules a patre interfectae, postquam tribunatu abierat, sententia patrum et lege de sicariis condemnatur*.

which, he says, he would call upon moderation in the future. The night was set, and Pontia entrusted the safekeeping of her bedchamber to a maid who was privy to things. Accompanied by a single freedman, he brought in a sword concealed in his clothes. Then, as is customary in anger and love, there were disputes, entreaties, reproach and resolution, and part of the darkness was set aside for desire; but as though inflamed at these things he ran her through with the sword when she feared nothing. When the maid rushed in he wounded her and frightened her away, and then fled from the bedroom. On the following day the murder was plainly evident, the assassin by no means in doubt. But his freedman avowed that the crime was his, and that he had done it to exact revenge for the insults against his patron. His testimony influenced some by the greatness of its example, until the maid recovered from her wound and made the truth known. Octavius was accused in the presence of the consuls by the dead girl's father; after he had finished his term as tribune he was condemned by the judgment of the Senate according to the law on murderers.

[†] et quasi incensus *Jacob Gronov.* ea quasi incensus *Heubner.* et quastim census *Med.*

The literary sub-case appears in the narration of the background events of the murder. This sub-case contains all of the trial elements except for a separate introduction and conclusion.

2A. *Crimen* The charge begins with the arrangement between Octavius and Pontia. They make an informal agreement¹⁴ to commit the crime

¹⁴ *Paciscor*, OLD 1, "To negotiate, arrange (an agreement)," the past participle of which is *pactum*, "an informal agreement." *Paciscor* and *pactum* are used by Proculus in *Digest* 46.3.82 describing a pact by way of dowry, and the possibility of return of property in the event of a divorce. Ulpian, in *Digest* 2.14.5., defines the three kinds of agreements, and

of *adulterium*. The agreement itself is immoral,¹⁵ and immoral agreements were void and not actionable.¹⁶ The other aspects of the literary trial revolve around this agreement.

3A. *Reus* Octavius is nominally the defendant in this sub-case, as he *acts* as though he is on the defensive when Pontia breaks the agreement.

4A. *Delator* For the same reason, Pontia is the *accusator*, for she is the one who takes the positive step of breaking their agreement.

5A. *Causa* Octavius has love as his motive for entering the illicit agreement: he is described as *amore vaecors*.¹⁷ Pontia's motive is a common one, greed: she is initially motivated by Octavius' gifts to enter

paciscor is the verb he uses. The verb is used by Tacitus of a marriage contract in Annals 12.5, see note 21.

¹⁵ W. W. Buckland, A Textbook of Roman Law: From Augustus to Justinian 3d ed., rev. Peter Stein (London: Cambridge University Press, 1971), 421, "An agreement for something illegal or *contra bonos mores* is void, the latter being illustrated by agreements to produce or prevent marriage or divorce..." This particular agreement transgresses on both counts.

¹⁶ Digest 45.1.26-7. The agreement may well have been informal because it was immoral, and only a *pactum* could be made.

¹⁷ An interesting question is, since *vaecors* means (OLD) "mentally deranged," whether this qualifies him as legally *furiosus*, "a lunatic," and therefore without capacity to enter upon a contract? Buckland, Roman Law, 419 notes that *furiosi* did not have the legal capacity to express the necessary consent in forming a contract. Buckland also (151) points to this as a "temporary excuse" rather than as a permanent incapacity. If Octavius were to be considered *furiosus* when he committed the murder, he would not be liable under the *lex Cornelia* (Digest 48.8.12).

the contract; she is later motivated to break the agreement when the hope of a richer husband comes along.

6A. Testimony for the Prosecution In place of the standard testimony for the prosecution, this case provides the argument for breaking the agreement. Pontia, in her attempt to hold off Octavius, "pleads as an excuse"¹⁸ that her father is opposed.

7A./8A. Defensio and Relatio The standard elements of the defense and counter-charges are filled by Octavius' testimony as to why Pontia ought not to break the contract. His *relatio* begins with complaints and threats. Octavius calls upon three factors as witnesses for his defense: his fortune, his reputation, and his life.¹⁹

9A. Iudex and Iudicium Pontia is also the judge in the case, and it is a capital charge. Octavius submits his very life to her judgment: *salutem...abitrio*²⁰ *eius permittens*. Her judgment is to reject him,

¹⁸ *Causor*, OLD 2a, "to plead as an excuse." Ulpian, in Digest 16.3.3, the title on "Actions on Deposit," *noluit praestare causatus quod semel ignarus vendiderit*. This parallel is of particular interest since Pontia is essentially refusing to return the gifts or make good on her contract, and is making an excuse in language similar to what is later recorded as statue law.

¹⁹ *Obtestor*, OLD 1. Tacitus uses the verb again for defense testimony, in the matricide charge against Nero, p.240.

²⁰ "Judgment, verdict." Ulpian Digest 23.3.12.1 (the title on *De Iure Dotium*) uses *arbitrium* for the judgment in a dispute in a hypothetical case in which a woman claims that she has been cheated by a low valuation of goods.

spernebatur.²¹ It is this decision by Pontia that directly leads to the commission of the actual crime that follows.

2. *Crimen* The actual crime is murder, a charge Tacitus indicates in several places. He describes the action of the killing: *ferro transverberat*. He classifies it after the event as *manifesta caedes*.²² The perpetrator of the deed is called a *percussor*, which has only one meaning, "an assassin." The charge is technically identified by the law under which it is

²¹ *Sperno* is used at Histories 1.9, of an army rejecting its legate; at 2.86 Vespasian is described as *bello non spernendus*. In the marriage arranged between Claudius and Agrippina (Annals 12.5) *sperno* is again used impersonally. The verb is not used of a rejection between lovers:

C. Pompeio Q. Veranio consulibus pactum inter Claudium et Agrippinam matrimonium iam fama, iam amore illicito firmabatur; necdum celebrare sollemnia nuptiarum audebant, nullo exemplo deductae in domum patris fratris filiae: quin et incestum ac, si sperneretur, ne in malum publicum erumperet metuebatur.

It can not mean "if it were rejected," and is cited in OLD 2c, "to disregard." The passage implies a duty on the part of someone (the state, the gods?) to stop what Tacitus calls *incestum*, in order to preserve the public good.

²² The adjective *manifestus* applied in a legal sense either describes the nature of the criminal, OLD 1, "caught in the act, plainly guilty," or describes the deed, OLD 2, "detected in the act, flagrant," as here. Livy 1.7.9., describes a defendant in a similar fashion: *manifestae reum caedis*. Tacitus' use of the term seems to apply to heinous nature of the crime, i.e., "flagrant." The Digest section on the *lex Cornelia* does not use this term, which may only imply that it is no longer in use then. Manifest theft (Buckland, Roman Law, 581) was more severely punished than *furtum nec manifestum*, and was punished by death under the XII Tables. It is possible that even if *manifesta caedes* was not a technical term, that Tacitus' account reflects the language of the record of the trial, and that the "flagrant" nature of the crime was used by the prosecution to influence the sentence.

prosecuted, the *lex de sicariis*.²³

3. Reus Octavius Sagitta is clearly identified as the defendant throughout the episode, and is accused by the phrase *haud ambiguus percussor*. This echoes the language of *manifesta caedes* above, and combined the two may reflect an argument by the prosecution to the effect that, "the crime was flagrant, the assassin beyond doubt."

4. Delator The informant is the Pontia's father, who is not identified by name:

*Postulatusque apud consules a patre
interfectae.*

He was accused in the presence of the consuls by
the dead girl's father.

The father makes these formal charges in the Senate, with the consuls present. The consuls served as the presidents of senatorial trials.²⁴

5. Causa Octavius is given two motives for killing Pontia. The main motive is her rejection of him (discussed above in ¶9A). As a result of that rejection, he committed what seems to be a premeditated murder: He brought a sword to a lovers' rendezvous, and concealed it.

A second, perhaps incompatible motive, is then ascribed to him with

²³ Properly, the *Lex Cornelia de Sicariis et Veneficis*. The Digest title on this law, 48.8, prefers phrases such as *qui hominem occiderit* or someone who does something *necandi hominis causa*, to an agent-noun for a murderer.

²⁴ Jones, Criminal Courts, 91.

the phrase *et quasi incensus*.²⁵ It is as though seized by a sudden rage, he kills her on the spur of the moment.²⁶

6. Testimony for the Prosecution There are two separate stages to the prosecution's case. Initially, the finding against Octavius seems assured: it is proved (*convincebatur*) that he was at the scene of the crime; it is plainly evident (*manifesta*) that the death is due to murder (*caedes*); and the identity of the assassin is equally clear (*haud ambiguus*). Then, the prosecution suffers a setback after the defense testimony (see below), but the case is still won with the late entry (explaining *donec*) of the maid. Octavius had wounded the maid, but she later recovered (*ex vulnere refecta*)

²⁵ The text here is doubtful. Heubner's reading of *ea quasi incensus* leaves doubt as to what the pronoun refers. The Medicean reads *et quastim census*, which makes no sense at all, but I have kept the *et*, which I translate adversatively. Furneaux, Tacitus, *ad loc.*, reads Halm's conjecture *ex qua quasi incensus*, which is more difficult to obtain, but amounts to much the same as Heubner's reading. Unfortunately, none of these fits in with the logic of the description (if a murder can have this quality). What is needed is a word such as *subito*, explaining the "sudden" turn of events from lovemaking to murder. The *et* of the Medicean, if adversative, may somewhat fill this function.

²⁶ While a valid distinction in consideration of motive, this difference would not (unlike today) affect the charge: Digest 48.8.1.3, *si gladium strinxerit et in eo percusserit, indubitate occidendi animo id eum admisisse*, and 48.8.7, *In lege Cornelia dolus pro facto accipitur*, indicating that with murder, malicious intent is a given (except in accidents). Furneaux, Tacitus, *ad loc.*, indicates that the murder was premeditated anyway, merely "committed as if under a paroxysm of passion."

to cement the case against by revealing the truth (*verum aperuit*).²⁷ Tacitus does not need to relate the substance of her testimony again, for the reader knows the truth of the story from the earlier narration. The only way, other than the unlikely event of a confession from Octavius, that the events can be told must be through the maid's testimony. She was privy to the secrets of her mistress (*conscia*), and thus could relate both their ill-fated agreement and the events on the night of the murder.

7./8. *Defensio and Relatio* The freedman who had accompanied Octavius to the rendezvous testifies in defense of his patron.²⁸ He avows that he committed the crime: *suum illud facinus profiteri*. The element of the counter-charge is provided by the motive to which the freedman confesses: he claims to have been avenging *iniuria* done to Octavius. The term

²⁷ Probably exacted under torture. Ulpian Digest 48.18.1.16 cites a rescript by Severus explaining that since slaves could not be tortured to give evidence against their masters, what evidence they did supply should not be admitted. Peter Garnsey, Social Status and Legal Privilege in the Roman Empire (Oxford: Oxford University Press, 1970), 213 n.5, says that their evidence was not admissible otherwise. Certainly a slave's evidence under torture carried the ring of truth *quo facillime posse verum scire iudex crediderit* (Digest 48.18.1.2).

²⁸ Buckland, Roman Law, 88, indicates that freedmen were barred from providing testimony **against** a patron (and that the patron could not give evidence against his freedman in a criminal case). Yet there no evidence that the *obsequium*, the "duty" the freedman owed to his patron, extended to a *de iure* obligation to provide testimony **on behalf of** the patron. It might have been the norm for a freedman to testify as part of the respect he owed the patron (Digest 47.15.9), but there would be no duty to commit perjury.

iniuria can have a broad meaning.²⁹ Here it could be applied to some perceived "affront" to Octavius' reputation, which he had claimed was damaged, with the words *famam perditam*. The exact nature, however, of the *iniuria* is not specified.

9. *Iudex* and *Iudicium* The Senate judges the case after the inviolability of Octavius' tribuneship has expired. He is found guilty (*condemnatur*) and sentenced in accordance with the *lex de sicariis*. This most likely meant confiscation of property and capital exile.³⁰ Death would have

²⁹ Applicable to *quod non iure fit... aut re aut verbis*. Digest 48.10.1.1. See also Bruce W. Frier, A Casebook on the Roman Law of Delict (Atlanta: Scholars Press, 1989), 177-8 for a discussion of the range of actions under *iniuria*.

³⁰ There were varying types and degrees of "exile," and the picture is very murky. Tacitus is sometimes specific about the type of exile, and other times is not; this assumes that when he uses a technical term, he does so correctly. During Nero's day the status of the penalties was somewhat ambiguous. Major revisions had occurred under Augustus, and then under Trajan and Hadrian (Garnsey, Social Status, 113). Assuming no significant changes in between, some general statements can be made. The most important distinction was between "capital" and "non-capital" exile: Paulus Digest 48.1.2, *Publicorum iudiciorum quaedam capitalia sunt, quaedam non capitalia. capitalia sunt, ex quibus poena mors aut exilium est, hoc est aquae et ignis interdictio: per has enim poenas eximitur caput de civitate. nam cetera non exilia, sed relegationes proprie dicuntur: tunc enim civitas retinetur*. The key difference enumerated by this text is the status of one's rights of citizenship, lost under the capital exile, but maintained under non-capital exile.

Capital exile was the next step from the death penalty. In theory it was permanent. The person was usually banished to an island, but could be banished to (or from) other places; citizenship rights were lost; property confiscation seems to have been normal. The penalty was technically called *aquae et ignis interdictio*, as well as *exilium*. The term

been unusual.³¹

10. Historical Conclusion Tacitus does not conclude this episode with any

exilium, however, can not be relied upon as an absolute, for it is often used of non-capital exile. J.L.Strachan-Davidson in Problems of the Roman Criminal Law (Oxford: Oxford University Press, 1912), 2:66-67, maintains that *exilium* technically applied to capital exile, but was used without distinction by many, including Cicero, Tacitus, and Digest writers. Note that in the passage above, Paulus is at pains to explain what he means by the term, as though one might not understand the specifics). Sometime late in Tacitus' time, or just afterwards, *deportatio* (Garnsey, Social Status, 114) becomes an official term for capital exile. By Ulpian's day this was the standard term (Ulpian Digest 48.13.3: *aquae et ignis interdictionem, in quam hodie successit deportatio*). Tacitus uses *Italia pulsa est* for a case of capital exile in Annals 12.8.1 (so Garnsey, 113 n.1, but nothing in the text indicates it as such). Capital exile was the sentence for a convicted murderer under the *lex Cornelia de sicariis et veneficis* (Digest 48.8.3.5); it generally applied to those sentenced under the *lex Iulia maiestatis* (Garnsey, 112).

Non-capital exile is technically called *relegatio*, but is also referred to as *exilium* (Garnsey, 115), and by various other non-technical designations. Even the term *interdictio*, if not accompanied by the key words *aquae et ignis*, did not guarantee the status of capital exile; as Gaius Digest 28.1.8.3 indicates, this could refer to a form of exile equated with *relegatio*, where citizenship rights were retained: the key distinction is that non-capital exile did not deprive the person sentenced of citizenship rights, such as *libertas*, the power of a *paterfamilias*, and the right to make a will (which Gaius is discussing in the above citation). Property could be confiscated, but in Trajan's day, this was not the normal practice (Garnsey, 117). *Relegatio* could be temporary or permanent, and could mean confinement to a place as well as exclusion from a place or places (Garnsey, 116). *Relegatio* could even be imposed as the sentence for *maiestas*, according to Richard A. Bauman in Impietas in Principem: A Study of Treason Against the Roman Emperor with Special Reference to the First Century A.D. (Munich: Beck, 1974), 49. It was the common penalty of coercion, e.g., of a patron for use against his freedmen (see p.43 in the "Case *de Fraudibus Libertorum*"). It was the penalty for adultery under the *lex Iulia de Adulteriis* (Paulus Sententiae 2.26.14).

³¹ See below, note 352.

generalizations. He does, however, place some observations of this type within and just after the case.

Tacitus comments first on the nobility of the freedman's gesture: *commoverat quosdam magnitudine exempli*.³² He does not simply indicate that the testimony was believed, but uses the emphatic *commoveo* to describe the impact of the man's actions; he does not refer to what the freedman says as evidence or testimony, but as an example for others. In contrast, the relationship of Octavius and Pontia receives the rather harsh historical judgment: *ut adsolet in amore et ira*. This not only applies to the rendezvous of the two lovers, but to the case as a whole.

Tacitus' final remarks on this matter come in his transition to the next case in 13.45: *Non minus insignis eo anno impudicitia*. This is possibly what makes the murder of Pontia worthy of inclusion for Tacitus, that it was one of the more infamous events of the year.

³² Tacitus is similarly impressed with the courage of another former slave, Epicharis, in 15.57: *clariore exemplo libertina mulier in tanta necessitate alienos ac prope ignotos protegendo*. An unnamed slave of Octavia (14.60.3) receives similar attention.

The Case of The 400 Slaves of Pedanius Secundus (14.42-45)

[This case is an historical murder, exhibits all features from Table 1 on p.6. The majority of the case involves the lengthy prosecution speech by the jurist Cassius, ¶6. This case includes the key vocabulary terms: *caedes, censeo [x2], damno, decerno [x2], delibero, edico, ignarus, increpo, indicium, iniuria, innocentia, innoxius, insidiae, insons, ius, leges maiorum, nescius, nocens, poena, saevitia, scelus, seditio, senatus consultum, supplicium [x3], transigo.*]

1. Historical Introduction This murder differs from the previous case in that it involves friction between two classes of persons, free men and slaves. When Octavius killed Pontia, his freedman bravely tried to take the blame, but in the end, only Octavius stood accused. In this case, when a slave murders the prefect of Rome, all 400 slaves in his household face the peril of death according to the law. The case is introduced back at the beginning of the domestic account for A.D. 61, at Annals 14.40:

Eodem anno Romae insignia scelera,
alterum senatoris, servili alterum audacia,
admissa sunt.

In the same year there were noteworthy crimes
perpetrated in Rome, one on the part of a
senator, the other <occurring> through the
boldness of slaves.

³³ This text of this decree, which dates to A.D. 10 is not extant. For a discussion of the S.C., see Alan Watson, Roman Slave Law (Baltimore: Johns Hopkins University Press, 1987), 134-8. The substance, however, of the resolution is contained in Digest 29.5. Here it is associated with the *Senatus Consultum Claudianum* of A.D. 52. The S.C. Pisonianum of A.D. 57 (Annals 13.32) also confirms this decree. W. W. Buckland, The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian (London: Cambridge University Press, 1908; reprint, New York: AMS Press, 1969), 94 (page references are to the reprint edition), indicates that these merely put a legal force on ancient custom. For a similar case from the late Republican period, see Cicero Ad Fam. 4.12 and A.H.J. Greenidge, The Legal Procedure of Cicero's Time (Oxford: Oxford University Press, 1901), 372.

Tacitus gives a hint as to the second of the year's two notorious crimes, but then makes the reader wait through the first case, heightening the anticipation.³⁴ The notoriety of the case was automatic for the Roman of Tacitus' day. To any slave owner who, like Pedanius, was outnumbered on the order of 400-1 by his servants,³⁵ this case must have caused a chill which struck close to home; for the modern reader, the reaction is equally chilling, but caused rather by the sentence than by the crime, in which 399 innocents were executed along with the actual killer.³⁶

2./3. Crimen and Rei The charge is murder, of a master by one of his slaves (14.42.1):

Haud multo post praefectum urbis
Pedanium Secundum servus ipsius
interfecit.

Soon thereafter one of his own slaves killed the
prefect of the city, Pedanius Secundus.

The slave who committed the crime is not named by Tacitus. A slave could be a *reus*, and was liable to the same procedures and laws as a free

³⁴ For the first of these cases, involving the senator's daring, see "The Case of the Balbus Seven," p.52.

³⁵ The number 400 is given by Cassius in his speech (see ¶6), and is certainly a round number, and maybe even rhetorically exaggerated.

³⁶ Watson, Roman Slave Law, 134, "No title is better adapted...to show...the basic inhumanity of a slave state...and a brilliantly elegant legal solution..."

man.³⁷ The name of the defendant would seem an essential part of the procedure of *nominis delatio*. Detail does not seem to be lacking in Tacitus' sources here, for he can speculate on the slave's motives (see ¶5); the omission of the name is probably a deliberate choice: elsewhere Tacitus declines to note the names of defendants when they are not what he considers to be distinguished.³⁸ Tacitus' failure to name the single slave responsible is best explained by the underlying nature of the case: when a slave killed his master, the entire household was automatically accused (14.42.2):

Vetere ex more familiam omnem quae sub eodem tecto mansitaverat ad *supplicium* agi oporteret.

In accordance with ancient custom it was demanded that all the slaves who had stayed the night be led of to execution.

Tacitus describes the *crimen* with two phrases worth noting: "under the same roof," *sub eodem tecto* and "to spend the night," *mansito*. The first of these is crucial to the application of the penalty. As is indicated in the

³⁷ *Digest* 48.2.12.3-4, *Si servus reus postulabitur, eadem observanda sunt, quae si liber esset, ex senatus consulto Cotta et Messala consulibus. Omnibus autem legibus servi rei fiunt excepta lege Iulia de vi privata, quia ea lege damnati partis tertiae bonorum publicatione punitur, quae poena in servum non cadit*--because a slave could not own property. The S.C. dates from the consulship of Marcus Valerius Messala and Marcus Aurelius Cotta, A.D. 20, *Annals* 3.2. There were in fact some differences in treatment, on which see Watson, *Roman Slave Law*, 129-33; many of these relate to crimes committed by slaves against free men.

³⁸ E.g, in "The Case of the Balbus Seven," p.54.

text of the Digest,³⁹ the purpose of the law was to keep the household "safe," and provide "custodia" for the master. When someone killed the master in his house, the punishment (aside from the deterrent value) fell upon all of the slaves for **failure to protect** him. The restriction of *sub eodem tecto* is the exact language of the Digest, where it is said to be the language of the Senate's decree.⁴⁰ Tacitus' words must also be modeled on the S.C.

The second important phrase involves the rare verb *mansito*. Tacitus has only one additional recognized use of the word in his writings,⁴¹ occurring in the other sensational murder case in the Neronian Annals: Octavius Sagitta was evidently guilty because he "stayed the night" at the house of his mistress.⁴² The parallel between the two uses of the verb for "spending the night" in connection with manifest guilt in a murder case suggests another reflection on legal terminology by Tacitus.

³⁹ 29.5.1.

⁴⁰ Ulpian Digest 29.5.1.26-27. The logic here was that only those present could be expected to have heard the cries for assistance from the master. Deaf slaves were therefore equated to those who were not present at the time of the crime (29.5.3.8).

⁴¹ A. Gerber and A. Greef, Lexicon Taciteum 2 vols. (Stuttgart: Teubner, 1962), 808a. OLD lists only one other instance of the verb outside of Tacitus: Fronto Epistulae ad Amicos 2.p.90 (185N).

⁴² See p.13.

In a related passage, I am tempted to ponder the a third use of *mansito*, through an emendation in the passage from 13.32.1, where the parallel phrasing "*sub eodem tecto*" is also found with a form of the common verb *maneo*. Although this conjecture of *mansitassent* for the Medicean's *mansissent* is not a long stretch, *mansissent* presents no problems and is probably what Tacitus wrote, consciously varying his use (13.32.1):

Factum et senatus consultum ultioni iuxta et securitati, ut si quis a suis servis interfectus esset, ii quoque qui testamento manu missi sub eodem tecto mansissent[†] inter servos supplicia penderent.

A decree of the Senate was passed as much for retribution as for security, to the effect that if anyone was killed by his slaves, those also who by the owner's will were manumitted and had stayed the night under the same roof, were to pay the penalty along with the slaves.

[†] *mansissent* *Med.* *mansi* <ta> *ssent* *fortasse* (cf. 14.42.2 and 13.44.4).

At this point Tacitus mentions only "ancient custom," as the legal basis for this penalty;⁴³ it is, however, better known as the *Senatus Consultum Silanianum* of A.D. 10 (see note 33), which had recently been reinforced and extended under Nero's tenure by the above less well-known resolution.

4. *Delator* The informant in the case is supplied by the anonymous subject of the impersonal verb *oportet* (see ¶2/¶3 above). Someone had to stand as

⁴³ Bauman, *Lawyers and Politics in the Early Roman Empire* (Munich: Beck, 1989), 98-99, explores the possible statutory Republican origin of this custom.

delator, and it is this person who "demands" the application of the penalty.⁴⁴

5. Causa Although Tacitus does not seem concerned enough about the slave to mention him by name, he does provide an analysis of the motive for the killing (14.42.2):

Seu negata libertate cui pretium pepigerat
sive amore exoleti incensus et dominum
aemulum non tolerans.

He did this either because of liberty, which had been denied, but for which he had undertaken to give the price, or because of an impassioned love for a male prostitute, and the inability to endure his master as a rival.

An additional structural parallel to the case of Octavius Sagitta is given by the two motives: love or money. Octavius (see above p.18), like the slave in this case, was also described as *incensus*. The parallel in motive extends even to anger over the refusal to deliver on something for which a price had been paid: for the slave, freedom; for Octavius, marriage. An important difference is that for Octavius, the two motives were connected; for the slave they are alternatives. Furthermore, the object of the slave's money, freedom, is fundamental to the case. The attainment of freedom after the murder of the master is behind the S.C. in 13.32, the purpose of which was to serve as a deterrent to the murdering of the master to gain

⁴⁴ Jones, Criminal Courts, 111.

testamentary manumission.

Tacitus returns to the slave's motives in the speech by Cassius, who twists them to his own ends. Tacitus explains the motives first, in a straightforward fashion, so that the rhetoric Cassius employs in discussing this is more apparent (see below ¶6).

6. Testimony for the Prosecution The case for the prosecution is presented by a senator, whom Tacitus introduces as *C. Cassius*.⁴⁵ His famous speech is given in direct discourse,⁴⁶ and is of considerable length.⁴⁷

⁴⁵ Caius Cassius Longinus, *PW* 60, vol.3, pt.2, 1736-8, and *OCD* 11, appears in the *Annals* at 12.11-12 as *qui Syriae praerat*, governor of that province, and sporadically elsewhere; Tacitus reports his exile at 16.9. Tacitus has high praise for Cassius' legal abilities: *ceteros praeminebat peritia legum*. Suetonius (*Nero* 37) provides information on Cassius' death, and notes that Cassius was blind.

⁴⁶ There is a question as to what degree these words reflect the actual words of Cassius. Dieter Nörr, "C. Cassius Longinus; der Jurist als Rhetor (Bemerkungen zu Tacitus, Ann.14.42-45)," *Althistorische Studien. Festschrift Hermann Bengtson. Historia Einzelschriften* 40 (1983): 191 and 216f., argues that Tacitus has produced a representative speech, attributing to him qualities that uphold traditional values, as a scion of the *Cassii* (like those of the *Scipiones*) should. N.P. Miller, *Tacitus: Annals 14. A Companion to Book 14 of Tacitus: The Annals of Imperial Rome* (Bristol: Bristol Classical Press, 1987), 41, "the words are the words of Tacitus, but the sentiments and arguments may well be those of Cassius, whose speech would be recorded in the report of the senatorial proceedings." Syme, *Tacitus*, 355, calls the speech "a clear echo of Sallust." If the *Acta Senatus* contained the speech of Cassius verbatim, as Miller seems to imply, Tacitus would hardly have deviated from it, or have resorted to introducing the speech with the apologetic phrase *in hunc modum disseruit*. The clear fit of the speech into the construction of the episode indicates adaptation: Syme, 185, believes that the *acta* probably contained summaries of speeches, and that Tacitus could be safe in

Cassius begins his highly rhetorical speech with a *suasio* (14.43.1):

Saepe numero, patres conscripti, in hic ordine interfui, cum contra instituta et leges maiorum nova senatus decreta postularentur; neque sum adversatus, non quia dubitarem super omnibus negotiis melius atque rectius olim provisum et quae converterentur <in> deterius mutari, sed ne nimio amore antiqui moris studium meum extollere viderer. simul quidquid hoc in nobis auctoritatis est crebris contradictionibus destruendum non existimabam, ut maneret integrum si quando res publica consiliis eguisset.

Many times, gentlemen senators, I have been in this body, when new decrees of the Senate were put forward which went against the customs and laws of our ancestors; nor did I oppose them, not because I had any uncertainty that with regard to the proceedings, it had been seen to better and with greater moral rectitude in ancient times, and that the things which were being reversed were being changed for the worse, but (I did not oppose them) lest out of a too great love for ancient custom I seem to be advancing my own fancy. At the same time I did not think that whatever sort of clout I have ought to be destroyed by frequently speaking in opposition, so that this clout would remain intact if ever the state needed my advice.

The *suasio* contained here, "I did not oppose them (the new measures) before," contains the implicit "but now I must." ⁴⁸ Cassius speaks as the upholder of tradition.

Cassius must speak, because the time has come (14.43.2):

Quod hodie venit consulari viro domi suae interfecto per *insidias* serviles, quas nemo prohibuit aut prodidit quamvis nondum

Such a time has come today, when a man of consular rank, in his own home, has been killed through servile treachery, which not a one checked or uncovered, although the decree of the

"treating them in his own fashion...from his own experience and insight," provided he "kept to the main heads of the argument."

⁴⁷ Nörr "C.Cassius Longinus," 190-1 declares it the longest in Annals 14. Watson, Roman Slave Law, 137-8 considers the case important enough to provide a translation of the entire episode (not just Cassius' words), and to let it stand without subsequent comment as the conclusion to his work.

⁴⁸ The rhetoric of this section is standard and traditional, cf. Venus to Vulcan Aeneid 8.374-385; Cicero Pro Marcello 1.

*concusso senatus consulto quod supplicium
toti familiae minitabatur.*

Senate was not yet weakened, which threatens
the penalty of death upon the entire household
of slaves.

Cassius' words "which no one checked" reflect the language of the *senatus consultum (Silanianum)* to which he refers in the next line. The reasoning involves the legal fiction of complicity in the murder, neatly danced around in Cassius' argument. All the able-bodied⁴⁹ slaves are assumed to have heard the master's cries (which are assumed to have been made), and assumed to have ignored them willfully. His use of the word "uncovered" points to an argument he makes subsequently, that the assassin must have let a word slip beforehand, another fiction.⁵⁰ Cassius works in a third fiction, that acquittal of the 399 would mean that the S.C. had been "weakened"; the word *nondum* implies that unless he speaks, the process of this is underway.

The members of the Senate are then advised to acquit, as Cassius continues with a rhetorical *permissio*:

*Decernite hercule impunitatem: at quem
dignitas sua defendet, cum praefecto urbis*

Resolve upon exemption, by Hercules: but whom
will his importance defend when such was not
enough for the prefect of the city? Whom will a

⁴⁹ And even those *non corpore suo, at certe voce*, Digest 29.1.5.28, "who could cry out to others who were able." Only the deaf (29.5.3.8), and those not *sub eodem tecto*, and therefore too far away to hear, were excused.

⁵⁰ The only language in the Digest title on the S.C. which seems to lend force of law to this argument is 29.5.1.21, the section on *si dominus veneno non per vim necatus*. Here (probably because poison had to be prepared in advance, hence, premeditation) the text mentions *si qui conscii*.

non profu<er>it? quem numerus
servorum tuebitur, cum Pedanium
Secundum quadringenti non protexerint?
cui familia opem feret, quae ne in metu
quidem pericula nostra advertit?

large number of slaves protect, when 400 did not
protect Pedanium Secundus? To whom will the
household of slaves bring aid, which not even in
fear heeds our danger?

Cassius includes with the *permissio* some rhetorical questions on the consequences of acquittal. These contain the implied accusation that there are would-be assassins lurking among the slaves in every senator's household.

Cassius then poses as his own interlocutor, providing mock defense arguments:

An, ut quidam fingere non erubescunt,
iniurias suas ultus est interfector, quia de
paterna pecunia *transegerat* aut avitum
mancipium detrahebatur? pronuntiemus
ultra dominum *iure caesum* videri.

Perhaps, as some are not ashamed to fabricate,
the assassin was avenging personal wrongs,
because he had made a settlement concerning
his father's money, or an ancestral slave was
taken away? Let us even pronounce the
judgment that the master seems to have been
killed justly.

Cassius has again changed the rules: these arguments should not apply to the 399, only for the one who did the killing, but Cassius admits no distinction. Manipulation of the facts is evident when Cassius' version is compared to Tacitus' own version of the killer's motives in ¶5 above.

Cassius claims that the motives are a fabrication (*fingere*). He further mocks the slave's status with the words *paterna pecunia*.⁵¹ His words

⁵¹ A slave could not ever be said to possess "ancestral money." Yet despite Furneaux, *Tacitus, ad loc.*, he could have a *peculium* at the master's sufferance (Buckland, *Slave Law*, 187), and could have *de facto*

contain a quasi-*relatio*, "the master deserved to die." This is not given a response, and Cassius' silence can be interpreted to mean that however "just" the motive, it is of no consequence, and therefore the defense arguments regarding motive are irrelevant to the fate of the 399: they still rendered no assistance.

Cassius then expands the charge of failure to assist into outright complicity in the crime in 14.44. He challenges the presumption put forward by the anonymous senators that the 399 are innocent (14.44.1):

Creditisne servum interficiendi domini
 animum sumpsisse ut non vox minax
 excideret, nihil per temeritatem
 proloqueretur? sane consilium
 occultavit, telum inter *ignaros* paravit:
 num excubias transire, cubiculi foris
 recludere, lumen inferre, *caedem* patrare
 <poterat> omnibus *nesciis*?

Do you gentlemen believe that a slave undertook the intent of killing his master in such a way that no threatening word slipped out, that nothing was uttered rashly? Doubtless he kept his plan secret, and made ready his weapon in the midst of innocents: But could he have been able to go past the night-watchmen, throw open the doors of the bedroom, bring in a light, and carry to completion the murder with everyone being unaware?

Clearly any number of possibilities existed whereby no other slave would have had knowledge; Cassius has again slipped in another assumption, that the crime was premeditated. *Sane consilium* is the real message in *sane consilium occultavit*, which purports to argue lack of co-conspirators, but in fact implies both the forethought of a plan and the guile to conceal

ownership of other slaves (Buckland, 188). The slave had no ability to make a contract (Buckland, 74), as Cassius' language implies (*transegerat*), but frequently ran businesses which were commercially distinct from his master (Buckland, 188).

it (*occultavit*) on the part of the killer.

Cassius then verbally manipulates the status of the 399, who go from *ignaros* and *nesciis* to *nocentes* (14.44.1-2):

Multa sceleris indicia praeveniunt: servi si prodant, possumus singuli inter pluris, tuti inter anxios, postremo, si pereundum sit, non inulti inter nocentes agere.

A crime is preceded by many informing signs: If the other slaves betray these, we can live as individuals among many, we can live safe among the uneasy, and finally if death becomes inevitable, we will not be unavenged among the guilty.

Character assassination is the next element in Cassius' speech (14.44.2-3):

Suspecta maioribus nostris fuerunt ingenia servorum etiam cum in agris aut domibus isdem nascerentur caritatemque dominorum statim acciperent. postquam vero nationes in familiis habemus, quibus diversi ritus, externa sacra aut nulla sunt, conluviem istam non nisi metu coercueris.

The character of slaves was an object of mistrust to our ancestors even when they were born on our estates, or in our very homes and acquired from the start affection for their masters. But nowadays, since we have other countries in our households, who have different practices, religious rites that are foreign or non-existent, you won't keep that sewage in check except by fear.

The defense will argue (see below ¶7) for sympathy based on the "age or sex" of some of the 399, clearly implying that women and children are among that group. In the section above Cassius attempts to undercut that sympathy by rejecting the humanity of the group. If he can successfully impugn their humanity, the Senate will be less sympathetic.

Cassius further undercuts the upcoming defense in the conclusion to his lengthy prosecution speech through a final attack at the mainline defense argument (14.44.4):

At quidam *insontes* peribunt. nam et ex fuso exercitu cum decimus quisque fusti feritur, etiam strenui sortiuntur. habet aliquid ex iniquo omne magnum exemplum quod contra singulos utilitate publica rependitur.

But some innocent will perish! Yes, and when every tenth man of a routed army is struck with a club, the good also fall by the lottery. Every good deterrent has some unfairness against individuals which is balanced by the advantage of the state.

The *exemplum* of the military practice of decimation effectively nullifies the pleas against sacrificing the innocent. The implication must be clear to the senators: what was fair in military discipline, was more than fair in the discipline of the slave populace. The good of the many outweighs the unfairness to the few (*aliquid ex iniquo*) for both groups.

The case for the prosecution is remarkable in presenting no real evidence, either oral or physical. Cassius' presentation is merely rhetorical, and conforms more to the pattern of literary trials. The closest parallel is in the Case of Octavia, when Poppaea presents mock arguments for Octavia's defense (see p.161).⁵²

7. *Defensio* Some senators speak for the 399 before Cassius' speech. In

⁵² There are other parallels between these two cases: The crowd supports Octavia, as the crowd supports the slaves. Both Cassius and Poppaea make strong arguments, but prevail only with Nero's help. In both cases, pity loses. It has been argued here that Cassius' words are likely the creation of Tacitus. If so, this case parallels that of Octavia in another way, for it is a real case overlaid with a fictive trial.

contrast to the detail of Cassius' speech, those defense arguments are only sketched by Tacitus (14.42.2):

In quo ipso erant studia nimiam severitatem aspernantium, pluribus nihil mutandum censentibus.

In which very body there were concerns on the part of ones who were rejecting too much harshness, although the majority of senators expressed their opinion that nothing must be changed.

These comments are balanced by the many (*pluribus*) who wish nothing to be changed. Tacitus could have elaborated the position of those arguing for clemency, as he perchance did in the speech of Cassius; his failure to incorporate any speech to this effect may indicate a lack of sympathy with that position, or serve to indicate that there was an absence of any organized defense and defenders of Cassius' stature.

After Cassius' speech there are more words spoken for the defense (14.45.1):

Sententiae Cassii, ut nemo unus contra ire ausus est, ita dissonae voces respondebant numerum aut aetatem aut sexum ac plurimorum indubiam innocentiam miserantium.

While no individual dared to go against it, still a cacophony of voices gave the response to the opinion of Cassius, on the part of those expressing compassion about the age or sex and certain innocence of most of the slaves.

Once again there is no organization (*dissonae voces*) among those arguing for clemency. Their argument regarding the "age or sex" of the 399 has already been rendered impotent by Cassius.

8. *Relatio* The counter-charges in this case also parallel those in the

Octavia case,⁵³ with a *relatio* of mob-action rather than of words (14.42.2):

Concurso plebis quae tot *innocios*
protegebat usque ad *seditionem* ventum est
senatusque <obsessus>.

Matters had come to the point of rebellion, with
a gathering of the people protecting the great
number of innocents; the Senate was besieged.

This is the crowd's reaction to the initial indictment of the 399. The crowd
is said to be protecting "innocents."

After the verdict of the Senate below (§9), the crowd once again
reacts, this time with a clear intent on violence (14.45.1):

Sed obtemperari non poterat, conglobata
multitudine et saxa ac faces min <it> ante.

But it could not be complied with because of the
crowd that had massed together and was
making threats with rocks and torches.

This at the same time undercuts their position. Cassius and those voting
with him stand for order; the supporters of the 399 have shown themselves
as the agents of disorder.

9. *Iudex* and *Iudicium* After Cassius' speech and the dissonant voices for
the defense (§7), the Senate votes:

Praevaluit tamen pars quae *supplicium*
decernebat.

Nonetheless the part that voted for the death
penalty prevailed.

The majority votes for death. The effect, however, of Cassius' speech bears

⁵³ See p.158.

examination. In 14.42.2, before his speech, the balance of opinion in the Senate was for upholding the traditional penalty (*nihil mutandum*). The speech for the prosecution by Cassius disorganized the opposition, and in all likelihood discouraged any senator from going on record in the *acta* as opposing the death penalty but it is not evident that it changed a single vote. Those opposed still grumble about the unfairness of the sentence, and Tacitus allows this idea to take root by emphasizing that the Senate's decree is unjust (14.45.1): *plurimorum indubiam innocentiam*.

The opinion of the people, as well as that of the Senate, is not altered by Cassius (see ¶8). The verdict requires an imperial edict and imperial troops to be carried out:

Caesar populum *edicto* increpuit atque omne iter quo *damnati* ad *poenam* ducebantur militaribus praesidiis saepsit.

Caesar reproved the people in an edict and flanked with military guards the entire way along which the condemned were led to their punishment.

10. Historical Conclusion After the condemned are led away, there is a motion by a senator which imperils a new set of defendants (14.45.2):

Censuerat Cingonius Varro ut liberti quoque qui sub eodem tecto fuissent Italia deportarentur. id a principe prohibitum est ne mos antiquus quem misericordia non minuerat per *saevitiam* intenderetur.

Cingonius Varro moved that the freedmen also who had been under the same roof be exiled from Italy. The emperor forbid this, so that ancient custom, which pity had not weakened, would not be stretched out by cruelty.

Varro's motion is clearly excessive and contrary to tradition, and Nero

vetoed this idea.⁵⁴ The reasoning for the veto is the last line of the passage, that the maintenance of this ancient custom to control slaves avoids both pity and cruelty. The statement is intended to conclude the episode by demonstrating that the system has balance, that while the Senate's action shows no pity, neither does it go to excess. Tacitus has a delicate balance to strike here, since there exist great passions on both sides. By closing this episode with an act of leniency, he is attempting to mitigate the negative feelings that these events have produced.

⁵⁴ The actions of Varro and Nero at the conclusion of this case parallel the attempted action against Nerullinus in the "Case of Publius Suillius," (13.42-43), see p.81. Bauman, Lawyers and Politics, 100, sees a connection here to the case of Antistius, and feels that Nero's aim was to show clemency here as well. Cf. the S.C. effectively halting the manumission of slaves (p.27) when the master was killed; the difference in this case is that the *liberti* are already free (and therefore could not be assumed to have participated in the murder in order to earn that freedom).

The Case *De Fraudibus Libertorum* (13.26-7)

[This case is a debate, showing the process leading up to an imperial rescript. It exhibits all 10 features from Table 1 on p.6. This case includes the key vocabulary terms: *arguo*, *auctor*, *causa*, *censeo*, *crimen* [x2], *culpa*, *derogo*, *expendo*, *fraus liberti*, *ignarus*, *ius* [x2], *ius civilis*, *manifestus* [x2], *poena*, *relatio*, *relego*, *revoco*.]

1. Historical Introduction In the previous case many innocent slaves were put to death because their free owners feared them. Former slaves, known as *liberti*, freedmen, were also feared by their former masters. This case involves an attempt to alter the legal contract between these two groups; the case is a legal debate, an inside view of law-making under Nero's reign. The Senate debates the issue, but fails to act independently, and forwards the matter to the emperor. This initial debate by the Senate serves as Tacitus's introduction to the case (13.26.1):

Per idem tempus *actum in senatu de fraudibus libertorum*, *efflagitatumque ut adversus male meritos revocandae libertatis patronis daretur. nec deerant qui censerent, sed consules, relationem incipere non ausi ignaro principe, perscribere tamen consensum senatus.*

During the same time there was a debate in the Senate concerning the wrongdoings of freedmen. The petition was made that the right be granted to their patrons of revoking their freedom. Nor were senators lacking who expressed <this> opinion, but the consuls, not daring to enter upon an official resolution since the emperor was ignorant of it, nonetheless wrote a draft of the resolution of the Senate.

This introduction explains how Nero came to be involved in the case.

2./3. *Crimen and Rei* Freedmen as a class are the defendants, all freedmen,

without distinction. The fact the innocent are accused along with the guilty will be made into an issue for the defense.

The charge made in the introduction is *fraus*, which appears to have been a frequent charge made by patrons against their freedmen.⁵⁵ No specifics of the charge emerge in the Senate's debate; their actions are limited to the expressions of opinions in favor of the petition.⁵⁶ Later when the discussion is *inter paucos*⁵⁷ with Nero, further charges are passionately made against the freedmen (13.26.2):

Quibusdam coalitam libertate
inreverentiam eo prorupisse frementibus,
<ut> vine an aequo cum patronis iure
agerent [sententiam eorum] consultarent ac
verberibus manus ultro intenderent,
impudenter vel poenam suam ipsi
suadentes.

Some were grumbling that the disrespect of the freedmen had taken root on account of their freedom, and had burst forth to such an extent that these freedmen were deliberating as to whether they should act violently or on an equal legal standing with their patrons; that <some > had actually raised their hands for <delivering > blows, even brazenly themselves proposing <what > their own punishment <should be >.

Freedmen are accused of openly discussing their patrons as legal equals, which would qualify as *contumelia*. Some have discussed the use of force

⁵⁵ Ulpian Digest 37.14.16, and the entire title 38.5, "Si Quid in Fraudem Patroni Factum Sit," cover *fraus* by freedmen against their patrons.

⁵⁶ *Censeo*, OLD 4, "(of a senator) To express as his opinion."

⁵⁷ A small group of advisors. The term is discussed below, p.48.

or have even threatened their patrons with violence.⁵⁸

4. *Delator* The informants in this case are the unnamed patrons who in 13.26.1 brought their complaints before the Senate. The verb indicating their request is *efflagito*, "to petition ceaselessly,"⁵⁹ which allows the impression that their case is heard only after repeated requests.

5. *Causa* The freedmen are not heard from directly. Their motive is implied, however, within the charges made by the informants in the session *inter paucos* with Nero: the freedmen clearly wish more rights.

The same desire for rights motivates the patrons, who spell out their wishes directly. The patrons argue that they do not have sufficient legal recourse against their freedmen; they wish the right of revoking⁶⁰ the freedom of some, as a deterrent against insult or violence (13.26.2-3):

⁵⁸ A freedman was required to be respectful to his patron. *Relegatio* awaited those who gave insult, and the mines those who used violence: Ulpian *Digest* 37.14.1, *Si ingratus libertus sit, non impune ferre eum oporteat. Sed si quidem inofficiosus patrono patronae liberisve eorum sit, tantummodo castigari eum sub comminatione aliqua severitatis non defuturae, si rursus causam querellae praebuerit, et dimitti oportet. enimvero si contumeliam fecit aut convicium eis dixit, etiam in exilium temporale dare debbit: quod si manus intulit, in metallum dandus erit.*

⁵⁹ OLD 1b.

⁶⁰ *Revoco*, OLD 7b, numerous legal citations, including Gaius *Inst.* 2.57, *nam ut ex auctoritate Hadriani senatus consultum factum est, ut tales usucapiones revocarentur.* Cf. Ulpian's use of *revoco* in *Digest* 37.14.16, within the title (37.14) on "De Iure Patronatus," to discuss the recovery of property.

Quid enim aliud laeso patrono concessum, quam ut c<ent>esimum ultra lapidem in oram Campaniae libertum releget? ceteras actiones promiscas et pares esse: tribuendum aliquod telum, quod sperni nequeat. nec grave manu missis per idem obsequium retinendi libertatem, per quod adsecuti sint: at *criminum* manifestos merito ad servitutem retrahi, ut metu coerceantur, quos beneficia non mutavissent.

"What else was granted to an injured patron besides banishing the freedman beyond the hundredth stone to the coast of Campania? Other legal actions were possessed in common, and were equal. Some weapon had to be granted which could not be disdained. Nor for the manumitted would <the burden> of keeping their freedom in the manner in which they had obtained it be heavy: but those flagrantly guilty of crimes would with good cause be dragged back to servitude, so that those might be checked by fear, whom acts of kindness had not changed."

Those urging action are incensed because their only recourse against their former slaves is limited to *relegatio* as far as Campania. They want another weapon (*telum*), which their freedmen can not disdain.

6. Testimony for the Prosecution Further enumeration of the charges comes in 13.26.2 (see above in ¶2) from unnamed individuals who are attending the session *inter paucos* with Nero. This group may consist of some or all of the individuals who laid the charges before the Senate in 13.26.1. They are clearly not merely uninterested advisors, who are helping Nero to see both sides of an issue, but rather they must be interested parties: their evident dislike of freedmen indicates that this group may have included some of the senators who argued in favor of the resolution in the earlier debate. Their testimony continues as part of their request for remedy (13.26.3): freedmen have been showing disdain for what little recourse the patrons have.

7. Defensio The defense for the freedmen comes from some others of the

anonymous advisors in Nero's council. They provide an argument in three parts, the middle of which is a *relatio*, to be considered in ¶8 below.

The first argument addresses the question of corporate guilt (13.27.1):

Disserebatur contra: paucorum culpam
ipsis exitiosam esse debere, nihil
universorum iuri derogandum.

The discussion on the opposing side was as follows: that the guilt of the few ought to be destructive to themselves, and that nothing must be subtracted from the rights of all.

The argument is logical: the innocent should not be convicted along with the guilty.⁶¹ The second clause indicates an important distinction. Even though some freedmen threatened physical violence, specific remedies existed that did not call for the extreme measure of disfranchising the entire class.⁶²

⁶¹ Although corporate guilt is applicable to slaves (see the "Case of the Slaves of Pedanius Secundus," 14.42-45, see p.35). Greenidge, Legal Procedure, 372, notes a similar case from 45 B.C., the murder of M. Marcellus. He explains the reasoning of the rule as follows (481): "the universal execution of the servile members of the household...was based on the idea that it was the slaves' duty to protect their lord and that it could only be through their neglect or cognizance that he had met his death." Decimation of legions also assumes a measure of such corporate guilt. Both examples have as their basis the idea of negligence, *culpa*. The argument should fail in the case of the freedmen because they are not a unit like the slaves of a household or the soldiers under one command, but a class of people from many households under different "commands."

⁶² Freedmen would be liable for any violence committed against their patrons as much as anyone else, if not more so (see above note 58, and Garnsey, Social Status, 262); the real complaint here is lack of respect, which is what Ulpian addresses in Digest 48.14.1.

The second part of the defense argument appeals to tradition

(13.27.2):

Non frustra maiores, cum dignitatem ordinum dividerent, libertatem in communi posuisse. quin et manu mittendi duas species institutas, ut relinqueretur paenitentiae aut novo beneficio locus. quos vindicta patronus non liberaverit, velut vinclo servitutis attineri. dispiceret quisque merita tardeque concederet, quod datum non adimeretur.

Not to no purpose had our ancestors, when they sorted out the status of the orders, ordained that freedom was to be shared. And furthermore, two kinds of manumission were established, that room would be left for change of mind or a new kindness. Those whom the patron did not free by the act of *vindicta*, are held as if by the chain of servitude. Each <patron> should consider <a slave's> worthiness and hand over slowly that which may not be taken away once given.

The defense advocates remind Nero that their ancestors established freedom in common.⁶³ The ancestors had also established two forms of manumission (according to the argument). The first was by means of *vindicta*, explained as irrevocable (*quod datum non adimeretur*). The second (by implication, revocable) was set up as a double-edged sword: still held by the chain of servitude (*vinclo servitutis*), the good freedmen could hope for the reward (*novo beneficio*) of full freedom; and for the bad there was the fear of a change of mind (*paenitentiae*) on the part of the patron. This is advice for the patrons also: hand over slowly (*tarde*) full freedom, for once given it can not be revoked. The argument indicates that options are available which, if the patrons used them, should eliminate their problems.

8. *Relatio* The counter-charge comes in two parts. It is first argued that

⁶³ Pono, OLD 17, "Ordain, lay down (a rule, law, definition, etc.)."

Rome depends upon its freedmen: they serve essential functions, assisting magistrates, priests, and serving in the fire brigade (13.27.1).⁶⁴

Quippe late fusum id corpus. hinc plerumque tribus decurias, ministeria magistratibus et sacerdotibus, cohortes etiam in urbe conscriptas.

Surely that group was spread out far and wide; hence to a large extent were composed the tribes, the guilds, the attendants for the magistrates and priests, and even the imperial fire brigade.

The second part of the *relatio* is meant to make the patrons think carefully about their own personal history before condemning what their own ancestors may have been.⁶⁵

Plurimis equitum, plerisque senatoribus non aliunde originem trahi: si separarentur libertini, manifestam fore penuriam ingenuorum.

For most of the equites, and for very many of the senators, their roots were derived nowhere else. If freed-men are to be treated as distinct, the scarcity of the free-born would be flagrantly obvious.

Tacitus remarks in the opening of the Annals (1.3.7. to 1.4.1) on how few men there were left who had seen the old republic at the time of Augustus' death; that nowhere was there a trace of the ancient and upright character. The second part of the *relatio* is in sympathy with that earlier

⁶⁴ After the note of Furneaux, Tacitus, *ad loc.*, "the *vigiles* are meant." For *vigilum cohortes* see OLD 4b, "the imperial fire-brigade."

⁶⁵ Syme, Tacitus, 612, notes that it has been argued from this passage that Tacitus himself was of such ancestry; he discounts this, maintaining that the passage is merely "the art of the historian, who, employing speeches to dramatize a person or expound a theme, claims his full liberty and achieves plausibility by adding what speeches normally contain: that is to say, distortion and deceit." It should be noticed, however, that Tacitus makes this argument the one that prevails.

sentiment: the old blood-line was thin. While in all certainty "very many" is an exaggeration, there surely were a few senators who fell into this category, or else the argument could not stand.

9. *Iudex and Iudicium* The Senate issues the preliminary judgment in the case, one that goes against the freedmen: they apparently vote to grant the added rights to the patrons according to the petition. The consuls, however, do not dare to act as magistrates and make the resolution into law (*relationem incipere*) since Nero does not know about it. They instead write a "draft law" and send that to Nero for his decision.⁶⁶

Nero's deliberation forms the main body of the case. There are some problems with the text,⁶⁷ and the result is an uncertainty as to exactly what sort of group is advising the emperor. For the sake of

⁶⁶ *Perscribo*, OLD 2, "To put (a law, literary work, etc.) into written form," and 3b, "To record a resolution of the Senate which has been vetoed by a tribune, with a view to bringing it forward at a later date." In this case there has been no veto, but rather fear of one by Nero, and so the consuls send the draft (*perscribere*) to which Nero eventually sends a rescript.

⁶⁷ The text in the passage below, where obelized, is quite corrupt. K. K. Wellesley, "A Privy Council on the Behaviour of Freedmen (Tacitus A.13.26.2)," *LCM* 8 (1983): 136-139, makes an effort at the restoration of the text, but adds little to what Furneaux, *Tacitus*, says *ad loc.*, "It is plain that we have an account of a discussion, not in the senate, but in the private cabinet of the council of the princeps." John Crook, *Consilium Principis* (New York: Arno Press, 1975), 46 "Not only was there more and more work for legal *consilia*, but with the increasing irresponsibility of the senate there was more and more for administrative *consilia* as well."

simplicity, it is referred to in this case as the council *inter paucos* (13.26.2):

❖ille an auctor constitutionis fieret, ...ut
inter paucos et sententiae diversos❖

❖Nero <debated> as to whether or not he
should become the author of this decree; <he
consulted> a few <advisors>, and their
opinions varied.❖

After the deliberation of the chosen few with Nero, the emperor makes his judgment in favor of the defense argument and sends that judgment to the

Senate in a rescript (13.27.3):

Haec sententia valuit, *scripsitque Caesar
senatui*, *privatim* expenderent causam
libertorum, quotiens a patronis
arguerentur; in commune nihil
derog<ar>ent.

This opinion prevailed, <and> Caesar sent a
<re->script to the Senate, that they should
judge the freedmen on a case-by-case basis,
whenever they are brought up on charges by
their patrons; that the senators should remove
no legal rights <from the freedmen> as a
group.

Freedmen who are brought up on charges⁶⁸ should have their cases judged⁶⁹ on an individual basis (*privatim*); as a group they were to have no rights taken away.⁷⁰

10. Historical Conclusion The conclusion to what seems to be a sensible act of legislation and cooperation between the emperor and the Senate is *infamia*. Tacitus undercuts Nero's contribution to the legislation with an unfortunate consequence of Nero's meddling in a related case (13.27.3):

⁶⁸ *Arguo*, OLD 4a, *op. cit.*

⁶⁹ *Expendo*, generally, "to weigh." Here, OLD 5, "to judge."

⁷⁰ *Derogo*, OLD 1b, cf. Ulpian 50.17.45: *Privatorum conventio iuri publico non derogat.*

Nec multo post ereptus amitae libertus Paris quasi *iure civili*, non sine *infamia principis*, cuius iussu perpetratum ingenuitatis iudicium erat.

Not long afterwards, the freedman of his aunt Domitia, Paris, was snatched away by quasi-civil law, not without disgrace to the emperor, at whose order a verdict that he had been freeborn had been obtained.

Nero had procured a judgment that Domitia's freedman Paris was in fact freeborn.⁷¹ Paris is familiar to Tacitus' reader for his role in the *maiestas* trial of Agrippina.⁷² As a consequence of that action, Paris proceeds to remove himself from Domitia's patronage by the use of a quasi civil law procedure. The result, according to Tacitus, was *infamia* for Nero.⁷³ Why Nero procured this judgment for him is not specified by Tacitus, yet the incident seems to have been well known: the case attained some ancient notoriety, finding its way into Ulpian's Book 26 on the Edict, and eventually into the Digest.⁷⁴ The story related is that Paris was apparently trying to cheat Domitia out of the money he had paid for his

⁷¹ *Judicium*, OLD 6, *op.cit.*

⁷² 13.18-22, see p.146.

⁷³ *Infamia* implies conviction (see note 224). In this instance it is a literary judgment, since Nero was not actually on trial. Nero had committed *dolus*. For *infamia* arising out of such actions with *dolus* see Buckland, Roman Law, 160 and 512.

⁷⁴ Digest: 12.4.3.5 The parallel here between the Annals and the Digest is well known, it is cited by Furneaux, Tacitus, *ad loc.* It should, however, be noticed that Ulpian does not cite Tacitus, but Lucius Neratius Priscus (suffect consul in A.D. 97), a contemporary of Tacitus, and conceivably an intermediary for other parallels between Tacitus and Ulpian.

freedom.⁷⁵ In possibly another ironical connection to the general case above, manumission by the ceremony of the *vindicta* involved a legal fiction wherein it was claimed that the slave was wrongly held. Such a fiction by necessity involved the willing participation of the owner. Here Domitia's participation was not willing, and Paris' freedom was not procured through fiction but through fraud--the very subject of the Senate's action in Annals 13.26.1.

Despite the fame of that one incident from this case, the proceedings themselves are far from specific, and indeed are mysterious: Who are the patrons who propose such fundamental changes in Roman society? What freedmen are accused of the specified abuses? There are no names in the passage. The arguments are given impersonally on both sides, and even Nero is identified only as *Caesar*. Impersonal verbs or indefinite constructions govern all the key real-time events until the rescript: *actum in senatu; efflagitatum ut; nec deerant qui; quibusdam...fremetibus; disserebantur; haec sententia valuit*. Tacitus appears to possess only the rescript and no other hard data. He uses his

⁷⁵ In the version in the Digest, Domitia is inexplicably referred to as *Neronis filia*, when she was clearly *Neronis amita*, his aunt. Mommsen notices this in his 1868 commentary with a question mark, pointing to the passage in Annals 13.19 where Domitia is correctly identified as *amita*. One would assume that Neratius, as a contemporary of Tacitus, would not have made such an obvious error (Nero had no surviving children), and that it must have occurred in the retelling of the story.

familiar format of a trial to provide a larger context for the rescript; the trial itself may therefore be entirely a literary construction. In such cases, the point must be conceded (see note 65) that Tacitus merely supplies the arguments that are logical for both sides. The purpose of relating the episode must be a forum for the presentation of those arguments: the argument which Tacitus makes the better one (whether it succeeds or not, for Tacitus can not change history, only color it) must be the author's, for he demonstrates its superior logic.⁷⁶

⁷⁶ If the better argument does not prevail, this is also a comment on the times, such as Tacitus makes at 14.12.2, that the gods are *sine cura*. Crook, Consilium, 120, holds that the winning viewpoint here is Seneca's, based on the tenets of the de Beneficiis.

CHAPTER TWO

MISCELLANEOUS CASES

This chapter contains four cases: forgery, forbidden religion, attorneys' fees, and insult. The only common thread the cases have is that they are all straightforward historical cases.

Forgery and Collusion: *Lex Cornelia de Falsis* and *De Praevaricatione*

The Case of the Will of Domitius Balbus: "The Balbus Seven" (14.40-41)

[This case is an account of an historical trial, involving a main case and two related sub-cases. The main law concerned is the *Lex Cornelia de Falsis*, and there are at least seven defendants; the first of the two sub-cases involves a brief mention of a conviction for complicity in the first case; in the second sub-case, the prosecutor in the main case is charged with collusion, *de praevoricatione*. These charges form an intricate part of the case as a whole. The elements of the main case are designated with A, those of the first sub-case with B, and the second sub-case with C. As an entirety, this case exhibits no defense features (no ¶7 or ¶8), but contains all other features from Table 1 on p.6. This case includes the key vocabulary terms: *arguo, calumnia, condemno, convinco, damno, defero, flagitium, gnarus, infamia, insidiae, interdico, iudicium, lex Cornelia, obnoxius, poena, poena, praevoricator, reus, scelus, senatus consultum, species legum, subdo, testamentum.*]

1. Historical Introduction Tacitus begins his account of the year A.D. 61 at Annals 14.29. He devotes the entirety of 14.29-39 to his account of the *gravis clades in Britannia*. When the historian returns to his domestic account, this is his first case, which he begins as follows (14.40.1):

Eodem anno Romae insignia scelera, alterum senatoris, servili alterum audacia, admissa sunt.

In the same year there were noteworthy crimes perpetrated in Rome, one on the part of a senator, the other <occurring> through the boldness of slaves.

Tacitus has just related a disaster he considers *gravis* abroad, and indicates here that the next two cases he is about to relate are on a par with those events, for the crimes are *insignia*. The first of those two cases involves the will of Domitius Balbus.⁷⁷

The victim in the case, Balbus, is introduced as being very old, rich, and childless. Mentioned first among the perpetrators of the forgery, Valerius Fabianus is a relative of Balbus headed for a distinguished career. Asinius Marcellus, a great-grandson of Asinius Pollio⁷⁸ and said to have been of generally good character, is introduced next. Marcellus' connection to the fame of Pollio adds to the noteworthiness of his *scelera*.

2A. *Crimen* The charge is forgery, more specifically, the substitution⁷⁹ of a false will for the genuine one (14.40.2):

⁷⁷ The second of the two, evolving "out of the boldness of slaves," refers to the "Case of the Slaves of Pedanius Secundus," see p.23.

⁷⁸ Gaius Asinius Pollio, the historian and friend of Julius Caesar and Marc Antony. His career and lost history are discussed by Ronald Syme in *The Roman Revolution* (Oxford: University of Oxford Press, 1939; reprint Oxford: Oxford University Press, 1987), 5-6. Tacitus mentions Pollio in connection with Antony and Augustus at *Annals* 11.7.2.

⁷⁹ *Subdo* OXF 8b, "to substitute fraudulently (a forged document)." The verb of choice in *Digest* 48.10, the title on the *Lex Cornelia*, seems to be *subicio*, used in 48.10.2, and 48.10.16.2 for "substituting a false will." The crime of Fabianus and the others is specifically covered by either of those sections explaining the force of the *lex*. *Subdo* appears in this title at 48.19.1.1, for the "substitution of a false child," i.e., "heir" in order to cheat on a will.

Ei propinquus Valerius Fabianus, capessendis honoribus destinatus, *subdidit* testamentum.

His close relative, Valerius Fabianus, who was earmarked for undertaking a political career, substituted a forged will.

3A. *Rei* Valerius Fabianus is the main agent of the crime, as the only person mentioned as related to Balbus (see above passage), and therefore the likely *heres* of the phony will. Owing to the requirement of seven witnesses, Fabianus therefore had at least six accomplices.⁸⁰ Tacitus mentions only four accomplices by name:

Adscitis Vinicio Rufino et Terentio Lentino equitibus Romanis. illi Antonium Primum et Asinium Marcellum sociaverant.

He (Fabianus) took as his accomplices Vinicius Rufinus and Terentius Lentinus, both Roman knights. They took as partners Antonius Primus and Asinius Marcellus.

He omits the names of the others (*aliis*) because, he says, they were less famous: *minus inlustribus*. It is worth noting that although Tacitus does not mention the requirement that a will be sealed by seven witnesses, he provides exactly for sufficient accomplices for Fabianus.⁸¹ The verb used here, *sociaverant*, implies a *societas*, a "conspiracy," and is echoed by the language of the Digest in the title on the *Lex Cornelia de Falsis*, which

⁸⁰ Ulpian Digest 28.1.23, and Buckland, Roman Law, 285.

⁸¹ Since *aliis* must include at least two people for the plural to be correct: Fabianus + 4 named + 2 (at least) unnamed = 7.

makes it illegal to form an association to cheat the innocent.⁸²

4A. Delator The informant in the case against the seven forgers is Valerius Ponticus. Tacitus does not include this information until the next chapter, when he relates the charges of *praevaricatio* brought against Ponticus. Delaying this vital fact adds to the brevity of the account and connects the incidents: the identity of the *delator* is revealed at the same time as the fact of the collusion.

5A. Causa Several of the participants are provided with motives. The victim, Domitius Balbus, provides the main motive; his wealth is a liability (14.40.1):

Domitius Balbus erat praetorius, simul longa senecta, simul orbitate et pecunia insidiis *obnoxius*.

Domitius Balbus was a former praetor who was at the same time on account of his extreme old age, his childlessness, and his wealth, liable to treacheries.

Balbus is described in terms similar to Junia Silana, who at 13.18 is for similar reasons the target of legacy hunters.⁸³ In a turn on a legal expression, Tacitus calls the man in this condition of aged wealthy childlessness *obnoxius*, as though it were a requirement that such a person be a target, a law of nature, surely.

⁸² Digest 48.10.1.

⁸³ See Tacitus' similar wording in Agrippina's trial, p.147, where Agrippina's motive for ruining Silana's marriage was to prevent a husband from coming "into possession of the riches and childlessness of Silana."

Fabianus' motive is never specifically discussed, nor are any attributed to the knights involved. The other two named accomplices are given motives (14.40.2):

Antonius audacia promptus, Marcellus Asinio Pollione proavo clarus neque morum spernendus habebatur nisi quod paupertatem praecipuum malorum credebat.

Antonius was inclined on account of his boldness; Marcellus was illustrious, with Asinius Pollio as his great grandfather, and was considered to be one whose character merited respect except that he believed that poverty was foremost among evils.

Antonius' participation derives from his natural boldness. Marcellus' motive, however, requires more explanation. As the descendant of a famous noble Roman, the reader of Tacitus expects him to breed true, displaying something of *prisci et integri moris*, "ancient and unblemished character" (Annals 1.4.1). And in his character he was true to form, except that he regarded poverty as the chief ill, and therefore more of an evil than forgery.⁸⁴

6A. Testimony for the Prosecution There is no direct testimony *per se* for the prosecution or defense in this part of the case; the prosecution's evidence can, however, be deduced from the following (14.40.3):

⁸⁴ For poverty of the descendants of old nobility, see Annals 13.34, where Valerius Messala, the descendant of Messala Corvinus, is given an annual stipend, along with others in similar circumstances. For a discussion of this see Syme, Tacitus, 573. The general decline of the *nobiles* is thematic in Tacitus, e.g., Histories 1.2.3, *atrocis in urbe saevitum: nobilitas, opes, omissi gestique honores pro crimine, et ob virtutes certissimum exitium*.

Igitur Fabianus tabulas <adhibitibus> iis quos memoravi et aliis minus inlustribus obsignat, quod apud patres *convictum*.

And so Fabianus, having called upon those whom I have mentioned and others less well known, affixed his seal to the <false> will. This charge was proved in the Senate.

The testimony in the case was probably unremarkable, like the unnamed conspirators. What convicts Fabianus and the others in this case is not the arguments, but the physical evidence.⁸⁵ His seal (and that of the others) on the will could not be refuted. The only testimony needed then was that of Balbus indicating that the document did not contain his lawful wishes, *iusta sententia voluntatis*.⁸⁶

9A. *Iudex and Iudicium* The Senate tries and judges the case (see above passage). The sentence is as follows:

Fabianus Antoniusque cum Rufino et Terentio *lege Cornelia damnantur*.

Fabianus and Antonius, along with Rufinus and Terentius, were sentenced according to the Cornelian law.

The penalty under the *lex Cornelia* was capital exile, i.e., *aqua et igni interdictio*.⁸⁷

10A. Historical Conclusion Tacitus concludes the initial phase of this case with a comment on a separate punishment meted out to Marcellus (14.40.3):

⁸⁵ Greenidge, Legal Procedure, 493, notes "Documentary evidence (*ex tabulis*) was as familiar as any other mode of proof."

⁸⁶ Digest 28.1.

⁸⁷ Digest 48.10.33, and Greenidge, Legal Procedure, 507 n.2.

Marcellum memoria maiorum et preces
Caesaris poenae magis quam infamiae
exemere.

Marcellus, owing to the memory of his ancestors
and the entreaties of Caesar, was exempted by
the senators from the punishment but not the
disgrace.

Marcellus, owing to the influence of his family name, is spared. Or is he? *Infamia* was concomitant with conviction on various offenses,⁸⁸ and could be a "quasi-penal form" of "milder chastisement" which came in "various degrees."⁸⁹ For one sentenced to capital exile, the addition of *infamia* hardly mattered. Yet the phrasing of the sentence indicates that *infamia* was not a sentence of the court, and that Marcellus is not among those mentioned as condemned.⁹⁰ In the introduction the crime is described as "noteworthy," and Marcellus' motive stemmed out of a deviation from his expected character as a descendant of the noble Pollio. While this ancestral tie saves him from the statutory penalty applied to his co-defendants, it is that very nobility which is affected by the *infamia*-for only he as the scion of Pollio has the reputation to lose. The *infamia* is something from which neither the senators nor the emperor could spare him: it is Tacitus' historical judgment.

2B./3B./6B./9B. Crimen, Reus, Prosecution, and Iudicium Tacitus begins 14.41 with the fate of a young quaestor (14.41):

⁸⁸ Digest 3.2.1, including *praevaricatio* and *calumnia*.

⁸⁹ Greenidge, Legal Procedure, 508. See also note 224.

⁹⁰ Garnsey, Social Status, 37, "Marcellus escaped scot-free." Tacitus does not let him off quite that easily.

Perculit is dies Pompeium quoque Aelianum, iuvenem quaestorium, tamquam flagitiorum Fabiani gnarum, eique Italia et Hispania in qua ortus erat interdictum est.

That day was also the undoing of Pompeius Aelianus, a young man of quaestorian rank. On charges that he had knowledge of the outrages of Fabianus he was exiled from Italy and from Spain, where he had been born.

Pompeius is apparently accused of being a member of the *societas* (see ¶3A above), although not of affixing his seal to the false will. The testimony against him is supplied in virtual indirect discourse after *tamquam*, with *esset* understood after *gnarum*. His sentence is apparently non-capital exile, for the penalty, in specifying Spain as well as Italy, as the places from which he was banished, follows a specific formula.⁹¹

2C./3C. Crimen and Reus Valerius Ponticus is the defendant in the next sub-case. The charge against him is *praevaricatio*, "collusion." It now also becomes evident that he was the *delator* against the "seven" in the first sub-case, for he is now himself a defendant for having changed the venue of the case in order to obtain for the "seven" a more friendly hearing. Tacitus does not record who informed on the informant.

5C./6C. Causa and Testimony for the Prosecution The evidence for the

⁹¹ Digest 28.1.8.1-3, Gaius indicates that *interdictio* from Italy and one's province was a type of punishment, apparently equivalent to *relegatio* (and specifically distinguished from capital exile), under which one retained citizenship rights: *Si cui aqua et igni interdictum sit, eius nec illud testamentum valet quod ante fecit nec id quod postea fecerit...In insulam deportati in eadem causa sunt: Sed relegati in insulam et quibus terra Italica et sua provincia interdicitur testamenti faciendi ius retinent.* See above, note 30.

prosecution against Ponticus is provided in virtual indirect discourse:

Quod reos ne apud praefectum urbis arguerentur ad praetorem detulisset, interim specie legum, mox praevaricando ultionem elusurus.

It was charged that he had brought the case against the defendants before the praetor, that they might not be accused in the city-prefect's court; that for a while, under the semblance of law, and eventually, by collusion, he aimed to get around the retribution due them.

The pluperfect subjunctive of *defero* after *arguerentur* indicates virtual indirect discourse, the language of the prosecution, not of simple narration.⁹² Ponticus was accused of changing the venue of the trial from the bench of the urban prefect to that of the praetor. The passage implies, but does not state explicitly, that the prefect's bench was more to be feared.⁹³ It is clear that Ponticus was avoiding the normal judicial pathway, and the motive for this was to avoid retribution for the defendants (*ultionem elusurus*). This does not address the question of the motive for the collusion itself, on which Tacitus is silent.⁹⁴

⁹² Woodcock, *Latin Syntax*, ¶285.

⁹³ Garnsey, *Social Status*, 27-8, discusses the case and this point specifically, concluding that the prefect's court was the normal one at this point for *falsum*, although the praetor and the Senate were possible choices. Although remarking that the trial ends up in the Senate, Garnsey does not discuss the reason. Why the prefect's bench at this point should bring "a speedy and just settlement" and the praetor's would not, remains unclear. Garnsey does note (p.95) that by Ulpian's day, "the prefect's sanctions were the most potent."

⁹⁴ It is possible that Valerius Ponticus was motivated by a bribe, or by his *gens tie* with Valerius Fabianus.

Tacitus has both condensed events and supplied them out of sequence. The reader is supplied with the following sequence: the defendants were "convicted in the Senate," but Ponticus "had brought the case before the praetor." The chronological sequence, with the steps omitted by Tacitus highlighted, is given in Table 2:

Table 2.--Chronological Sequence of the "Case of the Balbus Seven."

a.	Ponticus brings or attempts to bring the case before the praetor instead of the prefect.
b.	This proceeding is disallowed, and Ponticus' collusion is manifest.
c.	The case against the "Balbus Seven" is brought before the Senate (as the next competent venue).
d.	The "Seven" are convicted.
e.	The quaestor is also convicted .
f.	The prosecutor, Valerius Ponticus, is convicted of collusion.
g.	The Senate passes a decree regarding collusion in such cases.

9C. *Iudex* and *Iudicium* Ponticus' punishment is equated to that of Pompeius:

Pari ignominia Valerius Ponticus adficitur.

Valerius Ponticus was punished with an equal loss of rights.

Ponticus suffers *ignominia*, which is generally a synonym for *infamia*.⁹⁵

⁹⁵ E.g., Gaius *Inst* 4.60. *Ignominia* is the term originally used for Censorian *infamia* according to A.H.J. Greenidge, *Infamia: Its Place in*

Here however *pari* indicates that the penalty involved is equivalent to the non-capital exile of Pompeius.⁹⁶ Tacitus does not mention again, as it is somewhat unnecessary, that the case is tried in the Senate. This is clear from the location of the first trial, and the subsequent *senatus consultum*.

10C. Historical Conclusion Tacitus concludes this trial with a rider on a famous decree by the Senate:

Additur senatus consulto, qui talem operam emptitasset vendidissetve perinde poena teneretur ac publico iudicio calumniae condemnatus.

A clause was added to the decree of the Senate, that anyone who had purchased such a service or sold it, would be equally liable to the penalty as though he had been found guilty in a public criminal trial on the charge of vexatious litigation.

The decree to which this was attached was the *Senatus Consultum Turpillianum*, the subject of Digest title 48.16.⁹⁷ Petronius Turpilianus (properly one "I")⁹⁸ was consul for the year A.D. 61 (Annals 14.29.1) in which this case takes place. Furneaux, Tacitus, *ad loc.*, correctly refutes

Roman Public and Private Law (Oxford: Oxford University Press, 1894; reprint, Darmstadt Germany: Wilhelm Weichert, 1977), 18-19.

⁹⁶ I.e., *relegatio*. Greenidge, Legal Procedure, 470 indicates that in the Ciceronian period, no specific *poena* accompanied a conviction on this charge, merely "*infamia* of various degrees." Macer Digest 47.15.4 also indicates *infamia* as the penalty.

⁹⁷ Greenidge, Infamia, 85, notes that the S.C. Turpillianum also extended the scope of *infamia*.

⁹⁸ PW 75, vol.19., pt.1, 1228, The *cognomen* was variously corrupted.

unnamed earlier "commentators" who argue that Tacitus is discussing Ponticus' sentence.⁹⁹ Ponticus' offense has led to new legislation.

An alternative possibility is to translate *additur senatus consulto* to mean that the ink on the decree was still wet, "the Senate added to its decree," i.e., the *S.C. Turpillianum*. Instead of a separate or related decree, Tacitus' wording could allow the interpretation that these crimes occurred during the Senate's formulation of the decree, and this provision became part of the original wording.

Whether part of the original S.C., or an attached provision, Tacitus' incorporation of the collusion into his account allows the inclusion in his Annales of this major piece of legislation.

⁹⁹ "It is possible that Tacitus means to say that a clause suggested by this special offence was added to a general decree taking other precautions against will-forgery." There can be little doubt that this is what Tacitus means.

The Case of Pomponia Graecina (13.32)

[This case is an incomplete account of an actual trial. The location of the trial in a household, under the jurisdiction of the *paterfamilias*, is most unusual, as is the charge, apparently *sacrilegium*. This case exhibits only 5 of the features from Table 1 on p.6. This case includes the key vocabulary terms: *cognosco, de capite, dolus, impune, insons, iudicium, rea.*]

1. Historical Introduction This case concerns a woman put on trial for practicing a forbidden religion. The relative fame and influence of her husband may have allowed him to conduct the investigation of this charge as a family matter.

This case is recorded within Tacitus' account of the year A.D. 57, which is the thinnest of any of the Neronian Annals, spanning only 13.31 to 13.33.¹⁰⁰ It may be that Tacitus was hard pressed for anything to relate during that year. Nonetheless, this case is quite unusual, and even tantalizing, because of what little he records about it. Tacitus' stated justification for including this case in his Annals is the renown of both the accused and the judge, who here are husband and wife (13.32.2):

Pomponia Graecina insignis femina, <A.>
Plautio, quem ovasse de Britannis rettuli,
nupta.

Pomponia Graecina, a distinguished lady, the wife of the Aulus Plautius who (as I have related) had celebrated an ovation over the Britons.

¹⁰⁰ It is barely 25% the length of an average year in the Neronian account. Tacitus himself apologizes for the scantiness of the account (13.31.1): *pauca memoria digna evenere.*

The accused is *insignis*,¹⁰¹ and the judge, Aulus Plautius,¹⁰² the leader of Claudius' expedition into Britain in A.D. 43, needs no such introduction for the Roman reader.¹⁰³ Tacitus has discussed him before in his extant corpus in Agricola 14, describing Plautius as *egregius bello*. The account, however, to which Tacitus refers above, Plautius' *ovatio*, is missing. Dio (61.30) records the *ovatio* for the year A.D. 47.¹⁰⁴ The reference back to the account of the *ovatio* for Plautius serves without further comment to cement the distinguished status for the former consul.¹⁰⁵ Tacitus thus enlarges what must have seemed a relatively minor event into part of a larger account of Plautius' life.

2./3. Crimen and Rea On what is a most fascinating charge, Tacitus is

¹⁰¹ Pomponia (*PW* 83, vol.21, pt.2, 2351) Graecina was the daughter of a man of consular rank (Pomponius Graecinus, suffect consul A.D. 16), and thus *insignis* by birth as well as by marriage.

¹⁰² *PW* 39, vol.21, pt.1, 27-29.

¹⁰³ Dio 60.19. An excellent account of his tenure is given by Plantagenet Somerset Fry, Roman Britain (Totowa, N.J.: Barnes & Noble, 1984), 34-41.

¹⁰⁴ In Tacitus' account, A.D. 47 begins in the lost part from the beginning of Annals 11, and runs through 11.22; Tacitus must have mentioned Plautius' *ovatio* in those lost chapters. Herbert W. Benario, Tacitus: Annals 11 and 12 (Lanham, Maryland: University Press of America, 1983), 75, supposes that half of Annals 11 has been lost.

¹⁰⁵ Furneaux, Tacitus, vol.2, introductory p.139, cites this as the only such distinction given after 26 B.C. to anyone not of the imperial family.

agonizingly obscure:

Superstitionis externae rea <erat>.

She was a defendant on the charge of a foreign superstition.

What was the *superstitio* with which Pomponia was charged as having practiced? The terms used for the accusation are not specific. On only one other occasion does Tacitus use the adjective *externus* together with the noun *superstitio*.¹⁰⁶ There he is writing of non-Italic beliefs in general. Elsewhere Tacitus uses *superstitio* for a variety of different religions: Christianity (15.44), Judaism (Hist.5.4), Druidism (Hist 4.54), and in comparing the beliefs of the Gauls with those of the Britons (Agricola 11). Some have argued that Pomponia was a Christian.¹⁰⁷ Syme hints at a

¹⁰⁶ Annals 11.15.

¹⁰⁷ This would make her one of the earliest Christians known in Rome, a dangerously attractive idea. Furneaux, Tacitus, ad loc., summarizes this position, which is largely a deduction based upon the description Tacitus gives concerning her attitude and attire (see text in ¶10), "probably, if she was a Christian, this was made, as often, on the ground of a charge of conjugal infidelity, and for this reason the judgment was left to her husband." This can not be correct here, for a third party could not bring such a charge against a wife, if the marriage was in effect: *Constante matrimonio ab iis, qui extra maritum ad accusationem admittuntur, accusari mulier adulterii non potest.* (Ulpian Digest 48.5.27). And, if the marriage was not in effect, the husband (and others) could certainly bring this charge, but he would have no standing to adjudicate it. Only if Plautius himself brought the charge before dismissing his wife, could a trial for infidelity take place in this fashion. Finally there is no indication in the text that Pomponia was charged with *adulterium*.

parallel case many years later recorded by Dio.¹⁰⁸ But there is no firm evidence that Rome had officially noticed the Christians before A.D.64.¹⁰⁹ Whatever the *superstitio* was, it must have been one that was illegal in A.D. 57. It need not be assumed either, that Pomponia was in fact a practitioner of whatever religion with which she was charged. Someone might well have charged her with Druidism, if she had accompanied her husband to Britain while he was there (A.D. 43-47).¹¹⁰ The nature of the case, a household trial, and the personal nature of the description of Pomponia, suggest that the record of this case came

¹⁰⁸ Syme, Tacitus, 532, points to the case in Dio 67.14, but that is in A.D. 95 under Domitian.

¹⁰⁹ Regarding the status of Jews and Christians, in the year A.D. 19 Tacitus (2.85) records the exile of Jewish and Egyptian worshippers by a *senatus consultum*. This is also mentioned by Dio (67.18.5a) and Suetonius (Tiberius 36). Yet the Jews are again tolerated in Rome by A.D. 41 (Dio 60.6.6); Josephus quotes an edict of Claudius proclaiming tolerance and friendship towards them (Ant. 19.5.3). In contrast, Suetonius (Claudius 25) records that Claudius expelled the Jews, on account of disturbances made by (or in the name of) a certain *Chrestus*. This seems to be a confused or misplaced account, and it may well be, as Dio specifically denies any general expulsion (60.6.6). St. Luke, Acts 18.2, however, confirms an expulsion of the Jews by Claudius. Under Nero, Josephus (Ant 20.8 f.) notes no particular restrictions placed on Jews in Rome. Miriam T. Griffin, Nero: The End of a Dynasty (New Haven: Yale University Press, 1984), 133, indicates that the Romans did not distinguish the Christians as separate from the Jews before the fire of A.D. 64, and that Poppaea was generally considered to have sympathized with the Jews. On balance, it seems doubtful that Pomponia was charged with being a Jew, and quite unlikely that the charge was Christianity.

¹¹⁰ Druidism had been banned by Claudius (Suetonius Claudius 25).

elsewhere than from the *Acta* of the Senate. Syme speculates that Tacitus actually knew Pomponia.¹¹¹ If so, Tacitus may have, out of respect, suppressed the *superstitio* with which she was charged, especially if it were still one unpopular in his day. It is also possible that Tacitus did not have the specifics of the case, and the lack of detail (no speeches, no *delator*, and no motive indicated) would tend to support this.

4. Delator Although Tacitus mentions no informant in the case, it is possible that one of the male kinsmen of Pomponia, perhaps her father, brought the charge.¹¹²

9. Iudex and Iudicium The judge in the trial is Pomponia's husband, Aulus Plautius, and the venue is their home. "Relatives" are present. This practice, Tacitus says, was according to ancient tradition:

Mariti iudicio permissa; isque prisco instituto propinquis coram *de capite* famaue coniugis cognovit et *insontem* nuntiavit.

She was surrendered to the judgment of her husband. Plautius, in accordance with ancient custom, in the presence of her kinsmen, tried the case with his wife's life and reputation in the balance; he found her innocent.

Precedents and parallels for household trials are few.¹¹³ From Livy

¹¹¹ Tacitus, 535 n.5.

¹¹² In cases involving the wife, such as *adulterium*, her father had the most standing to bring a case, if the husband did not (Ulpian Digest 48.8.3).

¹¹³ E.C. Clark, History of Roman Private Law vol.3 (New York: Brill and Tannen, 1965), 59, "of any parental judicative properly so called...there is not a trace to be found." This case should at least qualify as a trace.

(1.26) comes the story of Horatius, who took the *ius necandi*, the "right of killing," upon himself in the case of his sister, and was put to death because of this.¹¹⁴ Another instance of a household trial seems to be recorded by Tacitus at 2.50, where Tiberius tries Appuleia Varilia, apparently not as *princeps*, but in his role as *paterfamilias*.

The right to conduct a household trial by a *paterfamilias* is older than recorded Roman law, and his *ius necandi* was first codified in the XII tables.¹¹⁵ From this, it can be deduced that Pomponia was married to Plautius in a *manus* marriage, otherwise there would be no *potestas* for him as husband, and no *ius necandi*.¹¹⁶

In addition to Plautius, Tacitus indicates that *propinqui* are present.

In a household trial, the *paterfamilias* was assisted in the proceedings by either five nearby male neighbors or an unspecified number of kinsmen

¹¹⁴ On a charge of *perduellio*, "treason." R.M. Ogilvie, A Commentary on Livy (Oxford: Oxford University Press, 1965), 114-115 explains that this was most likely because Horatius had circumvented due process of law, thus causing injury to the state.

¹¹⁵ *F.I.R.A.*, 1:35, Table IV, 2a: *Cum patri lex--dederit in filium vitae necisque potestatem.*

¹¹⁶ Percy Ellwood Corbett, The Roman Law of Marriage (New York: Oxford, 1930), 128-9, mentions this case in his discussion of domestic tribunals for *adulterium*. He notes 135 n.1, "The offense dealt with here was of course not adultery, but the passage is useful in showing the degree of jurisdiction which might be accorded."

(*agnati*).¹¹⁷ This group was then known as either the *concilium domesticum*, or the *concilium propinquorum vel amicorum*.¹¹⁸ The male relatives would not be those of the husband, but of the wife, and their presence was nominally to protect her interests,¹¹⁹ against, presumably, a hostile husband. The jurisdiction of the council of *agnati* predates the XII Tables.¹²⁰

The defendant's specific peril in the case, *de capite fama*que, has been questioned.¹²¹ The term *de capite* indicates clearly that the charge is a capital one, with death or capital exile if convicted.¹²² The trial also concerned her reputation, *de fama*. This implies the possibility of *infamia* resulting from the charge.¹²³ As a woman of status, she had a

¹¹⁷ Clark, Roman Private Law, 55.

¹¹⁸ C. Westrup, Introduction to Early Roman Law (London: Oxford, 1944), 83-84.

¹¹⁹ Westrup, Early Roman Law, 83-84.

¹²⁰ Ogilvie, Livy, 324.

¹²¹ Furneaux, Tacitus, ad loc., "in the Roman legal sense of the term. We can hardly suppose that at this date the punishment of death, so far in excess of that prescribed by public law...could have been inflicted."

¹²² For capital exile see note 30.

¹²³ Greenidge, Infamia, 171-3 discusses the effect of *infamia* on women, who could not hold, and therefore not be debarred from public office. The consequences mainly relate to *ius civile*; such a *damnata* could no longer marry a freeborn citizen. Under Domitian, they could not receive inheritances or legacies (Greenidge, 175). A woman could become *infamis*

reputation to lose if convicted. Yet none of these penalties ensues, as Plautius finds her not guilty.

10. Historical Conclusion Tacitus' conclusion to the case concerns the life of Pomponia in general:

Longa huic Pomponiae aetas et continua tristitia fuit: nam post Iuliam Drusi filiam dolo Messalinae interfectam per quadraginta annos non cultu nisi lugubri, non animo nisi maesto egit; idque illi imperitante Claudio impune, mox ad gloriam vertit.

Pomponia enjoyed a long life but endless sadness: for after Julia the daughter of Drusus was killed by the treachery of Messalina, for forty years she went about with no attire but that of mourning, and had no feelings except those of sadness. And during the reign of Claudius this conduct was without adverse consequences, and later it credited her with glory.

On the surface these comments would seem to indicate that although Pomponia survived the peril of these charges, her life was unhappy. What the connection was between her and Julia, the daughter of Drusus, is unknown, but they were obviously close at one time. Julia, Drusus' daughter, was of course Tiberius' granddaughter, and at one time betrothed to the notorious Aelius Sejanus.¹²⁴ Julia's son was Nero's imagined imperial rival, Rubellius Plautus.¹²⁵ While Tacitus gives no direct hint that the charges were political, it is not difficult to assume that Pomponia might have been attacked in this fashion when the real target

in a number of ways: "prostitutes, *lenae*, the woman condemned in a *judicium publicum*, the woman caught in adultery..."

¹²⁴ Syme, Tacitus, 555.

¹²⁵ For Rubellius Plautus, see the "Case of Agrippina," p.143.

was her husband; Pomponius' imperial benefactor, Claudius, was no longer around to protect him, and old enemies might see an opportunity here.

The final comments regarding Pomponia's *gloria* may seem a bit obscure. Tacitus may wish to indicate that her loyalty to her friend Julia, through the display of grief at her loss, was to her credit: under Claudius this was no difficulty;¹²⁶ not so under Nero, as it brought her into conflict with an emperor who saw in the family of Rubellius Plautus a threat to his rule. Her behavior also touches upon Tacitean themes from the *Agricola*, that good individuals can prosper under bad emperors, *posse etiam sub malis principibus magnos viros esse* (42.4), and that of remembering the good when they have perished (46).

¹²⁶ For two reasons: (1) after Messalina's death in A.D. 48 (*Annals* 11.38) her enemies such as Julia's friends, would not be out of favor, and (2) Claudius seemed particularly fond of Plautius, as evidenced by his appointment as governor of Britain, and the *ovatio* he received.

Attorneys' Fees: *Lex Cincia de Donis et Muneribus*
Embezzlement: *Lex Iulia Peculatus*

The Case of Publius Suillius (13.42-43)

[This case is an account of an historical trial. The first law concerned is the *Lex Cincia*; also relevant are the *Lex Iulia Peculatus* and conceivably the *Lex Cornelia de Falsis*. This case exhibits all 10 features from Table 1 on p.6. When the accused responds with a *defensio* and *relatio* to the initial charge, a second set of charges is brought against him. The different charges and their corresponding elements will be distinguished by the letters A and B. There is also a brief sub-case contained in the conclusion. This case includes the key vocabulary terms: *accusatio*, *accusator* [x2], *aestimo*, *causa*, *crimen* [x3], *damnatio*, *damno* [x2], *defendo* [x2], *defensio*, *defero* [x2], *exilium*, *increpo*, *inquisitio*, *intercedo*, *litigator*, *nocens*, *obiecto*, *pello*, *poena*, *repetundae*, *reus*, *scelus* [x2], *senatus consultum*, *testamentum*, *testis*.]

1. Historical Introduction In this case a man stands accused for having charged excessive fees for serving as an attorney. Tacitus introduces this case by referring indirectly to his previous account in Annals 11.5 of the defendant, Suillius, his rapacity, and the *lex Cincia* (13.42.1):

Variis deinde casibus iactatus et multorum odia meritis *reus*, haud tamen sine invidia Senecae *damnatur*. is fuit Publius Suillius, imperitante Claudio terribilis ac venalis et mutatione temporum non quantum inimici cuperent demissus quique se nocentem videri quam supplicem mallet.

Then a man who was buffeted by numerous misfortunes and had incurred the hatred of many, was accused, and yet by no means without ill will towards Seneca, was condemned. The man was Publius Suillius, who, under the rule of Claudius had inspired terror and who could be had for a price; with the change of times he was not brought down as far as his enemies wished, and he preferred to seem guilty rather than humble.

Suillius was also a notorious informant, and had made many enemies; in the last line above, Tacitus attributes this episode to his arrogance and defiance. He will conclude the story (§10 below) with a comment on how these events affected his defiant spirit.

2A. Crimen Suillius is initially charged with having violated a decree of the Senate relating to the provisions of the 250 year old *lex Cincia*

(13.42.1):¹²⁷

Repetitum...senatus consultum poenaque Cinciae legis adversum eos, qui pretio causas oravissent.

The decree of the Senate and the penalty of the Cincian law were restored against those who had pleaded cases for a fee.

The *lex Cincia* periodically fell into abeyance and had to be "restored" to full force. Augustus revived the law in 17 B.C.,¹²⁸ and Claudius enacted a limit of 10,000 sesterces in A.D. 47.¹²⁹ The most recent restoration had come under Nero in A.D. 54, when the Senate prohibited fees altogether,¹³⁰ after which the prohibition must have lapsed again, because a praetor's edict in Tacitus' own day was needed to revive the law.¹³¹ It is unclear which of the various decrees of the Senate relating to the *lex Cincia* Suillius is charged with having violated, but the S.C. of A.D. 54 is a likely candidate. It is the most recent decree known, it was

¹²⁷ The *lex Cincia de donis et muneribus* 204 B.C., by the tribune M. Cincius Alimentus.

¹²⁸ Dio 54.18.2. καὶ τοὺς ῥήτορας ἀμισθὶ συναγορεύειν...ἐκέλευσε.

¹²⁹ Annals 11.7.4.

¹³⁰ Annals 13.5. Furneaux, Tacitus, *ad loc.*, writes that this applied to a previous arrangement, i.e., that some sort of a legal dodge was still used. Bauman, Lawyers and Politics, 137, discusses this case, the S.C., and Claudius' actions, and concludes that the Claudian action "extended the *lex Iulia repetundarum* to the new category," and that Nero's actions, 138 "had either restored the full vigour of the *lex Cincia* or had reduced the allowable fee."

¹³¹ According to Pliny Ep. 5.9, the advocate and his client had to stipulate beforehand that no money was promised for the services, but after the case, the fee not exceeding 10,000 HS could still be paid.

more stringent than Claudius' enactment (and so presumably easier to violate), and it is not even certain that the measure passed under Claudius was a decree of the Senate.¹³²

3. Reus Suillius is clearly marked out as the defendant in the case by the use of the term *reus*. The first set of charges against him is probably only perceived. Yet Tacitus not only has Suillius react as though charged, he also uses the term *reus* followed closely by *damnatur* in the first lines of the case, in order to facilitate the impression that Suillius is actually a defendant on the *lex Cincia*.

4A. Delator There are no specific informants for the first charge, and no one is credited by name for the revival of the law; the informants are only identified as *inimici* of Suillius.

5A. Causa Suillius is hated for the reasons explained in the introduction, and the laws are revived and targeted at him (13.42.1): *eius opprimendi gratia*. The phrase *mutatione temporum* is also crucial: in Suillius' earlier prominence (11.5-7) he is saved from prosecution by Claudius. Now "with the change of times" his protector is no more, but his enemies are many.

7A. Defensio Suillius defends his wealth, maintaining that it was obtained by hard work (13.42.4):

¹³² Tacitus in 11.7 mentions no S.C., but Bauman, Lawyers and Politics, 137 believes that there was such a decree.

Sibi labore quaesitam et modicam pecuniam esse. crimen, periculum, omnia potius toleraturum, quam veterem ac domipartam dignationem subitae felicitati submittere <t>.

He said that his own money had been obtained by work and was of a modest amount. He would endure charges, dangers, everything rather than make his old and home-grown honor subject to the luck of this parvenu.

The key to following the spirit of the Cincian law and the related decrees was to charge a reasonable fee. Suillius asserts this by terming his money "moderate."

8A. Relatio Suillius was a skilled advocate, and Tacitus (11.5.1) calls him *saevus accusandis reis*. The attacks against Suillius have been thus far anonymous, but his *relatio* is far from anonymous: Seneca is the direct target. Yet Seneca was in exile (A.D. 41-49) when Suillius is last mentioned in Tacitus Annals 11.6, and Seneca's recall is not until Annals 12.8. If Seneca is attacked for personal reasons, Tacitus is silent. He is perhaps Suillius' target because of his prominence and alleged wealth (13.42.2-3):

Nec Suillius questu aut exprobratione abstinebat, praeter ferociam animi extrema senecta liber et Senecam increpans infensum amicis Claudii, sub quo iustissimum exilium pertulisset. simul studiis inertibus et iuvenum imperitiae suetum vivere iis, qui vividam et incorruptam eloquentiam tuendis civibus exercerent. se quaestorem Germanici, illum domus eius adulterum fuisse. an gravius aestimandum sponte litigatoris praemium honestae operae adsequi quam corrumpere cubacula principum feminarum? qua sapientia, quibus philosophorum praeceptis

And Suillius did not refrain from complaints and reproaches; in addition to the ferocity of his intellect he was free on account of his extreme old age. He chided Seneca for being hostile to the friends of Claudius, "under whose rule," Suillius said, "Seneca had endured a most just sentence of exile. At the same time, on account of his useless studies, and his being accustomed to the ignorance of youths, he is jealous of those who employ a lively and unspoiled eloquence for defending citizens. I was Germanicus' quaestor, while he was an adulterer of the man's house. Or should the acquisition of a litigant's freely-given reward for honorable work be assessed a greater penalty than spoiling the beds of the ladies of the imperial house? With what wisdom,

intra quadriennium regiae amicitiae ter milies sestertium paravisset? Romae testamenta et orbos velut indagine eius capi, Italiam et provincias immenso faenore hauriri.

with what principles of philosophy, within a four-year period of royal friendship did he acquire three hundred million sesterces? In Rome the wills of the childless were, so to speak, caught in his nets, and Italy and the provinces were devoured by his huge rates of interest.

In addition to making points about their relative fortunes and how they were obtained (which responds to the motive behind the charges, *venalis*), the *relatio* contrasts the advocate's profession with the philosopher's.¹³³

2B. *Crimen* The second set of charges against Suillius is a result of his bitter *relatio* against Seneca. These charges include offenses committed while a provincial governor (13.43.1):

Direptos socios, cum Suillius provinciam Asiam regeret, ac publicae pecuniae peculatum detulerunt.

They accused Suillius of ripping off our allies, when he governed the province of Asia, and they accused him of the embezzlement of public moneys.

The first charge *direptos socios*, is probably another way of expressing the charge of *repetundae*. The second charge is an unusual one in the accounts of Tacitus, embezzlement.¹³⁴ The only other such case he records

¹³³ Syme, *Tacitus*, 332, refers to this speech as "a living specimen of the eloquence of the prosecutors." It is also probable that Tacitus, as an advocate, has a more personal agenda. Any remarks attributed to Suillius can be safely denied (he was *terribilis ac venalis*); once said, however, the words make their point. This is Tacitus' own turn on Cicero's *praeteritio*.

¹³⁴ For *publicae pecuniae peculatus* see *Digest* title 48.13, *Ad legem iuliam peculatus et de sacrilegis et de residuis*. The penalty for which Ulpian stipulates in 48.13.3: capital exile, *aquae et ignis interdictio*, (therefore loss of rights), and confiscation of property. This is essentially Suillius' penalty, see below ¶10.

specifically as *peculatus* is in Histories 1.53.2 under Galba's reign.

Because of the ease of a swifter prosecution, the decision is made to forgo that charge in lieu of *urbana crimina*. Those charges are an assortment, mostly consisting of accusing Suillius of having made false accusations. Both these charges and the initial ones under the *lex Cincia* involve Suillius' role as a prosecutor under Claudius. False accusations would also make him liable to the penalty for *repetundae*.¹³⁵

4B. Delator The informants are again anonymous (13.43.1):

Nec deerant qui haec isdem verbis aut
versa in deterius Senecae *deferrent*.
reperitque *accusatores*...

Nor were lacking men who laid this information
in his exact words (or changed for the worse)
before Seneca. Informants were found...

The *relatio* of Suillius is reported to Seneca, who is clearly the agent in the finding of *accusatores* for the new charges. These new charges are more specific than the threats of prosecution under the *lex Cincia* that were made before.

5B. Causa The immediate motive for the second set of accusations is the *relatio* in ¶8A above; clearly also Suillius' crimes had laid the ground for this years before.

6B. Testimony for the Prosecution Seneca and the opponents of Suillius apparently have no difficulty in finding *accusatores* regarding the charges

¹³⁵ See note 241.

from Asia, but there is an anticipated delay in gathering evidence (13.43.1):

Quia inquisitionem annuam impetraverant, brevius visum urbana crimina incipi, quorum obvii testes erant.

Because they had obtained a year for collecting evidence, it seemed quicker that his crimes in the city be the beginning, for which there were witnesses at hand.

The witnesses "at hand" deliver the following testimony about Suillius' crimes in the city (13.43.2):

Li acerbitate accusationis Q. Pomponium ad necessitatem belli civilis detrusum, Iuliam Drusi filiam Sabinamque Poppaeam ad mortem actas et Valerium Asiaticum, Lusium Saturninum, Cornelium Lupum circumventos, iam equitum Romanorum agmina damnata omnemque Claudii saevitiam Suillio obiectabant.

They charged that with the bitterness of his accusation he had driven Quintus Pomponius to feel compelled to civil war, that he had compelled Julia, the daughter of Drusus, and Sabina Poppaea to die, and that he had unjustly prosecuted Valerius Asiaticus, Lusius Saturninus, and Cornelius Lupus, and next they charged that he had condemned the rank and file of Roman knights, and they charged Suillius with all the cruelty of Claudius.

These charges probably amount to the specifics covered under the *Lex Cornelia de Falsis*.¹³⁶ After the defendant attempts to place the blame on Claudius (where Tacitus' phrasing, *omnemque Claudii saevitiam*, indicates that it belongs), Nero nullifies this attempt in testimony for the prosecution (13.43.3):

Eam orationem Caesar cohibuit, compertum sibi referens ex commentariis patris sui nullam cuiusquam accusationem ab eo coactam.

Caesar checked that argument, stating for the record that he had verified from the accounts of his father that no accusation had been compelled by him.

¹³⁶ Marcian *Digest* 48.10.1, *poena legis Corneliae irrogatur ei qui falsas testationes faciendas testimoniave falsa inspicienda dolo malo coiecerit*.

The final argument of the prosecutor is provided in an effective rhetorical question (13.43.4):

Cur enim neminem alium delectum, qui saevienti impudicae vocem praeberet?

Why was no other person selected to provide a voice for that cruel slut?

In this case the defense is checkmated because there are no *exempla* for Suillius or others suborned by Messalina into false prosecutions, and because Nero has suppressed all evidence of Claudius' crimes.

7B. *Defensio* Suillius comes up with a much weaker retaliation to this second set of charges. Instead of trying to affix the blame on his accusers, as in a *relatio*, he attempts to accuse the dead (13.43.3):

Ille nihil ex his sponte susceptum, sed principi paruisse defendebat...tum iussa Messalinae praetendi et labare defensio.

In his defense he said that nothing had been undertaken at his own discretion, but that he was obeying the emperor...then as an excuse he alleged the orders of Messalina and his defense began to falter.

When Suillius' attempt to shift the blame onto Claudius is vetoed by Nero, he attempts to blame Messalina. Tacitus' comment that "the defense began to falter," indicates the desperation of the defendant. His defense tactic becomes part of the rationale of the sentence.

9B. *Iudex and Iudicium* Tacitus provides what must be the rationale of the

Senate's judgment (13.43.4):

Puniendos rerum atrocium ministros, ubi pretia scelerum adepti scelera ipsa aliis delegent.

The agents of cruel deeds must be punished, when having obtained rewards for their crimes, they delegate ownership for those very acts onto others.

It seems that not only is he found guilty for obtaining rewards for crimes, but also for attempting in his defense to divert that guilt. The sentence is then handed down (13.43.5):

Igitur adempta bonorum parte (nam filio et nepti pars concedebatur eximebanturque etiam quae testamento matris aut aviae acceperant) in insulas Baleares pellitur.

Therefore with part of his property confiscated (for a part was allowed for the son and the granddaughter, and also what they had received by the will of their mother and grandmother was exempted), he was exiled to the Balearic islands.

From the language used, it is unclear whether or not this was capital exile, for although confiscation was unusual with *relegatio*, it was possible.¹³⁷

10. Historical Conclusion Tacitus concludes the case by connecting it to his introductory comments on Suillius' temperament. He seems to express wry admiration for the man's *constantia* (13.43.5):

Non in ipso discrimine, non post damnationem fractus animo; ferebaturque copiosa et molli vita secretum illud toleravisse.

Not during the danger of the trial itself, nor after his conviction was he broken in spirit; the story goes that he endured that seclusion with an abundant and soft lifestyle.

A short sub-case also is added by way of conclusion to the incident:

¹³⁷ See above, note 30.

Filium eius Nerullinum adgressis
accusatoribus per invidiam patris et
crimina repetundarum, *intercessit princeps*
tamquam satis expleta ultione.

Suillius' son, Nerullinus, was assaulted by
informants on account of their hatred towards
his father; they charged him with *repetundae*.
The emperor vetoed this, on the grounds that
vengeance had been sufficiently satisfied.

Tacitus here shows that both he (by including the incident) and Nero have
the capacity for evenhandedness and fairness.

The Case of Claudius Timarchus (15.20-22)

[This case is an historical trial, for *contumelia*, a type of *iniuria*. The major portion of the case is filled with a long speech arguing that a precedent should be set. The case exhibits 8 of the 10 features from Table 1 on p.6. This case includes the key vocabulary terms: *accusatio*, *auctor*, *censeo*, *contumelia*, *crimen*, *culpa*, *decerno* [x2], *delictum*, *dictito*, *iniuria*, *iudicium*, *lex*, *lex Iulia*, *poena*, *repetundae*, *reus* [x2], *senatus consultum*, *sententia*, *veto*.]

1. Historical Introduction This case is in part about the abuse of privilege and the sale of favors by wealthy provincials. It is also in part about how the conservative Roman Senate, moved by Cassius' arguments for upholding tradition (see p.30), can be persuaded to make new laws.

In the case which motivated the creation of these new laws, one such wealthy provincial from Crete has engaged in the sale of political power, and as a result has accumulated against him a number of charges. Unfortunately for him, he has run afoul of the Senate of Rome. His crime is insult. In the introductory passage an extrapolation is made from this one man's particular set of offenses to wealthy provincials in general who commit *iniuria* (15.20.1):

Ceteris criminibus ut solent praevalidi provincialium et opibus nimiis ad iniurias minorum elati.

There were other charges such as very powerful provincials are accustomed to, as well as those exalted by their riches to the detriment of those of lesser status.

This provincial is representative of many, and Tacitus makes his case an example; in a similar fashion, in the longest part of the case, the prosecution speech (§6 below) will use the excuse of the particular

transgressions to address the general problem. The introduction not only provides background for the case, but also forecasts the structure of the main speech of the episode.

2./3. *Crimen and Reus* The defendant in the case is Claudius Timarchus:

Claudius Timarchus Cretensis reus agitur.

Claudius Timarchus the Cretan was taken to court as the defendant.

He is not elsewhere known.¹³⁸

In the introduction Tacitus hints vaguely that Timarchus has committed many crimes, and the technical word used is *iniuria*.¹³⁹ One kind of *iniuria* involves verbal insult, which is known as *contumelia*.¹⁴⁰ The specific act of *iniuria* that has landed Timarchus in the Senate's court¹⁴¹ is *contumelia* against that body:

¹³⁸ Claudius (*PW* 366, vol.3, pt.2, 2882) Timarchus. His name (as well as his influential status) may indicate that he was a Roman citizen enfranchised under Claudius or even Nero. A. N. Sherwin-White, *The Roman Citizenship*, 2d ed. (Oxford: Oxford University Press, 1973), 246, "especially in the old province of Achaëa, the very heart of Hellas, there are numerous instances of Greek *cives Romani* who bear Claudian *nomina*, although at least some of these are likely to be due to Nero."

¹³⁹ See notes 29 and 209.

¹⁴⁰ Garnsey, *Social Status*, 32, includes this as an unusual senatorial case, and classifies the crime merely as *contumelia*.

¹⁴¹ Miller, *Annalium Liber XV* (London: MacMillan, 1973), 69, points out an additional reason for the venue of the case in the Senate: Crete was a senatorial province.

Una vox eius usque ad *contumeliam*
senatus penetraverat.

An utterance of his had gone to the point of
insulting the Senate.

Unlike Fabricius Veiento, who committed *contumelia* against individual members of the Senate (and others) by composing verses against them,¹⁴² Timarchus' insult has been by actions which have impugned the dignity of the Senate as a body.

4. *Delator* Ulpian wrote that one who brings a charge of *iniuria* must provide details as to the nature of the offense.¹⁴³ The *delator* in the case is not named, but the words of his allegation provide the specifics of the charge in virtual indirect discourse following the pluperfect subjunctive of *dictito*:

Quod *dictitasset* in sua potestate situm an
pro consulibus qui Cretam obtinuissent
grates agerentur.

It was alleged that he (Timarchus) had stated
often that it lay in his power as to whether or
not official thanks would be given to those who
served as pro-consuls in Crete.

The "thanks" that would be voted, in this case by the local assembly in Crete, affected the pro-consuls who were members of the Roman Senate. Timarchus was setting himself up as a judge of senators, with the

¹⁴² See p.122.

¹⁴³ *Digest* 48.5.7, *Praetor edixit*: "*qui agit iniuriarum, certum dicat, quid iniuriae factum sit.*"

implication by the term *opibus nimis*, that his judgments were for sale.

5. Causa In addition to the possible monetary motivation of Timarchus in the sale of judgments, the prosecution's case (§6 below) attributes political motives for the buyers, those who seek out men like Timarchus:

Inde initia magistratum nostrorum
meliora ferme et finis inclinat, dum in
modum candidatorum suffragia
conquirimus.

Hence it is that the beginnings of our terms of office are for the most part better, and there is decline at the close, while we hunt down votes in the manner of candidates.

The prosecution's observation that the purchase comes at the expense of good government indicates that the crime of Timarchus affects more than just the Senate's dignity. The unscrupulous would seek to purchase the sort of official commendations Timarchus sold in order to seem more worthy to win appointment to additional posts.

6. Testimony for the Prosecution Thræsea Paetus, the famous stoic senator, delivers the case for the prosecution.¹⁴⁴ The actual charges against Timarchus receive only the briefest mention, and as there are no defense features in the case (§7 or §8), the impression made is that matters were "open and shut" with regard to the *contumelia* (15.20.2):

De reo censuerat provincia Creta
depellendum.

He (had) expressed his opinion as senator concerning the accused, that the man be expelled from the province of Crete.

¹⁴⁴ He also figures prominently in the "Case of Antistius," p.126.

Thrasea's language is ambiguous as to type of exile proposed, but the penalty was likely non-capital exile.¹⁴⁵

The opportunity to speak allows Thrasea to affect policy. In 14.42.2 Tacitus begins Cassius Longinus' speech in a similar fashion, *C. Cassius sententiae loco*. Cassius argues that he is speaking for *utilitas publica* (14.44.4), but Tacitus adds **in narrative** before Thrasea's speech that he is speaking for the *bonum publicum* (15.20.2):

Quam occasionem Paetus Thrasea ad bonum publicum vertens...haec addidit.

Thrasea Paetus, turning this opportunity to the public good...added the following:

Thrasea proceeds to use this "opportunity" to provide his reasoning on why the practice allowing provincial assemblies to go on record thanking Roman governors should be abolished. His speech dominates the episode; this historical trial is revealed as merely a framework for the presentation of Thrasea's ideas. The question may fairly be raised as to whether the ideas presented are Thrasea's or Tacitus' in disguise, and as to whether or not this episode is merely a literary creation. Tacitus' reliance upon the *Acta* of the Senate is been discussed above (note 46); if

¹⁴⁵ Digest 47.10.45, members of the upper classes suffered the following penalty for *iniuria: vel exilio temporali vel interdictione certae rei coercentur*.

it is accepted here that Tacitus is at least following the main thrust of Thrasea's speech, then the historical trial was the framework for the presentation of Thrasea's legislative endeavor.

In his legal reasoning Thrasea provides some general principles which could be used for proposing any new legislation to the conservative Senate, and are possibly then representative not merely of this case, but of senatorial legal argumentation in general. In the first of these, Thrasea discusses the origin of law (15.20.3):¹⁴⁶

Usu probatum est, patres conscripti, leges egregias, exempla honesta apud bonos ex *delictis* aliorum gigni.

It is shown from experience, gentlemen senators, that outstanding laws and respectable precedents among good men arise from the misdeeds of others.

In Thrasea's view, all men are not prone to committing *delicta*, and good men do not create laws in a vacuum: without the wrongdoings of others, there would be no laws for good men to create. If good men make laws as a result of the delicts of those who are not good, it is the wrongdoers who provide the examples to the good, of where to make law.

Thrasea's next principle is closely allied to this idea (15.20.3):

Nam *culpa* quam *poena* tempore prior, emendari quam peccare posterius est.

For wrongdoing is antecedent to punishment, just as the righting of wrongs is subsequent to committing them.

¹⁴⁶ The *leges Iuliae* to which Thrasea refers are *de ambitu*, on bribery, see Digest 48.14 and Furneaux, Tacitus, *ad loc.*

It follows then that the need to create a new law will arise any time a new crime has been created. Rome was a society based largely on keeping with tradition, and such an argument was a subtle way to encourage something that was new, that the "ancestors" had not thought of. This view is at odds with that which Tacitus puts in the mouth of Cassius Longinus, who argues for maintaining traditional law,¹⁴⁷ but Thrasea's argument skillfully avoids direct confrontation with tradition, and actually makes use of tradition to support change (15.20.3):

Sic oratorum licentia Cinciam regationem,
 candidatorum ambitus Iulias leges,
 magistratuuum avaritia Calpurnia scita
 pepererunt.

In this fashion the excess of attorneys brought about the Cincian Bill, and the graft of candidates brought about the Julian Laws, and the greed of magistrates, the Calpurnian resolutions.

The appeal is to traditional laws, and the underlying argument is that they once addressed new problems too; that the old laws were once also new laws is not said. Thrasea's speech does employ the hated word "new," but not in regard to the legislation (15.20.4):

Ergo adversus novam provincialium
 superbiam dignum fide constantiaque
 Romana capiamus consilium.

Accordingly, against this new pride of the Provincials, let us undertake a policy worthy of Roman honor and steadfastness.

¹⁴⁷ 14.43-44, see p.30.

It is the *superbia*, the elevated mind-state of the provincials (recalling *elati* from 15.20.1) that is "new." Against the new threat Thrasea does not argue for new law, but for *constantia Romana*, which implies a lack of change.

Thrasea's final principle offered addresses a possible bad reception of the new ruling (15.21.3):

Plura saepe peccantur, dum demeremur
quam dum offendimus; quaedam immo
virtutes odio sunt.

Often more wrongs are committed while we are
obliging than when we cause offense; indeed
some excellent qualities are hated.

Roman provincial rule was undeniably unpopular in at least some instances, and such a maxim could be useful.

The real goal, however, of Thrasea's speech, is summed up in his final lines (15.21.4):

Nam ut metu *repetundarum* infracta
avaritia est, ita vetita gratiarum actione
ambitio cohibebitur.

For just as greed is broken by fear of
repetundae, so with expressions of thanks
forbidden, graft is checked.

The *ambitio*, "graft," or "currying favor" on the part of the governors is placed on a par with *repetundae* as a menace that can be checked.

9. *Iudex* and *Iudicium* Tacitus reports immediate and overwhelming approval; the Senate votes in favor of Thrasea's position (15.22.1):

Magno adsensu celebrata sententia.

His opinion was honored with general agreement.

There is no dissent, but the consuls do not act to ratify the measure:

Non tamen senatus consultum perfici potuit, abnuentibus consulibus ea de re relatum. mox auctore principe sanxere ne quis ad concilium sociorum referret agendas apud senatum pro praetoribus prove consulibus grates, neu quis ea legatione fungeretur.

Nevertheless, the decree of the Senate was not able to be ratified, since the consuls signified that a formal proposal had not been made on the matter. Later, with the emperor as agent, they ordained that no one was to propose to a council of allies that expressions of thanks be made in the Senate for those governing provinces in the rank of praetor or consul, and that no one was to carry out this sort of deputation.

This is a parallel to 14.49.1, when another decree of Thrasea wins approval by the Senate, but fails on consular inaction.¹⁴⁸ The matter is referred to the emperor.

Tacitus provides the details of the resolution which Nero approves, and it does not deviate in essence from the motion for which Thrasea argued.

10. Historical Conclusion The remainder of 15.22 serves as the conclusion both to this episode, and to the year A.D. 62 (15.22.2):

Isdem consulibus gymnasium ictu fulminis conflagravit effigiesque in eo Neronis ad informe aes liquefacta. et motu terrae celebre Campaniae oppidum Pompei magna

Under the same consuls a gymnasium was destroyed by fire, struck by a bolt of lightning, and the likeness in it of Nero was melted down to shapeless bronze. And the populous town of

¹⁴⁸ See p.134. There the consuls had reason to fear Nero's anger; here they undoubtedly remember his outrage at Thrasea, and fail to act specifically because Thrasea is behind the resolution.

ex parte proruit; defunctaque virgo Vestalis Laelia, in cuius locum Cornelia ex familia Cossorum capta est.

Pompeii in Campania was largely ruined by an earthquake; and a Vestal Virgin, Laelia, died, and in her place Cornelia of the family of the Cossi was chosen.

Three events are mentioned: a lightning strike, an earthquake, and the death of a Vestal Virgin. A backtrack to the events which have transpired just before this reveals a possible pattern: Thrasea at 14.48-9 opposed Nero and succeeded; by now in Tacitus' account, he is established as an opponent of Nero, and he has again moved legislation which Nero sanctions. Immediately thereupon the Roman reader is given a list of three events: the first must seem like an omen from the gods: a statue of Nero is struck by lightning and melted; the second omen is equally unpropitious, as a city is ruined by an earthquake; the final item shows a person of importance who dies *and is replaced*.

CHAPTER THREE

EXTORTION: *REPETUNDAE* AND RELATED CASES

This chapter presents six cases of magisterial misconduct. The grouping here differs from the other chapters in that it is Tacitus who presents these cases together. Aside from the Pisonian conspiracy, it is the only such cluster of related cases presented in the Neronian books. Tacitus may have had a personal interest in such cases, as will be discussed below.

The two years which receive the shortest accounts of the Neronian years, A.D. 56 (13.25-30) and A.D. 57 (13.31-33), and the two chapters which conclude those two years, 13.30 and 13.33 present this assembly of cases. In this grouping are five cases of *repetundae*, a sixth case which is closely related, and, in an intervening chapter, the record of an imperial edict aimed to correct injustices committed by provincial governors. These cases present a range of outcomes on this charge: there is conviction, acquittal, anticipatory suicide, and bribery. Abuse against Italians as well as provincials is charged. Between Annals 13.30 and 13.33 Tacitus becomes quite focused on the question of magisterial misconduct outside

of Rome, and even hints at such misconduct in the city.

Repetundae, or "extortion," was another crime involving politicians. A provincial magistrate could get away with any number of abuses while in office, but he was forbidden to enrich himself. Eventually provincials were able to call their former governors to account on other charges as well, under the heading of a charge of extortion. Cases for *repetundae* in the Annals are also of particular interest, since the only case known which Tacitus prosecuted was against Marius Priscus (Pliny Ep. 2.11) on this same charge. In the Neronian books, Tacitus records several such trials, but with the exception of this group, the accounts are generally very brief and scattered.

"The Six Cases," (13.30-33): A.D. 56-57

[This is a cluster of five historical cases for *repetundae*, one related case, and an edict on provincial maladministration. As a group, they exhibit all ten features from Table 1 on p.6. This case includes the key vocabulary terms: *absolvo* [x2], *accusatio*, *accusator*, *accuso* [x2], *conflicto*, *damnatio*, *damno* [x2], *defensionem omittere*, *defero*, *delinquo*, *edico*, *exilium*, *flagitium*, *insons*, *ius*, *lex repetundarum*, *multo*, *repetundae*, *res repetere*, *reus*, *saevitia*, *scelus*, *traho*.]

1. Historical Introduction The three cases in 13.30 begin without introduction; at the start of 13.31, Tacitus begins the year and introduces the group of cases as a whole with some disparaging remarks (13.31.1):

Nerone iterum L. Pisone consulibus pauca memoria digna evenere, nisi cui libeat laudandis fundamentis et trabibus, quis molem amphitheatri apud campum Martis Caesar exstruxerat, volumina implere, cum ex dignitate populi Romani repertum sit res inlustres annalibus, talia diurnis urbis actis mandare.

In the year of Nero's second consulship with Lucius Piso, few things happened worth relating, unless anyone likes to fill rolls of papyrus by praising the foundations and beams with which Caesar built the structure of an amphitheater on the Field of Mars, when it has been demonstrated to be in accord with the nobility of the Roman People to entrust illustrious events to annals, and such things as these to the "Daily Acts" of the city.

Tacitus wishes to lower the expectations of his readers, for he has perhaps few details on these cases, and the events are hardly *res inlustres*. The three cases in 13.33 begin with an indication that these are but some of many:

Idem annus plures *reos* habuit; quorum...

The same year had many defendants; one of these was...

The three defendants charged in this chapter verge more on the

"illustrious" than those from 13.30, none of whom is mentioned elsewhere by Tacitus; all of the defendants in 13.33 figure elsewhere in Tacitus' account, Capito and Marcellus significantly.

The case involving one of those prominent defendants is the only case which receives what could be considered an individual introduction, that of Cossutianus Capito in 13.33:

Maculosum foedumque et idem *ius*
audaciae in provincia ratum, quod in urbe
exercuerat.

<They said that he was> a stained and
shameful man, who thought he had the same
right of boldness in the province which he had
made use of in Rome.

Cossutianus Capito was a notorious *delator*, who first appears in Tacitus' account in 11.6, as a possible target of prosecution for violation of the *lex Cincia*.¹⁴⁹ He later becomes son-in-law to Tigellinus, who restores him to the Senate after his conviction. Maybe in return for this favor, Capito becomes the tool of Tigellinus and Nero, and serves as *delator* for the prosecution of Antistius Sosianus.¹⁵⁰ At the end of the extant portion of the Annals (16.17-33) Capito is associated with this chapter's third

¹⁴⁹ Cossutianus (*PW* 1, vol.4, pt.2, 1673) Capito along with Publius Suillius was a target of the *lex Cincia* under Claudius, see p.73.

¹⁵⁰ See p.128.

defendant for *repetundae*, Eprius Marcellus.¹⁵¹ In Annals 16 both serve as Nero's henchmen in the prosecution of Thrasea Paetus. These later actions of Capito unquestionably contribute to earning him the description as "a stained and shameful man."

2./3. Crimina and Rei Repetundae was, broadly, a charge of extortion, short for *pecuniae repetundae*, "money to be sought back."¹⁵² The procedure was designed for use by provincials as a check against the misuse of *imperium* by provincial administrators, especially governors.¹⁵³ The charge was a criminal one, but in many ways, it resembled a civil charge,¹⁵⁴ as the theoretical main purpose was compensation for money that the administrator had appropriated. Governors were not allowed to make money or accept gifts without specific

¹⁵¹ T. Clodius Eprius (*PW* 2, vol.6, pt.1, 261) Marcellus appears in the Dialogus and the Histories, where in IV.6-8 he debates Thrasea's son-in-law Helvidius Priscus, with an impressive speech in IV.8. In A.D.79, καίπερ φίλους τε αὐτοὺς ἐν τοῖς μάλιστα νομίζων, "although Vespasian regarded him among his special friends," Dio 65.16.3, Marcellus was caught in a plot to assassinate the emperor and condemned before the Senate. He committed suicide.

¹⁵² For *pecunias repetere*, see *repeto* OLD 10. *Repetundae* is an alternate form of the gerundive.

¹⁵³ Sherwin-White, "Poena Legis Repetundarum," Papers of the British School at Rome 4 (1949): 16-17, discusses the abuses associated with provincial *imperium* and the associated lack of recourse on the part of provincials.

¹⁵⁴ P.A. Brunt, "Charges of Provincial Maladministration under the Early Principate," Historia 10 (1961): 195.

exemption.¹⁵⁵ Inhabitants of the provinces who were not Roman citizens had originally little recourse against magisterial abuse until the *lex Acilia de repetundis* of 123 B.C. allowed them to bring prosecutions themselves.¹⁵⁶ By Nero's day provincials could bring other charges against their former magistrates before the Senate of Rome, apparently as part of a charge of *repetundae*.¹⁵⁷

The law underwent various changes in the Republic. The final Republican modification of Caesar's law, the *Lex Iulia de Repetundis*, by Julius Caesar as consul in 59 B.C., is not extant, but is known to have been a lengthy one: M. Caelius Rufus wrote to Cicero (*Ad.Fam.* 8.3), about a case for *repetundae*, in which the praetor quoted from the *unum et centesimum caput* of the law. An early imperial modification of the law, the S.C. Calvisianum of 4 B.C., is extant, and may best represent the state

¹⁵⁵ Brunt, "Maladministration," 191.

¹⁵⁶ Brunt, "Maladministration," 193. The *lex Acilia* is extant in fragments found c. A.D. 1521, see *FIRA* 1.7.

¹⁵⁷ Sherwin-White, "Repetundarum," 17, classifies cases in which charges are brought in addition to simple extortion as *repetundae* with *saevitia*. Brunt, "Maladministration," 197, "by 4 BC, provincials could certainly bring some capital charges against officials, and it is the most natural philological interpretation of the *S.C. Calvisianum* (v.9 cf.130) that these charges were under the law of *repetundae*."

of the law in Nero's day.¹⁵⁸ The penalties entailed by the law will be discussed in ¶9.

All of Tacitus' "Six Cases" provide specific identifications of the defendants, and varying identifications of the charges against them. Table 3 lists the defendants and the charges as Tacitus provides them:

Table 3.--Defendants and Charges in the "Six Cases"

	<i>Reus</i>	<i>Crimen</i>
1	Vipsanius Laenas	<i>Sardiniam provinciam avaro habitam</i> , "Governing the province of Sardinia with greed."
2	Cestius Proculus	<i>Repetundae</i>
3	Clodius Quirinalis	<i>Italiam...adflictaisset</i> , "He oppressed Italy."
4	Publius Celer	<i>Repetundae</i> implied by <i>delator</i> : <i>accusante Asia</i> , "Asia bringing charges against him."
5	Cossutianus Capito	<i>Ius audaciae in provincia ratum</i> , "He thought he had a right of boldness in the province."
6	Eprius Marcellus	<i>Res repetebant</i> , "They instituted proceedings for recovery of property."

¹⁵⁸ Extant in Greek, discovered in 1926, text in *SEG* ix.8; the text along with a Latin translation of G.Oliverio is provided in *FIRA* vol.1.68. The 144 verses contain five decrees, the fifth being the S.C. Calvisianum. The exact interpretation of some key phrases is in doubt, especially v.99. Sherwin-White, "Repetundarum," 15, explains that the problem concerns whether or not the bringing of capital charges permitted by the S.C. was within or outside of the scope of the Julian law; but however the resolution altered the *lex Iulia*, this is the last documented change before the evidence of the Younger Pliny's letters (Sherwin-White, 12), and thus is the best evidence outside of Tacitus for the state of affairs under Nero.

For two of the defendants, (2) Proculus and (6) Marcellus, Tacitus clearly specifies the charge as *repetundae*, but for Marcellus he varies his language, and uses the unusual phrasing *res repetebant* instead of *pecunias repetebant* or simply naming the charge, as he does in the case of Proculus.¹⁵⁹

In the case of (1) Laenas the charge is specified indirectly, by stating that he governed his province "with greed." The greed implies the theft of money from his subjects, that the charge as *repetundae*.

(5) Capito's crime is "thinking that he had a right of boldness." This might imply simple theft of money, but it could also imply the aggravating circumstances, *saevitia* added to *repetundae*. In his case *repetundae* is mentioned during sentencing (see below, ¶9).

The charges against (4) Celer are not given, but if he had been charged by a province for acts committed while serving as a magistrate with *imperium* in that province, the only apparent rubric under which charges could be brought was *repetundae*.

It is far less certain on what basis (3) Clodius Quirinalis was charged.¹⁶⁰ He was charged for misconduct for acts committed while

¹⁵⁹ It is possible that the Lycians were demanding back specific property (*res*), and not cash.

¹⁶⁰ Sherwin-White, "Repetundarum," 18 n.88, accepts with minor reservations that the charge is *repetundae*, apparently because of its

praefectus remigum qui Ravennae haberentur, prefect of the fleet at Ravenna. As noted above, *repetundae* was a charge designed for use by non-Roman provincials against former administrators. Provincials with Roman citizenship as well as peregrines could bring a charge of *repetundae*; it would not be reasonable for those provincials who were citizens to lack a privilege belonging to non-citizen provincials.¹⁶¹ The major difficulty here is that Ravenna was not a province, but an Italian town in Cisalpine Gaul, a *municipium*, whose people had attained citizenship in 49 B.C.¹⁶² If anything, citizens from northern Italy enjoyed greater status than citizens from the provinces.¹⁶³ It is not altogether certain if a charge of *repetundae* could technically be brought against a magistrate for abuse of a non-provincial post, and while the *lex* does not seem to exclude this, there would seem to be no parallel for this case. As citizens, the people of Ravenna could have brought other charges

inclusion in "a list of extortion cases." Garnsey, *Social Status*, 86 n.4., tentatively equates this with a charge of *furtum* and *vis* brought against the prefect of a cavalry troop. Brunt, "Maladministration," 224-226, does not include the case among his list of "attested cases." He may exclude the case because the *praefectus remigum* was not a civil administrator; yet he seems to have been the chief power in the *municipium* (Robert Browning, *OCD*).

¹⁶¹ Brunt, "Maladministration," 194 n.16.

¹⁶² Robert Browning, *OCD*.

¹⁶³ G.E.F. Chilver *Cisalpine Gaul: Social and Economic History From 49 B.C. to the Death of Trajan* (Oxford: Oxford University Press, 1941), 93.

that might be applicable against Quirinalis, such as *vis publica*.¹⁶⁴ These same citizens could apply civil suits for damages, where peregrines could not.¹⁶⁵ A *repetundae* charge, however, would combine compensation for the victims with a possible capital penalty for the defendant. The Senate also had jurisdiction under the S.C., and thus one might avoid petitioning the emperor to prosecute someone he had appointed.¹⁶⁶ For these reasons, and because of the otherwise illogical placement of the case by Tacitus, it seems best to describe the charge as "quasi-*repetundae*."

4. Delator Table 4 below lists the defendants and informants for each case. In all six cases, no individuals are mentioned as bringing any of the charges, but rather the people of the state as a group.

¹⁶⁴ The penalty was *aquae et igni interdictio* (Digest 48.6.10.2), capital exile, and could be applied (48.6.7) to those with *imperium* who put to death or flogged Roman citizens, or even raised taxes (48.6.12) on their own.

¹⁶⁵ This was one of the purposes of the law for *repetundae*, as a method for provincials to recover damages, cf. Brunt, "Maladministration," 194.

¹⁶⁶ Brunt, "Maladministration," 208, points to Pliny's admitted fear (Ep. 1.18.3) of bringing a case against a friend of the emperor. Yet the Senate trying its own would certainly not be an objective court. Garnsey, 20, believes that in such cases senators would feel "a measure of tolerance and understanding" towards a senatorial defendant, "even if they disapproved of the conduct of the man." Yet this could easily cut both ways, and the Senate might wish to remove from its body (by *infamia*) someone who did not do it credit (cf. Greenidge, Infamia, 84-5).

Table 4.--Defendants and Informants in the "Six Cases"

	<i>Reus</i>	<i>Delator</i>
1	Vipsanius Laenas	<i>Delator</i> inferred from <i>crimen</i> .
2	Cestius Proculus	<i>Cretensibus accusantibus</i> , "The people of Crete bringing the charge."
3	Clodius Quirinalis	<i>Delator</i> inferred from <i>crimen</i> .
4	Publius Celer	<i>Accusante Asia</i> , "Asia bringing charges against him."
5	Cossutianus Capito	<i>Cilices detulerant</i> , "The Cilicians acted as informants."
6	Eprius Marcellus	<i>Lycii res repetebant</i> , "They Lycians pressed charges of <i>repetundae</i> ."

In (1) and (3) Tacitus does not state who brings the charges; in (3) this information would have illuminated an unusual case. In (2) and (5) the people of the provinces are said to bring the charge. In case (4) Tacitus takes this a step further by having Asia itself bring the charge. These differences could be simple *inconcinnitas*, or variation to avoid redundancy, yet in each case the *delator* is apparently the people of the province banded together, rather than an individual petitioner.¹⁶⁷

5. Causa The motive for the officials in cases of *repetundae* no doubt was

¹⁶⁷ Brunt, "Maladministration," 194, "The *repetundae* procedure must be regarded as unique, instituted by senate or people in a sovereign capacity." p.212, "Charges could be preferred by individuals, cities and even whole provinces."

most often greed. This is the exact motive attributed to the first defendant, Vipsanius Laenas, about whom Tacitus does not record a *crimen*, merely a motive:

Damnatus...VipsaniusLaenasobSardiniam
provinciam *avare* habitam.

Vipsanius Laenas was condemned for having
governed the province of Sardinia with greed.

The third defendant, Clodius Quirinalis, is said to have afflicted the people of Ravenna *luxuria saevitiaque*, "with his extravagance and cruelty."

These ablatives could as easily be taken as causal, and the passage rendered "he oppressed (them) on account of his extravagance and cruelty."

This differs from mere governing "with greed."¹⁶⁸ The latter term,

saevitia, "cruelty," implies the prosecution on actions other than simple

extortion, i.e., *repetundae* with *saevitia*. Tacitus uses *luxuria* in only one

other place in the Annals, at 16.3.1, for "extravagance" in the spending of

money. It could be interpreted from this term that Quirinalis was spending

money like Nero in 16.3:

quasi oblati quas multos per annos
prodigeret.

as though funds had been delivered which he
might lavish over many years.

If Quirinalis was spending money in this fashion, clearly living above his means, this might have been a part of the evidence that was supplied

¹⁶⁸ *Contra* Sherwin-White, "Repetundarum," 18 n.88, who interprets this phrase to be simply an equivalent for *repetundarum reus* or *provinciam avare habitam*.

against him.

Motives of character are attributed to the fifth defendant, Cossutianus Capito. He was introduced (see ¶1 above) as "a stained and shameful man." In addition, "boldness" is attached to him, as well the allegation that he thought that he enjoyed a right which he clearly did not. Where Quirinalis was spending above his position, Capito assumed a level of *imperium* which he did not have: *repetundae* was, at its most essential level, a check on abuse of *imperium*.

No motives are attributed to Cestius Proculus, Publius Celer, or Eprius Marcellus.

6. Testimony for the Prosecution The six cases in 13.30 and 13.33 are reported in abbreviated fashion, apparently without speeches. Yet in one case in each chapter, Tacitus follows his pattern and includes at least an echo of the testimony, through virtual indirect discourse. In the case of Clodius Quirinalis, Tacitus slips in the testimony in this fashion (13.30.1):

Clodius Quirinalis, quod praefectus remigum, qui Ravennae haberentur, velut infimam nationum Italiam luxuria saevitiaque adflicta visset, veneno damnationem anteit.

Clodius Quirinalis, because it was alleged that as prefect of the oarsmen who were stationed at Ravenna, he had, with his extravagance and greed, oppressed Italy as though it were the lowliest of nations, preceded his conviction with poison.

The pluperfect subjunctive *adflicta visset* indicates virtual indirect discourse, "they said that he had..." Whatever the charge was (see in ¶2

above), the phrase *velut infimam nationum Italiam* would seem also to be an echo of this testimony. The people of Ravenna charged him because he had, they said, "treated them like provincials." This may have led them to charge him as though he were a provincial magistrate, for *repetundae*. Tacitus' interest in such cases might derive from a possible origin in northern Italy;¹⁶⁹ in any event, Tacitus has chosen to include the forceful rebuke by Ravenna's citizens against being treated like second-class citizens by an impudent (*luxuria saevitiaque*) Roman magistrate.

Similar testimony is included in the case against Cossutianus Capito in 13.33.¹⁷⁰ There *ratum* is short either for the perfect infinitive *ratum esse*, or for the pluperfect subjunctive, *ratum esset*. In either case, the words are meant to be those of the Cilicians. Tacitus' switch to the indicative represents his own thoughts: *exercuerat* is best rendered, "which he had *in fact* practiced in Rome." The relationship between the two sets of testimony, that against Capito and in 13.30 against Quirinalis should not be overlooked: Quirinalis treated northern Italians like the lowliest of provincials, while Capito had the audacity to abuse the provincial Cilicians

¹⁶⁹ For the arguments on both sides of this question, see Syme, *Tacitus*, 614-24. The famous letter of Pliny 9.23, associates Tacitus and Pliny with a possible northern Italian region, and might also explain their vigor in their co-prosecution of Marius Priscus.

¹⁷⁰ The text is given above on p.96.

as much as he did the Romans. Upon comparison of these two cases from the group, Tacitus' subtle barb becomes clear: no one suffered more than did the people of Rome.

7. *Defensio* No comments are made with regard to the defenses of the first three defendants: Laenas, Proculus, and Quirinalis. Proculus, however, is acquitted, and it is likely he put up some sort of defense.

In the case of the fourth defendant, Publius Celer,¹⁷¹ it is the emperor himself who comes to the rescue (13.33.1):

Quia *absolvere* nequibat Caesar, *traxit*,
senecta donec mortem obiret.

Because Caesar could not acquit him, he
dragged out the proceedings until Celer met
death from old age.

Nero either acts directly (and unsuccessfully) for the defense, or has no viable defense to offer; yet he wishes Celer acquitted.¹⁷² Nero managed to "drag out," or "put off" the proceedings, instead of letting the case go forward to conviction.¹⁷³ The case against him must have been strong, or Nero's influence not yet enough to manage the sort of acquittal he gets

¹⁷¹ Celer, an *eques Romanus*, appears in 13.1 and murders Junius Silanus on Agrippina's orders, Tacitus says, *ignaro Nerone*; At the time of Celer's trial (A.D. 57), Agrippina's influence with Nero may still be such that it is she who encourages the defense of the knight.

¹⁷² The location of the trial will be discussed below in ¶9.

¹⁷³ The jurist Gaius makes similar use of *traho* in *Digest* 23.1.17, for "prolonging" or "dragging out" the period of a betrothal. Tacitus at 14.4.4 uses the verb in the "Case of Matricide," (see p.234), where Nero drags out the last meal with his mother before she boards the boat rigged to kill her.

for Asinius Marcellus four years later at 14.40.¹⁷⁴ There it is possible that the Senate was satisfied with *infamia*; here the knight may have found a less sympathetic jury than the scion of nobility Asinius.

The fifth defendant, Cossutianus Capito, "abandons his defense," *defensionem omisit*. This can be a sign of complete despair, as in Annals 6.40.3, where Aemilia Lepida is charged with adultery with a slave. "After abandoning her defense," *omissa defensione*, she commits suicide. Yet abandoning one's defense did not necessitate defeat. In the trial for *repetundae* where Tacitus gave arguments, Marius Priscus similarly "abandoned his defense."¹⁷⁵ In that case, Priscus was "pleading guilty," and the remainder of the trial concerned his sentence, either restitution and capital exile, *urbe Italiaque interdicendum*, or restitution and temporary, non-capital exile, *in quinquennium relegandum*.¹⁷⁶ Priscus was successful in obtaining the lighter penalty. For Capito's sentence, see below ¶9.

The sixth defendant, Eprius Marcellus, perhaps also knows that he is unable to be acquitted by a standard defense. Marcellus' defense is not

¹⁷⁴ See p.58.

¹⁷⁵ Pliny Ep.2.11.2, *Marius Priscus accusantibus Afris, quibus pro consule praefuit, omissa defensione iudices petit*. The case then concentrated on the assessment of the penalty.

¹⁷⁶ Pliny Ep.2.11.19-20.

one to find sanction in the legal texts, but not without precedent in the Annals; he uses bribery: *ambitus praevaluit*. This was not always a successful ploy: In 12.59, Agrippina tries *ambitus*, but fails to prevent the expulsion of her henchman Tarquitius Priscus from the Senate.¹⁷⁷ Pompeius Silvanus, charged with *repetundae* the year after Marcellus (13.52), is acquitted *ambitu*, by bribery; an aged, childless, and wealthy man, Nero and others protect his wealth from restitution to the provinces in hopes of a legacy, but they are thwarted when he outlives them.¹⁷⁸

8. Relatio The only counter suit is applied by the last defendant, Eprius Marcellus. His corrupt influence was so strong that he was able to secure more than just his acquittal (13.33.3):

Eo usque ambitus praevaluit, ut quidam
accusatorum eius exilio multarentur,
tamquam insonti periculum fecissent.

His corrupt influence was so powerful that some
of those who accused him were punished with
exile, for allegedly having placed an innocent
man in jeopardy.

It is apparent from this passage that after he secured acquittal, he

¹⁷⁷ He was nonetheless retained in Nero's imperial service, acting probably as *procurator* in Bithynia, until in A.D. 61 (Annals 14.46) he is convicted for *repetundae* by the Senate, *magno patrum gaudio*. Bithynia (Broughton, OCD) gradually went from being a senatorial province to imperial control under Marcus Aurelius. Brunt, "Maladministration," 226, lists him specifically as *proconsul* rather than *procurator*; this would imply an intervening restoration to his senatorial rank, upon which Tacitus would surely have remarked.

¹⁷⁸ 13.52.2, *senecta, quam ultra vitam eorum produxit, quorum ambitu evaserat*.

instituted proceedings against his *delatores*.¹⁷⁹ If Marcellus were able to "prove" by nefarious means that those who had informed against him had taken money to bring the charges, they could be themselves punished by the law of *repetundae*.¹⁸⁰

9. *Iudex and Iudicium* Under the *Lex Iulia de Repetundis*, and the *S.C. Calvisianum* of 4 B.C., which modified it, the penalty for those convicted depended upon the specifics of the charge. There were, it seems, two paths that the case could take. The first occurred if the defendant was charged with simple extortion, *repetundae*; the penalty was simply restitution of damages, and *infamia*, which necessitated expulsion from the Senate.¹⁸¹ The alternative for the accusers was to bring charges additional to extortion (capital charges of some sort) under the *repetundae* procedure, specifically aggravated extortion, i.e., *repetundae* with *saevitia*.¹⁸² A conviction for aggravated extortion added a capital penalty to the

¹⁷⁹ Tacitus has recently (13.23.2) reported a similar fate, *exilium*, for the *delator* in the "Case of Burrus and Pallas," see p.141.

¹⁸⁰ Ulpian Digest 3.6.1.1, *maxime cum et lege repetundarum teneatur, qui ob negotium faciendum aut non faciendum per calumniam pecuniam accepit*.

¹⁸¹ Brunt, "Maladministration," 202. On *infamia* see note 224.

¹⁸² These were probably the same thing, the former is Brunt's explanation, "Maladministration," 202, and the latter Sherwin-White's, "Repetundarum," 17.

sentence.¹⁸³ It is probable that, for senators, capital exile was the greatest possible sentence.¹⁸⁴

The normal jury for a charge of *repetundae* at this time was the Senate,¹⁸⁵ whether the accused were of senatorial or equestrian rank.¹⁸⁶ Some cases involving simple extortion were heard by a select

¹⁸³ Sherwin-White, "Repetundarum," 17.

¹⁸⁴ Garnsey, Social Status, 113 n.4, follows Sherwin-White's classification of the penalties; Brunt, "Maladministration," 203-4, seems to indicate that in Nero's day, no one convicted for *repetundae* and not also for *maiestas* was sentenced to capital exile. This is sometimes thinly based, such as in the case of C. Silanus (Annals 3.69), who is sentenced to capital exile: *maiestas* is alleged after the initial accusation against Silanus for *repetundae* by several senators, but it does not figure in the arguments on his case. Sherwin-White, "Repetundarum," 17 n.88, is certain that the conviction is only on *repetundae*.

¹⁸⁵ Garnsey, Social Status, 20.

¹⁸⁶ This is a matter of some debate: Garnsey, Social Status, 86, maintains that the only example of an equestrian *procurator* tried by the Senate was Lucius Capito (Annals 4.15). Brunt, "Maladministration," 201, includes two cases under Nero that are questionable. Vipsanius Laenas (13.30, defendant [1]), and Vibius Secundus (14.28). Vipsanius (*PW* 4, vol.9a pt.1, 168) Laenas is not otherwise known, and although Tacitus does not specify the venue, the Senate is a reasonable assumption; the status of Laenas himself is in question, and it would seem to depend upon the status of Sardinia. In A.D. 6 (Dio 55.28.1) Sardinia was put under an equestrian governor, until apparently A.D. 66, when Nero transferred it back to senatorial control (Pausanias 7.17.3). Assuming no other changes, Laenus was an equestrian, but the evidence is weak. In the case of Vibius Secundus (14.28.2) Tacitus himself informs us that he was equestrian, but the account of the case provides no clue as to the court; lacking information to the contrary, the Senate again seems the likely court. Cf. on P. Celer, p.113.

committee of five senators.¹⁸⁷ The emperor heard cases as well.¹⁸⁸ The accusers had the option of bringing the charge where they wished.¹⁸⁹

The defendants in the six cases face various fortunes. Laenas is *damnatus*, convicted. His sentence is not specified, but nothing other than simple *repetundae* seems to be charged, and it is likely to have been *infamia* and restitution. The second defendant, Cestius Proculus, is acquitted, *absolutus*. Acquitted also is the sixth defendant, Eprius Marcellus, but his case was won by bribery.

Clodius Quirinalis, the defendant in the pseudo-*repetundae* case, anticipating conviction, commits suicide: *veneno damnationem anteit*. This action indicates fear of at least capital exile, if not actual execution.¹⁹⁰ The sentence of capital exile would confirm that his charge was *repetundae*

¹⁸⁷ Sherwin-White, "Repetundarum," 14 and 23. In his view, the Senate would assign the simpler cases to the select committee. Jones, *Criminal Courts*, 111, goes through the complex procedure by which the five would be chosen, which involved a lottery and preemptive challenges by each side.

¹⁸⁸ E.g., 13.52., Suplicius Camerinus and Pompeius Silvanus are acquitted by Nero.

¹⁸⁹ Jones, *Criminal Courts*, 94.

¹⁹⁰ Sherwin-White, "Repetundarum," 18-19, "Why else should the insignificant knight Clodius Quirinalis commit suicide if the penalty of the law was only *infamia*?" Or for that matter *relegatio*? This case would seem to argue well for the capital penalty (see note 184).

with *saevitia* (see ¶2 above).

Publius Celer, the fourth defendant, is neither convicted nor acquitted, and unlike Quirinalis, dies of old age before conviction. Nero (¶7 above) comes to his defense, and delays the case. The court in this instance is in question. It is known from the earlier reference in Tacitus (13.1) that Celer was a knight. Possibly because of the infrequency of senatorial trials of equestrians on this charge (see note 186), and because the emperor is mentioned, Garnsey and Brunt both without explanation declare that this case was tried by Nero.¹⁹¹ Yet Tacitus does not indicate whether Nero or the Senate tried the case. Nero "could not acquit" Celer, but was able to stall the proceedings. This would seem to indicate the Senate, rather than the emperor, as the court for the trial. If Nero were trying the case, why could he not manage an acquittal? Tacitus indicates nothing about the firmness of the defense. In the following year (13.52), Nero is able to acquit Pompeius Silvanus, despite *magna vis accusatorum*. The delay in the process has the scent of Nero meddling with a senatorial case, as in the Case of Antistius.¹⁹²

Cossutianus Capito (13.33.2) is convicted after he forgoes his defense, i.e., pleads guilty. His sentence is not stated beyond *lege*

¹⁹¹ Garnsey, *Social Status*, 86; Brunt, "Maladministration," 201.

¹⁹² See p.134.

repetundarum damnatus est. His later restoration to the Senate through Tigellinus' influence may indicate that the sentence was non-capital exile, and that his crime was simple extortion yet even capital exile could presumably be rescinded by an emperor.¹⁹³

10. Historical Conclusion Tacitus provides no formal conclusion to the "six cases," which he surely did not envision as a separate entity from his Annals. The last of the three cases in 13.30 ends with the suicide of Quirinalis, after whose death, Tacitus concludes his account of A.D. 56 with two notable deaths: Caninius Rebilus and Lucius Volusius. The addition of their accounts is a balance to the three cases for *repetundae*, and to the wicked Quirinalis in particular.¹⁹⁴

Caninius Rebilus, like Clodius Quirinalis, commits suicide, but it is to his credit (13.30.2):

Caninius Rebi<1>us, ex primoribus peritia legum et pecuniae magnitudine, cruciatus aegrae senectae misso per venas sanguine effugit, haud creditus sufficere ad constantiam sumendae mortis, ob libidines muliebriter infamis.

Caninius Rebilus, one of the leading men in knowledge of laws and greatness of wealth, escaped from the tortures of a feeble old age by opening his veins; no one had thought he was up to the steadfastness of taking on his own death, as he was infamous for his effeminate lusts.

¹⁹³ As in the "Case of Fabricius Veiento," sentenced to capital exile for *maiestas* by Nero (14.50) in A.D. 62, see note 206, but later restored, necessarily after Nero's death. See also in the Pisonian Conspiracy, p.205.

¹⁹⁴ Ronald Syme, Ten Studies in Tacitus (Oxford: Oxford University Press, 1970), 79, includes this chapter among the twelve obituary passage he finds in the Annals.

His suicide showed, to Tacitus, a courage which was not evident from his life as a whole; suicide could, in contrast to that of Quirinalis, be a noble act.

Still another life is set in contrast to both Rebilus and Quirinalis, that of one Lucius Volusius:

At L. Volusius egregia fama concessit, cui tres et nonaginta anni spatium vivendi praecipuaeque opes bonis artibus, inoffensa tot imperatorum <a>micitia fuit.

In contrast, Lucius Volusius departed with an excellent reputation, he had a 93 year span of living, surpassing wealth acquired honestly, and sure-footed friendship with so many rulers.

Volusius died of old age without suicide, and in his life, as Tacitus gives his obituary here, he had nothing to be ashamed of. He had managed to keep on good terms with all of the emperors thus far.¹⁹⁵

Tacitus gives one of the six cases its own conclusion, that of Publius Celer (13.33.1). After relating Celer's death from old age, Tacitus reflects upon the crimes Celer had committed, and his previous appearance (13.1) in his work:

Nam Celer interfecto, ut memoravi, Silano pro consule magnitudine sceleris cetera flagitia obtegebat.

For Celer, as I have related, had killed Silanus, the proconsul, and by the enormity of this crime he just about concealed his other shameful acts.

Silanus' death in A.D. 54 was the *prima mors* which set the tone for Nero's tenure as emperor. Tacitus is making a comparison between Nero's

¹⁹⁵ Tacitus touches again on a favorite theme, see on p.72.

protection of Celer's *cetera flagitia*, for which the province of Asia was prosecuting him, and Celer's own protection of those crimes by his murder of the proconsul.

The final item of interest in this legal cluster regarding provincial government is the account of the edict of Nero at 13.31.3:

Et edixit Caesar, ne quis magistratus aut procurator in provincia, <quam> obtineret, spectaculum gladiatorum aut ferarum aut quod aliud ludicrum ederet. nam ante non minus tali largitione quam corripendis pecuniis subiectos adfligebant, dum, quae libidine deliquerant, ambitu propugnant.

And Caesar issued an edict that no magistrate or imperial administrator, in the province which he governed, was to exhibit a spectacle of gladiators or wild beasts or any other type of amusement. For formerly these administrators would oppress their subjects no less by such largess than by stealing their money outright, while they defended with bribery what delicts they had committed out of wantonness.

The edict applies both to governors of senatorial rank (*magistratus*), and equestrian procurators. Nero has forbidden them to produce games in their provinces; he has not forbidden others to do so. The purpose behind the legislation is clear: the governors would attempt to conceal their delicts (such as acts of *repetundae*) by putting on popular performances--the *panem et circenses* of Juvenal(10.81), except that the governors stole the bread while putting on the circuses. Tacitus uses a word in the account of Nero's edict, *ambitus*, which links this edict to the *ambitus* of Epirus Marcellus, the sixth and final case in the grouping. The account of the edict, which was an attempt to check the *ambitus* of provincial governors, links the two sets of three cases in 13.30 and 13.33 together.

CHAPTER FOUR

TREASON: *MAIESTAS* AND RELATED CHARGES

This chapter examines five treason trials with individual defendants and one case with many defendants. In the first two cases, the defendants Fabricius and Antistius are apparently charged with treason for writing lampoons against Nero or members of the Senate. In the second two cases, the primary defendants are harassed with patently false charges of plotting to overthrow Nero. These charges are brought by personal enemies of the defendants. In the fifth case, Nero and his second wife Poppaea bring treason charges against Octavia, Nero's first wife, as a cover for murdering her. The last case in this chapter is the massive Pisonian conspiracy, in which 41 defendants are charged in an actual plot to assassinate Nero. At least half of the defendants, however, were not involved in the plot, and Nero applies the lesson he learned from Octavia's case, and uses a real conspiracy as a cover to remove a great number of enemies. In this sense the Pisonian case is as much about Nero's crimes as about the twenty who conspire against him.

Any discussion of trials in the Annals would not be complete

without a thorough treatment of cases for *maiestas*, "treason." It was the treason trial which came increasingly to mark the reign of Nero as a tyrant.

The Latin word *maiestas*, which originally meant "majesty" or "dignity" applied to a god, and then to the state or the people, in the sense of "sovereignty," would come to be a feared word under the empire. The law against treason in Rome spans the entire legal history of the state, for in the last major work of Roman law, the Digest of Justinian, the jurist Marcianus (48.4.3) in defining *maiestas* indicates that the *XII Tables* prescribed the penalty of death for treason.¹⁹⁶ Use of the term *maiestas* to indicate a crime had its inception considerably later under the republic. *Maiestas* was established as a crime in the *Lex Apuleia* of 103 B.C., and then refined in Sulla's *lex maiestatis* of 81 B.C., and a standing *quaestio* was set up.¹⁹⁷ In Cicero's day the law applied equally to the state and its magistrates;¹⁹⁸ The *lex Iulia maiestatis*, discussed in the brief Digest

¹⁹⁶ *Lex duodecim tabularum iubet eum, qui hostem concitaverit quive civem hosti tradiderit, capite puniri.*

¹⁹⁷ Balsdon, OCD, *ad loc.* Richard A. Bauman, in The Crimen Maiestatis in the Roman Republic and Augustan Principate (Johannesburg: Witwatersrand University Press, 1967), 69, holds that the first permanent *quaestio maiestatis* predates Sulla.

¹⁹⁸ Cicero's definition of the term is given in de Inv. 2.17.53 as *maiestatem minuere est de dignitate aut amplitudine aut aliquid derogare*. For the complex relationship of *maiestas* with its earlier cousin *perduellio*, see Bauman, Crimen Maiestatis, 16-23.

title 48.4,¹⁹⁹ was set up near the inception of the principate.²⁰⁰ The law apparently often lapsed only to be revived again. Tacitus indicates (Annals 1.72.2) that Claudius revived the law,²⁰¹ and adds that it had been used in ancient times, but for different purposes, such as *si quis proditione exercitum aut plebem seditionibus, denique male gesta re publica maiestatem populi Romani minuisset*. Those provisions specify offense against the army, *plebs*, and state. And while clearly a different thing altogether from offending any given individual, the emperor's person is a natural extension of those provisions, as he begins to overshadow the army, the *plebs*, and even the state. Tacitus goes on to say (1.72.3) that Augustus was the first who conducted a *cognitio* on libellous writings. Tacitus' assertion that this was only under the "outward appearance of law" (*specie legis*) indicates his opinion that even Augustus' use was of

¹⁹⁹ The term *maiestas* itself here is an ellipse, for *maiestas imminuta*, or some such word, i.e., "diminished grandeur," or rather transitively, the charge is "diminishing the grandeur of." See also *maiestas* OLD 3, "short for *maiestas imminuta*, *laesa*, or sim."

²⁰⁰ By either Julius Caesar the dictator or Augustus.

²⁰¹ Dio 60.3.6 indicates that Claudius formally set aside the law of *maiestas* both in regard to writings and actions: τό τε ἔγκλημα τῆς ἀσεβείας ὁμοίως οὐκ ἐν τοῖς γράμμασι μόνοις ἀλλὰ καὶ ἐν ταῖς πράξεσιν ἔπαυσε, καὶ οὐδένα διὰ τοιοῦτό τι οὔτ' ἐπὶ τοῖς προτέροις οὔτ' ἐπὶ τοῖς ἔπειτα ἐκόλασε. In A.D. 51, at Annals 12.42.3, *maiestas* is charged, but the case appears to have been quashed and the defendant sentenced to capital exile. Tacitus, however, gives no hint that the law is in abeyance when those charges are made.

dubious legality. According to Suetonius, Augustus' legislation was somewhat milder: the law applied to libellous verses published about anyone (not just the emperor), and apparently only if done so under a pseudonym.²⁰²

Modern writers on Tacitus have noted the frequency of trials under the charge of *maiestas*, usually under Tiberius.²⁰³ The charge is also a favorite tool of Nero, although often the charge is not specifically called *maiestas* by Tacitus. Sometimes from Tacitus' language it is clear that this is a form of the historian's own *inconcinnitas*, i.e., for variety, he will now and then avoid the direct use of the term.²⁰⁴ Other times it must have been that no official use of the *lex maiestatis* was made. Garnsey uses the term "quasi-*maiestas* trials" for these.²⁰⁵

²⁰² Augustus 55 *censuit cognoscendum posthac de iis, qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine edant.*

²⁰³ E.g., B. Walker, The Annals of Tacitus: A Study in the Writing of History (Manchester: Manchester University Press, 1952), and Martin, Tacitus, passim, esp. 176, where he comments on the "Case of Antistius" at 14.48 (see below). R.S. Rogers, Criminal Trials and Criminal Legislation under Tiberius (Middletown, Conn.: American Philological Association, 1935), concentrates on *maiestas* trials under Tiberius. Bauman, Crimen Maiestatis, 93-4 discusses how Julius Caesar was once the potential target of such a charge; 180-197, he examines four famous Augustan cases.

²⁰⁴ See the discussion of the "Case of Fabricius Veiento," p.121.

²⁰⁵ Social Status, 41.

Case of Fabricius Veiento (14.50)

[This short historical case consists of 1 chapter, and exhibits features ¶2,3,4,5,9, and 10 from Table 1 on p.6, notably lacking any defense features (¶7 and ¶8). It includes the key vocabulary terms: *accusator*, *adicio*, *causa*, *conflicto*, *convinco*, *crimen*, *depello*, *iudicium*.]

1. Historical Introduction The case of Fabricius Veiento is a fairly brief account, involving charges of *maiestas* and *iniuria*. It is worthy of attention on account of the specifics of the charge and the identity of the defendant, Fabricius Veiento. He would survive the exile resulting from this case, outlive Nero and the next six emperors, and along the way make a career as a notorious informant.²⁰⁶

Apparently because of the infamy of the defendant, Tacitus presents the case without historical introduction, yet he devotes a full chapter to the account, more space than to those which he simply incorporates in a list:

Haud dispari crimine Fabricius Veiento *conflictatus est*, quod multa et probrosa in patres et sacerdotes composuisset iis libris, quibus nomen codicillorum dederat. *adiciebat* Tullius Geminus *accusator* venditata ab eo munera principis et adipiscendorum honorum ius. quae causa

With a by no means dissimilar charge Fabricius Veiento was harassed, because he had composed many abusive things in the sort of books, to which he had given the name *codicilli*, that is, "petitions." The informant, Tullius Geminus made the additional charge that imperial favors had been offered for sale by the defendant, along with the right of obtaining office. This was the

²⁰⁶ A. Didius Gallus Fabricius (*PW* 15 vol.6, pt.2, 1938) Veiento was three times consul after Nero's death. Juvenal notes Fabricius later as *prudens* (4.113), and he was prominent under Domitian. Pliny (*Ep.*4.22.4-6) has him dining next to the emperor Nerva. Pliny clearly disliked Fabricius: *dixi omnia, cum hominem nominavi*, and goes on to relate a joke one of the dinner guests made, in reference to another informer, Catullus Messalinus; when Nerva wondered aloud what would have happened to him, if he were still alive, the joke is made: *nobiscum cenaret*, i.e., just like Fabricius.

Neroni fuit suscipiendi iudicii, convictumque Veionem Italia depulit et libros exuri iussit, conquisitos lectitatosque, donec cum periculo parabantur: mox licentia habendi oblivionem attulit.

reason that Nero undertook the judgment, and after Veiento had been convicted, he banished him from Italy and ordered that his books be burned. These books were much sought after and read, until the ease of having them brought their destruction.

2./3. Crimen and Reus Tacitus begins the episode by defining the crime: the rhetorical *haud dispari crimine*. The litotes indicates the close similarity of this charge with the *maiestas* charge against Antistius in the preceding two chapters.²⁰⁷ Whereas Antistius' target had been the emperor, the target of Fabricius' libels were priests and senators.²⁰⁸ The charge of *maiestas* does not apply for these *codicilli*: contumely against

²⁰⁷ R. S. Rogers, "The Tacitean Account of a Neronian Trial," Studies Presented to David Moore Robinson on his Seventieth Birthday, ed. Mylonas and Raymond (Saint Louis: Washington University, 1951-53), 714 n.7, inexplicably suggests that Veiento is being charged with *repetundae*. He also remarks on the "rather sympathetic attitude of Tacitus toward Veiento in contrast with the bitterness of Pliny" This also is unfounded; Pliny, it is true, hated the man. Tacitus relates the case here with no sympathy or anger, truly *sine ira et studio*, only it seems with a little sarcasm in his final line about why Fabricius' writings perished.

²⁰⁸ Fabricius designated these writings (and Tacitus does not tell us whether they were prose or verse) as *codicilli*. This term has been the subject of some controversy (see James Keenan, "Tacitus, Roman Wills, and Political Freedom," BASP 24 (1987): 7-8). Tacitus indicates clearly here that Fabricius' writings were some sort of "book," *iis libris*, which he called *codicilli*. They are not part of a will, but there is nothing to prevent them from being some sort of satirical or mock will. This may be what Edward Champlin has in mind in Final Judgments: Duty and Emotion in Roman Wills, 200 B.C.--A.D.250 (Berkeley: University of California Press, 1991), 69, "It might be the first display of true emotion such as one might not entrust to the will...hence the title chosen by Fabricius Veiento for a work which scurrilously attacked senators and priests."

the senators and priests was rather *iniuria*.²⁰⁹ While not part of the stated charge, these lampoons were the reason he was harassed with the *maiestas* charge (see ¶5 below).

The charge of *maiestas* comes instead from the clause with the verb *adicio*, "to add the charge," or here, "to add (to these insults) the charge." The actions of Veiento which qualify for that charge are "selling imperial favors" and "selling offices." Veiento was a *privatus* acting as a magistrate; this qualifies as *maiestas*.²¹⁰

4. Delator The informant in the case was one Tu<l>ius Geminus. Tacitus provides us with no other information about him. Little is known of him, and even the manuscript reading of the name is a conjecture.²¹¹ Geminus may also be seen to play the role of prosecution witness (¶6).

5. Causa While Tacitus provides us with no details on the informant, his

²⁰⁹ The charge of *iniuria* may have been part of the case, and it fits his punishment better. *Iniuria* was a criminal offense, see Ulpian Digest 47.10.5.10, *Eadem poena ex senatus consulto tenetur etiam is qui ἐπιγράμματα aliudve qui sine scriptura in notam aliquorum produxerit*.

²¹⁰ Marcian Digest 48.4.3, *quive privatus pro postestate magistrature quid sciens dolo malo gesserit*. See also Woodcock, Tacitus Annals XIV (Oxford: Blackwell, 1939), 137, who points out that this is the imperial prerogative of *commendatio*, whereby certain appointments were reserved under the empire for the *princeps*.

²¹¹ Med.: *Talius Geminus*. He is perchance to be equated with C. Terentius Tullius (*PW* 35, vol.7A, pt.1A, 1312) Geminus, who was suffect consul in 46, and the Τύλλιος Γέμινος who is author of some epigrams in Anth. Pal. 9.107.

motive is apparent. The *delator* was normally rewarded for his work.²¹² Tacitus may have seen great irony in relating such a case against a man who was himself a notorious informant.

The motive for the prosecution is indicated by the words *conflictatus est quod*. The reason that Fabricius was charged for selling imperial favors was because of his libels against prominent Romans. Whether or not Fabricius had had Nero's permission to act on his behalf in bestowing *munera* or offices, he clearly became something of an embarrassment for his *codicilli*.²¹³

9. *Iudex and Iudicium* Without any testimony for the defense or any counter-charges, Tacitus moves directly to the judgment. Nero himself judges the case, probably to avoid an embarrassing trial in the Senate. If Fabricius had been selling imperial favors without permission, there would have been no need for this. Tacitus' phrase *quae causa*, describing Nero's reasoning, refers to the combination of the libels and Geminus' charge.

Nero sentences Fabricius to be "driven from Italy."²¹⁴ A second

²¹² Ulpian Digest 47.10.5.11 stipulates for a *delator* on a charge of *iniuria*, if successful: *pro modo substantiae accusatae personae aestimatione iudicis praemium constituitur*.

²¹³ It seems unlikely that one would act on a tyrant's behalf without permission, and Fabricius was no fool.

²¹⁴ The technical type of exile is not specified by the verb *depello*, OLD 5, "to expel," used elsewhere by Tacitus in the Neronian books of driving away a spouse c.f. 14.62.3 *coniugem infensam depelleret* referring to

penalty, the burning of Fabricius' books is also stipulated. The penalties confirm the motive of the case, elimination of the libellous writings. The irritation that Fabricius had produced is destroyed. The punishment of exile rather than death shows that *maiestas* was not at issue.²¹⁵

10. Historical Conclusion Tacitus' subsequent comments provide a wry historical judgment about banned books throughout time: Initially their value goes up, as copies are *conquisitos*, "much sought after," (14.50.2) but popularity brings oblivion, and the only knowledge of Fabricius' books survives in this account of their destruction.

Octavia, or of a potential spouse, *quam matrimonio C. Sili a Messalina depulsam*, 13.19.1. Ulpian Dig.43.16.1.46: *servos quosdam vi depulit*...uses the verb of driving off slaves, to discuss a question of *possessio*. Garnsey, 113 n.1 cites this exile in 14.50 as parallel to *interdictio aqua et igni*, i.e., capital exile. This is probably not correct, based upon Fabricius' later restoration, but there is no way to discern this from Tacitus' account. On the difficulty of distinction between capital and non-capital exile see note 30.

²¹⁵ This is clear from the strategy in the Case of Antistius, see below, p.132.

[This case exhibits all ten features from Table 1 on p.6, but ¶8 is of an unusual type. It includes the key vocabulary terms: *aboleo*, *absolvo*, *censeo*, *condemno*, *contumelia*, *decerno*, *defero*, *delictum*, *increpo*, *infamia*, *iniuria*, *intercessio*, *iudicum*, *lex*, *maiestas*, *manifesta*, *nocens*, *obicio*, *offensio*, *poena* [x2], *relatio*, *rescribo*, *respondeo*, *reus* [x2], *revoco*, *saevitia*, *sententia*, *supplicium*, *testimonium*, *testis*.]

1. Historical Introduction This case of a charge of treason against the emperor, which the emperor has himself arranged not so much to remove the accused, but to gain favor by showing leniency in the sentencing. Of the many official and unofficial trials for *maiestas* which Tacitus records, the trial of Antistius Sosianus is of particular interest for two additional reasons: first, Tacitus notes that it was the first official use of the law under Nero's reign; second, while ostensibly a case of *maiestas*, Tacitus has senatorial freedom as his real topic.

When Tacitus mentions that this is the first revival of the law for treason: *tum primum revocata ea lex*, he might have more accurately said that it was the first formal use of the law under the new emperor's

²¹⁶ In consideration of this trial, the classification of it as an historical trial seems beyond question. R. S. Rogers, however, in "Neronian Trial," 713, argues that the case is suspect; in fact, while believing that there was a case, he argues that, as presented, it has been manufactured by Tacitus. If Rogers' conclusion is correct, then this case is purely a literary fabrication. Judith Ginsburg, "Speech and Allusion in Tacitus. Annals 3.49-51 and 14.48-49," AJPh 107 (1986): 527, correctly rejects the argument of Rogers, calling his "a quite wrong-headed conclusion." She affirms the historicity of Tacitus' account.

tenure.²¹⁷ The case begins as follows (14.48.1):

P. MARIO L. AFINIO consulibus Antistius praetor, quem in tribunatu plebis licenter egisse memoravi, probrosa adversus principem carmina factitavit vulgavitque celebri convivio, dum apud Ostorium Scapulam epulatur.

In the consulship of Publius Marius and Lucius Afinius, the praetor Antistius (who, as I have related, when tribune of the people acted loosely) habitually composed verses against the emperor, and made them public at a crowded banquet, while he was dining at the house of Ostorius Scapula.

By way of further historical connection, Tacitus refers to the previous appearance of Antistius in his work (13.28). There, as tribune, the defendant had acted *licenter*. This background information on the defendant ties the case into a larger narrative on the man's career and prepares the reader for Antistius' rapid conviction.²¹⁸

²¹⁷ Three "unofficial" earlier cases of *maiestas* are the trial of Agrippina (13.18-22), that of Burrus and Pallas (13.23), and that of Cornelius Sulla (13.47). Many commentators ignore these cases in consideration of *maiestas*: Harold Y. McCulloch, Narrative Cause in the Annals of Tacitus (Königstein/Ts.: Hain, 1984), 187 refers to the Antistius case as "the revival of the treason law"; Martin, Tacitus, 176, calls this "the reintroduction of the *lex maiestatis*"; Walker, Tacitus, 109, "The law is, however, revived under Nero, when, eight years after the reign has begun..."; both Furneaux, Tacitus, and Woodcock, Annals XIV, ad loc. make similar remarks. The three cases are acknowledged in a discussion of Nero's use of the *lex maiestatis* by Bauman, Impietatis, 143. He nonetheless maintains "the revival of the *lex maiestatis* in 62," and denies the status of *maiestas* to these three earlier trials. On the first case he writes, "It is clear that Agrippina was not tried," 212. On the other two cases there is brief discussion, 213, without any firm reason for rejection of their status as *maiestas* trials other than the somewhat circular argument that the law was "in abeyance," according, it seems, to 14.48.2, *tum primum revocata ea lex*.

²¹⁸ For a similar connection made in the "Case of Publius Suillius," see p.73.

2.13. Crimen and Reus Antistius' mistake was not merely the composition of verses (*carmina*) against the emperor (dangerous enough for an average citizen, but Antistius was a very noticeable citizen as *praetor*), but the recitation of his work at a crowded dinner party of Ostorius Scapula (*vulgavitque celebri convivio*).²¹⁹

4. Delator The informer for the charge of *maiestas* is the son-in-law of Tigellinus, Cossutianus Capito:

Exim a Cossutiano Capitone, qui nuper senatorium ordinem precibus Tigellini soceri sui receperat, maiestatis delatus est.

Afterwards he was accused of treason by Cossutianus Capito, who had recently recovered his senatorial status through the entreaties of his father-in-law Tigellinus.

When Tacitus mentions at this exact point that the informant is Tigellinus' son-in-law, who has just been reinstated to the Senate, the historian is not supplying superfluous background data.²²⁰ The purpose is to undercut the informant's credibility by demonstrating the link to Nero through Tigellinus. The whole prosecution becomes thereby suspect.

5. Causa The first motive mentioned by Tacitus is not Antistius' for composing the verses against Nero, but the prosecutor's motive (which is

²¹⁹ Suetonius Nero 39.1, notes the frequency of such lampoons against Nero, and his tolerance of them: *mirum et vel praecipue notabile inter haec fuerit nihil eum patientius quam maledicta et convicia hominum tulisse, neque in ullos leniorem quam qui se dictis aut carminibus lacessissent extitisse*. This account of his attitude towards such verses seems to affirm that the real aim of this prosecution was not to punish Antistius.

²²⁰ For Capito's conviction on *repetundae* at Annals 13.33, see p.96.

surely Nero's own motive) for undertaking the prosecution (14.48.2):

Credebaturque haud perinde exitium
Antistio quam imperatori gloriam
quaesit < tam >, ut *condemnatum* a senatu
intercessione tribunicia morti eximeret.

The belief was that destruction for Antistius was by no means as much sought as glory for the emperor, namely that Nero, by his tribunician veto, was to save him from death after he had been condemned by the Senate.

This informs the reader that the outcome is rigged. Antistius is to be condemned so that Nero can overturn the verdict or give a more lenient sentence, and thereby win points in the public eye for his clemency. Nero probably wishes to emulate Augustus' tolerance for such lampoons.²²¹

6. Testimony for the Prosecution At his trial in the Senate, it can be inferred that Antistius called as his witness Ostorius (clearly a material witness as the verses occurred at his party), who was probably supposed to have testified to the defendant's innocence. Instead the plan must have gone awry, for the testimony of Ostorius benefits neither side, and by default, helps the prosecution:

Cum Ostorius nihil audivisse *pro testimonio*
dixisset, *adversis testibus* creditum.

When Ostorius had said in his testimony that he had heard nothing, belief went in favor of the opposing witnesses.

The reason for assuming that Ostorius was a defense witness is the way in which Ostorius is separated from the group of adverse witnesses. Those

²²¹ E.g. his treatment of Junius Novatus, see Suetonius Augustus 51. For instances of Augustus' judicial clemency see Augustus 33.

adverse witnesses deliver the prosecution's testimony.²²² The silence of Ostorius parallels the eventual inaction of the senators in 14.49.3, and it is safe to assume that it stems from the same cause, fear.

7. *Defensio*. After the initial verdict of the Senate (14.48.2), Thrasea Paetus speaks up. The *prooemium* of his speech is summarized briefly by Tacitus as flattery of Nero and invective against Antistius. But those words only disguise the real purpose (14.48.3-4):

Ceteris inde adsentientibus, Paetus Thrasea, multo cum honore Caesaris et acerrime increpito Antistio, non quicquid nocens reus pati mereretur, id egregio sub principe et nulla necessitate obstricto senatui statuendum disseruit. carnificem et laqueum pridem abolita, et esse poenas legibus constitutas, quibus sine iudicum saevitia et temporum infamia supplicia decernerentur.

When the other senators agreed, Thrasea Paetus, after saying many things honoring Caesar and rebuking Antistius, set forth his view that it was not <of importance> what the guilty defendant deserved to suffer, but rather that under an excellent emperor the Senate must make its decision bound by no necessity. The executioner and the noose had long since been abolished, and there were penalties prescribed by law, within which punishments could be decreed without cruelty on the part of the judges and without <incurring> the disgrace of the times.

Thrasea's argument that it matters not what the guilty defendant deserves, but rather how the Senate decides the sentence, directly faces Nero's purpose. Thrasea must know that the entire matter is being orchestrated for the emperor's benefit. The trial has switched its immediate focus, from the fate of the praetor to freedom of debate in the

²²² Unlike Suetonius, who often quotes such lampoons (six are quoted in Nero 39, three more in Nero 45), Tacitus disdains to relate the testimony of these witnesses, which undoubtedly included the lampoons themselves.

Senate chamber. The main concern of the prosecution was not really Antistius; nor was Antistius in fact the main concern of Thrasea, who nominally here is arguing for the defense. His arguments only concern the sentence and how that reflects upon the Senate. This is the post-conviction, pre-sentencing phase, and although the defendant has been found guilty, this still forms an important part of his defense.²²³ Had Thrasea not made these arguments, Nero's veto would have fulfilled the void in the defense.

8. *Relatio* In this case the pattern is varied a little. In place of counter-charges by the accused Antistius, Tacitus supplies opposition to the purpose of Nero (who is the real accuser), in the form of the *libertas* which Thrasea demonstrates (14.48.1):

Libertas Thrasea servitium aliorum rupit,
et postquam discessionem consul
permiserat.

Thrasea's freedom broke the servility of the
others, and afterwards the consul allowed a
vote.

Since the case against Antistius is never at issue, and since the real purpose of the prosecution was Nero's attempt to gain glory, the counter-charge becomes instead a counter-thrust at that attempt. Thrasea's forestalling of the veto nullifies the emperor's attempt for glory; his own

²²³ In a similar fashion, in the trial in which Tacitus acts for the prosecution after Marius Priscus' plea of guilty (Pliny *Ep.*2.11.2), the debate over sentencing becomes the main focus of the trial.

demonstration of free speech procures that glory for himself. In addition, Thrasea's words to the Senate (see above in ¶7) are a veiled *relatio* against the emperor: the Senate is *obstrictus*, "forced," into a judgment which demonstrates *saevitia* and brings *infamia*.²²⁴

9. *Iudex* and *Iudicium* The Senate quickly judges Antistius guilty (14.48.2). The debate over sentence in the Senate seems about to end just as swiftly when the consul designate, Iunius Marullus, proposes that

²²⁴ *Infamia* held a particular meaning when used in the Senate. In Nero's day, *infamia* was becoming established as a method for the Senate to expel a member from its body. Greenidge, *Infamia*, provides a thorough treatment of the various degrees, types, and modes of incurring *infamia*. He terms this procedure by the Senate (84) as "quasi-judicial." The Senate, it seems, often applied this as a penalty, expelling the member, in instances where loss of status was not automatic. One of the more frequent applications of this was in cases for *repetundae* (see above, p.110).

Greenidge, 19, notes a difficulty in distinguishing between *infamia* as a legal disqualification from a moral censure (without legal force); certainly Tacitus uses it this way, cf. The "Case *De Fraudibus Libertorum*," p.49.

Originally a tool of the Censor from the early days of the Roman Republic, the scope of *infamia* was gradually increased under the praetorian edict as a consequence of conviction in a *iudicium publicum*, until by a rescript of Constantine (Cod.12.1.2), *infamia* was automatic and entailed exclusion from all public office and honors (Greenidge, 32).

It was also (Greenidge, 182-3) at the discretion of the judge to offer to a convicted person the choice of either the regular penalty with *infamia*, or a heavier penalty than prescribed by law, but without the *infamia*., cf. Ulpian *Digest* 3.2.13.7., and Macer *Digest* 48.19.10.2, *in personis tam plebeiorum quam decurionum illud constitutum est, ut qui maiori poena adficitur, quam legibus statuta est, infamis non fiat*.

See also Barry Nicholas, *Roman Law* (Oxford: Oxford University Press, 1962), 217 n.1., and Julian *Digest* 3.2.1 for a variety of actions incurring *infamia*.

Antistius be stripped of his praetorship and put to death in the ancestral fashion.²²⁵ All but Thrasea agree. His technical disagreement is that the sentence prescribed is illegal, that the *carnifex* and the *laqueus* were long since abolished,²²⁶ and that there were specific laws in place. His counter-proposal, which must have been within the realm of established law, is confiscation of property and exile (14.48.4).²²⁷ The subsequent argument that this prolonged the misery for the defendant and would be

²²⁵ What exactly was meant here by *more maiorum* is unclear. Woodcock Annals XIV ad loc., and McCulloch, Narrative Cause, 187, explain this as "scourging to death." Furneaux, Tacitus, ad loc., compares this to Nero's own sentence at the hands of the Senate in Nero 49, where it is explained to Nero, who doesn't know, that the "ancestral fashion" meant death in the *furca*. From Thrasea's words later in 14.48, it is clear that some form of death was meant which no longer seemed civilized to the Romans of the day.

²²⁶ If this is not rhetorical license on the part of Thrasea, it seems then the sentence here is not the *furca*, but death by strangulation at the hands of an executioner. Both Furneaux, Tacitus, and Woodcock, Annals XIV, ad loc., see this as rhetorical, that Thrasea means that since the executioner and the noose are no longer done surely the *mos maiorum* would be unthinkable. Execution was clearly the norm for those convicted of *maiestas* according to Garnsey, Social Status, 105, but he does not supply information as to a specific method in these cases; elsewhere he mentions (110) beating to death as a traditional punishment. Garnsey does list (155) various methods of execution: by the sword, fire, crucifixion, wild beasts, axe and noose, all but the first considered as aggravated modes under a reform by Hadrian.

²²⁷ By so doing, Thrasea is also making a small revival of the old Republic, when exile was the maximum penalty for those of the aristocracy, and before the death penalty had become the norm for *maiestas*. See Garnsey, Social Status, 105. The exile proposed is probably capital exile, but on this see note 30.

for the senators *clementiae maximum exemplum*, checkmates Nero's plans.

In the actual voting by the Senate, Thrasea wins a strong majority:²²⁸

Pedibus in sententiam eius iere, paucis ex<c>eptis, in quibus adulatione promptissimus fuit A. Vitellius, optimum quemque iurgio lacesens et *respondenti* reticens, ut pavida ingenia solent.

With their feet they voted with him, with a few exceptions, among whom most eager in obsequiousness was Aulus Vitellius, who would assail any good man with invective, and be silent to his response, as is the norm for the timorous intellect.

The old Republic, however, does not sputter to life because the consuls (14.49.1) have not the courage to act as real magistrates and ratify the *decretum senatus*. This action allows Nero to be the judge.

At consules, *perficere decretum senatus* non ausi, *de consensu scripsere Caesari*.

But the consuls, not having dared to ratify the verdict of the Senate, wrote to Caesar concerning their agreement.

Nero's reaction is a vacillation between *pudor* and *ira*, best translated here as "humiliation"²²⁹ and "anger." His judgment in the case is the following rescript to the Senate (14.49.2):

Nulla iniuria provocatum Antistium gravissimas in principem contumelias

Provoked by no insult Antistius has spoken the most severe slanders against the emperor;

²²⁸ The future emperor Vitellius does not vote with the majority. Tacitus at once condemns the fawning of Vitellius and all who did not vote with Thrasea. This shows how Tacitus can speak his mind about an emperor whom he wishes to criticize, and does not have to disguise the criticism.

²²⁹ OLD 4a, with two citations from Tacitus. The fluctuation is one of depression at a feeling of defeat and a wanting to lash out in frustration. This is perhaps not unexpected from an essentially child-like temperament.

dixisse; earum ultionem a patribus postulatam, et pro magnitudine delicti poenam statui par fuisse. ceterum se, qui severitatem decernentium impediturus fuerit, moderationem non prohibere: statuerent ut vellent; datam et absolvendi licentiam.

revenge for these has been demanded by the senators, and it was fair that a penalty be stipulated according to the magnitude of the offense. But I, who was going to be an obstruction to the harshness of those making the judgment, do not forbid moderation. You may decide the case as you wish; permission even of acquittal is granted.

The technical vocabulary of the rescript makes it appear straightforward,²³⁰ but Tacitus' preface to the rescript, describing Nero's emotion, puts the words in a different light. Instead of a level-headed response, the words convey bitterness, and the permission to acquit must be seen only as rhetorical. Tacitus cements this by closing comments on Nero's rescript:

His atque talibus recitatis et offensione manifesta.

When these words and <others> of a like nature had been read aloud, his resentment was flagrant.

Tacitus' terminology is legal here as well. Nero's resentment is *manifestus*; like a criminal caught in the act, his attempt to gain glory has been detected. This is Tacitus' judgment on the real matter of the case.

10. Historical Conclusion The opening words of chapter 49, *libertas Thraseae*, are aimed to show the historical significance of the resumption

²³⁰ Nero's word *contumelia* is the technical term for actionable insult in words, see Ulpian Digest 47.10.5., ¶1 and ¶10 regarding the *lex Cornelia* and a *senatus consultum* on anonymous writings defaming another. Paulus Digest 47.10.8: *Vulneris magnitudo atrocitatem fecit*. The text also considers it relevant who is insulted (47.10.7.8).

of debate in the Senate.²³¹ But Tacitus is toying with his reader through a premature conclusion. At the close of 14.49, after Nero's rescript, Tacitus again describes the consuls and Senate as cowards who do not dare to change their *relatio*.²³² Only Thrasea, standing alone, does not waver in his purpose, while the majority of the Senate seeks safety (and anonymity) in number, *plures numero tuti*. The case was really a struggle for power. Tacitus closes by noting that, for the moment, Thrasea has outmaneuvered the emperor and won a small portion.

²³¹ Martin, *Tacitus*, 176, notes that it is "an opportunity for the display of senatorial independence." His view is that Tacitus is writing the case to discuss Thrasea. McCulloch, *Narrative Cause*, 189-90, sees the case in a similar fashion, but concludes that Thrasea's actions represent a judicial "policy of restrained progressivism." Tacitus rather presents the events as they occurred; the case was not about Thrasea until he interfered with Nero's machinations for *gloria* (14.48.2); that Thrasea had similar personal interests is evident by Tacitus' concluding words regarding him: *ne gloria intercideret* at 14.49.3.

²³² The term is used by Tacitus here both in the sense of the counter-charge (for it thwarts Nero's aim) OLD 4a, and in the sense OLD 1b, "the referring back (of a case) to the original magistrate."

The Case of Burrus and Pallas (13.23)

[This historical case consists of one chapter, and exhibits all ten features from Table 1 on p.6, although feature ¶1 is quite weakly represented, and feature ¶8 must be inferred. It includes the key vocabulary terms: *accusatio*, *accusator*, *auctor*, *consciis*, *defero*, *exilium*, *innocentia*, *iudex*, *manifestus*, *nomino*, *respondeo*, *reus*, *sententiam dicere*.]

1. Historical Introduction In the second year of Nero's reign (A.D. 55), a charge of treason is brought against one of Nero's most trusted advisors, Burrus. Tacitus gives the case only the briefest introduction. He connects this case to the previous case, the *maiestas* trial of Agrippina, in which Burrus was implicated. The background information on Cornelius Sulla's marriage (see below ¶2) and Paetus's career as an informant (see below ¶10), also gives the case a wider historical scope.

2./3. Crimen and Rei Nero's counsellor Burrus is again in jeopardy,²³³ denounced, this time, along with the freedman Pallas. The charge here is *consentio*,²³⁴ another word for plotting a revolution, *maiestas* in everything but name.²³⁵ The specifics of the charge are that Burrus and Pallas have conspired together to make Cornelius Sulla emperor.²³⁶ It

²³³ For his earlier peril, see p.151.

²³⁴ OLD 1b., "a subversive agreement, plot." The actual form used is the allied verb *consentio*, c.f. OLD 4c., "to form a conspiracy."

²³⁵ This case would clearly fall under the *Lex Iulia Maiestatis* as described in the provisions of Ulpian Digest 48.4.1.1.

²³⁶ Better known as Faustus Sulla Felix, consul in A.D. 52 (Annals 12.52). For his "trial" and execution, see Annals 14.57-59, and Syme,

is alleged that Sulla was chosen *claritudine generis et adfinitate Claudii* (he had married Claudius' daughter Antonia).

Deferuntur dehinc consensisse Pallas ac Burrus, ut Cornelius Sulla claritudine generis et adfinitate Claudii, cui per nuptias Antoniae gener erat, ad imperium vocaretur. eius *accusationis auctor* extitit Paetus quidam, exercendis apud aerarium sectionibus famosus et tum vanitatis manifestus. nec tam grata Pallantis innocentia quam gravis superbia fuit: quippe nominatis libertis eius, quos consocios haberet, *respondit* nihil umquam se domi nisi nutu aut manu significasse, vel, si plura demonstranda essent, scripto usum, ne vocem consociaret. Burrus quamvis *reus* inter *iudices* sententiam dixit. exiliumque *accusatori* inrogatum et tabulae exustae sunt, quibus oblitterata aerarii nomina retrahebat.

Next, Burrus and Pallas were accused of having conspired to make Cornelius Sulla the emperor, on account of the fame of his family and his marital connection to Claudius, whose son-in-law he was through marriage to Antonia. The creator of this accusation is on record as a certain Paetus, notorious for carrying out property confiscations and sales while with the Treasury, and then flagrantly guilty of falsehood. Nor was the innocence of Pallas as pleasing as his haughtiness was oppressive. Indeed, when his freedmen were called as witnesses, he said in his defense that he expressed nothing at his home except by way of a nod or by hand-motion, or, if more things had to be indicated he made use of writing, lest he associate his voice with them. Burrus, although a defendant, pronounced sentence along with the judges. Exile was imposed upon the accuser, and his account books were burned, with which he was bringing up again for trial the forgotten entries of the Treasury.

4. *Delator* "A certain Paetus" is the informant.²³⁷ Tacitus applies a hand to the defense here, providing background information on the character of the informant which damages his credibility: Paetus was "infamous for prosecuting actions for confiscation of property."²³⁸

5. *Causa* No motive is provided in the allegations of the plot to replace Nero. Paetus' motive as *delator* is apparent from two statements. First,

Tacitus, 555.

²³⁷ Paetus (*PW* 1, vol.18, pt.2, no.1, 2283), is otherwise unknown.

²³⁸ OLD 8, *exerceo*; *sectio* OLD 2, *op.cit.* For *famosus*, see *Digest* 49.14.18, Title on the Imperial Treasury, Marcian "Informers," where *famosus* is used of a *delator* whose case has failed in such cases.

he seems to be attempting to revive his previous mode of employment, for which he was already infamous. When this is combined with the statements regarding the "forgotten entries" in his account books, the motive for the informant becomes evident: financial gain.²³⁹ He obviously hoped to get the money and property of the accused.

6. Testimony for the prosecution Some of Pallas' own freedmen were either called to give testimony (as alleged accomplices), or mentioned as possible witnesses.²⁴⁰ The prosecution's allegations are provided in virtual *oratio obliqua*, "whom he (Pallas) was said to have had as co-conspirators" (*quos conscios haberet*).

7. Defensio Pallas dismisses the possibility of their giving testimony against him, claiming that he never talked with them, only communicated by non-verbal signals or in writing; he claims that he did not wish to lower himself. The freedman's dislike of other freedmen is regarded by Tacitus as *superbia*. Pallas is clearly vindicated only in spite of his defense. This

²³⁹ These would presumably be records of the old republican treasury in the temple of Saturn, eventually absorbed by the imperial *fiscus* (Buckland, Roman Law, 175), but still active in Nero's day (Nero in fact reformed the process, Annals 13.28-29). A person could come to owe money to this treasury through the imposition of judicial fines (Annals 13.28). The written records of these would be legal documents similar in nature to written contracts for sale, which would serve as proof of the obligation (Buckland, 481).

²⁴⁰ Tacitus says merely that they were *nominatis*, "called by name," or "summoned."

demonstrates that a bad defense, by a disreputable and disliked defendant, can still prevail when the charges have been fabricated.

8. Relatio Counter-charges by Burrus and Pallas against Paetus must be assumed from the judgment against Paetus in 14.23.2. There must be some accusation for a conviction. Although Tacitus does not indicate with what Paetus was charged, it was surely with bringing a false accusation.²⁴¹

9. Iudex and Iudicium The words *innocentia Pallantis* clearly indicate the official verdict in case regarding Pallas; a different verdict is provided by Tacitus and his yard-stick of public opinion: "Pallas' innocence was less pleasing than his arrogance was irritating."

The position of the other defendant, Burrus, is quite unusual. Despite recent problems (13.20), his innocence must not have been questioned (possibly the whole charge was too ridiculous). Tacitus, however, does **not** mention that Burrus was found innocent of the charges, although from what follows, this certainly was the case. Tacitus' silence on this issue may indicate his opinion that Burrus was guilty and used his

²⁴¹ Ulpian Digest 3.6.1.1, *Hoc autem iudicium non solum in pecuniariis causis, sed et ad publica crimina pertinere Pomponius scribit, maxime cum et lege repetundarum teneatur, qui ob negotium faciendum aut non faciendum per calumniam pecuniam accepit*. Apparently those who made false allegations in a criminal case could be brought to trial under a charge of *repetundae*, hence the logic of the sentence of exile which Paetus receives.

considerable influence, along with the accuser's bad reputation, to quash the indictment. Tacitus' statement, "Burrus, although a defendant, pronounced sentence along with the judges," emphasizes his status as *reus* after his innocence has been pronounced. This may be a further hint by Tacitus that the charges were true.

Another possible interpretation of Burrus' status is to assume that Tacitus has condensed two trials into one. If Burrus participates as judge not in his own trial, but in the trial for Paetus for false accusation, then his role makes more sense: No longer accused, he takes personal (but legal) revenge upon his accuser. Tacitus then has condensed two intricately related, but technically distinct cases into one.²⁴²

The results of the charges against Burrus and Pallas are quickly dispensed with: Paetus is *vanitatis manifestus*, "caught in the act of falsehood."²⁴³ This brings about an unfortunate turn of events for the

²⁴² Bauman, *Impietas*, 213, reads *quamvis reus* strictly, arguing that this still applies to the case against Burrus, and that since the case involved a "manifestly false charge" he judged his own innocence. Yet it is the informant who is described as *vanitatis manifestus*. Tacitus may again be avoiding comment on Burrus' guilt. Furthermore, the sentence over which Burrus presides is not the question of his guilt or innocence: that occurs earlier in the passage, and the sentence prescribed here is against Paetus. It seems more likely that two trials have been condensed by Tacitus' abbreviated style, and that *quamvis reus* stands for *quamvis nuper reus*, or something similar.

²⁴³ *Vanitas* is not a technical term. Tacitus uses it at *Annals* 6.21 in the same sense of "falsehood," and as "foolishness" 16.1.1. The technical

delator: He is sentenced to exile,²⁴⁴ and his ledgers are burned. These are the treasury-ledgers on which he had names (including possibly Burrus) of those "he was on the point of *bringing up again for prosecution*."²⁴⁵

10. Historical Conclusion Tacitus ends the case with the burning of Paetus' accounts, and the strong implications in the conclusion that his greed has brought him ruin. The use of the participle *oblitterata* parallels *oblivionem*, which Tacitus uses at the conclusion of the case of *maiestas* against Fabricius in 14.50.2.²⁴⁶ Paetus was like Fabricius in another important way: both were notorious informants. The two are given a similar end by Tacitus.²⁴⁷

crime committed by Paetus is *calumnia* (Digest 3.6.1.1), punishable under the law of *repetundae*. The penalty of exile which he receives is in accord with this. Ulpian Digest 49.14.25, indicates that in denunciations to the Imperial Treasury, the *delator* has the burden of proof.

²⁴⁴ If used in the same sense as *exilium* in 13.22, this is capital-exile.

²⁴⁵ *Retrahebat*, OLD 3b., *op.cit.*

²⁴⁶ See p.121.

²⁴⁷ Neither appears in Tacitus' writings other than in their respective cases. Fabricius' career did not of course end then; the fate of Paetus, as has been mentioned (note 237), is unknown.

The Case of Agrippina (13.19-13.22) ²⁴⁸

[This case is an account of an historical trial. It exhibits all 10 features from the list on p.6. It is unusual in that there are three phases of judgment, on the same charges. These will be distinguished by the designations 9i, 9ii, and 9iii. This case includes the key vocabulary terms: *absolvo*, *accusatio*, *accusator* [x2], *adulter*, *arbiter*, *arguo*, *auctor*, *coarguo*, *conscientia*, *crimen* [x3], *defensio*, *defero*, *delator*, *dictito*, *dissolvo*, *exilium*, *facinus*, *gradus*, *infamia*, *iniuria*, *innocentia*, *iudico*, *ius proconsulare*, *mando*, *obicio* [x2], *offensio*, *parricidium*, *poena* [x2], *relego*, *res novas extollere*, *scelus*, *supplicium*.]

1. Historical Introduction Similar to the case against Pallas and Burrus, is the very first charge of treason which is brought in Nero's tenure. His mother, Agrippina, is also wrongfully charged. This case is of particular interest because it heralds Nero's eventual murder of his mother; at this early point in his reign, Nero has not yet become the man who kills his mother, and when the charges here are shown to be false, the case is dismissed. Nevertheless, the tension between mother and son is evident, as is the rage that boils just beneath the surface of the young emperor.

In the previous chapter, Tacitus describes Nero's growing estrangement from his mother. Matters reach a critical point when Nero removes her personal guard. The case then opens with a generalization drawn from the episode (13.19.1):

²⁴⁸ The episode is unusual in that Tacitus pauses in the middle to comment upon (and even name) some of his sources. The actual variation in the accounts he mentions (13.20.2) concern the status of Burrus after Paris' account of Silana's allegations. In that Burrus was not removed at this point, the differences seem to be of little moment, and Tacitus' source-criticism at this point is a puzzle. For a discussion of this incident in relation to Tacitus' sources, see Syme, Tacitus, 289-90, and Martin, Tacitus, 208. Both see the value of the episode in Tacitus' discussion of his sources, rather than in the account of the case itself.

Nihil rerum mortalium tam instabile ac fluxum est quam fama potentiae non sua vi nixa <e>. statim relictum Agrippinae limen: nemo solari, nemo adire praeter paucas feminas, amore an odio incertas.

Nothing in mortal affairs is so unstable and fluid as a reputation for power which is not supported by its own strength. Agrippina's door was immediately abandoned, no one gave comfort, no one came near, save a few women, and whether they came out of love or out of hatred is not known.

These lines would be a fitting description for almost any downfall from power, and are remarkably similar in tone to the words which Suetonius uses to describe Nero's own fall from power.²⁴⁹

2./3. Crimen and Rea Agrippina is marked out as the defendant from the moment her threshold is abandoned, except for an enemy. Tacitus stresses that the charges brought against her are new, and through praeterition, reminds the reader of old charges that are **not** made (13.19.3):

Non vetera et saepius iam audita deferens, quod Britannici mortem lugeret aut Octaviae iniurias evulgaret.

She (Junia Silana) did not make old and now often heard charges, to the effect that she was mourning the death of Britannicus, or was making public the injustices done to Octavia.

The first of those "old charges" had been levelled earlier (13.14-18) as part

²⁴⁹ Nero 47.3: *Sic cogitatione in posterum diem dilata ad mediam fere noctem excitatus, ut comperit stationem militum recessisse, prosiluit e lecto misitque circum amicos, et quia nihil a quoquam renuntiabatur, ipse cum paucis hospitia singulorum adiit. verum clausis omnium foribus, respondente nullo, in cubiculum rediit, unde iam et custodes diffugerant, direptis etiam stragulis, amota et pyxide veneni.* In both texts the doors are abandoned or closed and they find themselves suddenly alone; for verbal similarities note: *paucis...adiit* in the Suetonius, and *adire...paucas* in Tacitus' account; Suetonius' *nihil...nullo* and Tacitus' *nemo...nemo*.

of the case against Nero: the murder of Britannicus.²⁵⁰ For the second set of old charges, the *iniuriae* of Octavia, Tacitus gives Octavia a chance to plead her own case at the end of Book 14.²⁵¹

The charges that are made against Agrippina are more severe than those alluded to above:

Destinavisse eam Rubellium Plautum, per maternam originem pari ac Nero gradu a divo Augusto, ad *res novas extollere* coniugioque eius et imperio rem publicam rursus invadere.

She charged that Agrippina had marked out Rubellius Plautus, who, through his maternal line, was of an equal degree of relationship as Nero from the divine Augustus, that Agrippina was encouraging him to revolution, and that through marriage to him and his power, was again attacking the state.

The charge is *res novas extollere*,²⁵² which is *maiestas* in everything but name.²⁵³ Plautus, the alleged replacement for Nero, has the misfortune

²⁵⁰ See "Fratricide," p.222.

²⁵¹ See "The Case of Octavia," p.154.

²⁵² *Extollere* OLD 6b, "to encourage." This almost natural extension of the base meaning "lift up," seems to be unique to Tacitus.

²⁵³ Bauman, *Impietas*, 211-213 summarizes the details of this episode. He follows Tacitus' statement at 14.48.2 of the revival of the law at that point under Nero (and not before). It goes to the credit of the thoroughness of his investigation that, while arguing that this case is not *maiestas*, he does not ignore it. He first refers to the charges as "brought or contemplated charges," 211, and identifies the *crimen* as "revolt." He then picks up on the phrase *infamia parricidii* (see below ¶8) as the actual charge in the case. *Infamia* was however not a *crimen*, but the consequence of a conviction, see note 224. Bauman concludes that what occurs here is merely a "preliminary interrogation" and that "Agrippina was not tried" 212; "this case," he argues, "lends important support to the employment of charges of *parricidium* when *maiestas* was in abeyance" 213. This is a very literal interpretation. The case is historical--the

of being as closely related to Augustus as Nero.²⁵⁴

4. Delator Although Junia Silana is the one with the main motive (see ¶5 below), she is not directly the informant. She works indirectly, through a pair of underlings, Iturius and Calvisius, whom she delegates out of her retinue of clients as *accusatores*. They in turn also do not act directly, but relate the information to Atimetus, a freedman of Nero's aunt Domitia. This freedman, as one might suspect by now, also does not act directly, but finds a certain actor, Paris, who is ordered to make the charges *atrociter* (hence the need for one of his profession).²⁵⁵ Conveniently, Paris is a friend of the emperor (13.20.1), and this obviously facilitates his audience.

5. Causa Junia Silana is introduced as one of the women who continue

accusations made, the danger to Agrippina, the eventual rewards and punishments all were very real. If Bauman is correct, matters were not conducted in an official trial setting, and Tacitus has framed the events more like a trial than they actually occurred: this is his literary structure. Nevertheless, the *crimen* here is *maiestas*, in everything but name. For what is *parricidium* on Agrippina's part, directed toward her son, the emperor, if not also *maiestas*?

²⁵⁴ Tacitus comments in 13.1.1 on this problem: *quippe et Silanus divi Augusti abnepos erat. haec causa necis*. For the term *gradus* used to describe the degree of relationship, cf. Ulpian Digest 37.4.8.1, the title *De Bonorum Possessione*, and the sub-section treating those singled out for disherison.

²⁵⁵ This could be an historical progression, an anti-climax, since Tacitus dislikes actors even more than freedmen; or it may refer to Nero's own vanity, because as it turns out, Paris is also a freedman--*libertum et ipsum*. The flimsy chain of witnesses (Silana to Iturius and Calvisius, to Atimetus, and finally to Paris) whereby the evidence is delivered to Nero adds a general tone of mocking humor.

to visit Agrippina for reasons that are *incertae* (13.19.2):

Ex quibus erat Iunia Silana, quam matrimonio C. Sili a Messalina depulsam supra rettuli, insignis genere forma lascivia, et Agrippinae diu percara, mox occultis inter eas offensionibus, quia Sextium Africanum nobilem iuvenem a nuptiis Silanae deterruerat Agrippina, impudicam et vergentem annis dictitans, non ut Africanum sibi seponeret, sed ne opibus et orbitate Silanae maritus poteretur. illa spe ultionis oblata parat *accusatores*.

One of those was Junia Silana, who, as I have related above, was dismissed from her marriage to Caius Silius; she was noted for her birth, beauty, and sexual license, and had been quite dear to Agrippina for a long time, but later there arose hidden affronts between them, because Agrippina had discouraged Sextius Africanus, a noble youth, from marrying Silana, repeatedly charging that she was unchaste and heading downhill in years; she did this not to set aside Africanus for herself, but lest a husband come into possession of the riches and childlessness of Silana.

Silana's reasons are clearly not "uncertain" but "malicious." She has turned from friend to informant because Agrippina had ruined the opportunity she had had for a lucrative marriage.²⁵⁶

Motive is also supplied for one link in the chain of informants: Atimetus is pleased by the opportunity to give information because his mistress dislikes Agrippina.

6. Witness for the Prosecution The prosecution testimony is the delivery by the actor of the story concocted by Silana (13.20.1):

Provecta nox erat et Neroni per vinolentiam trahebatur, cum ingreditur Paris, solitus alioquin id temporis luxus

The night was advanced, and was being drawn out by Nero through drunkenness, when Paris entered. He had been generally accustomed at

²⁵⁶ 13.19.2. This was managed, on Agrippina's part, by making false (or surely unsubstantiated) accusations against Junia, including *impudicitia*. Tacitus goes so far to explain Agrippina's motive: legacy hunting. This is a small case within the larger case.

principis intendere, sed tunc compositus ad
maestitiam, expositoque indicii ordine.

that time of night to intensify the indulgences of
the emperor, but this time had disposed himself
to sadness, and went through the evidence in
order.

The details of the fabricated evidence are not cited for the reader a second
time, and it may be assumed that all the actor added was his artistry.²⁵⁷

7. *Defensio* The arguments for the defense come from two sources.
Initially, with the swiftness of the late-night judgment (§9*i* below), the case
has almost ended in a moment. Seneca comes to the defense of Burrus
(13.20.2), who in turn comes to the defense of Agrippina (13.20.3).²⁵⁸

Nero trepidus et interficiendae matris
avidus non prius differri potuit, quam
Burrus necem eius promitteret, si *facinoris*
coargueretur; sed cuicumque, nedum
parenti defensionem tribuendam; nec
accusatores adesse, sed vocem unius <et>
ex inimica domo adferri: reputare <t>
tenebras et vigilatam convivio noctem
omniaque temeritati et inscitiae propiora.

Nero, who was quivering and eager to kill his
mother, could not be dissuaded until Burrus
guaranteed her death, if she should be convicted
of the crime. "But," he said, "to anyone, let
alone a parent, a defense must be granted.
There were no informants present, save the
voice of one man, and he from a hostile
household: you should make allowance for the
darkness and the night spent awake in feasting,
and that everything verges on rashness and
ignorance."

²⁵⁷ When a suborned informant exceeds his orders, Tacitus makes a
note of it, e.g., (14.62.4): *plura etiam quam iussum erat fingit*.

²⁵⁸ It is unclear exactly who gives the advice in *oratio obliqua*. As
reputaret (s.v.l.) makes clear, the subject of which is surely Nero, he can
not be the subject of the understood introductory verb which governs the
oratio obliqua, or else we must not follow Lipsius here and perhaps emend
the impossible reading *refutare* merely to *reputare*. Following Fisher
(OCT) and Heubner (Teubner) and reading *reputaret*, we must conclude
that it is either Seneca, who intervenes on Burrus' behalf earlier, or more
likely Burrus himself, who is the subject of the nearby *promitteret*, which
quite plausibly gives the notion of speaking which leads Tacitus into this
construction.

The use of the gerundive with *esse* understood leaves no room for argument: all accused (at least as Nero is advised here) must have a defense. This defense speech on behalf of Agrippina is surely the proximate cause of her living through the night to refute matters personally the next morning.

Agrippina provides the second phase of her defense personally. The accused is informed of the charges (13.21.1),²⁵⁹

ut nosceret obiecta dissolveretque vel
poenas lueret.

so that she might know the accusations and
refute them, or pay the penalty.

Her moderately long speech (13.21.2-5) is given in *oratio recta*. She begins with a *relatio*, for which see below (§8). Afterwards, she proceeds with the following (13.21.3-5):

Per concubinum Atimetum et histrionem
Paridem quasi scaenae fabulas componit.
Baiarum suarum piscinas extollebat, cum
meis consiliis adoptio et proconsulare ius et
designatio consulatus et cetera apiscendo
imperio praepararentur. aut existat qui
cohortes in urbe temptatas, qui
provinciarum fidem labefactatam, denique
servos vel libertos ad scelus corruptos
arguat. vivere ego Britannico potente
rerum poteram? ac si Plautus aut quis
alius rem publicam *iudicaturus* obtinuerit,
desunt scilicet mihi *accusatores*, qui non

Through her concubine Atimetus and the actor
Paris she has composed stories fit for the stage.
She was advancing the fishponds of her estates,
while adoption, proconsular rights, and the
designation of consul, and the other tools for
acquiring empire were being prepared by my
plans. Or does there exist someone who makes
the charge that an attempt was made to
influence the cohorts in the city, or that the
loyalty of the provinces was weakened, or
finally that slaves or freedmen were corrupted
<by me> into crime? Could I have lived with
Britannicus in power? Or if Plautus or someone
else were to obtain control of the state and

²⁵⁹ See Strachan-Davidson, *Criminal Law*, 2:112, a necessary procedure. For *dissolvo* see OLD 7b, *op.cit.*, and citations for similar uses in Cicero and Quintilian; 7a used by Ulpian. The only similar legal use in the Neronian books is 14.17, where the subject of the participle is "measures."

verba impatientia caritatis aliquando incauta, sed ea *crimina obiciant*, quibus nisi a filio absolvi non possim."

become judge, would truly accusers be lacking who, not the odd word spoken carelessly through the impatience of affection, but would accuse me of those very sorts of charges, of which I can not be absolved except by my son?"

Her argument is threefold: first, she asserts that the crime has been merely staged (*scaenae fabulas*);²⁶⁰ second, she recounts her services, without which her son would not have become emperor; third, she makes the argument, *cui bono*, that turning on Nero would only result in her destruction.

Her final words, "I can not be acquitted except by my son," seem to demand Nero as her judge rather than Burrus, Seneca, and the freedmen present.

8. *Relatio* The counter charges in Agrippina's defense contrast her behavior with that of her accusers (13.21.2):

Agrippina ferociae memor "non miror" inquit, "Silanam numquam edito partu matrum adfectus ignotos habere; neque enim proinde a parentibus liberi quam ab impudica adulteri mutantur. nec si Iturius et Calvisius adesis omnibus fortunis novissimam suscipiendae *accusationis* operam anui rependunt, ideo aut mihi *infamia* parricidii aut Caesari conscientia subeunda est.

Agrippina, recalling to mind her fierceness, said, "I do not wonder, that Silana, who has never had children, is ignorant of the emotions of mothers; for children are not changed by parents in the same way as adulterers are changed by a slut. If Iturius and Calvisius, with all their wealth eaten away, are rendering as payment to the old woman this last-ditch work of undertaking an accusation, it does not mean that Caesar or I must undertake the disgrace or guilt of killing a close relative.

She accuses her real accuser, Junia Silana, of *impudicitia* and *adulterium*;

²⁶⁰ See in "The Case of Matricide," where Tacitus will echo this, p.242.

then she insults her as an old woman.

9i. *Iudex and Iudicium* The initial judge in the case is the drunken Nero who makes an immediate judgment when he receives Paris' late-night testimony (13.20.1):

Ita audientem exterret, ut non tantum matrem Plautumque interficere, sed Burrum etiam demovere praefectura destinaret, tamquam Agrippinae gratia provectum et vicem reddentem.

Paris so frightened (Nero) as he listened that he determined not only to kill his mother and Plautus, but also to remove Burrus from his prefecture, on the grounds that he had been promoted by the favor of Agrippina, and was now rendering payment.

The sentences of death for Agrippina and Plautus are not altogether unexpected; the removal of Burrus, who had not been touched by the allegations, is a surprise, which hints at the paranoid mind-set of the emperor.²⁶¹ Nero's narrow basis for inclusion of his trusted advisor is guilt-by-association. This is a definite hallmark of a reign of terror, with which Tacitus was familiar.²⁶²

9ii. *Iudex and Iudicium* When Nero agrees to Burrus' defense arguments (§7 above), the case disintegrates for lack of evidence as quickly as it seemed to materialize. With the dawn the inquiry proceeds in official

²⁶¹ Walker, *Tacitus*, 218-19, discusses this passage as an example of Tacitus' casting of a character as a type, here specifically Nero is playing the role of a "victim" in a "victim-scene."

²⁶² Cf. *Histories* 1.2.3, *corrupti in dominos servi, in patronos liberti; et quibus deerat inimicus, per amicos oppressi*. The passage conceivably refers not only to the events of A.D. 69, but also to Domitian; it is equally valid for Nero's reign, and comes to fruition in the Pisonian conspiracy, see p.195.

fashion, and includes a new set of judges:

Burrus iis mandatis Seneca coram
fungebatur; aderant et ex libertis arbitri
sermonis.

Burrus carried out his mandate with Seneca
present; there were also present some of
<Nero's> freedmen as judges of the dialogue.

The freedmen might be "judges" or "witnesses,"²⁶³ but the entire group is a makeshift court to judge Agrippina's testimony. Burrus relates the charges, and Agrippina delivers her defense and *relatio* (§7 and §8 above). Afterwards this court is "thoroughly moved."²⁶⁴ Their decision is related only indirectly: she obtains the demanded audience with her son.

9iii. *Iudex and Iudicium* Tacitus does not provide any details of this audience, only its results. The final judge in the case is same as the first: Nero.

Through the judgment he makes, Agrippina is not only acquitted, but also achieves vengeance upon her *delatores* and rewards for her friends. This trial has ended with a surprise turn of events: the accused

²⁶³ "Judges" is OLD 2, with numerous parallel legal uses; yet Furneaux, Tacitus, *ad loc.* translates as "witnesses," and OLD follows this and cites the passage under sense 1. But for a parallel use in Tacitus, see 16.18, for the famous phrase describing Petronius as *elegantiae arbiter*. Strachan-Davidson, Criminal Law, 1:116, notes that testimony given in *absentia* had to be brought to court under the seals of seven witnesses, but there would be no requirement for the witnesses to be present at the testimony; as the ending of the passage makes clear, they were sent to judge her, a judgment which she essentially refuses, insisting upon instead being judged in person by Nero.

²⁶⁴ *Commotis*, 13.21.6.

is rewarded, and the accusers themselves are accused and punished. The details of the rewards and penalties are laid out in 13.22: Silana is exiled; Calvisius and Iturius are banished by *relegatio*;²⁶⁵ Atimetus is put to death; but Paris, who is too favored, receives no penalty.

10. Historical Conclusion Tacitus' final line gives the brief but ominous comment, "Plautus for the moment was passed over in silence." The appearance of a comet in A.D. 60 (14.22) will again bring Plautus back into more prominence than is healthy for an imperial rival. Then he is exiled; finally, in A.D. 62 (14.59) he is given a sham-trial and executed.

²⁶⁵ The distinction made here between *exilium* (capital-exile) for Silana, as opposed to *relegatio* for Iturius and Calvisius, demonstrates that Tacitus could, when he wished to, be specific about types of exile (see note 30). Garnsey, Social Status, 263 suggests that Iturius and Calvisius are freeborn citizens because their penalty of *relegatio* is less severe than that of death for *Atimetus*. Tacitus provides no information on this account, but *relegatio* was also a standard penalty for freedmen (cf. Digest 37.14).

The Case of Octavia (14.60-64)

[This case is a partly-historical trial, consisting of 5 chapters. It is actually 3 cases interwoven, and exhibits all 10 features from Table 1 on p.6. The three sub-cases are: a failed charge of adultery against Octavia; a fictive case against Poppaea; and finally charges of *maiestas*, adultery, and abortion against Octavia. The sub-cases will be designated A, B, and C, respectively, and the case elements so-marked (e.g., 2A.) where they apply to a specific sub-case, and marked without a letter (e.g., 1) where the element applies to the trial as a whole. This trial includes the key vocabulary terms: *adulter, cieo, confessio, conscientia, crimen, deduco, delictum, depello, dictito, exilium, fateor[x2], flagitium, incuso, obicio, offensio, pello, quaestio, respondeo, revoco, saevitia [x2], scelus, seditio, senatus consultum, testor.*]

1. Historical Introduction This case marks a change in the course of treason trials under Nero. It is here that Nero apparently realizes the full extent of his power and the weakness of the Senate, and as if testing that theory, he willingly participates in the fabrication of charges which conceal a plot to kill Octavia. *Maiestas* has become a weapon of tyranny, and an expression of the fear that the tyrant will be assassinated. Although none of the cases thus far, including this one, has involved an attempt to overthrow Nero, plots were soon to come.

To introduce to this case, Tacitus connects it to the preceding case, the sham-trials and executions of Plautus and Sulla. After their deaths, Nero sends a letter to the Senate (14.59.4):

Ad senatum litteras misit de caede Sullae Plautique haud confessus, verum utriusque turbidum ingenium esse, et sibi incolumitatem rei publicae magna cura haberi.

He sent a letter to the Senate concerning the deaths of Sulla and Plautus, by no means confessing his guilt, but <stating> that the nature of each was unruly, and that the safety of the state was a great concern for him.

The Senate's reaction to this letter is a decree showing subservience:

Decretae eo nomine supplicationes, utque Sulla et Plautus senatu moverentur, gravioribus iam ludibriis quam malis.

The Senate decreed offerings in that connection, and decreed that Sulla and Plautus were to expelled from their body; these measures were more serious mockeries than evils.

It is to this decree of the Senate that Tacitus refers in opening this case.

Now, in A.D. 62, Nero sees that his "crimes" will be taken for "noble acts," and this allows the proceeding against Octavia to begin (14.60.1):²⁶⁶

Igitur accepto patrum consulto, postquam cuncta scelerum suorum pro egregiis accipi videt, exturbat Octavia, *sterilem dictitans*.

And so, after he had received the decree of the Senate, now that he realized that all of his crimes were taken for noble acts, he drove out Octavia, insisting that she was barren.

Poppaea is also introduced so as to broaden the scope of the passage.

The nine-word description that follows at once looks back to a time before the case, and toward the future, when Octavia will be dead and Poppaea Nero's new wife (14.60.2):

Ea diu paelex et adulteri Neronis, mox mariti potens.

For a long time she was the mistress and had control over Nero the adulterer, soon over Nero her husband.

This line also introduces Poppaea, instead of Nero, as the prime mover in the case.

²⁶⁶ A similar idea forms the opening of the "Case of Matricide." Then, in A.D. 59 (14.1-13), Nero needed his rule matured (*vetustate imperii*) in order to remove his mother.

2A./3A./4A. *Crimen and Rei and Delator* Octavia has apparently been *de facto* divorced (14.60.1) before the start of the first sub-case.²⁶⁷ Simple divorce, however, seems not to have satisfied Poppaea, hence the first set of charges (14.60.2):²⁶⁸

Quendam ex ministris Octaviae impulit
servilem ei amorem obicere.

Poppaea forced a certain one of Octavia's
attendants to accuse her of loving a slave.

The *crimen* and *reus* are clearly indicated by Tacitus' choice of *obicio* as the verb. Octavia is charged with having a slave as a lover. The crime is *adulterium*.²⁶⁹ The man elected²⁷⁰ to the position of *reus* is a certain Eucaerus. The man is termed *reus* rather than *delator*, because the charge of *adulterium* applies against him also.²⁷¹ The real informant in the case is Poppaea, who forces Eucaerus' action. Tacitus' details on this man

²⁶⁷ Probably by *repudium*. See Buckland, Roman Law, ¶ 52.

²⁶⁸ The fact that they are already divorced is no obstacle, see Ulpian Digest 48.5.17, *Qui uxori repudium miserit, postea denuntiare...potest*.

²⁶⁹ Furneaux, Tacitus, *ad loc.* believes the charge that was dropped here was *maiestas*; he views the estates given to her as recompense for the dowry--no doubt this idea is based on the much abbreviated version in Dio 62.13. Garnsey, Social Status, 21, notes that as early as Augustus, adultery connected to the emperor's household is seen to parallel *maiestas*. In the second case (see ¶2C below) *maiestas* is a central part of the charge, but it can only be guessed at as part of these initial charges.

²⁷⁰ *Destino*, OLD 6, possibly not without sarcasm.

²⁷¹ In some instances the sentence could be death: (Macer Digest 48.5.25): *Marito quoque adulterum uxoris sua occidere permittitur...quive servus erit*. One of the instances was when the offender was a slave.

are scanty: he was an Alexandrian flute-player.²⁷²

5A. Causa Nero has decided to remove his wife, initially only by divorce. She has become *gravis* (14.59.3), "troublesome," because of her father's name (i.e., her lineage) and her popularity with the people. Both may have made her seem a threat. Poppaea clearly wishes to replace Octavia, and the prominent description of Poppaea's power over Nero (14.60.2) indicates that her motives are at least as important as Nero's.

6A./7A. Testimony for the Prosecution and Defense Octavia's opponents now aim at the trappings of an official proceeding, by attempting to produce incriminating evidence through the interrogation under torture of Octavia's slaves. The attempt to turn the majority of them into witnesses for the prosecution fails (14.60.3):

Actae ob id de ancillis quaestiones, et vi tormentorum victis quibusdam, ut falsa adnuerent, plures perstitere sanctitatem dominae tueri; ex quibus una instanti Tigellino castiora esse muliebria Octaviae respondit quam os eius.

Examinations were conducted of the maids on that matter, and although some were overcome by the force of the tortures, so that they assented to false things, more stood firm in preserving the virtue of their mistress; one of these, to Tigellinus standing over her said in defense that the womanly aspects of Octavia were purer than Tigellinus' mouth.

Instead of becoming prosecution witnesses, most of the slaves provide evidence valuable only for the defense, testifying to Octavia's *sanctitas* and *castitas*.

²⁷² This is relevant to his eligibility for the death penalty, as Macer's provision (see note 271) also specifically applies to stage performers of various types.

8A. *Relatio* General counter-charges against Nero come in the introduction to the case (see above, section ¶1) with comment on the emperor's new attitude towards his *scelera*. Tacitus narrates for the defense.

The counter-attack to these first charges of adultery occurs only after the judgment below. It is Octavia's popularity that briefly comes to her rescue. The voice of the *vulgus* is the advocate for the defense, and seems to rule Nero (14.60.5):

Inde crebri questus nec occulti per vulgum,
cui minor sapientia <et> ex mediocritate
fortuna pauciora pericula sunt.

Then amidst the masses there were frequent complaints, which were not hidden, for they have less wisdom, and on account of the mediocrity of their fortune they have fewer dangers.

Their complaints function as an appeal of her sentence of exile.²⁷³

The narrative of the actions of the *vulgus* continues in 14.61.1. Octavia's statues are raised and Poppaea's are toppled. These actions are a *relatio* against Poppaea:²⁷⁴ the crowd indicates that Octavia should

²⁷³ For an interesting turn on these events, see the *Octavia* 860 f., where Nero contends that the *populi furor*, acting on behalf of Octavia, is really her accuser: *qui sontem arguat*.

²⁷⁴ To understand that the toppling of one's statues could be a serious matter, one need only note that to do so to an emperor's statue was grounds for the charge of *maiestas* (*Digest* 48.4, *passim*). Poppaea doubtless sees herself as already being an empress. The crowd accuses Poppaea of treason by restoring the toppled statues of Octavia. Bauman, *Impietas*, 82-5, recounts the history of desecration of imperial statues. Balsdon, *OCD*, under *damnatio memoriae* notes that the destruction of one's images occurred if sentenced to that fate.

replace her. Poppaea herself will view these actions as charges (see below ¶2B).

9A. Iudex and Iudicium The criminal proceeding clearly fails when the attempt to generate evidence by torturing the slaves fails. Legal methods are then apparently abandoned by Nero. Octavia is perhaps only now (14.60.4) officially "removed" (*movetur*),²⁷⁵ and this is done "under the semblance of a civil law divorce" (*civilis discidii specie*),²⁷⁶ perhaps on the grounds of sterility mentioned earlier (*sterilem dictitans*).²⁷⁷ Any criminal aspect of judgment in the first case is excluded by the use of the

²⁷⁵ OLD 7b, *op. cit.*, "dismissed," with parallel uses for removing someone from office, or from the roll of the Senate. Two legal uses are listed here from Cicero. Furneaux, Tacitus, ad loc., however views this as simple for compound, i.e., *amovetur*. Corbett, Law of Marriage, 233, lists *expellere, discedere, and dimittere* as the standard verbs.

²⁷⁶ This would entail an oral or written *repudium*, presented in the presence of seven witnesses, Corbett, Law of Marriage, 239, and Buckland, Roman Law, 117. The *infausta dona* mentioned by Tacitus must be then Nero's official restoration of the dowry (Buckland, 110). Susan Treggiari in Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian (Oxford: Oxford University Press, 1991), 466, "The legal effect of divorce was normally considered to be the physical separation of the *coniuges* and the restoration of the dowry..." She then points to Burrus' house and Plautus' estates as "substantial gifts" made to Octavia, as part of Nero's attempt at an "appearance of a *civile discidium*."

²⁷⁷ Treggiari, Roman Marriage, 466, asserts that these are the grounds for divorce, effectively connecting *exturbat Octaviam, sterilem dictitans* (14.60.1) with *movetur tamen primo civilis discidii* (14.60.4). After the failure of the adultery charge, the grounds for divorce in 14.60.4 may well have been those mentioned in 14.60.1; nonetheless as Tacitus presents them they are two separate events.

term *civilis*.

Although at first assigned to Burrus' home and Plautus' property, she is soon "exiled" (*pulsa*) to Campania under military guard. The exile is of course extra-legal; there has been no criminal judgment. The sentence however assumes such a judgment.²⁷⁸

This initial judgment is then reversed after the appeal of the crowd. Nero terminates Octavia's exile; again a technical term, *revoco*, is employed.²⁷⁹

2B./3B./4B. *Crimen, Rea, and Delator* The second sub-case grows out of a response to the counter-charges in ¶8A above, and will, through its own counter-charges, initiate the final sub-case; it thus serves as the glue which holds the three sub-cases together.

Poppaea is cast in the role of defendant, in what is more of a literary than an actual trial. It is difficult to believe that there would have been any record of Nero and Poppaea conversing during the riot outside the palace, still more difficult to imagine that any account of what was said existed. Tacitus probably filled in what to him was likely, but in

²⁷⁸ Exile was the normal punishment for adultery under the *Lex Iulia*, see Garnsey, *Social Status*, 111 n.3, and 113 n.5, and above note 30.

²⁷⁹ OLD 3b, *op.cit.* There is no indication here that Nero takes Octavia back as his wife; if he were to, however, this would mean that he absolved her of offenses committed in the context of the previous marriage (Ulpian *Digest* 48.5.14.9).

so doing he chose the medium of a trial.

The crowd, by causing her statues to be toppled (if only momentarily), plays the role of *delator* and brings a charge against Poppaea. This charge is most likely *maiestas*.²⁸⁰ Poppaea, in a series of rhetorical questions, also plays the role of *delator* against herself, posing some mock accusations (14.61.4):

Quod alioquin suum delictum? quam
cuiusquam offensionem? an quia veram
progeniem penetibus Caesarum datura sit?

What *was* my crime? What injury have I done to
anyone? Was my crime that I am about to give
a true offspring to the Penates of the Caesars?

The specifics of the mock accusations deserve examination. The first two questions imply that she has been charged with a *delictum* or an *offensio*. Both terms can be translated as "offense," but while the first is a technical term, the second is not. The distinction can be rendered by translating the passage, "have I committed any offense criminal or otherwise?" Poppaea's third rhetorical offense is surely something she considers of merit: producing an heir for Nero. This also carries an implicit *relatio*: Octavia's failure to produce an heir (i.e., sterility, *sterilem dictitans* 14.60.1).

5B. *Causa* Tacitus ascribes two different motives to Poppaea. The first involves her nature, "she always acts out of hatred," and the second is her fear of the losing power (14.61.2):

²⁸⁰ See note 274.

Quae semper odio, tum et metu atrox, ne aut vulgi acrior vis ingrueret aut Nero inclinatione populi mutaretur.

She always <acted> out of hatred, but then was also savage on account of her fear that either the quite violent power of the mob would attack her, or that Nero's opinion would be changed by of the will of the people.

These motives may well work for the entire episode, but Tacitus chooses to provide them in the center of the story.

8B. *Relatio* Poppaea offers no standard defense against the charges which she has posed, but instead moves directly to a whole series of counter-charges (14.61.2-3):

Vitam ipsam in extremum adductam a clientelis et servitiis Octaviae, quae plebis sibi nomen indiderint, ea in pace ausi, quae vix bello evenirent. arma illa adversus principem sumpta; duces tantum defuisse, qui motis rebus facile reperiretur: omitteret modo Campaniam et in urbem ipsa pergeret, ad cuius nutum absentis tumultus cicerentur.

My life itself has been plunged into great danger by the clients and slaves of Octavia, who have attached to themselves the name of the people, and have dared to the sort of things in time of peace which scarcely happen during a war. Those arms are raised against the emperor; their cause only lacks a leader, who, once things are set into motion would easily be found: if only she would just leave Campania and make her way into the City, she at whose absent nod this disturbance is being stirred up.

These charges are simplified in Table 5:

Table 5.--Rhetorical Charges in Poppaea's *Relatio* against Octavia

A	The clients and slaves of Octavia are trying to kill her.
B	They misrepresent themselves as the <i>vox populi</i> .
C	Their actions amount to <i>vis publica</i> . [‡]
D	They are plotting armed insurrection (<i>maiestas</i>).
E	Octavia, although absent, is their leader.

[‡] *Digest* 48.6.11, *Hi, qui aedes alienas aut villas expilaverint effregerint expugnaverint, si quid in turba cum telis fecerint, capite puniuntur.*

Poppaea continues addressing Nero with more accusations along the same lines in (14.61.4):

Malle populum Romanum tibicinis Aegyptii subolem imperatorio fastigio induci? denique, si id rebus conducatur, libens quam coactus acciret dominam, vel consuleret securitati. iusta ultione et modicis remediis primos motus consedis: at si desperent uxorem Neronis fore Octaviam, illi maritum daturus.

Do the Roman People prefer that the offspring of an Egyptian piper be installed in the imperial rank? Finally, if it is advantageous, you should summon your mistress voluntarily rather than be compelled to do so, or even look to your own safety. By just revenge and moderate treatments initial outbreaks of disorder are quelled: but if these people should despair of Octavia as the wife of Nero, they will find for her a new husband.

Here she has placed advice ("Summon her, before she summons you") in the middle of a final counter-charge: the Roman people may not want an emperor descended from an "Egyptian piper," but aim to find a new husband for Octavia. This charge combines the adultery and the *maiestas*, with the added insult recalling the days of Antony and Cleopatra; insults were a common stock of the Roman court.²⁸¹ The purpose of this batch of charges is to reinforce charge (D) above, and transfer the imagined threat from Poppaea to Nero.

When the charge of having had an abortion is related (14.63.1),

²⁸¹ Cf. Cicero, *Pro Sex. Roscio* 152, on the differences between his client and his client's accuser: *Dubium est ad quem maleficium pertineat, cum videatis ex altera parte sectorem, inimicum, sicarium, eundemque accusatorem hoc tempore, ex altera parte egentem, probatum suis filium, in quo non modo culpa nulla sed ne suspicio quidem potuit consistere?* [text: Clark OCT]. Greenidge, *Legal Procedure*, 472, mentions that an appeal to the feelings of the judges was a common tactic, as well as character testimonials, 490.

Tacitus will note that the previous charge of sterility has been forgotten.²⁸² Here, too, it seems Poppaea's accusation flies in the face of logic. If sterile, an abortion is impossible, and if not, the abortion itself was probably not yet a crime.²⁸³ Yet if true, the abortion could be considered evidence for the adultery charge.

2C./3C./4C Crimen, Rei, and Delator The third and final sub-case is a result of Poppaea's rhetoric (§8B above). The weaknesses of the first case against Octavia must be overcome: the alleged affair with the slave was "insufficiently weighty" (*parum valebat*), and the interrogations of the maids "were foiled" (*elusa erat*). Nero again attempts to frame Octavia, and this time the charge of *maiestas*, termed here as *res novae*, will be the main component of the charges (14.62.1):

Confessionem alicuius quaeri placet, cui rerum quoque novarum crimen adfingetur.

He decides that another's confession is to be sought, upon whom the charge of plotting a revolution can also be made up.

Anicetus is chosen as the new informant. Tacitus reminds us that

²⁸² At Octavia 181, Octavia alleges that Poppaea is pregnant by Nero.

²⁸³ Furneaux, Tacitus, 2:311, indicates that abortion was not a crime until the time of Septimius Severus, pointing to Marcian Digest 47.11.4, where in a rescript Severus and Caracalla stipulate temporary exile (*relegatio*) as the penalty. However, in the title (48.8) on the *Lex Cornelia de sicariis et veneficis*, the penalty of exile is also stipulated. Here the selection (Digest 48.8.4.8.) is from Ulpian on the Praetor's Edict. It is possible that this reflects earlier language from the Edict, and that Poppaea's charge may have had some criminal penalties.

Anicetus was the perpetrator of Agrippina's death.²⁸⁴ By mentioning this, Tacitus keeps the literary case against Nero alive.

5C. Causa Nero is shown to have motives against both Anicetus and Octavia. Nero is motivated by the speech of Poppaea in 14.61. The depth of his reaction is parallel to his receipt of the news in 14.7 that his mother had survived the first assassination attempt.²⁸⁵ Poppaea's words both terrify and inflame him (indeed they were designed to do so: *sermo et ad metum atque iram adcommodatus*). His motive is thus a renewed fear and anger. Anicetus is chosen because Nero has begun to dislike him. Tacitus interjects the observation that assistants of evil crimes are seen to give reproach (to those who order the crimes). Part of the motive is to eliminate a witness of the matricide.

6C. Testimony for the Prosecution Anicetus is summoned and instructed how to make his confession: *fateretur Octaviae adulterium*. He is not given a real choice; he is promised rewards if he accepts, death if he refuses. His testimony shows creativity: he confesses beyond the call of duty: *plura etiam quam iussum erat fingit*.

²⁸⁴ Tacitus' word here *admissum*, OLD 13, "perpetrated," is used in the same sense in the Digest. Several more parallel uses follow: *subvenisse* (14.62.3); *abactos* (14.63.1); *perniciem* (14.63.3); *exempta* (eximo, OLD 6); *incolumnis* (14.64.1); *atrocior* ("more heinous," OLD 6b, 14.64.2); *praesumptum* (14.64.3).

²⁸⁵ Note that Anicetus is involved in both cases.

7C. Defensio Tacitus relates the reaction of the people this time as sadness rather than anger (14.63.2):

Non alia exul visentium oculos maiore misericordia adfecit. meminerant adhuc quidam Agrippinae a Tiberio, recentior Iuliae memoria obversabatur a Claudio pulsae; sed illis robur aetatis adfuerat; laeta aliqua viderant et praesentem saevitiam melioris olim fortunae recordatione adlevabant.

No other exile affected the eyes of those who saw her with greater pity. Some still recalled the exile of Agrippina by Tiberius, and the more recent memory of Julia banished by Claudius was recalled; but they had strength of age; they had seen some happy times and could alleviate their present harshness by the memory of a once better lot.

The emotions of the people are now used as a defense based on sympathy for Octavia.

8C. Relatio The pleas for sympathy change to accusations (14.63.3):

Huic primum nuptiarum dies loco funeris fuit, deductae in domum, in qua nihil nisi luctuosum haberet, erepto per venenum patre et statim fratre; tum ancilla domina validior et Poppaea non nisi in perniciem uxoris nupta; postremo crimen omni exitio gravius.

For Octavia from the first, her day of marriage was as a funeral, brought as a bride into a home where she experienced nothing except grief, her father and then straightway her brother snatched away by poison; then a maid who was mightier than her mistress, and Poppaea, who was not married but for the destruction of the first wife; finally, a crime worse than any death.

These counter-charges are literary, given through the thoughts of those who see Octavia led off into exile (*visentium* above in ¶7C).²⁸⁶ The specifics of the charges are both poetic (her marriage was a funeral) and criminal (Claudius and Britannicus were murdered).

The final line regarding the *crimen* is somewhat obscure. Is this

²⁸⁶ Tacitus may again be borrowing from the Octavia, where the Chorus at the end of the play witnesses Octavia being dragged away to her doom, and comments in a similar fashion on her ill fortune.

referring to the charge or charges that have been made against her?²⁸⁷

All of the other items in the counter-suit are outrages committed against Octavia rather than by her. While it is true that the charges made against her could be an outrage, and perhaps this is meant, it is more likely Tacitus is referring to something that really is worse than death, namely disgrace. Tacitus has his anonymous observers (his *vox populi*) look not from their limited temporal sight, but from Tacitus' own historical viewpoint, at all the crimes done to Octavia. These begin at the time of her marriage, which was likened to a funeral, and extend through the end of her life, where she is forced to die in apparent disgrace. The final *crimen* "crime" suffered by Octavia is the *crimen* "charge" brought against her, as well as her death and subsequent dismemberment, and this is surely the meaning of that line.

9C. *Iudex* and *Iudicium* Nero's kangaroo court (14.62.4) consists of *amici* as a quasi-judicial council (*velut consilio*).²⁸⁸ They sentence Anicetus to his *non inops exilium*. 14.64 begins immediately with Octavia's sentence,

²⁸⁷ So both Furneaux, Tacitus, and Woodcock Annals XIV, *ad loc.*

²⁸⁸ Crook, Consilium Principis, 47, and Furneaux, Tacitus, *ad loc.*, both notice the impact of *velut*. Crook, "it was a sham affair, and the word *velut* implies that not every gathering of *amici* was a *consilium*"; Furneaux notes that this might have taken the form of a family council, and refers to the Case of Pomponia, "but it is implied in *velut* that the process, of whatever sort, was a sham."

and includes the charge of her having conceived a child by Anicetus and of having it aborted (14.63.1). She is sentenced to exile. Nero publishes an edict (*edicto memorat*) the finding of his "court" in an attempt to forestall a popular reaction similar to the previous uprising (§8A).

Tacitus' plea for pity continues in 14.64.1, where he describes Octavia's state as a limbo between life and death. When her death is ordered, Tacitus presents what must be her final appeal:²⁸⁹

Iam viduam se et tantum sororem
testaretur communesque Germanicos et
postremo Agrippinae nomen cieret, qua
incolumi infelix quidem matrimonium, sed
sine exitio pertulisset.

She testified that she was now a widow and only a sister; she called to witness their common Germanici, and finally she appealed to the name of Agrippina, and the indeed unpropitious, but not fatal marriage she had endured while Agrippina was alive.

Octavia's pleas produce no reaction, and the historian moves straight to the execution. Octavia is chained and her veins are opened, as this drags out, she is finally killed by hot steam.

This punishment again assumes conviction, this time on the charge of *maiestas*, but Tacitus says only that "death was ordered." This allows the impression that she was not found guilty, that no sentence of death was issued as a result of any legal or quasi-legal proceeding, that her death was murder. The execution order fills the place of a sentence, but it is carried out without the semblance of legality.

²⁸⁹ *Emergere umbris et fer auxilium tuae/natae invocanti, genitor: Octavia* 134-5.

10. Historical Conclusion Octavia is not done suffering with her death, for further outrage is inflicted upon her corpse.²⁹⁰ the head is severed and brought to Rome for Poppaea's inspection.

In the final passage (14.64.3) of this episode (not unlike Annals 4.32-33 in tone), Tacitus steps aside from his narrative and addresses his readers:

Quicumque casus temporum illorum nobis vel aliis auctoribus noscent, praesumptum habeant, quotiens fugas et caedes iussit princeps, totiens grates deis actas, quaeque rerum secundarum olim, tum publicae cladis insignia fuisse. neque tamen silebimus, si quod senatus consultum adulatione novum aut paenitentia postremum fuit.

Whoever shall learn of the misfortunes of those times from our work, or from other authors, they should regard it as a presupposed thing, that whenever the emperor ordered exiles and murders, just as often thanks were granted to the gods, these which were once the mark of fortunate events, now were the mark of public disaster. Nor will we pass by it in silence, if some decree of the Senate is new in its fawning or the lowest in its grovelling.

With the words "decree of the Senate," Tacitus neatly ties the ending to his introduction, where such a decree sparked these events. Events have come full circle: Nero kills (Sulla and Plautus), the Senate fawns, and Nero kills again.²⁹¹

²⁹⁰ *Atrocior saevitia*: the adjective *atrox* is used by a number of jurists (see OLD 6b) in the sense of "more heinous." A. Berger in Encyclopedic Dictionary of Roman Law (Philadelphia: American Philosophical Society, 1953), defines crimes which are *atrox* as "certain crimes accomplished with particular violence and cruelty, hence involving greater culpability and more severe punishment." Her death was worse than an ordinary death.

²⁹¹ A connection is made to the deaths of Sulla and Plautus in the Octavia by Nero's words (437-8): *Perage imperata: mitte, qui Plauti mihi/Sullaeque caesi referat abscisum caput.*

The Case of the Pisonian Conspirators (15.48-74) ²⁹²

[This case concerns a conspiracy to assassinate Nero; it is a group of connected historical trials, the longest trial episode in the Neronian Annals. There are 41 defendants (16 "major" and 25 "minor," see below ¶2: Tacitus discusses the minor defendants mostly in lists), and 7 others (see Table 11 below), not including Nero, involved in various aspects of the trial. It exhibits all features from Table 1 on p.6. This case includes the key vocabulary terms: *abnuo* [x2], *accusator*, *adicio* [x4], *adulter*[x2], *arbitrium*, *arguo* [x3], *auctor*, *caedes* [x7], *causa* [x3], *cognitio*, *confessio* [x2], *confuto*, *coniuratio* [x11], *coniurati* [x9], *conscientia* [x2], *consciis* [x4], *contumelia*, *convincio* [x2], *crimen* [x5], *criminatio*, *damno*, *defensionem trahere*, *defensio*, *denego*, *defero*, *dicere ad causam*, *dictito*, *edico*, *exilium*, *expers*, *facinus* [x3], *fateor* [x2], *flagitium*, *fraus liberti*, *gnarus* [x3], *ignarus* [x2], *impunitas* [x3], *in metum adducere*, *increpo* [x2], *incuso*, *index* [x6], *indiciis* [x6], *infamo*, *infamia*, *infamis*, *iniuria*, *insidiae* [x2], *insons* [x3], *iudex*, *iudicium*, *mando* [x3], *manifestus* [x3], *nescius* [x2], *novae res*, *obicio* [x3], *parricida*, *poena* [x5], *reus* [x2], *respondeo* [x5], *saevitia* [x4], *scelus* [x6], *species iudicis*, *supplicium* [x3], *testor*, *testamentum* [x6], *testis* [x3], *venia*.]

1. Historical Introduction This is a complex case on which Tacitus no doubt had his own difficulties in reporting.²⁹³ Three times he feels compelled

²⁹² Bernard W. Henderson, The Life and Principate of the Emperor Nero, new ed. (London: Methuen & Co., 1905) 257-274 gives a chronological account of the conspiracy drawn mostly from Tacitus. In his notes (486) he provides a table of the guilty and innocent conspirators, to which our Table 10 owes a great debt. Henderson, however, was an unflinching admirer of Nero (274), "Under this Prince, however wanton, frontiers had been safeguarded and advanced; justice had been administered to every class of the Empire's subjects." Of the conspiracy he writes, "By failure it initiated a reign of terror in place of a reign of quiet and mercy." B. H. Warmington, Nero: Reality and Legend (New York: W. W. Norton, 1969) devotes a chapter (11, pp.135-141) to the Pisonian Conspiracy, and provides a chronological summary somewhat shorter than Henderson's. The legal aspects of the case are summarized by R.S. Rogers in "Heirs and Rivals to Nero," TAPA 86 (1955): 208. Bauman, Impietas, 152 n.112, notes the phrases *defensionem orsus*, *in crimen traheretur*, and, *ad defensionem trahens*, as evidence of individual trials.

²⁹³ The other ancient accounts are the very brief account of Suetonius Nero 36.2, and Dio 62.24-27, whose account does not include Piso. D.C.A. Shotter, "Tacitus' View of Emperors and the Principate," ANRW 2.33.5 (1991): 3316, comments on Suetonius' and Dio's scanty coverage of the conspiracy. Bauman, Impietas, 147, also remarks on Suetonius' comparative silence on the conspiracy (Nero 36.1).

to cite his sources,²⁹⁴ commenting on the difficulty of establishing certain details (15.49.1):

Nec tamen facile memoraverim, qui primus auctor, cuius instinctu concitum sit quod tam multi sumpserunt.

Nor yet could I recount with ease who was the first instigator, at whose inspiration was stirred that which so many took up.

The conspiracy is the longest case in the Neronian section, and dominates the narrative for that year. Tacitus' account of A.D. 65, which begins with the conspiracy, does not end until 16.13. All except the 13 chapters of Annals 16 are devoted to the conspiracy. Not only is it the most significant event that he covers, but Tacitus also introduces the conspiracy as though it begins the year (15.49.1):

Ineunt deinde consulatum SILIUS NERVA et ATTICUS VESTINUS, coepta simul et aucta *coniuratione*, in quam certatim nomina dederant senatores eques miles, feminae etiam, cum odio Neronis, tum favore in C. Pisonem.

Then Silius Nerva and Atticus Vestinus entered the consulship (A.D. 65), and a conspiracy was begun and at once grew, into which senators, knights, soldiers, and even women vied to give their names, not only out of hatred for Nero, but also out of support for Caius Piso.

The passage above addresses the question of *causa* in general terms; Tacitus will discuss specific motives for many of the defendants as well (see below ¶ 5); some defendants state their motives directly to Nero in the form of a *relatio* (¶8).

In the passage above (15.49.1), Tacitus indicates the broad spectrum

²⁹⁴ Caius Plinius 15.53.3; Fabius Rusticus, 15.61.3; *commentaria senatus* 15.74.3.

of those involved in the conspiracy.²⁹⁵ He comments upon this again when the conspiracy begins to unravel (15.54.1):

Sed mirum quam inter diversi generis ordines, aetates sexus, dites pauperes taciturnitate omnia cohibita sint, donec proditio coepit e domo Scaevini.

But it is strange how among those of different families, ranks, ages, sex, rich and poor, that everything was held together in silence, until the betrayal began from the home of Scaevinus.

A tribune and a centurion of the praetorian cohort, Subrius Flavus and Sulpicius Asper, are credited with leading conspirators in the plot (15.49.2), which included senators (15.49.3), knights (15.50.1), and a freedwoman.²⁹⁶

In addition to the general introductions, some members of this crowd are given individual descriptions. For Afranius Quintianus (15.49.4), Epicharis (15.51.1), and Flavius Scaevinus (15.59.4), Tacitus comments on how their strong participation in the plot contrasts with their previous behavior.²⁹⁷

²⁹⁵ Sallust Bellum Catilinae 17, lists a similar range of conspirators.

²⁹⁶ Mark Morford, "How Tacitus Defined Liberty," ANRW 2.33.5 (1991): 3444, notes the significant absence of Thræsea from the role of conspirators. Tacitus, Morford feels, would not have approved of Thræsea's role, so his absence from the conspiracy won him favor from Tacitus.

²⁹⁷ Syme, Tacitus, 314, "A man's character might either be depicted once and for all in a single portrait or allowed to grow out of his actions, gradually." Martin, Tacitus, 184, "Whatever a person's life had been, Tacitus judges the manner of his death on its own merits; fortitude in the face of death observed, and gained form the historian's pen, its own tribute." These three all die as a result of the conspiracy.

The specific association of some defendants, including Annaeus Seneca (15.60.2), Atticus Vestinus (15.68.2-3), and Claudius Senecio (15.50.2) with the conspiracy's target, Nero, forms the basis for their introductions. Of these, the introduction to the involvement of Seneca, who is already well-known even in the Neronian Annals, is of particular interest.²⁹⁸

Sequitur caedes Annaei Senecae, laetissima principi, non quia *coniurationis manifestum* compererat, sed ut ferro grassaretur, quando venenum non processerat.

There followed the murder of Annaeus Seneca, a most joyous one to the emperor, not because he had established that Seneca was plainly guilty of conspiracy, but so that he might press on with the sword when poison had not succeeded.

Tacitus here refers to his account (15.45.3) of a failed attempt to poison Seneca.²⁹⁹ The introduction of Seneca is as a victim of Nero, rather than as a conspirator against him.³⁰⁰ Atticus Vestinus is similarly

²⁹⁸ W.H. Alexander, "The Enquête on Seneca's Treason," CPh 47 (1952):1-6 analyzes the case against Seneca in detail.

²⁹⁹ Furneaux, Tacitus, *ad loc.*, notes that in the earlier account (15.45) the story of the poisoning attempt is reported as a rumor; here it is presented as though evidence of prior behavior on Nero's part.

³⁰⁰ The question of Seneca's involvement in the conspiracy, and Tacitus' knowledge and treatment of him, has generated an enormous amount of literature. Werner Suerbaum, "Zweiundvierzig Jahre Tacitus-Forschung: Systematische Gesamtbibliographie zu Tacitus' Annalen 1939-1980," ANRW 2.33.2 (1990), devotes 1399-1402 to the bibliography on this section of the Annals, most of which concerns Seneca.

That Tacitus was uninformed on Seneca is held by Denis Henry and

introduced (15.52.3) as a victim rather than as a conspirator.³⁰¹ Senecio, however, is actually a conspirator, and his association with Nero carries with it an added danger (15.50.2):

Ex quibus Senecio, e praecipua familiaritate Neronis, speciem amicitiae etiam tum retinens eo pluribus periculis conflictabatur.

Of whom, Senecio was quite close to Nero, and even while this was going on he kept up the appearance of friendship; for this reason he was harassed by a great number of dangers.

The two lengthiest introductions involve family history, physical description (a rare feature in Tacitus), and for one, apparent as opposed to actual, character. Receiving this more detailed description is Piso, the titular head of the conspiracy and intended replacement for Nero (but who might well earn the title *cunctator* for his failure to act, e.g., 15.52.1, 15.59.1, and 15.59.4). His lineage and reputation are described first (15.48.2):

Is Calpurnio genere ortus ac multas

He was of the Calpurnian family, and embraced

B. Walker, "Tacitus and Seneca," *G&R* 10 (1963): 106, "It is clear that Tacitus did not explore in any depth the strange ambivalence and indecisions that made up Seneca's tortured personality." Tacitus (107) was not concerned with Seneca's private personality. Henry and Walker feel that although Tacitus refers vaguely to Seneca's philosophical and rhetorical writings, that he was not well read on Seneca; that he might have read the tragedies (110), but he ignores them.

Contra, Steven L. Dyson, "The Portrait of Seneca in Tacitus," *Arethusa* 3 (1970): 71, "Tacitus probably knew the philosophical and dramatic works of Seneca and in some places he seems to be commenting in ironical fashion upon them."

³⁰¹ Even Henderson, *Nero*, 274, concedes Vestinus' innocence, arguing that Vestinus was the only positively innocent person slain.

insignesque familias paterna nobilitate
complexus, claro apud vulgum rumore erat
per virtutem aut species virtutibus similes.

many distinguished relatives in his paternal
nobility. He was held in high regard by the
masses on account of his manly honor-or
qualities that gave that appearance.

Already his character is suspect from the hint that what may pass for
virtus, may not in Piso be *virtus*. Tacitus next describes his generosity and
physique (15.48.3):

Namque facundiam tuendis civibus
exercebat, largitionem adversum amicos, et
ignotis quoque comi sermone et congressu;
aderant etiam fortuita, corpus procerum,
decora facies.

For he employed his eloquence in protecting the
citizens, his generosity towards his friends, and
even to those he didn't know he had a friendly
word and disposition; he had also the gifts of
fortune, a tall body and handsome appearance.

The outward generosity, apparent *virtus*, and noble features all conceal an
underlying weakness:

Sed procul gravitas morum aut voluptatum
parsimonia: levitati ac magnificentiae et
aliquando luxu indulgebat. idque pluribus
probabatur, qui in tanta vitiorum dulcedine
summum imperium non restrictum nec
praeseverum volunt.

But he was far from seriousness of character or
restraint in his pleasures: he gave vent to
frivolity and grandiose displays and sometimes
even to extravagance. And this was approved of
by most men, who, when vices are so sweet, do
not want the chief power to be austere or very
strict.

His popularity, if Tacitus is correct, stems partly from his vices. While on
the whole he is given a balanced portrait, Piso does not appear to be an
ideal imperial candidate;³⁰² the failure of the plot springs in part from
his hesitation if not outright cowardice. Tacitus comments on this as a

³⁰² Syme, *Tacitus*, 575, "by almost suppressing any mention of Piso
himself, it confirms his nullity."

general criticism of all the conspirators (15.61.3):

Fatali omnium ignavia.

With the deadly cowardice that afflicted everyone.

2. Crimina and Rei 41 defendants can be counted in this case: this total includes all those either named as conspirators, mentioned as acquitted, or condemned in the episode.³⁰³ Of those 41 defendants, I classify 16 herein as "major" defendants because their cases are treated in detail corresponding to all or most of the elements from Table 1 (see p.6); I classify the remaining 25 as "minor" defendants, to whom Tacitus gives either partial coverage or includes only in lists of the conspirators or condemned.

For each of the 41 defendants in this case the charge must be conspiring to assassinate Nero.³⁰⁴ The *crimen* is therefore clearly *maiestas*, although Tacitus never uses that term; instead he fastens onto the terms *coniuratio* "conspiracy," used eleven times, and the agent-noun *coniurati* "conspirators," used nine times, as more descriptive of the actual events and participants. In this case the real charge often conceals a

³⁰³ Henderson, Nero, 486, also lists 41 defendants, but in that total includes Antonia, who is not charged in the account of Tacitus, Suetonius, or Dio. Tacitus does not mention her after 15.53. Henderson omits Iunius Gallio from the register of defendants.

³⁰⁴ Bauman, Impietas, 152 "it is reasonably certain that the Republican categories of *maiestas* were engaged in the suppression of the conspiracy."

hidden charge, usually a personal grudge on the part of the emperor: only 20 of the 41 charged are listed by Tacitus among the actual conspirators; for the remaining defendants, Tacitus concentrates on the motive of Nero in place of the charge, where conspiracy is only a screen for the emperor's private vendetta.

Table 6 below lists the major defendants in alphabetical order.³⁰⁵ Since in each case the charge is participation in the conspiracy, "conspirator" is indicated if Tacitus confirms the defendant's participation in the crime; if innocent, the defendant is termed "not involved," and the *causa Neronis* (why Nero prosecutes) is listed. All the major defendants except Seneca [3], Vestinus [5], and Gallio [12] are genuine conspirators. Tacitus' major concentration is on the actual conspirators.

The minor defendants (listed in Table 7 according to the model of Table 6) outnumber the major ones because Tacitus includes a number of individuals in lists of conspirators or condemned who do not figure greatly (and in some cases not at all) in the rest of the episode.

The designation "unknown" is given above for seven defendants ([B], [C], [F], [J], [L], [M], and [S]), where Tacitus does not indicate whether or not the individual was actually a conspirator; for five of these ([C], [F],

³⁰⁵ According to the first of the pair of names (or single name, e.g., Epicharis) as given by Tacitus; usually this is the *gens* name.

Table 6.--Major Defendants in the Pisonian Conspiracy

<i>Reus</i>	<i>Crimen or Causa Neronis</i>
[1]Afranius Quintianus	conspirator (15.49.4)
[2]Annaeus Lucan	conspirator (15.49.3)
[3]Annaeus Seneca	possible conspirator (15.65.1); <i>caedes</i> (15.60.2) by Nero.
[4]Antonius Natalis	conspirator/ <i>particeps</i> , (15.50.2)
[5]Atticus Vestinus	not involved (15.52.3); hated by Nero (15.68.2-3)
[6]Caius Piso	conspirator (15.49.1), (15.50.2), <i>passim</i> .
[7]Cervarius Proculus	conspirator (15.50.1)
[8]Claudius Senecio	conspirator (15.50.1)
[9]Epicharis	conspirator (15.51.1)
[10]Faenius Rufus	conspirator (15.50.3)
[11]Flavius Scaevinus	conspirator (15.49.4)
[12]Iunius Gallio	not involved; <i>hostis et parricida</i> (15.73.3)‡
[13]Plautius Lateranus	conspirator (15.49.3)
[14]Staius Proxumus	conspirator (15.50.3)
[15]Subrius Flavius	conspirator (15.49.2)
[16]Sulpicius Asper	conspirator (15.49.2)

‡. Iunius Gallio, Seneca's brother, is not charged by Nero, although he is charged in association with the conspiracy, see below, p.205.

Table 7.--Minor Defendants in the Pisonian Conspiracy

<i>Reus</i>	<i>Crimen or Causa Neronis</i>
[A]Acilia (Lucan's mother)	not involved;‡ charged to appease Nero (15.56.4)
[B]Annius Pollio	unknown; charged to appease Nero (15.56.4)
[C]Blitius Catulinus	unknown; no <i>causa</i> indicated (15.71.4)
[D]Caedicia	not involved (15.71.5); association ^{##}
[E]Caesennius Maximus	not involved (15.71.5); no <i>causa</i> indicated
[F]Cluvidianus Quietus	unknown; no <i>causa</i> indicated (15.71.4)
[G]Cornelius Martialis	not involved; alleged to hate Nero (15.71.2)
[H]Flavius Nepos	not involved; alleged to hate Nero (15.71.2)
[I]Gaius Silvanus	conspirator (15.50.3)
[J]Glitius Gallus	unknown; charged to appease Nero (15.56.4)
[K]Iulius Augurinus	conspirator (15.50.1)
[L]Iulius Agrippa	unknown; no <i>causa</i> indicated (15.71.4)
[M]Iulius Altinus	unknown; no <i>causa</i> indicated (15.71.4)
[N]Marcus Festus	conspirator (15.50.1)
[O]Maximus Scaurus	conspirator (15.50.3)
[P]Munatius Gratus	conspirator (15.50.1)
[Q]Musonius Rufus	not involved; "fame" and "wisdom" (15.71.4)
[R]Novius Priscus	not involved; friendship with Seneca (15.71.3)
[S]Petronius Priscus	unknown; no <i>causa</i> indicated (15.71.4)
[T]Pompeius ???	not involved; alleged to hate Nero (15.71.2)
[U]Rufrius Crispinus	not involved; once married to Poppaea (15.71.4)
[V]Staius Domitius	not involved; alleged to hate Nero (15.71.2)
[W]Venetus Paulus	conspirator (15.50.3)
[X]Verginius Flavius	not involved; "fame" and "eloquence" (15.71.4)
[Y]Vulcacius Araricus	conspirator (15.50.1)

‡. It is assumed that she was not involved because the charges against her were not pursued, see below, p.206.

##. Charged because she was the wife of Flavius Scaevinus [11].

[L], [M], and [S]) he does not indicate a motive for the status of *reus*; these defendants are named in the case only in a list of persons condemned to exile (15.71.4).

4. *Delator* In a conspiracy it must be the informant who is the most dreaded individual. Tacitus' remarks on the lack of any betrayal for a considerable period are given above (p.172). There are eventually many betrayals in the Pisonian conspiracy, and almost as many informants as defendants, since most defendants shortly become informants in turn. There is, however, one major *delatio*, "laying of information." It is the most significant because, while not the first, it is the one that starts the process by which the conspiracy unravels. In contrast with the many betrayals, there are also some notable defendants who defy the torture and threats of torture, and do not betray their associates.

The first *delatio* in the conspiracy occurs against the freedwoman Epicharis, who is attempting to win over the fleet in Campania.³⁰⁶ Despite apparent sympathy with the *coniuratio*, the commander, Volusius Proculus, betrays the confidence and informs against Epicharis (15.51.3-4):

³⁰⁶ D. Corsi Zoli, "Aspetti inavvertiti della congiura pisoniana," Studi Romani 20 (1972): 329-339, discusses the role of Epicharis in detail. According to Corsi Zoli, this *libertina* was a *εταίρα* (336). Her association with Lucan and Lucan's father, Annaeus Mela helps to explain her silence about the names of the conspirators (339). See also Emanuele Ciaceri, "La congiura pisoniana contro Nerone," chap. in Processi Politici e Relazione Internazionali (Rome: Nardecchia, 1918), 372-3.

Nomina tamen *coniuratorum* reticuit. unde Proculi *indicium* inritum fuit, quamvis ea, quae audierat, ad Neronem *detulisset*.

Yet she kept silent about the names of the conspirators. And so the indictment of Proculus against her was not fruitful, although he informed Nero of those matters which he had heard.

Although Epicharis is retained in custody and tortured, the *delatio* of Volusius is ultimately fruitless; her caution or foresight in not disclosing the names of the other conspirators to Volusius renders the betrayal ineffective against the heart of the conspiracy.

Epicharis continues to hold out (15.57.1), and resists becoming a *delator* herself despite the best efforts of Nero's torturers.³⁰⁷ Her suicide closes this avenue of inquiry. And while the fear of another such *delator* moves the conspirators to urge Piso into action (15.52.1), Piso refuses to take the initiative before the major betrayal comes.

This major betrayal is carried out by another former slave, Milichus, whose character is contrasted with that of Epicharis. Bearing news concerning the odd behavior of his patron (Flavius Scaevinus), he

³⁰⁷ As a *liberta* of low-status, she is not automatically exempt from torture under the law. Garnsey, *Social Status*, 143, notes that under the Republic, torture of free men was forbidden by principle, and that under Augustus, the laws narrowed this to citizens; the first emperor himself is said to have ignored this in the case of a praetor, Quintus Gallus. Suetonius *Augustus* 27.4 tells how Gallus was suspected of concealing a sword under his cloak, and then was secretly tortured and killed on Augustus' orders: *servilem in modum torsit ac fatentem nihil iussit occidi prius oculis eius sua manu effossis*. If a Roman praetor could be treated in this fashion, no one was safe.

insists upon and gains admission to the emperor, and makes his *delatio* (15.55.1):

Igitur coepta luce Milichus in hortos Servilianos pergit; et cum foribus arceretur, magna et atrocia adferre *dictitans* deductusque ab ianitoribus ad libertum Neronis Epaphroditum, mox ab eo ad Neronem, urgens periculum, graves *coniuratos* et cetera, quae audiverat coniectaverat, docet; telum quoque in necem eius paratum ostendit *accirique reum* iussit.

And so as the day began Milichus made his way to the Servilian gardens. When he found his way barred by gates, he insisted that he was bringing great and terrible news, and was led by the door-slaves to Epaphroditus, Nero's freedman, and soon by him to Nero. He informed Nero of the imminent danger, the formidable conspirators, and the other things which he had heard or inferred; he showed Nero the weapon which had been made ready for his death and ordered that the accused be summoned.

The apparent subject of *iussit* is Milichus. It is as though after insisting (*dictitans*) upon entry and the importance of his news, and gaining the emperor's ear, he gets carried away by the moment and his own perceived importance and shouts, "bring in the accused!"³⁰⁸

When Scaevinus' *relatio* (see below, p.200) weakens Milichus' evidence, Milichus' wife (whom Tacitus does not name) acts as *delator*. She informs against Antonius Natalis (15.55.4) for having had secret conversations with Scaevinus.

³⁰⁸ Furneaux, *Tacitus, ad loc.*, acknowledges a difficulty in the reading here, and indicates that Nero makes better sense as the subject of *iussit*. But in the context of the passage as argued above, Milichus is possible; the determining factor should then be what keeps the closest to the Latin. Milichus must be the subject of *docet* and *ostendit*, the latter of which is connected only by *-que* to the verb in question: *ostendit accirique reum iussit*. Nero can only be read as the subject of *iussit* if a lacuna is assumed; but if Milichus gives the orders, the syntax of the passage is smoother and the scene takes on a new vividness.

Natalis, unable to bear the sight of the instruments of torture,

becomes the first of the actual conspirators to turn informant (15.56.2):

Prior tamen Natalis, totius conspirationis magis *gnarus*, simul *arguendi* peritior, de Pisone primum fatetur, deinde *adicit* Annaeum Senecam.

Yet it was Natalis who first confessed, as he was more acquainted with the whole of the conspiracy and at the same time was more skilled at bringing accusations, initially about Piso, and then he accused Annaeus Seneca.

His *delatio* is an inspiration to Scaevinus, as the conspiracy begins to fall apart (15.56.3):

Tum cognito Natalis *indicio* Scaevinus quoque pari imbecillitate, an cuncta iam patefacta credens nec ullum silentii emolumentum, edidit ceteros.

Then Scaevinus, after he had become aware of the information given by Natalis, (either) out of an equal stupidity, or because he felt that everything was now in the open and that there was no benefit in keeping silent, revealed others.

Scaevinus' action is possibly "stupidity" because at this point the damage might still have been contained. The "others" named at this point are Annaeus Lucanus, Afranius Quintianus, and Claudius Senecio. These three also turn informant, apparently against innocent friends, merely to please Nero and to save themselves (15.56.4):

Lucanus Quintianusque et Senecio diu *abnuere*: post promissa *impunitate* corrupti, quo tarditatem excusarent, Lucanus Aciliam matrem suam, Quintianus Glitium Gallum, Senecio Annium Pollionem, amicorum praecipuos, nominavere.

Lucan, Quintianus, and Senecio denied the accusations for a long time; after they were turned with the promise of immunity, so that they might seek exemption for their slowness, Lucan named his mother Acilia, Quintianus named Glitius Gallus, and Senecio named Annus Pollio, their chief friends.

The promised immunity is not granted to any of these three, although others later receive it (see below ¶9); Lucan is forced to commit suicide,

and the other two are executed. Yet none of the three against whom they give information is executed, and this adds to the impression provided by Tacitus' wording that they are indeed innocents betrayed merely to impress Nero.

The most dramatic *delatio* is the confrontation between the patron of Milichus, Scaevinus, and the praetorian prefect Faenius Rufus. Both are conspirators. Faenius has not only managed to escape initial detection, but has even conducted some of the interrogations of his fellow conspirators. Scaevinus, however, finally has had enough of this duplicity (15.66.1):

Ceterum militaris quoque conspiratio non ultra fefellit, accensis [quoque] *indicibus* ad prodendum Faenium Rufum, quem eundem *conscium* et inquisitorem non tolerabant. ergo instanti minitantiue renidens Scaevinus neminem ait plura scire quam ipsum, hortaturque ultro redderet tam bono principi vicem.

But even the military conspiracy no longer went unnoticed, as the informants were aroused to betraying Faenius Rufus, whom they could not stand as both accomplice and interrogator. Therefore Scaevinus, smiling back at Faenius who was standing over him and making threats, said that no one knew more things than he, and encouraged him moreover to pay back such a good emperor.

The *delatio* of his fellow conspirator reduces the interrogator Faenius to babbling, and his guilt is clear from his fear: *pavoris manifestus*, "he was plainly guilty of fear." Others follow Scaevinus' lead and inform against the prefect Faenius.

With so many of the conspirators betraying each other, the example of Epicharis' bravery is paralleled by only a few. One of these is Plautius

Lateranus, the consul-designate (15.60.1):

Raptus in locum servilibus *poenis*
sepositum manu Statii tribuni trucidatur,
plenus constantis silentii nec tribuno
obiciens eandem conscientiam.

He was arrested and thrown into a place set
aside for punishing slaves and then slaughtered
by the hand of the tribune Statius, full of a
steadfast silence, and not casting the accusation
of the same guilt upon the tribune.

Unlike Scaevinus, Plautius remains silent about his nearby compatriot,
who is given the unpleasant task of executing a friend.

5. *Causa* The conspiracy itself is introduced in 15.48.1 with the dual
motive for all the conspirators of hate towards Nero and support for Piso.
While the latter receives no elaboration beyond the description of Piso's
popular qualities (see above, p.175), the hatred of Nero springs from a
number of different causes in the twenty conspirators. Motive is also
ascribed for the two prominent informants who do not number among the
defendants, Milichus and Volusius (see "Rewards" in Table 11). Nero's
own motives for the prosecution of some of the non-conspirators are
detailed.

Tacitus begins with a small elaboration of the general motive of
odium in 15.49.3:

Lucanus Annaeus Plautiusque Lateranus
vividam odia intulere.

Annaeus Lucan and Plautius Lateranus added
their spirited hatred.

For their "spirited" hatred of Nero, both Lucan and Plautius have,

propriae causae, "particular motives." Lucan's motive is private.³⁰⁹

Quod famam carminum eius premebat
Nero prohibueratque ostentare, vanus
adsimulatione.

Because Nero, out of a vain rivalry, was in the habit of disparaging the reputation of his poems, and had forbidden him to give recitations.

Plautius' motive is given a more noble description:³¹⁰

Lateranum consulem designatum nulla
iniuria, sed amor rei publicae sociavit.

Lateranus, the consul designate, acted out of no personal wrong suffered, but his love of country joined him (to the plot).

These motives seem suspect, if only because they are derived from a narrow view of the character of each: Lucan, the poet, has a conflict with Nero, the would-be poet. Lateranus, a man of consular rank, objects to Nero based upon his career in public service. This does not insure that the motives are fictions by Tacitus, merely that if he were going to invent motives, these would be the most obvious he could have chosen.

A motive involving details of a more personal nature inflame Afranius Quintianus. He has suffered *contumelia* (15.49.4):

³⁰⁹ Griffin, *Nero*, 159 attributes Lucan's participation in the plot to what Tacitus says it was, not political motives, but poetic rivalry. His choice of death passage from the *Bellum Civile* was not a denunciation of tyranny, and this confirms his motive.

³¹⁰ Shotter, "Tacitus' View," 3317, on the motives of the conspirators, notes that only Lateranus is given an honorable motive.

Quintianus mollitia corporis *infamis* et a Nerone probroso carmine diffamatus *contumeliam* ultum ibat.

Quintianus was notorious for bodily effeminacy. He had been slandered by Nero in a scurrilous poem and intended to avenge the insult.

Nero had himself been the target of such lampoons. When Antistius Sossianus composed lampoons about Nero he was charged with *maiestas* (see p.126). When an emperor is the author of the lampoons there is no easy legal recourse for the victim.³¹¹

All of the motives considered thus far are given indirectly, in narration. Subrius Flavus (15.67.2) *interrogatusque a Nerone quibus causis*, and Sulpicius Asper (15.68.1) *percunctanti Neroni cur*, both declare their motives directly to Nero when asked why they joined the conspiracy. Each is motivated by hatred, and for each the *causa* amounts to a *relatio*, charges of crimes committed by the emperor (see p.202).

Nero is not the only one hated, and one major conspirator, Faenius Rufus, is motivated as much by his hatred of Tigellinus as by his hatred of Nero (15.50.3):³¹²

³¹¹ Bauman, *Impietas*, 146 n.72, underscores this problem of the individual having no recourse against the emperor, neither civil action, nor criminal charge, nor even the real impunity to issue his own lampoons against Nero.

³¹² Griffin, *Nero*, 167-8 discusses the complexities of the motives of Faenius Rufus.

Faenio Rufo praefecto...quem vita famaue laudatum per *saevitiam* impudicitiamque Tigellinus in animo principis anteibat, fatigabatque *criminationibus* ac saepe in *metum adduxerat* quasi *adulterum* Agrippinae et desiderio eius ultioni intentum.

Faenius Rufus was the (cohort's) prefect...a man lauded in his life's reputation, whom Tigellinus had surpassed in the mind of the princeps through his cruelty and shamelessness. Tigellinus wore out Rufus with accusations, and often caused him fear with the charge of being a paramour of Agrippina who, out of longing for her, was bent on revenge.

These are representative of the motives of all those who participated in the conspiracy. Tacitus also discusses Nero's own motivations against those defendants who did not conspire but are charged under the veil of the conspiracy. As with the conspirators, Nero's primary emotion seems to be hatred.

This is what motivates Nero to condemn Seneca, whose guilt in the conspiracy is in a grey area between conspirator and non-conspirator.³¹³ Tacitus, however, leaves no uncertainty as to Nero's guilt in the matter of Seneca's death (15.60.2).³¹⁴ Nero has already attempted to kill Seneca,

³¹³ Henderson, *Nero*, 274, "The guilt of Seneca...remains in some, though not in very great, doubt." Rogers, "Heirs and Rivals," 208, sees "very good reason...for accepting a definite complicity of Seneca in the plot." *Contra* Miriam T. Griffin, "*Imago Vitae Suae*," in *Seneca*, Greek and Latin Studies: Classical Literature and its Influence Series, ed. C.D.N. Costa (London: Routledge & Kegan Paul Ltd., 1974), 27, who sees "no evidence strong enough to invalidate Tacitus' belief in Seneca's innocence." In her view, since Tacitus' portrait is not "uniformly favorable" this validates Seneca's innocence. Walker, *Tacitus*, 136, "Tacitus makes it clear that Seneca was not one of the conspirators." Griffin is correct in her assessment of the balanced nature of Tacitus' portrait; Walker goes too far. Seneca's guilt is deliberately unclear in Tacitus' account.

³¹⁴ See text above, p.173.

and is not motivated by the desire to establish the truth of Seneca's participation, but rather by the desire to commit murder.

Nero's *odium* against one who is manifestly innocent, the consul Vestinus, stems from two sources, the first motive arising from being the target of his lampoons, similar to those of Antistius (15.68.3):

Ceterum Neroni odium adversus Vestinum ex intima sodalitate coeperat, dum hic ignaviam principis penitus cognitam despicit, ille ferociam amici metuit, saepe asperis facetiis inlusus, quae ubi multum ex vero traxere, acrem sui memoriam relinquunt.

But for Nero, his hatred against Vestinus sprang from close association, during which time Vestinus despised the idleness he recognized deep down in the emperor, and Nero feared the arrogance of his friend, mocked often by Vestinus' harsh witticisms, which when they derive much from the truth leave behind them a stinging memory.

Vestinus may be immune from the prosecution brought against Antistius as he did not it seems, like Antistius, make his lampoons into verses which he published (*vulgavit*).³¹⁵

Nero's second motive against Vestinus appears even stronger:

Accesserat repens causa, quod Vestinus Statiliam Messalinam matrimonio sibi iunxerat, haud *nescius inter adulteros eius et Caesarem esse.*

There had been added a recent motive because Vestinus had married Statilia Messalina, by no means unaware that Caesar also had been among her lovers.

This recent motive of the lover's triangle recalls the motive in the Case of Octavius Sagitta (p.17) and the alleged motive of the slave who murdered Pedanius Secundus (p.28).

Nero has a similar motive against one of the minor defendants, [U]

³¹⁵ See p.128.

Rufrius Crispinus (15.71.4), who had once been married to Nero's wife Poppaea. The trail for this motive is rather cold, since Otho had been married to her in the interim and had lost her to the emperor (13.46) after praising her too much. After sending Otho away to be governor of Lusitania, Nero had then married Poppaea in A.D. 62 (14.59.3), precipitating the removal of Octavia (see p.154).

Eclipsing Nero's fame could be as dangerous as being perceived as a rival in love. The minor defendants [X] Verginius Flavus, and [Q] Musonius Rufus, are both caught up in the mass convictions (15.71.4) because they have made too much of a name for themselves; the former for eloquence, the latter for wisdom. For several other minor defendants Nero may have had similar motives, such as against the five reported as exiled in that same section (15.71.4) who do not number among the conspirators, and are only heard of during their sentencing.

For two non-defendants in the case, motive is an important element. Milichus, the freedman whose *delatio* begins the downfall of the conspiracy, is not motivated to oppose the conspirators either by love of Nero or hatred of his patron. Money motivates Milichus, and outweighs his sense of duty to his patron (15.54.4):

Nam cum secum servilis animus praemia
perfidiae reputavit simulque immensa
pecunia et potentia obversabantur, cessit

For when his servile mind reflected on the
rewards of treachery, and at the same time
boundless money and wealth were imagined, his
(sense of) moral rectitude and (of) the safety of

fas et salus patroni et acceptae libertatis memoria.

his patron ceased, as well as the memory of the liberty which he had received.

His wife, whose information leads to Natalis' arrest (see above p.182), has the same motivation and stresses the first-come, first-serve nature of any reward:

Quippe ultro metum intentabat, multosque astitisse libertos ac servos, qui eadem viderint: nihil profuturum unius silentium, at praemia penes unum fore, qui *indicio* praevenisset.

Indeed of her own accord she kept holding over him the fear that many freedmen had been nearby who had heard the same things: she said that the silence of one man would help nothing, but the rewards would be in the hands of the one who arrived first with the laying of information.

The most unusual motive in this case is that of Volusius Proculus, the naval commander whom Epicharis tries to recruit. Volusius is only approached with the plot after he had expressed a clear motive for hating Nero and thus for aiding Epicharis and the other *coniurati* (15.51.2):

Volusius Proculus, *occidendae* matris Neroni inter ministros, non ex magnitudine sceleris proventus, ut rebatur...merita erga Neronem sua et quam in inritum cecidissent aperit *adicitque* questus et destinationem vindictae, si facultas oreretur, spem dedit posse impelli et plures conciliare.

Volusius Proculus, had been among the ministers of the murder of Nero's mother, and had not been promoted as he had thought, according to the magnitude of the crime...He revealed his good deeds towards Nero and how they had fallen fruitlessly, and added his regrets and intention for revenge, if the opportunity should arise, and he gave the hope that he could be persuaded and win over many others.

Since it seems that Volusius never intended to join the conspiracy, but instead heads straight to Nero with his *delatio*, this story may be a ruse, and the *destinatio vindictae*, "intent for revenge," patently false. What is not explained by Tacitus would be the most interesting motive of all: if the

man indeed had not received his promised promotion, what was his motive for loyalty to Nero? Volusius (see Table 11), unlike Milichus, is not even said to have been rewarded for his service; this is particularly strange, since Nero goes so far as to reward prominent men like Nerva who played no part at all in these events.³¹⁶

6. Testimony for the Prosecution The testimony against these defendants is sometimes presented in narration. In this way Tacitus provides Milichus' testimony at 15.54, given in the narration of the unusual and suspicious behavior of Scaevinus: preparation of his will, freeing slaves, and acting as though he were about to meet death. The *delatio* of Milichus is not until 15.55.1. The proof that the events narrated in 15.54 are the facts to which Milichus testifies is that Scaevinus' defense (see ¶7 below) is a point-by-point refutation of that narration.

As more conspirators begin to inform against one-another in 15.56, their testimony has already been given as the narration of the organization of the assassination plot in 15.53: *ordinem insidiis composuerant*. By the time Scaevinus and Natalis confess in 15.62.2,

³¹⁶ Syme, *Tacitus*, 575 n.5, speculates that Nerva may have been active in the detection of the plot. Griffin, *Nero*, 168, also believes that Nerva was among those who helped uncover the conspiracy, because he was rewarded.

Tacitus has clearly indicated their guilt to his readers.

Testimony is also presented in this case "offstage." Natalis and Scaevinus, the first of conspirators to become informants, are undone by their separate statements; Tacitus' readers are not privy to what they say, only that their stories do not match (the readers are already acquainted with their true actions). When their versions of events do not match, their statements become at once testimony against themselves and each other (15.61.1):

Ergo accitur Natalis, et diversi interrogantur, quisnam is sermo, qua de re fuisset. tum exorta suspicio, quia non congruentia responderant, inditaque vincla.

Therefore Natalis was summoned, and the two were interrogated separately, as to what sort of a conversation it had been, and on what subject. Then suspicion arose, because they did not answer in their defense things that matched, and chains were put on them.

They obviously had no right to remain silent.

Indirect discourse provides testimony in a more traditional fashion

(15.59.3):

Miles potius deesset et plebes desereret, dum ipse maioribus, dum posteris, si vita praeriperetur, mortem adprobaret.

Let rather the soldier fail and the masses give up, while you yourself to your ancestors, to your descendants, render your death righteous, if life is to be snatched away before its time.

This testimony of Piso's involvement in the conspiracy is also evidence of his weakness of character, as he is *immutus*, "unmoved" by this encouragement from his comrades.

The testimony presented against the conspirators is overwhelmingly effective, regardless of character. The major reason for this appears to be the emperor himself, who is prone to believe allegations of a conspiracy even when they are unsupported (15.51.4):

Accita quippe Epicharis et cum *indice* composita nullis *testibus* innisum facile *confutavit*. sed ipsa in custodia retenta est, suspectante Nerone haud falsa esse etiam quae vera non probabantur.

Indeed after Epicharis was summoned and confronted with her informant, she easily refuted the evidence of Proculus, who was supported by no witnesses. But she was kept in custody, as Nero suspected that what was not proved true was by no means false.

Without support, the testimony of Volusius against Epicharis should have failed, but the emperor's paranoia allows it to succeed.

The testimony against Seneca is similarly weak. Natalis is the only one who provides any direct evidence (15.60.3):

Solus quippe Natalis et hactenus prompsit, missum se ad aegrotum Senecam, uti viseret conquerereturque, cur Pisonem aditu arceret: melius fore, si amicitiam familiari congressu exercuissent. et *respondisse* Senecam sermones mutuos et crebra conloquia neutri conducere; ceterum salutem suam incolumitate Pisonis inniti.

Indeed only Natalis made Seneca known, and only to this extent, (saying) that he had been sent to an ailing Seneca, that he might call on him and complain about why Seneca kept Piso from an audience. (Piso sent him, he said, to say that) it would be better if they carried on a friendship by close companionship. (Natalis testified) that Seneca had answered that mutual conversation and frequent talks were expedient to neither of them; but Seneca said that his own safety hung upon the security of Piso.

This is very meager, since Natalis admits that Seneca refused to meet with Piso. This is hardly evidence that the two conspired, and if anything, it

points to Seneca's innocence.³¹⁷ The last statement that Natalis attributes to Seneca, about valuing Piso's safety, is the damning one. It is the only part of Natalis' story that Seneca denies (see p.199).

Similarly meager testimonies are accepted as *crimina*, "charges," against "endless fettered columns"; and while this may still qualify as judicial procedure,³¹⁸ Tacitus paints a grim picture (15.58.3):³¹⁹

Continua hinc et vincta agmina trahi ac foribus hortorum adiacere. atque ubi *dicendam ad causam* introissent, <non stud>ia tantum erga *coniuratos*, sed fortuitus sermo et subiti occursus, si convivium, si spectaculum simul inissent, pro *crimine* accipi.

Endless fettered columns were hauled in and stood beside the gates of the (imperial) gardens. And whenever they entered for pleading their case, not only enthusiasm towards the conspirators, but even a chance conversation and sudden meetings, or the fact of having entered a banquet or a show together, these things were construed as criminal charges.

This is the sort of guilt by association that marked Nero's very first investigation of an alleged plot against him.³²⁰

In this climate, rumor also testifies for the prosecution. *Fama* is

³¹⁷ Griffin, "*Imago Vitae Suae*," 26-7, indicates that Seneca's reply to Piso may have been an attempt to discourage the conspiracy.

³¹⁸ Rogers, "Heirs and Rivals," 208, "...it cannot be too strongly emphasized, *there was a judicial proceeding*. The case was tried in Nero's court; we read of arrests, questioning, evidence, tortures (the law so provided respecting slave witnesses), state's witnesses, confessions."

³¹⁹ Henderson, *Nero*, 273, defends Nero against this picture: "The temporary measures of repression and of punishment were indeed grossly exaggerated...When the picture is presented to us of Rome's streets crowded with funeral processions and pathetic scenes of universal mourning, we know it to be the false and lying product of artistic effort."

³²⁰ See in the Case of Agrippina, p.151.

the witness of further and more serious involvement of Seneca in the plot (15.65.1):

Fama fuit Subrium Flavum cum centurionibus occulto consilio, neque tamen ignorante Seneca, destinavisse, ut post occisum opera Pisonis Neronem Piso quoque interficeretur tradereturque imperium Senecae, quasi *insoni* et claritudine virtutum ad summum fastigium delecto.

The story was that Subrius Flavius had determined in a secret plan with his centurions, and not without the knowledge of Seneca, that after Nero had been killed by the work of Piso, that with Piso also killed the power would be handed over to Seneca, as though to an innocent man, chosen to the highest rank by the renown of his honorable qualities.

This story is included only after Seneca's death (15.64) to indicate that it was not weighed by Nero as part of the evidence for ordering Seneca's death. Tacitus has clearly demonstrated, by designating Seneca's death as a murder (15.60.2) rather than a conviction, that Nero does not follow the rule of law in Seneca's case. Inclusion of this evidence before Seneca's death might have lent more legitimacy to Nero's verdict.

Information that emerges about the involvement of Claudius' daughter Antonia (15.53.3-4), who is not charged, is so incredible to Tacitus that he feels compelled to issue a disclaimer:

Nobis quoquo modo traditum non occultare in animo fuit, quamvis absurdum videretur.

Our intent is not to conceal a story handed down in whatever fashion, although it seems preposterous.

7. Defensio In the atmosphere of a drumhead trial, and against charges of mere association or rumors of involvement, there can be no effective defense. Despite some well-argued defenses, and without regard to their guilt or innocence, none of those whom Tacitus records as offering a

defense lives: all are either executed or persuaded to cheat the axeman by suicide. Of those who are acquitted or granted immunity (see ¶9), none offers any defense against the accusations.

The lack of an account of a *defensio* by a particular *reus* may only indicate that what was said was not considered worthy of mention by Tacitus (15.70.2):

Mox reliqui coniuratorum periere, nullo facto dictove memorando.

Soon the rest of the conspirators perished, with no word of deed worth relating.

For some of the guilty, the lack of a defense may indicate that none was worthwhile. Tacitus is specific in at least one instance when an accused can not summon words with which to defend himself (15.66.2):

Non vox adversum ea Faenio, non silentium, sed verba sua praepediens et pavoris manifestus.

Faenius had no voice against those charges, and no silence, but he tripped over his words and was plainly guilty of fear.

Here the man's guilt against both Nero and his fellow conspirators was on equal standing.

The uselessness of a defense is borne out by the experience of Epicharis. Her defense (see text above p.194) is both effective and ineffective: she refutes the evidence against her, but to no avail because Nero is suspicious; she is not released from custody, but tortured (15.57.1). Tacitus' account of her actual defense is very brief: *facile confutavit*.

A slightly longer account is given of Flavius' defense, which is

based upon character (15.67.1):

Primo dissimilitudinem morum ad *defensionem trahens*, neque se armatum cum inermibus et effeminatis tantum *facinus* consociaturum.

At first drawing to his defense the dissimilarity in character, he said that he would not have joined himself, a soldier in arms, in so great a crime, with a bunch of unarmed *ladies*.

It is of course not his own good character he is supporting, but a rebuke against the weakness and indecisiveness of the *coniurati*. Flavius puts into words the very factors which led to the failure of the conspiracy.

The two longest defenses are offered in indirect discourse.

Scaevinus gives a detailed refutation of Milichus' charges (15.52.2-3):

Is raptus per milites et *defensionem* orsus, ferrum, cuius *argueretur*, olim religione patria cultum et in cubiculo habitum ac *fraude liberti* subreptum *respondit*. tabulas testamenti saepius a se et incustodita dierum observatione signatas. pecunias et libertates servis et ante dono datas, sed ideo tunc largius, quia tenui iam re familiari et instantibus creditoribus testamento diffideret. enimvero liberales semper epulas struxisse, <dum ageret> vitam amoenam et duris *iudicibus* parum probatam.

He (Scaevinus), arrested by soldiers, began his defense: He said in his defense that the blade, regarding which the accusation was being made, had long ago been worshiped by family custom, and was kept in the bedroom; that by the trickery of the freedman it had been stolen. He said that the tablets of his will were quite often and without careful observance of the days sealed by him, that even before then, he had given gifts of money and freedom to his slaves, and he had just now done so more lavishly, because his estate was now meager and the creditors were knocking on the door, and he lacked confidence in his will. Truly, he said, he had always set up lavish banquets, and led an agreeable life of the sort that was very little approved of by harsh critics.

Tacitus recognizes that the way in which a witness gives his testimony is as important as the testimony itself: not only does Scaevinus answer each point of Milichus' allegations, but he does so in a convincing manner (15.55.4):

Adicit dictis constantiam...tanta vocis ac vultus securitate, ut labaret indicium.

He added firmness to his words...such calmness of voice and expression that the accusation was on the point of slipping.

Since Tacitus has already indicated (15.49.4) his leading role in the plot, his testimony is suspect.³²¹

Seneca's defense hardly seems necessary in light of what are, except for a statement regarding Piso's health, trivial charges. His defense indeed supports everything alleged against him, except for the crucial statement on Piso's health (15.61.1).³²²

Seneca missum ad se Natalem conquestumque nomine Pisonis, quod a visendo eo prohiberetur, seque rationem valetudinis et amorem quietis excusavisse *respondit*. cur salutem privati hominis incolumitati suae anteferet, causam non habuisse; nec sibi promptum in adulationes ingenium. idque nulli magis *gnarum* quam Neroni, qui saepius libertatem Senecae quam servitium expertus esset.

Seneca said in his defense that Natalis had been sent to him, complaining in Piso's name that he was being prevented from seeing Seneca, and that he (Seneca) had excused himself for reasons of his health and his love of quiet. Seneca said that he had no reason why he should put the safety of a private man before his own health. Nor, he said, was his nature prone to flattery. And he said that this was known to no one more than to Nero, who had more often had experience of the liberty of Seneca than his servility.

³²¹ Keenan, "Roman Wills," 4 n.15, "Scaevinus is probably lying through his teeth; but if he is telling the truth...then he convicts himself of violating the *lex Aelia Sentia* (A.D.4) with its provisions against manumissions in defraud of creditors."

³²² Alexander, "Seneca's Treason," 4, sees a special meaning in the word *incolumitas* when used in relation to the emperor, "the health, wealth, and prosperity of the sovereign." He attributes Seneca's conviction in part to the ambiguity of his defense, "unfortunately for Seneca these words were ambiguous enough in the circumstances to permit them to be construed as implying some kind of partnership in the Pisonian conspiracy." John Percival, "Tacitus and the Principate," *G&R* 27 (1980): 125, comments that Seneca's use of the word *libertas* is typical of the way Tacitus defines the word: "freedom of speech."

Seneca's final line probably does more to aggravate Nero's resentment than to appease it; on the whole his defense is lackluster and does not seem like a genuine effort, as though he knows that Nero has made his decision already.³²³

8. *Relatio* A standard *relatio* is made by the defendant against his or her accuser. Flavius Scaevinus' counter-charges are of this type, made against his freedman, the *delator* and chief witness against him, Milichus. Milichus' role in the undoing of the conspiracy is important, and is only possible because he violates the trust owed to his patron Scaevinus. Perhaps if he had done so out of a sense of loyalty to Rome or the emperor, this might have seemed a noble action, but Tacitus has stressed that Milichus' motive (see above ¶5) was financial gain. Scaevinus' *relatio* accuses Milichus in just those terms, and so despite Scaevinus' guilt, and the falsity of his defense, his counter-charges concerning the character of his *delator* have the ring of truth (15.55.3-4):³²⁴

Fomenta vulneribus nulla iussu suo, sed quia cetera palam vana obiecisset, adiungere crimen, <cu>ius se pariter indicem et testem faceret...incusat ultro intestabilem et consceleratum.

Dressings for wounds (had been prepared) by no order of his, but because (Milichus) had, he said, made other accusations that were patently without substance, he had joined to it a (serious) charge, of which he might make himself both informant and witness...he then accused Milichus as shameful and criminally depraved.

³²³ Dyson, "Portrait of Seneca," 77, believes that Seneca deliberately clouded his defense.

³²⁴ His words also confirm Milichus' dual role as informant and witness.

Most of the counter-charges in Tacitus' account of the Pisonian conspiracy are not directed in the standard manner against the *delator*, but are rather statements made by the defendant against the target of the conspiracy, Nero. They are declarations of the validity of the conspiracy and a manifesto of why Nero must be removed.

The *relatio* of Epicharis is of this type, delivered before she is charged (15.51.3):

Et omnia *scelera* principis orditur, neque senatui[†] quid <quam> manere. sed provisum, quonam modo *poenas* eversae rei publicae daret.

She gave an orderly account of all the crimes of the emperor, and how nothing remained of the Senate's power. But, she said, measures had been taken whereby Nero might pay the price for having ruined the state.

†. senatui *Med. sancti Heubner.*

Since Epicharis denies all the charges, she would not deliver a *relatio* against Nero as part of her defense; that would be an admission of guilt.

These charges against Nero are made as part of her failed effort to recruit Volusius Proculus.

In a similar fashion Piso's charges against Nero are spoken to his fellow conspirators (15.52.1):

Melius apud urbem in illa invisā et spoliis civium exstructa domo vel in publico patratus quod pro re publica suscepissent.

"Better," he said, "that you do in Rome, in that hated house which he built with the spoils of citizens, what you have undertaken on behalf of the state."

Unlike the charges made by Epicharis, Piso's are intended to discourage action. Piso is opposed to the idea of carrying through with the conspiracy at his own villa, for he refuses to violate the *sacra mensae*, the sanctity of the table and the guest-host relationship. This very refusal is perhaps a reminder by Tacitus of Nero's own violation of this ancient taboo when he murdered Britannicus (see p.230).

Seneca's *relatio* is given after his defense and after he has been sentenced to take his own life. Where he was restrained in his defense, he is direct in his rebuke (15.62.2):

Cui enim *ignaram* fuisse *saevitiam* Neronis? neque aliud superesse post matrem fratremque interfectos, quam ut educatoris praeceptorisque necem *adiceret*.

"To whom then is the cruelty of Nero unknown? There is nothing left after killing his mother and brother, than that he cast the death of his nurturer and tutor onto that heap."

The purpose of these counter-charges is to calm his friends with the logic of his fate rather than to incite them; they are also an explanation of why Nero has Seneca killed.³²⁵

The most effect type of *relatio* is provided by two of the defendants who deliver their counter-charges directly to Nero. As they have already

³²⁵ Theresa K. Roper, "Nero, Seneca, and Tigellinus," *Historia* 28 (1979): 351, draws a parallel between the accusations against Seneca and Agrippina (13.20): both were innocent, but Nero was convinced of their guilt.

confessed, this probably does not alter their fate. Sulpicius Asper and Subrius Flavus are both responding to direct questioning by Nero regarding their motives. Asper's *relatio* speaks only in general terms about Nero's crimes (15.68.1), but in the strongest *relatio* of the entire episode, Flavus is quite specific (15.67.2):

Confessionis gloriam amplexus interrogatusque a Nerone, quibus causis ad oblivionem sacramenti processisset, "oderam te," inquit. "nec quisquam tibi fidelior militum fuit, dum amari meruisti: odisse coepi, postquam *parricida* matris et uxoris, auriga et histrio et incendiarius extitisti."

After embracing the glory of a confession, he was asked by Nero for what reasons he had gone to the point of forgetting his oath. "I hated you," he said, "nor was any soldier more faithful to you while you deserved to be loved: I began to hate, after the matricide of your mother and killing of your wife, when you proved to be a charioteer, an actor, and a pyromaniac."

There is great mockery in the hint that he could have tolerated the murders of Agrippina and Octavia, had Nero not abased himself with disgraceful conduct as an actor, and with the burning of Rome.³²⁶

The hatred of Nero's artistic pretensions is illustrated by a popular saying also attributed to Flavus, which is an indictment of both Piso³²⁷ and Nero (15.65.1):

Quin et verba Flavi vulgabantur, non referre dedecori, si citharoedus demoveretur et tragoedus succederet (quia

And what is more, a saying of Flavus was common knowledge, that it lessened not the disgrace if a lyre singer were removed and a

³²⁶ This last charge is one for which Tacitus leaves the verdict open in his account of the Great Fire of A.D.64 and its aftermath (15.38-44). See "Additional Cases" in Appendix II.

³²⁷ Warmington, *Nero*, 137, thinks that Piso appeared either in Nero's Juvenalia or the Neronia.

ut Nero cithara, ita Piso tragico ornatu
canebat).

tragic actor took his place (because as Nero sang
with the lyre, so Piso sang in tragic garb).

His desire to be an actor is again mocked by the conspirators (15.59.2). After the conspiracy is crushed, as if to confirm Flavius' charge that Nero is a charioteer, Nero decrees the addition of more horse races to the games for Ceres (15.74.1). In further celebrations of success against the plot, Nero attempts to rename the month of April after himself.³²⁸

The charges against Nero made within this case cover a wide range: pretensions at being a charioteer, lyre-singer, and actor; ruining Rome, and burning the city; killing his mother, his brother, and his wife. Tacitus himself describes a city besieged by its own emperor (15.58.2), an emperor who is so out of touch with his people as to mistake their expressions of abject fear for joy (15.71.1).

Nero's people, however, are not deceived even by his decree publishing the confessions of the condemned, and see through his use of the conspiracy as a cover for his personal vendetta (15.73.1).³²⁹

³²⁸ Cf. Suetonius Nero 55. The documentary Papyrus *P.Oxy.808* written "in the month of Nero," μηνὶ Νερωνείῳ is evidence for the use of his name for the month of April. Furneaux, Tacitus, *ad loc.*, "the name cannot be supposed to have survived his lifetime."

³²⁹ Henderson, Nero, 272, sees the decree as effective: "This publication, designed to quell sinister rumours, compelled entire belief at least in the reality and formidable nature of the plot."

Etenim crebro vulgi rumore lacerabatur, tamquam viros <claros> et *insontes* ob invidiam aut metum extinxisset.

And indeed he was frequently ripped by the talk of the masses, on the charge of having destroyed famous and innocent men because of hatred or fear.

Yet Tacitus' presentation is not completely one-sided. He soberly acknowledges the existence of the conspiracy and balances Nero's destruction of innocents with the reality of the threat (15.73.2):

Ceterum coeptam adultamque et revictam *coniurationem* neque tunc dubitavere, quibus verum noscendi cura erat, et fatentur, qui post interitum Neronis in urbem regressi sunt.

But that a conspiracy had begun and had matured and was proven, neither did people doubt at the time, those to whom there was a care for knowing the truth, and they did confess, those who after the death of Nero returned to Rome.

9. *Iudex and Iudicium* Table 8 below lists the sentences for each of the major defendants, and Table 9 lists the sentences for the minor defendants.³³⁰

Nero is the judge for every defendant, with the exception of Iunius Gallio, and the Senate puts an end to his charges before they reach Nero

³³⁰ Warmington, *Nero*, 139, correctly notes 19 deaths and 13 exiles but says "among the latter were some regarded by Tacitus as innocent," which is misleading because Tacitus indicates that one of those who died, Vestinus, was innocent. Henderson, *Nero*, 273-4, argues that "*all* the exiles cannot have been guiltless," yet Tacitus includes none of the 13 exiled in the group of conspirators.

Table 8.--Major Defendants and Sentences

<i>Reus</i>	<i>Iudicium</i>
[1] Afranius Quintianus	executed (15.70.2)
[2] Annaeus Lucan	forced to commit suicide (15.70.1)
[3] Annaeus Seneca	forced to commit suicide; judgement pronounced: (15.61.2)
[4] Antonius Natalis	immunity for testimony (15.71.1)
[5] Atticus Vestinus	forced to commit suicide (15.69.2)
[6] Caius Piso	anticipatory suicide (15.59.5)
[7] Cervarius Proculus	immunity for testimony (15.71.1)
[8] Claudius Senecio	executed (15.70.2)
[9] Epicharis	suicide to avoid torture (15.57.2)
[10] Faenius Rufus	executed (15.68.1)
[11] Flavius Scaevinus	executed (15.70.2)
[12] Iunius Gallio	charges withdrawn (15.73.3)
[13] Plautius Lateranus	executed (15.60.1)
[14] Staius Proxumus	acquitted (15.71.2)
[15] Subrius Flavius	executed (beheaded) (15.67.4)
[16] Sulpicius Asper	executed (15.68.1)

Note: Non-conspirators (including Seneca) shaded. In Seneca's case the death occurs many chapters after the sentence is delivered.

Table 9.--Minor Defendants and Sentences

<i>Reus</i>	<i>Iudicium</i>
[A] Acilia (Lucan's mother)	charges forgotten (15.71.5)
[B] Annius Pollio	infamia and exile (15.71.3) [†]
[C] Blitius Catulinus	capital exile (15.71.4) ^{††}
[D] Caedicia	non-capital exile (15.71.5) ^{†††}
[E] Caesennius Maximus	non-capital exile (15.71.5)
[F] Cluvidianus Quietus	capital exile (15.71.4)
[G] Cornelius Martialis	loss of position (15.71.2)

<i>Reus</i>	<i>Iudicium</i>
[H] Flavius Nepos	loss of position (15.71.2)
[I] Gaius Silvanus	acquitted, then suicide (15.71.2)
[J] Glitius Gallus	infamia and exile (15.71.3)
[K] Iulius Augurinus	probably executed (15.70.2)***
[L] Iulius Agrippa	capital exile (15.71.4)
[M] Iulius Altinus	capital exile (15.71.4)
[N] Marcius Festus	probably executed (15.70.2)
[O] Maximus Scaurus	probably executed (15.70.2)
[P] Munatius Gratus	probably executed (15.70.2)
[Q] Musonius Rufus	exile (15.71.4)
[R] Novius Priscus	exile (15.71.3)
[S] Petronius Priscus	capital exile (15.71.4)
[T] Pompeius ???	loss of position (15.71.2)
[U] Rufrius Crispinus	exile (15.71.4)
[V] Staius Domitius	loss of position (15.71.2)
[W] Venetus Paulus	probably executed (15.70.2)
[X] Verginius Flavus	exile (15.71.4)
[Y] Vulcacius Araricus	probably executed (15.70.2)

Note: non-conspirators are shaded.

‡. Of all those noted as receiving this sentence Tacitus says: *infamatis magis quam convictis data exilia*: "defamed more than convicted, they were exiled." Tacitus gives no hint to the type of exile, but if the *infamia* carried greater weight, it was most likely non-capital exile.

‡‡. Capital exile, in each case it is applied here, is assumed from the nature of the sentence: *Aegaei maris insulae permittuntur*.

‡‡‡. Non-capital exile, where it is indicated, is assumed from the description of the sentence: *Italia prohibentur*, which is clearly less-severe than banishment to an island.

‡‡‡‡. All defendants listed as "probably executed" are conspirators, about whose fate nothing specific is recorded by Tacitus; all are considered to be covered by the blanket statement in 15.70.2, *mox reliqui coniuratorum periire*, "soon the rest of the conspirators perished."

(15.73.3). There is an indication in Seneca's case that a much abridged form of the *consilium principis* was employed.³³¹ Tacitus gives no specific indication as to whether or not this group participated in all the decisions during the conspiracy, but it seems that their role may have extended beyond merely Seneca's judgment: Tigellinus has a prominent role as interrogator, Poppaea has previously shown judicial manipulation of Nero (in the Case of Octavia, see p.162), and the statement that these two were the inner council for Nero, "when he was raving" (15.61.2), could be taken to apply to the majority of Nero's actions in the case.³³²

Those who put up a defense against the charges, as noted earlier, suffer invariably fatal consequences. Of the twenty whom Tacitus indicates as conspirators, only three survive. Two of the survivors Antonius Natalis and Cervarius Proculus, are granted immunity in exchange for their testimony; the third is the survivor of the only two who are acquitted: the praetorian tribunes Gaius Silvanus and Statius

³³¹ Crook, *Consilium Principis*, 45-7 discusses instances where Seneca functions as part of Nero's judicial council, but not this judgment of him by a Neronian council. Perhaps Tacitus found some irony in the former member of Nero's privy council tried by his replacements.

³³² Roper, "Nero, Seneca, and Tigellinus," 353, argues that the contrasts in the characters of Seneca and Tigellinus are based on Tacitus' "favorable bias" towards Seneca, and his dislike of Tigellinus, and that Seneca was Tigellinus' patron (357).

Proxumus. Silvanus, although acquitted, commits suicide anyway (15.71.2), perhaps out of guilt. He is clearly having difficulty with his role as he participates in carrying to Seneca the sentence of death (15.61.4):

Voci tamen et adspectui pepercit
intromisitque ad Senecam unum ex
centurionibus, qui necessitatem ultimam
denuntiaret.

Yet he spared his voice and his eyes, and sent in
to Seneca one of the centurions, with orders to
announce his final duty.

Staius Proxumus, the only other conspirator acquitted, is spared an indictment by Plautius Lateranus (15.60.1), whom he has been ordered to kill; his grant of a pardon (15.71.2) is not explained by Tacitus, nor is it made clear exactly when or how Staius' participation in the plot (which the reader is aware of from 15.50.3) comes to Nero's attention. Logically it must occur after the point is made that Lateranus does not betray him, and before his sentencing, but Staius does not appear in the text during the interval.

The non-conspirators, who total 21 (including those whose participation is unknown or dubious--e.g., Seneca), suffer fewer deaths, but none of them is acquitted (although charges against two are not pursued). Only two are killed: Atticus Vestinus and Seneca, both of whom are forced to commit suicide. The others against whom Nero uses the plot as a cover suffer a maximum penalty of capital exile. Many of these, however, are charged for motives that are quite petty.

One way to interpret the severity of the punishments meted out to conspirators as opposed to non-conspirators is to plot the sentences against the various reasons that each person is involved in the conspiracy. Table 10 below lists "The Charges and Results" to illustrate directly how the conspirators fared as opposed to the non-conspirators.

Nero thus commits only two outright murders, and the other innocents suffer lesser penalties.³³³ Yet when Nero kills Vestinus and Seneca, Tacitus squarely indicates the absence of the rule of law: Seneca's death was *caedes*, "murder," and in the death of Vestinus, Nero can not manage to find even the shadow of a legal role to play (15.69.1):

Igitur non crimine, non accusatore
existente, quia speciem iudicis induere non
poterat, ad vim dominationis conversus.

And so with no charge and no informant in
existence, because Nero could not even assume
the appearance of being a judge, he turned to
the power of despotism .

Nero himself is judged within the scope of the conspiracy. After the *relatio* of Subrius Flavus (15.67.2), Tacitus comments upon the effect of those words upon Nero (15.67.3):³³⁴

³³³ Robert A. Tucker, "Tacitus and the Death of Lucan," *Latomus* 46 (1987): 336, would argue for a third, picking up on Tacitus' use of the word *caedes* to describe Lucan's death as an execution. He concludes (337) with the hope that the traditional view of Lucan's death as a suicide will be revised.

³³⁴ Shotter, "Tacitus' View," 3322, contrasts Nero's dislike of hearing the truth with Galba's speech to Piso Licinianus (*Histories* 1.15.4) regarding the dangers of flattery to an emperor.

Table 10.--Charges and Results in the Pisonian Conspiracy

(41) Defendants [‡]	Conspirators (20)	possible conspirator (1)	involvement unknown ^{‡‡} (6)	no specified grudge (1)	rumored to dislike Nero (4)	Nero had specific grudge (4)	charged because of association: friends or relatives (5)
(3) anticipatory / voluntary suicide	3 (includes one of the acquitted)						
(3) forced suicides	1	1				1	
(13) executed or probably executed	13						
(13) exiled ^{‡‡‡}			6	1		3	3
(4) loss of status					4		
(2) grants immunity	2						
(2) acquittals	2						
(2) charges dropped or forgotten							2

Note: non-conspirators are shaded, and appear to the right of the thick line.

‡.As one of the defendants was acquitted and then also committed suicide, the total appears erroneously to be 42 instead of 41.

‡‡. Tacitus does not mention these among the conspirators, and includes no motive for their being sentenced.

‡‡‡. No distinction is made here as to type of exile incurred.

Nihil in illa *coniuratione* gravius auribus Neronis accidisse constitit, qui ut faciendis *sceleribus* promptus, ita audiendi quae faceret insolens erat.

It is certain that nothing in that conspiracy fell harder on the ears of Nero, who as he was eager for committing crimes, so he was unaccustomed to hearing about what he had done.

Nero is not actually on trial here, but Flavus' words have the effect of a judicial rebuke. Nero is guilty of the crimes with which Flavus charges him, and Tacitus has Nero suffer from the knowledge of that truth, as a condemned man hearing a sentence he deserves.

A number of people are rewarded for their services or in some cases perhaps merely for remaining loyal and not joining in the conspiracy. Nero promotes his deeds like a triumph:³³⁵

Tum quasi gesta bello expositurus, vocat senatum et triumphale decus Petronio Turpiano consulari, Cocceio Nervae

Then, in order to put on display his so-called deeds in war, he convoked the Senate and bestowed triumphal honors upon the former consul Petronius Turpilianus, and upon Cocceius

³³⁵ C.J. Classen, "Tacitus--Historian Between Republic and Principate," *Mnemosyne* 41 (1988): 113, notes that Tacitus "ends with Nero summoning the senate as if he was to report a military victory (XV 72,1: *quasi bello gesta expositurus*) and rewarding soldiers and magistrates." Werner Eck, "Nero's Freigelassener Epaphroditus und die Aufdeckung der pisonischen Verschwörung," *Historia* 25 (1976): 381-84, discusses an inscription found in 1913 in Rome (Desau *ILS*, Vol.3, pt.2, 163, no. 9505). Eck (384) sees this inscription as evidence to expand upon what Tacitus says, and indicates that Nero celebrated his suppression of the conspiracy as a military victory, "als ob er einen großen militärischen Sieg errungen hätte." Eck seems correct, and hence our translation of the passage has been revised accordingly: instead of reading *quasi...expositurus*, we interpret *quasi* as modifying either *bello* or *gesta*, since Nero seems to have treated this as a victory, Tacitus qualifies not the fact, but Nero's interpretation, as a "quasi-war" or "quasi-deeds."

praetori designato, Tigellino praefecto
praetorii tribuit.

Nerva the praetor-designate, and upon
Tigellinus the praetorian prefect.

Table 11 lists all the individuals who received rewards, and the services rendered in order to earn them, if indicated by Tacitus:

Table 11.--Rewards for Informants and Supporters

Name	Role in Conspiracy	Reward
[i] Tigellinus	Interrogator (15.58.3) Judge (15.61.2)	Triumphal honors, bust in forum, statue in palace.(15.72.1)
[ii] Milichus and Wife	<i>Delatores</i> of Flavius Scaevinus and Antonius Natalis (15.55)	Money amount not specified; takes Greek cognomen Σωτήρ (15.71.1)
[iii] Cocceius Nerva	Unknown	Triumphal honors, bust in forum, statue (15.72.1)
[iv] Nymphidius Sabinus	Unknown	Consular insignia (15.72.2)
[v] Petronius Turpilianus	Unknown	Triumphal honors (15.71.2)
[vi] Volusius Proculus	<i>Delator</i> against Epicharis (15.51.4)	No reward mentioned
[vii] Common Soldiers	Remaining loyal?	2000 sesterces/ man; quantity of free grain.(15.72.1)

10. Historical Conclusion Tacitus devises both general conclusions to the episode and conclusions for some of the individual defendants. For individual defendants Tacitus comments most frequently on the bravery or cowardice of their deaths, and their last words. His general comments focus on Nero: after the sentences there are some indications that the emperor's days are numbered.

Most of the deaths which Tacitus chooses to reflect upon are

examples of bravery. The two singled out as murdered by Nero, Seneca and Vestinus, both exhibit a brave end. Seneca's bravery is shown in consoling his friends (15.61.1-2),³³⁶ and his moderation in life is indicated by his preparation for death even at the height of power (15.64.4):

Etiā tum praedives et praepotens
supremis suis consuleret.

For even when he was very rich and very
powerful he gave thought to his final moments.

A similar calmness marks Vestinus' death: on the day he is to die, after fulfilling his consular duties, he calmly holds a banquet, while preparations are on hand for the time when the tribune comes to announce his suicide (15.69.3). As an epilogue to the cruelty of this sentence for an innocent man, Tacitus recounts Nero's additional cruelty towards those last guests of Vestinus (15.69.3):

Circumdāti interim custodia qui simul
discubuerant, nec nisi provecta nocte omissi
sunt, postquam pavorem eorum, ex mensa
exitium opperientium, et imaginatus et
inridens Nero satis *supplicii* luisse ait pro
epulis consularibus.

Meanwhile those who had dined with him were
surrounded by guards, and they were not
released until the night was well advanced.
Afterwards Nero pictured this in his mind and
laughed at the fear of those who had been
awaiting their doom after the meal, saying that
they had paid a sufficient penalty for their
consular banquet.

³³⁶ Dyson, "Portrait of Seneca," 78, views Tacitus' portrait of Seneca as counter to an *exemplum* of Roman Stoic tradition, when Seneca's "attempt to die in the traditional Roman manner...fails." Keenan, "Roman Wills," 4 n.19, sees a parody of the sort of death scene that Seneca himself often wrote. Miriam T. Griffin, *Seneca: A Philosopher in Politics* (Oxford: Oxford University Press, 1976) 369, notices that Tacitus models Seneca's death on Socrates' death in Plato.

The conclusion for the praetorian tribune Flavus shows his bravery through his last words (15.67.4):

Is proximo in agro scrobem effodi iussit, quam Flavus ut humilem et angustam *increpans*, circumstantibus militibus, "ne hoc quidem," inquit, "ex disciplina." admonitusque fortiter protendere cervicem, "utinam," ait "tu tam fortiter ferias!" et ille multum tremens, cum vix duobus ictibus caput amputavisset, *saevitiam* apud Neronem iactavit, sesquiplaga interfectum a se dicendo.

In a nearby field, Nero ordered a hole to be dug, which Flavus rebuked as low and narrow, saying to the soldiers standing around, "not even this is according to military regulation." Advised then to stretch for his neck bravely, he replied, "would that you strike as bravely." And the tribune, shaking a lot, after he had scarcely cut the head off with two blows, boasted of his cruelty in Nero's presence, saying that Flavus had been killed by him with a blow and a half.

By the empty boast of the tribune who executes Flavus, Tacitus contrasts real bravery with braggadocio.

Tacitus pauses to explain his inclusion of Flavus' words (15.67) and his omission of Seneca's (15.63.3): Seneca's were *in vulgus edita*, "published," and Flavus' *non, ut Senecae, vulgata*, "were not, as Seneca's, published." And despite Seneca's literate style, Tacitus considers the words of Flavus equally valid (15.67.3):

Nec minus nosci decebat militaris viri sensus incomptos et validos.

Nor is it less fitting that the rough and strong words of a soldier be known.

Lucan's last words are described only generally, as a selection from his own poetry (15.70.1):³³⁷

³³⁷ Tucker, "Death of Lucan," notes that Tacitus does not include any information as to exactly how Lucan died, whether he cut his own veins or a physician did it for him.

Recordatus carmen a se compositum, quo vulneratum militem per eius modi mortis imaginem obisse tradiderat, versus ipsos rettulit, eaque illi suprema vox fuit.

He called to mind a poem he had composed, in which he told the story of a wounded soldier who had met death in a fashion that mirrored his own. He repeated aloud those very verses; they were his last words.

The reference must be to a passage familiar to Tacitus' contemporaries, but there is some dispute as to the exact reference.³³⁸ Clearly whatever passage of Lucan is meant, *Tacitus'* image is of a poet drawing on the bravest image he knew, so that death might imitate art.

The brave endings of three conspirators are observed as contrasts to the weakness of the rest of their own lives, for Quintianus, Senecio, and Scaevinus (15.70.2).

Epicharis' brave ending is held up as a contrast to the weakness of those who chose to betray the conspiracy (15.57.2):

Clariore exemplo libertina mulier in tanta necessitate alienos ac prope ignotos protegendo, cum ingenui et viri et equites Romani senatoresque intacti tormentis carissima suorum quisque pignorum proderent.

She died with a more illustrious example, this freedwoman, by protecting, in such difficult circumstances, people who were strangers or barely known to her, than freeborn people, men even, and Roman knights and senators, untouched by torture, each of whom betrayed the dearest of his family.

Cowardly actions at death also receive Tacitus' attention. The prefect Faenius Rufus includes self-pity in his will; his weakness is contrasted with the bravery of his own centurions (15.68.1).

³³⁸ Furneaux, *Tacitus, ad loc.*, lists some possibilities, including Phars. 3. 635-646.

The obsequiousness, however, of Piso's will is granted some clemency by Tacitus (15.59.5), for it had a noble cause: it was done *amori uxoris*, "for the love of his wife." But Tacitus does not let the matter rest there, and explains how Piso's love for his wife was tainted:

Quam degenerem et sola corporis forma commendatam amici matrimonio abstulerat. nomen mulieri Satria Galla, priori marito Domitius Silus: hic patientia, illa impudicitia Pisonis *infamiam* propagavere.

(She was) a low-born woman and only commended by her physical beauty, whom he had stolen away from marriage to a friend. The woman's name was Satria Galla, and that of her former husband Domitius Silus: his submissiveness and her lack of morality extended the disgrace of Piso.

Tacitus' final verdict for the leader of the conspiracy is *infamia*.

Love and loyalty when not tainted as Piso's are rewarded with a decree of *gloria* by Tacitus, as in the case of Egnatia Maximilla. She was the wealthy wife of Novius Priscus, one of the innocent minor defendants sentenced to exile (15.71). She accompanies her husband into exile of her own accord, despite the confiscation of her wealth that this entailed.

The last defendant, Iunius Gallio, Seneca's brother, is charged because of a family tie. After the conspiracy, when the other sentences have been executed, an ambitious senator seeks Nero's favor by making absurd accusations against Gallio.³³⁹ The Senate quashes the charges and rebukes the *delator* with the following justification (15.73.3):

³³⁹ Griffin, "*Imago Vitae Suae*," 28, views Tacitus' treatment of Gallio as sympathetic.

Ne publicis malis abuti ad occasionem privati odii videretur, neu composita aut oblitterata mansuetudine principis novam ad *saevitiam* retraheret.

Lest he seem to abuse public ills for the opportunity of a private hatred, or summon back to new cruelty what had been appeased or forgotten by the clemency of the emperor.

By including these comments, Tacitus thus allows the Senate a small role in the conspiracy as a force for good; they act as a moderating element, a check, such as there can be one, on Nero. In addition, this is also perhaps a hint at some of Nero's strategy: since for *maiestas* death would be the normal penalty (see p.132), Nero could seem to be demonstrating *mansuetudo*, "clemency" (in the Senate's words above), another term for "*clementia*," towards any defendants not sentenced to death. By so doing, Nero aims (even in the case of innocents charged only to complete his personal agenda) to be seen as merciful. It is probably only coincidental that the senator who tried to have Seneca's brother charged was named Salienus *Clemens*, "The Merciful."

As a general conclusion to the episode, Tacitus includes two events which point to Nero's demise--not immediately, but perhaps not far off either. In the first of these (15.74.2), Nero dedicates the dagger of Scaevinus to *Iovi Vindici*, "Jupiter the Avenger." Tacitus then reminds his readers that Julius Vindex will soon lead an armed revolt against Nero.

In the second ominous event, a senator proposes to deify Nero, but Nero refuses (15.74.3):

<Sed ipse prohibuit, ne interpretatione>
 quorundam ad omen [dolum] sui exitus
 verteretur: nam deum honor principi non
 ante habetur, quam agere inter homines
 desierit.

<But Nero forbade it, lest by the
 interpretation> of some it be turned into an
 omen of his death: for the honor of godhood is
 not observed for an emperor before he shall
 have ceased to live among men.

Tacitus may have in mind Vespasian's dying joke, *puto deus fio*.³⁴⁰

Tacitus' view of the conspiracy, the conspirators, and Nero's role must each be considered separately. He makes very clear his disapproval of many of Nero's actions, including especially the murders of Seneca and Vestinus.³⁴¹ Tacitus strongly rebukes the cowardice (15.61.3) *fatali omnium ignavia*, which is displayed by so many of the conspirators. Piso receives few kinds words, but the bravery of the conspirator Subrius Flavus is highlighted, and the charges Flavus leveled at Nero (15.67.2), Tacitus has himself documented.

Although he casts Flavus in a good light, it would be incorrect to infer that Tacitus supports what was an illegal action. Tacitus may well have viewed differently the eventual removal of Nero by the Senate (Suetonius Nero 49.2), but the Pisonians do not have any such legal foundation. Tacitus does not disagree with their motives, only with their

³⁴⁰ Suetonius Vespasian 23.4.

³⁴¹ Rogers, "Heirs and Rivals," 209, "For in the circumstances of this case, if ever, one might expect tyrannous lawlessness to manifest itself. But no. There is orderly procedure under law." Rogers carefully neglects any mention of Nero's treatment of Vestinus.

methods.³⁴² His expression of this is placed in the thoughts of none other than Piso himself, as he reflects upon his own fears concerning his crimes (15.52.2):

Ceterum timore occulto, ne L. Silanus eximia nobilitate disciplinaque C. Cassii, apud quem educatus erat, ad omnem claritudinem sublatus imperium invaderet, prompte daturis, qui a *coniuratione* integri essent quique miserarentur Neronem tamquam per *scelus* interfectum.

But he had a hidden fear that Lucius Silanus, who had been elevated to the highest renown with his distinguished birth and with the training of Caius Cassius under whom he was educated, would seize power, since there were those who would grant it without hesitation, those who were unblemished by the conspiracy, and who would pity Nero on the grounds that he had been killed in a criminal action.

³⁴² Shotter, "Tacitus' View," 3316, feels that Tacitus viewed the conspiracy in a negative light. Walker, *Tacitus*, 133, sees more balance: "He does not glorify the conspirators to blacken Nero...Tacitus did not regard the conspiracy as a true attempt to restore freedom."

CHAPTER FIVE

FAMILY MURDER: *LEX POMPEIA DE PARRICIDIIS*

Thus far a range of historical trials has been examined: murder, fraud, extortion, and treason. Some of the cases have included fictive elements, such as the literary *relatio* of Poppaea in the "Case of Octavia." In the last two treason cases, Nero is almost a defendant himself. In this chapter two entirely fictive cases will be examined in which Nero is the defendant. Both are accounts of actual events, murders that were committed by Nero. What is fictive here is the presentation of these events in the atmosphere of a trial. When these accounts are examined in that way, they are found to exhibit all the elements of the historical trials which have been examined in the first four chapters. The conclusion will then propose that through these historical and fictive cases, Tacitus is leading up to the actual (though never narrated) trial of Nero by the Senate.

The Case of Fratricide (13.14.2-13.18.1)

[This case, spanning sections of 5 chapters, is really 3 interwoven literary cases, and exhibits all 10 features from Table 1 on p.6. The three sub-cases are: a charge that Nero rules unjustly in Britannicus' place; a short section with mock charges posed against inept poisoners; and the main case, the charge of fratricide against Nero. The sub-cases will be designated A, B, and C, respectively, and the case elements so-marked (e.g., 2A.) where they apply to a specific sub-case, and marked without a letter (e.g., 1) where the element applies to the trial as a whole. This trial includes the key vocabulary terms: *abnuo*, *aestimo*, *arguo*, *caedes*, *consciis*, *crimen*, *damno*, *defendo*, *defensionem parare*, *dolus*, *facinus [x2]*, *ignarus*, *ignosco*, *iniuria*, *innoxius*, *manifestus*, *nescius*, *parricidium*, *saevus*, *scelus [x4]*, *supplicium*, *testor*, *veneficium*, *venia*.]

1. Historical Introduction The case of fratricide is the first serious *crimen* that is brought against Nero by Tacitus.³⁴³ It occurs in A.D.55, soon after Nero's accession. The very first charge of murder in the Neronian Annals is the famous phrase which begins Annals 13, signaling that Nero's reign begins with death (13.1.1):

Prima novo principatu mors Iunii Silani
proconsulis Asiae ignaro Nerone per dolum
Agrippinae paratur.

The first death in the new principate, that of the proconsul of Asia, Junius Silanus, was carried out through the treachery of Agrippina, with Nero unawares.

Although this does not form part of the charge against Nero because the key words, *ignaro Nerone*, absolve the new emperor of guilt, it nevertheless sets the literary tone for what is to follow. The case of fratricide is a purely literary case: Nero was neither formally accused nor

³⁴³ Tacitus begins his literary case against Nero with an account of his inadequacies in 13.3.3, specifically his lack of oratorical skill. This continues in 13.6 with *rumores* as to Nero's lack ability to deal with foreign crises, and his affair with Acte in 13.12. See Appendix II.

tried on this charge.³⁴⁴

Tacitus introduces the episode by stressing the importance of the date: it takes place on Britannicus' fourteenth birthday. As if the reader might not catch the point, Tacitus has Agrippina "bear witness" that Britannicus was now legally an adult (see ¶2A below). Furneaux (Tacitus, *ad loc.*) notes, "the birthday would be an important one, as he would be of age to take the *toga virilis*." Nero had assumed the toga at barely 13 (Annals 12.41). This would mean that he was an increased threat to Nero.

At the start of 13.15, Tacitus has Nero recall an episode from the recent *Saturnalia*. Tacitus makes the remembered events seem an intricate part of the immediate episode, but it is now February 55, and the *Saturnalia* had taken place in the December of the previous year. By connecting these incidents at the start of the trial, Tacitus gives the episode a wider historical vision.

2A./3A./4A. Crimen, Reus, and Delator As the case opens, Agrippina makes the charge that Nero holds the throne in Britannicus' place unjustly (13.14.2):

Praeceptis posthac Agrippina ruere ad terrorem et minas, neque principis auribus abstinere, quo minus *testaretur* adultum iam esse Britannicum, veram dignamque stirpem suscipiendo patris imperio, quod

Afterwards Agrippina rushed headlong to terrible threats, and did not spare the ears of the emperor from her testimony that Britannicus was now grown up, that he was the true and worth offspring for taking up the rule of his father (Claudius), a rule which he had

³⁴⁴ Unless it became part of the Senate's case against him in A.D. 68.

insitus et adoptivus per *iniurias* matris
exerceret.

* * *

simul intendere manus, adgerere probra,
consecratum Claudium, inferno<s>
Silanorum manes invocare et tot inrita
facinora.

been engrafted and ran through injury to his
mother.

* * *

At the same time she (Agrippina) stretched out
her hands, piling up insults upon him (Nero),
calling upon the deified Claudius, the infernal
shades of the Silanii, and so many crimes.

Agrippina is the informant, and Nero clearly the defendant. The technical term used by the informant for the charge is *iniuria*, and the plural is used, indicating multiple wrongs: Tacitus intends the term in regard to Britannicus as well as Agrippina.³⁴⁵ The offense is *iniuria* in regard to Britannicus because Nero has interfered with his step-brother's use of his own property, and disregarded his public and private rights.³⁴⁶ Nero has usurped his right to rule. Agrippina had recently enumerated the *iniuria* committed against her in 13.13, including having a freedwoman as a rival, and what amounts to a charge of theft against Nero (13.13.4).

5A. Causa Agrippina's motive for making these charges is fear. The first words from the passage above, *praeceps posthac*, refer to Nero's removal of the freedman Pallas (13.14.1) from his position of *a rationibus*.³⁴⁷

³⁴⁵ Furneaux, Tacitus, *ad loc.*, takes *iniurias* subjectively, and translates, "through the iniquities of his mother." These words however are said by Agrippina, and are at least in part intended objectively, i.e., as "wrongs committed against her."

³⁴⁶ Nicholas, Roman Law 216.

³⁴⁷ Pallas was removed as part of an ongoing power struggle between Agrippina and Nero. Tacitus' description of this struggle begins at 13.12, where he remarks *infracta paulatim potentia matris*.

Pallas was a supporter of Agrippina, and she must have interpreted his removal as a threat to her power.³⁴⁸

6A. Testimony for the Prosecution Agrippina's testimony in 13.14.2 is part of the prosecution's case against Nero. Britannicus himself is the main witness, and it is Nero who unwittingly provides the forum for the testimony. Nero, in an attempt to embarrass Britannicus, makes him sing at a banquet (13.15.2):

Ille constanter exorsus est carmen, quo
evolutum eum sede patria rebusque
summis significabatur.

With determination he began a song, in which
it was implied that he had been evicted from his
father's place and from the highest affairs.

The attempt backfires when Britannicus' chosen theme brings him great favor. Tacitus is making a connection of two asynchronous events, the December *Saturnalia* and the February birthday. This is accomplished by having Nero recall them in his mind: *volutare secum*.

8A. Relatio There are no witnesses on Nero's behalf, but his actions above, "hoping to arouse laughter at a boy who was ignorant even of sober banquets, let alone drunken ones," are an attempt to discredit Britannicus, by demonstrating that he is still too young to be emperor. This is therefore a *relatio*, because the charge against Nero is that he rules in Britannicus' place unjustly.

9A. Iudex and Iudicium The judges are those present at the banquet, and

³⁴⁸ Pallas was also a lover of Agrippina (see 12.25).

the judgment is flagrant pity, *miseratio manifestior*. The adjective *manifestus* describes criminals caught in the act. Nero had clearly expected laughter, but received none. The pity expressed is now a crime, this time committed by the judges. Nero, too, has been caught in his own attempted deception.

1B. Historical Introduction The next sub-case involves Nero and his two inept accomplices in the poisoning. Tacitus casts their dealings into the form of a miniature trial. Nero decides to use poison, but has difficulties with his accomplices.³⁴⁹ Tacitus pauses to introduce them (13.15.3-5):

Pararique venenum iubet, ministro
Pollione Iulio praetoriae cohortis tribuno,
cuius cura attinebatur *damnata* veneficii
nomine Locusta, *multa scelerum fama*.

He ordered that poison be prepared, with Julius Pollio the tribune of the Praetorian Cohort as his accomplice, in whose supervision was held a condemned poisoner by the name Locusta, who was of great renown for her crimes.

The poisoners are Locusta, a condemned poisoner already, who comes with references, and Pollio, a tribune of the guard. Pollio is chosen here because he is Locusta's jailer. Tacitus is connecting the murder of the son with that of the father.³⁵⁰ If the planning of such a heinous crime can

³⁴⁹ It must go to Britannicus' credit that Nero has to resort to stealth to kill him (*occulta molitur*), because unlike so many others, no *crimen* can be found to charge against him. After all, this was Nero's first murder.

³⁵⁰ Locusta, as a sharp reader of Tacitus' narrative would have noted, was mentioned in 12.66. There she assists Agrippina in removing Britannicus' father, the emperor Claudius. She is already *damnata* then, but it is "recent," *nuper*. Locusta does not appear elsewhere in Tacitus,

have a comedic element, this pair, the tribune and Locusta, provide it.

While poisoning Britannicus is presented as a recent decision, preparations had apparently been made some time before that Britannicus' attendants would not have any sense of justice so as to impede the act.

Nam ut proximus quisque Britannico neque fas neque fidem pensi haberet, olim provisum erat.

For it had long before been arranged that everyone very close to Britannicus valued neither morality nor honesty.

2B./3B./9B. Crimen, Rei and Iudex When the first attempted poison does not have much effect, Nero grows angry at the slowness of the crime:

Nero lenti *sceleris* impatiens munitari tribuno, iubere *supplicium* veneficae, quod, dum *rumorem* respiciunt, dum *parant defensiones*, securitatem morarentur.

Nero, impatient at the slowness of the crime, began to threaten the tribune, and to order punishment for the female poisoner, on the grounds that while they were turning around to look at rumor, while they were preparing <their own> defense, they were standing in the way of safety.

These lines are the body of the sub-case. The poisoners are not doing their job; already imagining themselves accused of murder, they are instead hard at work on their defense. Nero acts as judge and threatens punishments. This causes a new promise of action.

7B. Defensio The poisoner's defense is that promise:

Promittentibus dein tam praecipitem necem, quam si ferro urgeretur.

They promised then a death as swift as if it were being hastened with a sword.

but Suetonius (Nero 33.3) records that Nero granted her *impunitas* and *praedia ampla*, "ample rewards" for her services. Dio 63.3 records her execution under Galba in A.D. 68.

2C./3C./4C. Crimen, Reus, and Delator The main sub-case begins in 13.16 without separate introduction. The crime charged is *parricidium*.³⁵¹ The statute on poisoning also applies.³⁵² Tacitus only once uses the term *parricidium* in this case (see ¶10 below), but repeatedly refers to poisoning.³⁵³ Nero is clearly the defendant:

Nero intellecta invidia odium intendit; urgentibusque Agrippinae minis, quia nullum crimen neque iubere caedem fratris palam audebat, occulta molitur pararique venenum iubet.

Nero, understanding the ill will, intensified his hatred; and with the threats of Agrippina pressing him, because he had no accusation < against Britannicus >, and because he did not dare openly to order the murder of his brother, he set in motion hidden plans, and ordered that poison be prepared.

The informants are those at the banquet described as having the *altior intellectus* (see text below in ¶6C). They "fix their gaze upon" Nero as his brother dies. If Tacitus' readers, the jury in this literary case, are still in

³⁵¹ Marcian Digest 49.8.1, refers to a *Lex Pompeia de parricidiis*. The law specifies brothers (and more than a dozen other near relations and in-laws). This law dates back to c.70 B.C. (OCD). The fact that Nero and Britannicus were only adoptive brothers would make no difference: *sed filiae meae is quem adoptavi frater fit, quoniam in familia mea est filia: nuptiis tamen etiam eorum prohibitis*, Digest 1.7.23.

³⁵² Digest 49.8.1 *quae est legis Corneliae de sicariis*, specifies the same penalty for parricides as poisoners: Marcian Digest 48.8.3.5: *Legis Corneliae de sicariis et veneficis poena insulae deportatio est et omnium bonorum ademptio. sed solent hodie capite puniri, nisi honestiore loco positi fuerint, ut poenam legis sustineant*. The original penalty was capital exile and confiscation of goods; death was statutory in Marcian's day (c. A.D. 200) for all but the very noble. This was also the norm under the late Republic (Garnsey, Social Status 105-106).

³⁵³ *Veneficium*, twice; *venenum* four times.

doubt as to Nero's guilt, the gaze of these witnesses clearly accuses Nero.

5C. Causa Nero's immediate motives for killing Britannicus are the charge that is made against him (§2A above), the reaction of the judges (§9A), and the threats of Agrippina.³⁵⁴ Nero is also worried about Britannicus as a rival, now that he has assumed manhood.

6C. Witnesses Britannicus is poisoned at the court dinner, with his age-mates (*cum ceteris idem aetatis nobilibus*) in attendance. Also named as present are Nero, Octavia, and Agrippina. A trick (*dolus*) is devised so that the crime will not be betrayed by the death of both Britannicus and his food-taster (*ne...utriusque more proderetur scelus*). *Dolus* and *scelus* remind the reader of the crime and court-setting. The reaction of the witnesses is the following (13.16.3):

Trepidatur a circumsedentibus, diffugiunt imprudentes: at quibus altior intellectus, resistunt defixi et Neronem intuentes. ille ut erat reclinis et nescio similis, solitum ita ait per comitalem morbum.

There was a shudder from those sitting about him, and the unwise fled. Those whose understanding was keener sat riveted, staring at Nero. He sat as he was, like one who knew nothing, and said that this was a customary occurrence on account of epilepsy.

The more prudent of those at the table have become witnesses that Nero is not *nescius*, "innocent," but *nescio similis*, "like one who knew nothing," or "pretending to be innocent." Nero's innocence is obviously only feigned; the reader, however, is meant to believe that Agrippina's demonstration

³⁵⁴ These threats are important enough to be mentioned twice: 13.14.2 and 13.15.3.

of emotion proves hers (13.16.4):

At Agrippina <e> is pavor, ea consternatio mentis, quamvis vultu premeretur, emicuit, ut perinde ignaram fuisse <quam> Octaviam sororem Britannici constiterit.

But in Agrippina there was such fear, such mental shock, although she tried to repress it in her expression, it lit up her face, that it was evident that she was as innocent as Octavia, Britannicus' sister.

Tacitus provides some of the best arguments for the prosecution, disguised as matters overlooked by "many writers of those times" (13.17.2):

Quamvis inter sacra mensae, ne tempore quidem ad complexum sororum dato, ante oculos inimici properata sit in illum supremum Claudiorum sanguinem stupro prius quam veneno pollutum.

Although amidst the sacraments of the table, with time not even granted for the embrace of his sisters, before the eyes of his enemy, the deed was hastened against him, this last of the line of the Claudii, who was degraded with dishonor before poison.

These lines invoke the additional, ancient sacrilege, of killing a guest at the table. There is also an emotional appeal, an argument for sympathy for the victim (and hence anger towards the offender): Britannicus could not embrace his sister before dying, and this last of the Claudian line suffered "outrage" in addition to death.³⁵⁵

³⁵⁵ *Stuprum* was a legal term, frequently used in Digest 48.5., the title on adultery. Specifically 48.5.35 mentions: *stuprum in vidua vel virgine vel puero committitur*. For this shade of meaning see OLD 2, "Illicit sexual intercourse in any form (whether forced or not)." If this interpretation of *stuprum* is combined with the alternative for *illudo* (see text p.231) of "to use for sexual pleasure" OLD 4 *op.cit.*, "rape" may be the intended meaning of *stuprum*. This would indicate that Nero had raped Britannicus "frequently" *crebris diebus* prior to the murder. Yet if Tacitus intends this as a charge against Nero, he does not present the case forcefully; no record

7C. *Defensio* The first phase of the defense argument is placed in the minds of the majority of people judging the case (13.17.1):

Plerique etiam hominum ignoscebant,
antiquas fratrum discordias et insociabile
regnum aestimantes.

The majority of men indeed forgave him,
considering the discords between brothers and
making the assessment that rule can not be
shared.

This sort of argument was an appeal to tradition, going back to Rome's legendary brothers, perhaps calling to mind Atreus and Thyestes.

The second phase of the defense is provided by Tacitus' anonymous sources (see above ¶6C). They relate an incident, several days before the murder, when Nero had insulted Britannicus (13.17.2):

Tradunt plerique eorum temporum
scriptores crebris ante exitium diebus
inlusum isse pueritia<e> Britannici
Neronem, ut iam non praematura neque
saeva mors videri queat.

Many writers of those times relate that
frequently in the days before Britannicus' death
that Nero had mocked his boyhood, that the
death might no longer seem untimely or cruel.

Their testimony is that there had been an argument before the murder.

This means in the judges' thinking that the death can not seem untimely (*praematura*) or cruel (*saeva*). What would today be used as evidence against Nero, demonstrating motive or premeditation of the crime, serves here to show that the killing was not done without good reason.

of the incident is provided by Suetonius or Dio. For an extended discussion of the "defilement" of Britannicus see Joseph Lucas, "La Souillure de Britannicus," chap. in *Les Obsessions de Tacite* (Leiden: E.J. Brill, 1974) 148-158. Lucas (150) does not see a literal rape here, "pour l'auteur, la souillure de Britannicus est de nature symbolique."

8C. *Relatio* Counter-charges for the defense are provided by the emperor himself. Why he must provide a defense when most people forgive him is unclear, unless he believes the crowd's interpretation of the rain-portent (see below in ¶9C). He publishes an edict in his defense (*edicto Caesar defendit*), not for the murder, but merely for the hastiness of the funeral (*festinationem exsequiarum*). The audacity of the rest of the edict is striking (13.17.3):

Ceterum ut sibi amisso fratris auxilio reliquas spes in re publica sitas, et tanto magis fovendum patribus populoque principem, qui unus superesset e familia summum ad fastigium genita.

But that since he had lost his brother's help, his remaining hopes were centered on the state, and so much the more must an emperor be cherished by the senators and the people, who is now alone the survivor of a family born to the greatest eminence.

By his murder of Britannicus, Nero argues that he has become a rarer and more valuable commodity. In order to increase that value further (13.18.1), he bestows lavish gifts upon his most powerful friends (*potissimos amicorum*). He wishes to bind them to his side, since he remains haunted by guilt (*sceleris sibi conscio*).

9C. *Iudex and Iudicium* In contrast to the judgment on the human plane, where most men would forgive him, the gods are angry with the crime (*iram deum...adversus facinus*); a deluge of rain drenches the pyre of the dead prince.³⁵⁶ That judgment is, however, ineffective as of yet. Later

³⁵⁶ As such clearly falls beyond the bounds of what Tacitus considers history, he includes a slight disclaimer (*ut vulgus...crediderit*). The later

Tacitus will remark on this phenomenon.³⁵⁷

10. Historical Conclusion Tacitus attributes an astute observation to Agrippina (13.16.4), linking this case to the next: She has realized that Britannicus' murder provides for Nero a path to follow (*parricidii exemplum*). This comment is also an effective link in that the both killings qualify as *parricidium*.

parallel with the role of the gods in Nero's matricide (see p.245) is disclaimed by the shorter *quasi*.

³⁵⁷ See p.246.

The Case of Matricide (14.1-13)

[This literary case spans 13 chapters, and exhibits all ten features from Table 1 on p.6 It includes the key vocabulary terms: *ambiguus*, *auctor*, *caedes* [x3], *confessio*, *conscientia*, *consci*, *contumelia*, *convinco*, *crimen* [x2], *criminatio*, *defero*, *dictito*, *exilium*, *facinus* [x5], *flagrans*, *ignarus* [x3], *incuso*, *infamia*, *iniuria*, *insidiae* [x4], *luo*, *obicio*, *obnoxius*, *obtestor*, *parricidium*, *poena* [x2], *relego*, *respondeo*, *scelus* [x9], *testor*, *testamentum*, *testificor*.]

1. Historical Introduction The Case of Nero's Matricide is lengthy, encompassing over 20% of Book 14, and of the trials in the Neronian books, it is exceeded in length only by the aggregate of trials in the Pisonian Conspiracy. Annals 14 opens with the introduction of the charge of matricide against Nero, and explains why the crime took place this year (A.D. 59):

GAIO VIPS<T>ANO <C.> FONTEIO
consulibus diu meditatam *scelus* non ultra
Nero distulit, *vetustate* imperii *coalita*
audacia.

In the consulship of Gaius Vipstanus and Fonteius, Nero no longer put off a long contemplated crime, since his boldness had taken firm root with the maturity of his rule.

His mother might have been killed four years earlier, when she was charged with *maiestas*.³⁵⁸ At that point in his narration, Tacitus makes a connection to this murder, and now Tacitus glances backwards with the observation that Nero has wanted to kill for some time (*diu*), but had to wait until his rule matured.

Tacitus' use of an agricultural metaphor to describe Nero's power

³⁵⁸ See 13.19, where Agrippina faces Junia's charge of *maiestas*, p.143.

(*imperium*) is another backward glance. This power now has "maturity,"³⁵⁹ and therefore his boldness "has taken firm root."³⁶⁰ The metaphor of power as something that grows recalls a description in Herodotus, also describing a tyrant.³⁶¹

2./3. *Crimen and Reus* Nero is identified in the first line (14.1.1) as the defendant. The *scelus* which Nero is no longer putting off is matricide, but Tacitus avoids exact specification of the charge for seven chapters. When the charge is spelled out, Tacitus uses the non-gender-specific designation *parricidium* (14.8.4); the term *matricidium* is not in his extant vocabulary.³⁶² *Parricidium* is also the technical charge.³⁶³

³⁵⁹ *Vetustas*, OLD 1b, "(in wine) the state of having reached a mature age."

³⁶⁰ *Coalesco*, OLD 4a, "to take firm root," cf. Ulpian *Digest*, 6.1.5.3., *De arbore, quae in alienum agrum translata coaluit et radices immisit Varus et Nerva utilem in rem actionem dabant*. Like the tree in Ulpian's example (from *Edicts* 16), Tacitus (13.14.2) describes a Nero who has been "transplanted" *insitus*, replacing the "true offshoot" of the tree, *veram dignamque stirpem*, Britannicus.

³⁶¹ *History* 1.108: ἐδόκεέ οἱ ἐκ τῶν αἰδοίων τῆς θυγατρὸς ταύτης φῦναι ἄμπελον, τὴν δὲ ἄμπελον ἐπισχεῖν τὴν Ἀσίην πᾶσαν. Astyages' vision of a vine (his future grandson Cyrus) growing from his daughter's womb. Cyrus' power would grow like a vine over the land.

³⁶² The word is apparently ἄπαξ λεγόμενον. The OLD lists a single citation: Cicero, *Iny.* 1.18, *Orestes si accusetur matricidii*. Is it possible that the infrequency of the word in extant Latin represents a superstitious avoidance of the word?

³⁶³ See note 351.

Notwithstanding the delayed use of *parricidium*, there is little uncertainty as to what the *diu meditatatum scelus* is (14.1.1):

Flagrantior in dies amore Poppaeae, quae sibi matrimonium et discidium Octaviae incolumi Agrippina haud sperans crebris *criminationibus*, aliquando per facetias *incusare* principem et pupillum vocare, qui iussis alienis *obnoxius* non modo imperii, sed libertatis etiam indigeret.

He became more outrageous daily in his love for Poppaea, who could by no means hope for marriage for herself and his divorce from Octavia while Agrippina was safe. By means of frequent accusations, sometimes through witty remarks, Poppaea would rebuke emperor, and call him a "pupil," who, bound by another's orders not only lacked power, but even freedom.

These lines bring up still more charges against Nero. His love for Poppaea is likened to a crime by Tacitus' use of the adjective *flagrantior*.³⁶⁴ Poppaea, who is depicted as the instigator of the matricide, goads Nero by "making accusations." She could have done any number of things: threatened to leave him, expose their affair, kill herself, etc. Her choice of a quasi-legal manoeuver adds still another level of trial here. She calls him *obnoxius*, "legally bound by" his mother's orders. The carefully juxtaposed *incolumi Agrippina haud* indicates the intended victim and therefore the crime.

Poppaea's reference to Nero as a *pupillus* involves a legal insult, implying that Nero is still under age 14.³⁶⁵ Poppaea exaggerates the

³⁶⁴ OLD 5, "(of crimes, app.) outrageous, monstrous."

³⁶⁵ Nero is 21 (born *post VIII. mensem quam Tiberius excessit, XVIII. Kal. Ian.* [Suetonius *Nero* 6.1]), and so still subject to the *cura minorum* until age 25 (Buckland, *Roman Law*, 171). Poppaea Sabina is older, but exactly how much is uncertain (Hanslik, *PW* 4, vol.22, pt.1, 85, places her birth around the time of the death of her father, in 31 A.D., not later than

implications: a *pupillus* lacked *auctoritas*, and was *obnoxius* to a degree, but certainly did not lack *libertas*.³⁶⁶ She insinuates that he is acting as though he still was under these restrictions.

4. Delator Poppaea, by her instigation, fills to a large extent the role of the *delator*. Tacitus himself, however, is the true informant for most of the case, providing in narration some of the most damning evidence (14.3.1):

Nero...praegravem ratus interficere
constituit, hactenus consultans, veneno an
ferro vel qua alia vi.

Nero, considering her very dangerous, decided to
kill her, deliberating only to this extent,
whether it should be by poison, or by the sword,
or by some other means.

Narration is effective evidence: the readers will be the ultimate judges in the literary case. After reading those lines, how can they but find Nero guilty? Tacitus does not provide Nero's thoughts here by way of *accusation* (no such language is used) but rather as *fact*. Even the verb *consulto*, used of Nero's thoughts, suggest a mockery of a judicial deliberation on how to commit a crime.

5. Causa The most important motives in this episode are Nero's for committing the matricide. The first of these are mentioned in the opening

32, and not much earlier than 30), but she is probably at least 27, and perhaps as much as 29; in any event she is past the key age of 25, old enough to taunt Nero with being under 25.

³⁶⁶ Buckland, Roman Law, 158-159.

sentence of the case: Nero's *audacia* and his *amor* for Poppaea. Her subsequent accusations of his subservience to Agrippina solidify his *odium*; their effectiveness as motivation is unchecked by more prudent counsel (14.1.3):

Haec atque talia lacrimis et arte adulterae penetrantia nemo prohibebat, cupientibus cunctis infringi potentiam matris et credente nullo usque ad caedem eius duratura filii *odia*.

These and like words penetrated with the tears and skill of the adulteress; no one checked them, since all wanted the power of the mother broken and no one believed that the hatred of the son would harden him to her murder.

A further motive, *infamia*, is supplied by events in 14.2. Agrippina has apparently made sexual advances to Nero.³⁶⁷ In addition to the disgrace, Nero is told that "the soldiers will not tolerate the rule of an impious emperor." The seat of his power has been threatened by his mother's actions, and he has decided to kill.

Agrippina's motive for those advances is lust, not for her son, but for power. Her son is getting old enough not to need her, and she is moved "by the zeal for keeping power" (*ardore retinendae...potentiae*).

6. Testimony for the prosecution Nero's first attempt at eliminating this threat to his power is the elaborate but unsuccessful ruse of the collapsing

³⁶⁷ Tacitus reveals a dispute in his sources here, one claiming this was Nero's idea, but most maintaining that Agrippina made the advances. The *infamia* was a moral judgment, as a consequence of the incest. The penalty for incest, if it were tried, would likely be capital exile (Garnsey, *Social Status*, 114).

boat. The intended target, Agrippina, survives, but others are killed, including Crepereius Gallus and Acerronia, the latter of whom is beaten to death in the water as she claims to be Agrippina. The witness for this evidence is the narration in 14.5. The survival of Agrippina is also important, for it allows her to be another witness for the prosecution against Nero.

In 14.6, Tacitus presents these charges in the form of indirect interior narration. The court that receives the personal account of her actions, immediately after she escapes death, is again made up of Tacitus' readers. Thinking back over (*reputans*) the events she has just witnessed, she realizes that they were not accidental:

Solum insidiarum remedium esse
<sensit>, si non intellegerentur.

She realized that the only defense from the treachery was if it were not recognized.

Testimony continues in 14.7, when information that Agrippina has survived and must surely know the identity of the assassin (*ne auctor dubitaretur*), is brought by messenger to an impatient Nero. After the success of the second attempt, Nature itself testifies against Nero.³⁶⁸ The sea and the shores which witnessed the attempts face the accused emperor:

³⁶⁸ Cf. Nature and the gods in judgment, *quasi convincendum*... below, p.245.

Quia tamen non, ut hominum vultus, ita locorum facies mutantur, obversabaturque maris illius et litorum gravis adspectus.

Yet because the appearance of places do not change as the faces of men, the grave look of the sea and the shores appeared before his eyes.

Tacitus notes how people can dissemble (in the witness box?), but how the face of the sea shore did not bear false witness, as it accused Caesar.

Further evidence is provided when the sounds of a trumpet and wailings are heard, seemingly provided by the dead Agrippina's Furies (14.10.3):

Et erant qui crederent sonitum tubae collibus circum editis planctusque tumulo matris audiri.

And there were those who believed that the sound of a trumpet was heard in the surrounding high hills, and the lamentations of his mother from the tomb.

Those who commit crimes, especially matricide (according to the model of Orestes) are haunted by guilt.

7. *Defensio* In the case for the defense, the emperor himself takes the witness stand, *iam iamque adfore obtestans vindictae properam* (14.7.2). It seems as though Nero is laying the groundwork for the defense of justified murder.³⁶⁹ Although it is surely a circular argument, part of Nero's defense becomes the fear expressed that Agrippina will go to the Senate and the people, and put him on trial for *attempted* matricide:

³⁶⁹ See in the "Case of Fratricide," where a previous quarrel serves that function, p.231.

Ad senatum et populum pervaderet,
 naufragium et vulnus et interfectos amicos
 obiciendo.

She might make her way to the Senate and the
 people, accusing him of the shipwreck and of her
 wounds.

The victim herself, earlier a witness for the prosecution, is now a
 witness for the defense: upon the arrival of assassins at her villa,
 Agrippina announces her disbelief to them (14.10.4):

Sin facinus patraturus, nihil se de filio
 credere; non imperatum parricidium.

But if you have come to carry out a crime, I will
 believe nothing about my son. A parent-killing
 has not been ordered.

In her last moments she testifies on behalf of her son. She does not
 believe the charge that Nero ordered her death, that is, until she sees the
 sword being unsheathed; then, believing, she tries to strike back at her son
 in death: "Strike my womb!" (*ventrem feri*), a stinging *relatio*.³⁷⁰

8. *Relatio* Following the pattern in Tacitean trials, this case also provides
 a *relatio* as a crucial part of the defense argument. This time, however,
 Nero's defense (*subsidium*)³⁷¹ is not provided by others.³⁷² Since
 Burrus and Seneca are of no assistance, it is the emperor himself who, in
 a moment of inspiration, comes up with the counterstroke. He fakes

³⁷⁰ This is similar to what Clytemnestra says to Orestes in Aeschylus
Choepori 896-8.

³⁷¹ *Subsidium*, OLD 3, assistance, used in the context of the courtroom
 by Cicero, *de Orat.*I.236, *quia saepe utitur orator subsidio iuris in causis*.

³⁷² *Quod contra subsidium sibi, nisi quid Burrus et Seneca?*

evidence of a crime, implicating Agermus (and therefore Agrippina, who sent this messenger) in an attempted assassination of Nero (14.7.6):

Scaenam ultro criminis parat, gladiumque,
dum mandata perfert, abicit inter pedes
eius, tum quasi deprehenso vincla inici
iubet, ut exitium principis molitam matrem
et pudore deprehensi sceleris sponte
mortem sumpsisse confingeret.

He actually prepared the stage of a crime, and cast a sword at the feet of the man who was delivering his message, then he ordered the man cast into chains on the grounds that he had been caught in the act, so that he (Nero) might fabricate the story that his mother had attempted the death of the emperor, and out of shame for her detected crime had undertaken a voluntary death.

That the trial is staged is emphasized by the term *scaenam*, fitting also for the would-be emperor turned actor, and for his present "role" as Orestes. Nero accordingly counter-charges the accuser with a crime. The real genius is offered by the final part of Nero's plan: His mother will seem to have made no defense against the phony counter-charges: her death will now be an admission of her guilt in respect to those charges, instead of a charge of matricide against him.

Nero continues his *relatio* against his victim with an official letter to the Senate (14.10.3):³⁷³

Summa erat repertum cum ferro
percussorem Agermum, ex intimis
Agrippinae libertis, et luisse eam poenam
conscientia, quasi scelus paravisset.

The gist of it was that Agermus, an assassin, had been caught with a sword, that he was one of her freedmen, and that she had paid the penalty out of a sense of guilt, as though she had planned the crime.

Again, the charge is attempted imperial assassination, and a point is made

³⁷³ Sent from Naples after he had withdrawn there in response to the sounds of the furies.

of Agrippina's *conscientia*, her sense of guilt for this *quasi scelus*.

When one charge might not be enough, several are presented. 14.11 begins with a long series of charges that Nero adds to his mother's indictment, listed in Table 12.³⁷⁴

Table 12.--Charges Against Agrippina in Nero's *Relatio*

1	She had aimed for a <i>consortium imperii</i> .
2	She had aimed to make the praetorian cohorts swear allegiance to a woman.
3	She had aimed to disgrace the Senate and the people in the same manner.
4	She had argued against the <i>donativum</i> and the <i>congiarium</i> to the <i>plebs</i> .
5	She had composed dangers for men of rank (trials).
6	She tried to burst into the <i>curia</i> and issue <i>responsa</i> to representatives of foreign nations.

Next, by way of a "twisted attack" (*obliqua insectatione*), Nero lays the blame for the excesses of the Claudian reign on his mother.³⁷⁵ Finally he relates the story of the shipwreck, and then preempts the judgment of the Senate with hyperbole: *quis adeo hebes inveniretur, ut crederet?*

Burrus and those under his command do eventually assist the defense,

³⁷⁴ 14.11.1, seemingly all in the same letter to the Senate.

³⁷⁵ See p.80, where Nero essentially denies that such crimes happened.

assuring Nero that the *facinus* was his mother's.³⁷⁶ This is the essence of a *relatio*.

Another turn of events is to see the deed not as a *facinus* at all, but as something good: Entire towns become witnesses on Nero's behalf:

Proxima Campaniae municipia victimis et
legationibus laetitiam testari.

The neighboring towns of Campania bore
witness to the joyousness of the event with
sacrifices and embassies.

To bolster the idea that her death was not a crime, there is a reference to divine intervention, this time in the form of a past prophecy related to Nero's mother about the matricide. She was told that he would rule, but also commit matricide. Her response was, in effect, permission for the crime (14.9.3):³⁷⁷

Hunc sui finem multos ante annos
crediderat Agrippina contempseratque.
nam consulenti super Nerone *responderunt*
Chaldaei fore ut imperaret matremque
occideret; atque illa "occidat" inquit, "dum
imperet."

Many years before, Agrippina had believed that
this would be her end, and she had made light
of it: for to her, as she was applying for
information about Nero, the astrologers replied
that it would come about that he would rule and
would kill his mother. "Let him kill," she
replied, "so long as he rules."

³⁷⁶ 14.10.2, *eum...adulatio...firmavit; firmo*: OLD 7a, to strengthen the spirits of, encourage; / but also : OLD 9, to vouch for, attest.

³⁷⁷ Francis de Zulueta, The Institutes of Gaius (Oxford: Oxford University Press, 1946), 2:154, regarding forms of verbal contract, indicates that the forms of verbs in use were to be *congruens*, that is, "it was necessary that the answer should echo at least the principal verb..." Here Agrippina has contracted with the gods for her destruction as well as for her son's principate. The parallel between her words, and the words of the soothsayers is quite close: *responderunt Chaldaei fore ut imperaret matremque occideret*. Agrippina's reply exactly echoes both of the verbs.

9. *Iudex* and *Iudicium* As in the *Oresteia* of Aeschylus, the crime of matricide, which Nero is plotting, is significant enough to merit a divine judgment.³⁷⁸ The gods themselves not only witness murder, but more importantly are judges for the failed attempt to murder Agrippina at sea by the device of the collapsing boat (14.5.1):

Noctem sideribus inlustrem et placido mari
quietam quasi convincendum ad scelus dii
praebuere.

The gods provided a night that was brilliant
with stars, and quiet with a calm sea, as though
for convicting him of the crime.

After the success of the second attempt, Tacitus depicts a Nero fearing judgment. Not only is his night restless, but also like a condemned man, he fears the onset of dawn (14.10.1):³⁷⁹

Sed a Caesare perfecto demum scelere
magnitudo eius intellecta est. reliquo noctis
modo per silentium defixus, saepius pavore

But with the crime finally accomplished, the
magnitude of it was understood. In the
remainder of the night he was sometimes
riveted in silence, but most of the time he would

³⁷⁸ The Romans of Nero's own day made this very connection with Orestes, as noted by the lampoon (Suetonius *Nero* 39.2):

Νέρων Ὀρέστης Ἀλκμέων μητροκτόνος. Nero, Orestes, and Alkmeon are matricides.
νεόψηφον· Νέρων ἰδίαν μητέρα ἀπέκτεινε. A new judgment: Nero = he killed his mother.

Even the emperor (*Nero* 21.3) must have seen some irony in his performing the play "*Orestes matricida*."

³⁷⁹ His general appearance here would seem to fit in with the defense tactic of wearing the "garb of mourning and the squalid disarray of grief," as Greenidge, *Legal Procedure*, 472 describes a typical *reus* in court.

exurgens et mentis inops lucem
opperiebatur tamquam exitium adlaturam.

rise from his bed in terror, and in a crazed state
he awaited the dawn, as though it would bring
his destruction.

Nero's letter of defense to the Senate produces yet another verdict from a different judge. The verdict here, however, is somewhat of a surprise: The judge for this verdict is public opinion, through the medium of *adverso rumore*, and it is not Nero who is convicted (for he, it seems, is beyond conviction), but Seneca, *quod oratione tali confessionem scripisset*. Nero's letter to the Senate, intended as a defense (by way of implicating his mother in treasonable acts), has become a confession, and the culprit is Seneca, for he wrote the letter.

10. Historical Conclusion A final verdict serves as Tacitus' historical conclusion to the case. The reader is informed that judgment has been suspended by the gods, despite several inauspicious omens: *quae adeo sine cura deum eveniebant, ut multos postea annos Nero imperium et scelera continuaverit* (14.12.2). Herein also is historical comment: Nero continues because the gods are *sine cura*.³⁸⁰

Tacitus, however, does not let the matter rest. At 14.12.3 Nero is still facing the jury of public opinion, trying to prove by way of testimony

³⁸⁰ In the Aeschylean trilogy, the gods seek a human venue, the Areopagus, in order to try Orestes. Perhaps Tacitus would have completed this parallel in his account of Nero's trial in the Senate, and the gods here are merely avoiding direct intervention.

(*testificaretur*) his *lenitas*. Nero then is himself acting as *iudex*, undoing in 14.12.4 various punishments inflicted by his mother and some which he had done himself.

Nero continues to fear the mood of both the Senate and the people. The *relatio* to this fear is then provided by most undistinguished counsel (*deterrimus quisque*), but it nevertheless carries the day, and as *publici servitii victor*, he returns to Rome (14.13.2).

Tacitus may well have returned to the matricide as one of the chief charges when discussing the actual trial of Nero by the Senate.

CONCLUSION

The actual trial of Nero by the Senate of Rome does not find its way into the realm of extant history in any form save the briefest mention. Tacitus' account of A.D. 66, already longer than all but three of the years from Nero's reign, breaks off mid-sentence. The length of what remained is unknown,³⁸¹ but of all that Tacitus could have covered from the remainder of Nero's term through to the end of A.D. 68, the most dramatic event must have been Nero's fall from power.³⁸²

The many trials that he included in his work show that Tacitus, the former praetor, consul, and prosecutor, had an avid interest in the legal events within the scope of his Annals. From a legal perspective it is likely

³⁸¹ St. Jerome knew of 30 books for all of Tacitus' work: Hieron. *Com.ad Zach.* 3.14: *Cornelius Tacitus, qui post Augustum usque ad mortem Domitiani vitas Caesarum triginta voluminibus exaravit.*

³⁸² Concerning the question of whether Tacitus ended with Nero's death, or proceeded beyond that to the end of the calendar year, see P. Fabia, "Le Point Final des *Annals* de Tacite," Journal des Savants (1901) 423-435, 563-575. In either case, the end point would have allowed for the inclusion of Nero's trial, which if not the end, was surely the thematic climax. Revilo P. Oliver, "Did Tacitus Finish the *Annales*?" Illinois Classical Studies 2 (1977): 291, believes that Tacitus did not finish the Annals. Martin, Tacitus, 260 n.38, "it is uncertain whether the *Annals* ended with Nero's death in June 68, or continued to the end of the year, thus joining up with the starting point of the *Histories*, 1 January 69." Syme, Tacitus, 265, analyzes both sides of the question, but it will remain unresolved pending new manuscript discoveries.

that the most significant aspect of Nero's demise was his trial and removal from power by the Senate. Of all of the emperors to Tacitus' day, only Nero was removed in this fashion.

The closest Nero came (in the extant portion of the Annals) to this eventual removal was during the Pisonian conspiracy. Tacitus could not support the Pisonians in his account of their conspiracy because the conspirators acted without any semblance of legal authority. Such authority perhaps did not exist, yet if the power to remove an emperor was vested anywhere, it lay with the Senate. There can be only speculation as to exactly what Tacitus would have said regarding the Senate's trial of Nero, but it seems more than a fair possibility that he would have remarked upon the event as unique, and that he would have discussed the legal implications.³⁸³

Details on Nero's trial by the Senate are few, and must be sought from Dio 63.27-29, Plutarch Galba 7, and Suetonius' Nero 49. Suetonius relates that Nero was judged by the Senate an enemy of the people (Nero 49.2):³⁸⁴

³⁸³ Bauman, Impietas, 147 n.92, "At the end of his reign, Nero was tried (*in absentia*)...But what were the charges?" Bauman seems to favor the general idea of "Amtsverbrechen." (Official crimes).

³⁸⁴ The 10th century compiler John of Antioch notes also the decree of the Senate (fr. 91-92 M): ἡ δὲ τῶν Ῥωμαίων βουλὴ πολέμιον αὐτὸν ἀνειπούσα.

Inter moras perlatos a cursore Phaonti codicillos praeripuit legitque se hostem a senatu iudicatum et quaeri, ut puniatur more maiorum.

Meanwhile tablets were brought by the courier Phaon. (Nero) seized and read (in them) that he had been judged to be an enemy by the Senate, and that he was being sought so that he could be punished in the ancestral fashion.

Tacitus' account of Nero's trial is the logical culmination of the pattern of narrating important historical trials which he has set in the Neronian Annals.

Tacitus has also used the format of fictive trials of Nero to relate another recurrent theme, the crimes of Nero. Beginning with the *prima mors* of 13.1, Tacitus includes the charge of fratricide in Annals 13, matricide in Annals 14, a string of crimes (*ne inter voluptates quidem a sceleribus cessabatur*)³⁸⁵ and the burning of Rome in Annals 15, his trial as an actor in Annals 16,³⁸⁶ and the removal of Thrasea at the end of the extant portion of Annals 16. Nero's actual trial is also the logical development towards which these fictive trials are building.

Through a combination of historical and fictive trials, Tacitus' plan in writing the Neronian books was to have this trial serve as the climax, or τρίτος where his two threads met to form a new one: the criminal trial of a Roman emperor.

³⁸⁵ 15.35.1.

³⁸⁶ A possible foreshadowing by Tacitus for his later inclusion of Nero's words *qualis artifex pereo*, spoken in Suetonius' account (Nero 49.1) just before the judgment of the Senate was announced.

APPENDIX I: TACITEAN LEGAL VOCABULARY

[Note: The following is an alphabetical list of the legal vocabulary identified in the trials covered in this study. Following each word is an indication of the number of times the word appears in the covered trials, the definition, one or two citations, the listing from the OXFORD LATIN DICTIONARY (OLD) corresponding to the definition, and an indication if the passage is a cited reference.]

abnuo to deny an accusation (15.56) OLD 4a.

aboleo to ban, prohibit (14.48.4), OLD 4a *op.cit.*

absolvo [x4] to acquit (13.30.1), OLD 2.

accusatio [x5] charge or accusation, *delatio* (13.23.1) OLD 1b.

accusator [x8] {syn. *delator*} an informer (13.23.2) OLD 2b.

accuso [x2] to bring a *delatio* (13.30.1) OLD 2a.

adicio [x5] {syn. *obicio*} (14.50 and 15.56); to add to: motive (15.51).

adulter [x4] an illicit lover (14.60.2) OLD 1a *op.cit.*

adulterium the crime "adultery" (13.44.1) OLD 1.

aestimo [x2] to assess, judge (13.42.3) OLD 4.

ambiguus [x2] of doubtful identity (13.44.4) OLD 7; undecided (14.4.4) OLD 2.

arbiter a judge (13.21.1) OLD 2.

arbitrium [x2] the right/power of deciding (15.60.1) OLD 4a

arguo [x7] to bring a charge against (13.27.3) OLD 4

auctor [x6] the person responsible for (13.23.1) OLD 12.

caedes [x13] the crime of murder (13.44.4), (15.60.2).

calumnia the crime of making a false accusation (14.41) OLD 1a *op.cit.*

causa [x2] case (13.27.3) OLD 1.

causa [x4] motive (15.50.2), (15.49.3) OLD 7.

causor to plead as an excuse (13.44.1) OLD 2.

censeo [x5] (of a senator) to propose, express his opinion (14.48.2) OLD 4.

cio to call as witness (15.64.1) OLD 6b.

coarguo to convict (13.20.3) OLD 3 *op.cit.*

cognitio judicial inquiry (15.58.4) OLD 3.

agnosco to investigate judicially (13.32.2) OLD 4.

- condemno* [x3] to find guilty, convict (13.44.5) = OLD 1.
confessio [x4] a confession, admission of guilt (14.11.3) OLD ?1 ?2
conflicto [x2] to harass (with an indictment) (14.50.1)
confuto to convict of error, refute (15.51.4) OLD 3 *op.cit.*
coniurati [x9] conspirators (15.51.1) OLD (as masc.pl.)
- coniuratio* [x11] conspiracy (15.59.1) OLD 2 *op.cit.*
conscientia [x5] complicity (15.51.1) OLD 1/sense of guilt (13.21.2) OLD 3d
consciuis [x8] privy to the crime or plot (13.23.2) OLD 2
contumelia [x4] insult, affront (14.1.2) OLD 1.
convinco [x6] to find guilty, convict (14.50.2) OLD 2; to prove (14.40.3) OLD 4
- crimen* [x19] indictment, charge, accusation (15.69.1) OLD 1.
criminatio [x2] charge, accusation (14.1.1) OLD
culpa [x2] guilt (13.27.1) OLD 3d.
damnatio [x2] condemnation, conviction (13.30.1) OLD
damno [x8] to pass judgement against, condemn (13.33.2) OLD 1.
- de capite* one's life as forfeit (13.32.2) [*caput* OLD 5]
decerno [x5] to ordain, resolve upon (15.74.1) OLD 5.
deduco to bring home as one's bride (14.63.3) OLD 10b
defendo [x3] to speak or write in defense (13.17.3) OLD 4.
defensio [6] a defense (in court) (13.15.5) OLD 2.
- defensionem trahere* to bring (an argument) to one's defense (15.67.1)
defensionem omittere to forgo defense: plead guilty (13.33.2) [*cf. omitto* OLD 4]
defensionem parare to make ready one's defense (13.15.5)
defero [x9] to give information against, charge, act as *delator* (14.48.1) OLD 9.
delator an informer, accuser (13.21.5) OLD 2.
- delibero* to ponder (a legal decision) (14.44.1) = OLD 2b.
delictum [x3] a misdeed, a "delict" (14.49.2) OLD a.
delinquo to commit a misdeed (13.31.3) OLD 3.
denego to deny accusations (15.57.1) OLD 1, *op.cit.*
depello [x2] to exile (14.50.2) OLD 5a, *op.cit.*; to drive off (14.62.3) OLD 5b, *op.cit.*
- derogo* to take away (a right) from (13.27.1) OLD 2 *op.cit.*
dicere ad causam to plead a case (15.58.3) *cf.* OLD 1b.
dictito [x5] to insist upon (an accusation or a claim) (15.55.1)
dissolvo to put an end to, refute (13.21.1) OLD 7b. *op.cit.*
dolus [x2] criminal treachery (13.16.1) *cf.* OLD 1b.
- edico* [x3] to publish an edict (decree) (13.17.3) OLD 1.
exilium [x7] (capital or non-capital) exile (13.22.1) OLD
expendo to judge a case (13.27.3) *cf.* OLD 5.
expers lacking knowledge of, innocent of (15.52.3) OLD 2.
facinus [x12] misdeed, crime (*syn. crimen*) (13.44.4), (14.3.2) OLD 2a.

fateor [x4] to confess (14.62.3) OLD 1b.

flagitium [x4] a shameful act, crime (13.33.1) OLD 4

flagrans outrageous (14.1.1) OLD 5.

fraus liberti [x2] deceit on the part of a freedman (13.26.1)

gnarus [x4] acquainted with, involved in (a crime) (15.54.3)

gradus degree of relationship (for succession) (13.19.3) OLD 7a.

ignarus [x8] {ant. *gnarus*} unaware, uninvolved in (a crime) (13.16.4)

ignosco to forgive (an offender/offense) (13.17.1) OLD 1.

impune without punishment (13.32.3) OLD 1.

impunitas [x3] exemption from punishment (14.43.2) OLD

in metum adducere {wordplay for *in iudicium adducere*, *adduco* OLD 4.} (15.50.3)

increpo [x5] to accuse (13.42.2) cf. OLD 5; to issue a (judicial) rebuke (14.45.2)

incuso [x3] to accuse, lodge a formal complaint against (14.1.1) OLD 1b.

index [x6] {syn. *delator*} an informer (15.55.3) OLD 1.

indicium [x7] {syn. *delatio*} "laying of information" (13.20.1) OLD 2a; evidence (14.44.1) OLD 4.

infamia [x5] (official) disgrace (14.40.3) OLD 2b.

infamis disgraced, one who bears *infamia* (15.49.4) OLD 2.

infamo to mark someone with *infamia* (15.71.3) OLD 1b.

iniuria [x8] an insult or affront (14.43.4) OLD 4.

innocentia [x3] innocence (13.21.6) OLD 1.

innoxius [x2] innocent (14.42.2) OLD 1; harmless (13.16.2) OLD 3 *op.cit.*

inquisitio the process of collecting evidence in a criminal case (13.43.1) OLD 2b *op.cit.*

insidiae [x8] treachery (14.40.1) OLD 5 *op.cit.*

insons [x6] innocent (13.32.2) OLD 1.

intercedo to interpose a veto (13.43.5) OLD 5b.

intercessio the veto (14.48.2) OLD 1 *op.cit.*

interdico to exile (14.41.1) OLD 3.

iudex [x3] a judge or juror (13.23.2) OLD 1,2.

iudicium [x5] jurisdiction (13.32.2) OLD 5 *op.cit.* judgement or verdict (14.50.2) OLD 6.

iudico to judge a case (13.21.1) OLD 1.

iure [2] lawfully (13.26.2), (14.43.4) OLD 1.

ius civilis the law of Roman citizens, "civil law" (13.27.3) OLD 2b.

ius proconsulare the authority of a pro-consul (13.21.3) OLD 13a *op.cit.*

ius [x2] a right (13.26.1), (13.33.2) OLD 11.

leges maiorum the laws of (our) ancestors (14.43.1)

lex de sicariis law on murderers (13.44.5) [OLD *sicarius* 13a *op.cit.*], [Digest 48.8]

lex Cornelia the Cornelian law (on forgery), (14.40.3) [Digest 48.10]

lex Iulia the Julian law on bribery (15.20.3) [OLD *Iulius* 4c *op.cit.*] [Digest 48.14]

lex repetundarum the law on extortion (13.33.2) [Digest 48.14]

lex [x2] a law (14.48.1) OLD 2.

litigator a person engaged in a lawsuit (14.42.3) OLD *op.cit.*

luo to suffer (*poenas* the punishment), (14.10.3) OLD 1a *maiestas*

mando [x5] to assign, entrust, delegate (authority), (14.20.2) OLD 5

manifestus [x9] plainly guilty (of criminals), (13.26.3) OLD 1; flagrant, plainly evident, open-and-shut (of crimes), (13.44.4) OLD 2/3.

multo to punish by a fine (13.33.3) OLD 1.

nescius [x4] ignorant, innocent (13.44.1) cf. OLD 1.

nocens [x3] guilty (13.44.2) OLD 2.

nomino to mention by name (13.23.2) OLD 6 *op.cit.*; to summon by name.

novae res revolution (15.50.2) OLD 10.

nuptiae marriage (13.44.1) OLD.

obicio [x8] to make a criminal accusation, accuse (14.72.2), (15.55.3) cf. OLD 10 *op.cit.*
{used 14 times in Neronian Annals/only once in non-legal sense (13.38.2)}

obiecto {syn. *obicio*} to make an accusation (13.43.2) OLD 4.

obnoxius [x2] legally answerable to, bound by (14.1.1) OLD 1b.

obtestor [x2] to assert on oath, "testify" (14.7.2) OLD 3a *op.cit.*

offensio [x3] transgression, offense, crime (14.49.3) OLD 5/6.

paciscor to negotiate a *pactum*, "agreement" (13.44.1) OLD 1.

parricida one who commits *parricidium* (15.67.2) OLD 1.

parricidium [x2] the murder of a near relation (14.8.4) OLD 1 *op.cit.*

pello [x2] to drive into exile (13.43.5) OLD 4b.

poena [x17] punishment (13.26.2) OLD 1.

postulo to arraign (13.44.5) OLD 3.

praevaricor to act in collusion (14.41) OLD 2 *op.cit.*

profiteor to avow (13.44.4) OLD 1b *op.cit.*

quaestio an examination of slaves under torture (14.60.3) OLD 2.

relatio [x2] a motion of the Senate (14.49.3) OLD 1 *op.cit.*

relego [x3] to banish by *relegatio* (non-capital exile), (13.26.2) OLD 1.

repetundae [x3] extortion (13.30.1) OLD [*repeto*] 10b *op.cit.*

res novas extollere to encourage to revolution (13.19.3) OLD [*extollo*] 6b *op.cit.*

res repetere to seek damages under a charge of *repetundae* (13.33.3) cf. OLD 10.

rescribo (of the emperor) to write an official response (*rescriptum*), (14.49.2) OLD 2a.

respondeo [x9] to issue a formal reply (14.9.3) OLD 4; to say in defense, refute (15.55.2)
OLD 5c *op.cit.*

reus [x11] a defendant (*rea*, if female), (13.32.2) (15.20.1) OLD 2.

revoco [x3] to recall (from exile), (14.60.5) OLD 3b; to take back, cancel, annul (13.26.1)
OLD 13 *op.cit.*

saevitia [x9] cruelty, violence (13.30.1) OLD 1/2.

saevus cruel (13.17.2) OLD 7.

satisfactio satisfaction of a creditor (13.44.3) OLD 1.

scelus [x26] a crime (13.15.5) OLD 2a.

seditio [x2] rebellion, revolution (14.61.1) cf. OLD 1.

senatus consultum [x5] a decree of the Senate OLD [as one word] (14.41)

sententia [x3] the sentence or verdict (13.44.5) OLD 4/5.

sententiam dicere to deliver a verdict (13.23.2) cf. *dico* OLD 10.

species iudicis the illusion of being a judge (15.69.1) *species* OLD 6/7.

species legum the outward appearance of law (14.41)

subdo to substitute fraudulently (14.40.2) OLD 8b *op.cit.*; (15.44.2) OLD 6.

supplicium [x9] non-capital punishment (14.48.4) OLD 3a; capital punishment (14.43.2) OLD 3b.

testamentum [x9] a will (14.40.2) OLD.

testificor to testify (14.12.3) OLD 1.

testimonium testimony by a witness (14.48.2) OLD 2.

testis [x5] a witness giving evidence in court or criminal proceeding (15.51.4) OLD 2.

testor [x4] to affirm solemnly, testify to (14.64.1) OLD 2.

traho to drag out, delay (a criminal case), (13.33.1) OLD 18 *op.cit.*

transigo to settle a claim (14.13.4) OLD 4 *op.cit.*

veneficium poisoning (13.15.3) cf. Digest 48.8.

venia a pardon (13.18.1), (15.71.2) OLD 4.

veto to forbid (15.21.4) OLD 1.

APPENDIX II

OTHER HISTORICAL AND FICTIVE TRIALS IDENTIFIED

ANNALS Books 13-16:

- 13.1 Murder of Silanus
- 13.3-8 Nero's ability as *princeps* (fictitious trial)
- 13.10 Case of Carrinas Celer
Case of Iulius Densus
- 13.11 Case of Plautius Lateranus
- 13.12 Nero and Acte: *adulterium*
- 13.25 Case of Iulius Montanus (partly-historical)
- 13.35-6 Military justice/desertion
- 13.45-46 Nero, Otho, and Poppaea (fictitious trial)
- 13.47 Case of Cornelius Sulla (partly historical)
- 13.49 Senate debate on Syracusan Gladiators--real purpose: Thrasea Paetus (related to *maiestas* trial of Antistius 14.48-9; freedom of speech in the Senate)
- 13.50-1 Pseudo-trial on public policy/tax reform
- 13.52 Case of Sulpicius Camerinus *repetundae* with *saevitia*
Case of Pomponius Silvanus: *repetundae*
- 14.14-16 Neronian delicts
- 14.17 Riot between Nucерians and Pompeians/trial in Senate
- 14.18 Case of Pedius Blaesus
Case of Acilius Strabo

- 14.20-21 Trial format to decide proper stance on new games
- 14.22 Comet puts Nero again on trial in public opinion
Case of Rubellius Plautus (see also 14.58)
- 14.28 Case of Vibius Secundus
- 14.46 Case of Tarquinius Priscus: *repetundae*
- 14.51 Nero implicated in the death of Burrus
- 14.52-56 "Trial" of Seneca
52. Accusations
53-4 Defense
55-6 Verdict
- 14.57-59 "Trials" of Sulla and Plautus
57. Sulla's death
58. public opinion imperils Plautus
59. Plautus executed; Nero's letter; Senate's decree
- 14.65 Neronian delicts
- 15.33 Neronian delicts
- 15.35 Case of Torquatus Silanus--sham trial: *maiestas*
- 15.37 Nero's banquets; Nero's depravity; "marriage" to Pythagoras
- 15.38-44 The Great Fire at Rome charge: *dolo principis* /defense/
witnesses/testimony/Infamia/Nero "*subdidit reos*"/Christians accused--
harsh punishments bring pity; cruelty of Nero.
- 15.46 Nero responsible for a disaster at sea
- 16.1-3 Nero seeks Dido's treasure --"trial" of Bassus
- 16.4-5 Nero's *dedecus* on stage
Near doom of Vespasian
- 16.6 Nero kills Poppaea
- 16.7-9 Case of C. Cassius
Case of Silanus
- 16.8 Case of Lepida

- 16.9 Exile for Cassius and Silanus/ Silanus' murder
- 16.10-11 Case of Lucius Vetus and family
- 16.12 Case of P. Gallus
- 16.14-15 Case of Publius Anteius and Ostorius Scapula
- 16.17 Case of Annaeus Mela
Case of Cerialis Anicius
Case of Rufius Crispinus
- 16.18-19 Case of Caius Petronius
- 16.20 Case of Silia
Case of Minucius Thermus
- 16.21-35 Case of Thrasea Paetus
- 16.23 Case of Barea Soranus

EARLIER ANNALS

- 1.6 Murder of Postumus Agrippa
- 1.72-75 Initial *Maiestas* trials under Tiberius: key vocabulary noted : [*absolvo*, *accusator* [x2], *arguo*, *causa* [x2], *censeo* [x2], *confessio*, *credebantur.*, *crimen* [x4], *decerno* [x2], *infamis*, *iniuria*, *inpune*, *iudicia*, *iudiciis*, *iudicium*, *lex* [x3], *maiestas* [x5], *obico*, *obiecto*, *reus* [x2], *repetundae*, *respondeo*, *saevitia* [x2], *seditio*, *venia*]
- 11.26-38 Conspiracy/Trial of Messalina and others: key vocabulary noted: [*accusator* [x4], *adulter* [x2], *adulterium* [x2], *caedes* [x3], *causa* [x3], *clementia*, *confiteor*, *consciis* [x2], *crimen* [x3], *damno*, *decerno*, *defensio* [x3], *delatio*, *facinus*, *fateor*, *flagitium* [x3], *gnara* [x2], *ignarus* [x2], *increpo*, *incuso*, *indefensus*, *index*, *indiciis*, *infamia*, *innoxius*, *insidiae*, *insons*, *ius*, *obicio*, *obnoxius*, *poena* [x2], *reus* [x2], *respondeo* [x3], *scelus* [x2], *veniam*.]

HISTORIES

- 1.72 The trial of Tigellinus
- 4.45 Case of Manlius Patritius; Case of Antonius Flamma

Appendix III: Trial Elements in Late Republican Trials

Alexander outlines the standard elements of a trial as follows:³⁸⁷

1. date
2. charge or claim: procedure
3. defendant
4. advocate(s): speaker(s) for the defendant and/or plaintiff
(includes *procurator* and *cognitor*)
5. prosecutor(s) or plaintiff(s)
6. presiding magistrate (includes praetor, urban praetor, peregrine praetor, aedile, *iudex quaestionis*, *quaesitor*, and *duumvir*)
7. jurors (includes advisory council and *arbiter*)
8. witnesses (includes informer, character witness, *advocatus*, *laudator*, *supplicator*, and *delator*)
9. party (parties) to a civil suit, where it is not known who is the defendant and who the plaintiff
10. other individuals directly involved in the trial, or miscellaneous information
11. verdict

These elements form the framework for the record of an historical trial. Alexander notes, however, that not all data are present for every trial. This is similar to the pattern in the Tacitean cases. I would again like to thank Professor Alexander for his permission to use and include his material.

³⁸⁷ Alexander, *Trials*, ix-x.

WORKS CITED

- Alexander, Michael C. Trials in the Late Roman Republic: 149 BC to 50 BC. Toronto: University of Toronto Press, 1990.
- Alexander, William Hardy. "The Enquête on Seneca's Treason." CPh 47 (1952): 1-6
- Bauman, Richard A. The Crimen Maiestatis in the Roman Republic and Augustan Principate. Johannesburg: Witwatersrand University Press, 1967.
- _____. Impietas in Principem: A Study of Treason against the Roman Emperor with Special Reference to the First Century A.D. Munich: Beck, 1974.
- _____. Lawyers and Politics in the Early Roman Empire. Munich: Beck, 1989.
- Benario, Herbert W. Tacitus: Annals 11 and 12. Lanham, Md: University Press of America, 1983.
- Berger, Adolf. Encyclopedic Dictionary of Roman Law. Philadelphia: American Philosophical Society, 1953.
- Brunt, P.A. "Charges of Provincial Maladministration under the Early Principate." Historia 10 (1961): 189-227.
- _____. "The Revolt of Vindex and the Fall of Nero." Latomus 18 (1959): 531-559
- Buckland, W. W. The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian. London: Cambridge University Press, 1908; reprint, New York: AMS Press, 1969.
- _____. A Textbook of Roman Law: From Augustus to Justinian. 3d ed., rev. Peter Stein. London: Cambridge University Press, 1971.
- Champlin, Edward. Final Judgments: Duty and Emotion in Roman Wills, 200 B.C.--A.D.250. Berkeley: University of California Press, 1991.
- Chilver, G.E.F. Cisalpine Gaul: Social and Economic History From 49 B.C. to the Death of Trajan. Oxford: Oxford University Press, 1941.
- Ciaceri, Emanuele. "La congiura pisoniana contro Nerone." Chap. in Processi Politici e Relazioni Internazionali. Rome: Nardecchia, 1918.

- Clark, E.C. History of Roman Private Law. New York: Brill and Tannen, 1965.
- Classen, C.J. "Tacitus--Historian Between Republic and Principate." Mnemosyne 41 (1988): 93-116.
- Corbett, Percy Ellwood. The Roman Law of Marriage. New York: Oxford, 1930.
- Corsi Zoli, Donatella. "Aspetti inavvertiti della congiura pisoniana." Studi Romani 20 (1972): 329-339.
- Crook, John. Consilium Principis. New York: Arno Press, 1975.
- de Zulueta, Francis. The Institutes of Gaius. 2 vols. Oxford: Oxford University Press, 1946.
- The Digest of Justinian. Latin text ed. Theodor Mommsen, with the aid of Paul Krueger; English trans. ed. Alan Watson. Philadelphia: University of Pennsylvania Press, 1985.
- Dyson, Steven L. "The Portrait of Seneca in Tacitus." Arethusa 3 (1970): 71-83.
- Eck, Werner. "Nero's Freigelassener Epaphroditus und die Aufdeckung der pisonischen Verschwörung." Historia 25 (1976): 381-84.
- Fabia, P. "Le Point Final des *Annales* de Tacite." Journal des Savants (July 1901): 423-435 and (September 1901): 563-575.
- Fisher, C.D. Cornelii Taciti Annalium. Oxford: Oxford University Press, 1906.
- Frier, Bruce W. A Casebook on the Roman Law of Delict. Atlanta: Scholars Press, 1989.
- Furneaux, Henry. The Annals of Tacitus. 2d.ed., 2 vols. Oxford: Oxford University Press, 1907.
- Garnsey, Peter. Social Status and Legal Privilege in the Roman Empire. Oxford: Oxford University Press, 1970.
- Gerber, A. and A. Greef. Lexicon Taciteum. 2 vols. Stuttgart: Teubner, 1962.
- Ginsburg, Judith. "Speech and Allusion in Tacitus. *Annals* 3.49-51 and 14.48-49." AJPh 107 (1986): 525-541.
- _____. Tradition and Theme in the *Annals* of Tacitus. Salem: Ayer Co. Publishers, 1984.

- Greenidge, Abel Hendy Jones. Infamia: Its Place in Roman Public and Private Law. Oxford: Oxford University Press, 1894; reprint, Darmstadt Germany: Wilhelm Weichert, 1977.
- _____. The Legal Procedure of Cicero's Time. Oxford: Oxford University Press, 1901.
- Griffin, Miriam T. "*Imago Vitae Suae*." In Seneca, Greek and Latin Studies: Classical Literature and its Influence Series, ed. C.D.N. Costa, 1-38. London: Routledge & Kegan Paul Ltd., 1974.
- _____. Nero: The End of a Dynasty. New Haven: Yale University Press, 1984.
- _____. Seneca: A Philosopher in Politics. Oxford: Oxford University Press, 1976.
- Henderson, Bernard W. The Life and Principate of the Emperor Nero. New ed. London: Methuen & Co., 1905.
- Henry, Denis and B. Walker. "Tacitus and Seneca." G&R 10 (1963): 98-110.
- Heubner, Heinz. P.Cornelii Taciti: Libri Qui Supersunt. Stuttgart: Teubner, 1983.
- Ihm, Maximilianus. C.Suetoni Tranquilli: Opera, Vol.I, De Vita Caesarum. Stuttgart: Teubner, 1908; reprint, 1973.
- Jones, A.H.M. The Criminal Courts of the Roman Republic and Principate. Totowa, N.J.: Rowan and Littlefield, 1972.
- Keenan, James G. "Tacitus, Roman Wills, and Political Freedom," BASP 24 (1987): 1-8.
- Lucas, Joseph. "La Souillure de Britannicus." Chap. in Les Obsessions de Tacite. Leiden: E.J. Brill, 1974.
- Martin, Ronald. Tacitus. Berkeley: University of California Press, 1981.
- McCulloch, Harold Y. Narrative Cause in the Annals of Tacitus. Königstein/Ts.: Hain, 1984.
- Mendell, C.W. Tacitus: The Man and His Work. New Haven: Yale University Press, 1957.
- Miller, Norma. Tacitus Annals 14: A Companion to Book 14 of Tacitus: The Annals of Imperial Rome. Bristol: Bristol Classical Press, 1987.
- _____. Annalium Liber XV. London: MacMillan, 1973.
- Morford, Mark. "How Tacitus Defined Liberty." ANRW 2.33.5 (1991): 3420-3450.

- Nicholas, Barry. An Introduction to Roman Law. Oxford: Oxford University Press, 1962.
- Nörr, Dieter. "C. Cassius Longinus; der Jurist als Rhetor (Bemerkungen zu Tacitus, Ann.14.42-45)." Althistorische Studien. Festschrift Hermann Bengtson. Historia Einzelschriften 40 (1983): 187-222.
- Ogilvie, R.M. A Commentary on Livy. Oxford: Oxford University Press, 1965.
- Oliver, Revilo P. "Did Tacitus Finish the *Annales*?" ICS 2 (1977): 289-314.
- Percival, John. "Tacitus and the Principate." G&R 27 (1980): 119-133
- Rogers, R. S. Criminal Trials and Criminal Legislation under Tiberius Middletown, Conn.: American Philological Association, 1935.
- _____. "Heirs and Rivals to Nero." TAPA 86 (1955): 190-212.
- _____. "The Tacitean Account of a Neronian Trial." In Studies Presented to David Moore Robinson on his Seventieth Birthday. vol 2.:711-718. ed. Mylonas and Raymond. Saint Louis: Washington University, 1951-53.
- Roper, Theresa K. "Nero, Seneca, and Tigellinus." Historia 28 (1979): 346-357.
- Sherwin-White, A.N. "Poena Legis Repetundarum." Papers of the British School at Rome 4 (1949): 5-25.
- _____. The Roman Citizenship. 2d ed. Oxford: Oxford University Press, 1973.
- Shotter, D.C.A. "Tacitus' View of Emperors and the Principate." ANRW 2.33.5 (1991): 3263-3331.
- Somerset Fry, Plantagenet. Roman Britain. Totowa, N.J.: Barnes & Noble, 1984.
- Strachan-Davidson, J.L. Problems of the Roman Criminal Law. 2 vols. Oxford: University of Oxford Press, 1912.
- Suerbaum, Werner. "Zweiundvierzig Jahre Tacitus-Forschung: Systematische Gesamtbibliographie zu Tacitus' Annalen 1939-1980." ANRW 2.33.2 (1990): 1032-1476.
- Syme, Ronald. The Roman Revolution. Oxford: University of Oxford Press, 1939; reprint Oxford: Oxford University Press, 1987.
- _____. Tacitus. 2 vols. Oxford: Oxford University Press, 1956.
- _____. Ten Studies in Tacitus. Oxford: Oxford University Press, 1970.

- Tucker, Robert A. "Tacitus and the Death of Lucan." Latomus 46 (1987): 330-337.
- Vocabularium Iurisprudentiae Romanae. 5 vols. Berlin: Walter de Gruyter, 1903-.
- Walker, B. The Annals of Tacitus: A Study in the Writing of History. Manchester: Manchester University Press, 1952.
- Warmington, B. H. Nero: Reality and Legend. New York: W. W. Norton, 1969.
- Watson, Alan, The Law of the Ancient Romans. Dallas: Southern Methodist University Press, 1970.
- _____. Roman Slave Law. Baltimore: Johns Hopkins University Press, 1987.
- Wellesley, K. "A Privy Council on the Behaviour of Freedmen (Tacitus A.13.26.2)." LCM 8 (1983): 136-139.
- Westrup, C. Introduction to Early Roman Law. Oxford: Oxford University Press, 1944.
- Woodcock, E.C. A New Latin Syntax. Cambridge: Harvard University Press, 1959.
- _____. Tacitus Annals XIV. Oxford: Blackwell, 1939.

JOHN W. THOMAS

John W. Thomas studied at the University of Chicago from 1976 until 1982. He earned a B. A. at Loyola University of Chicago in May of 1983. In May 1992 he earned his M. A. at Loyola University, and in May of 1993 earned his Ph. D. also at Loyola University of Chicago. While a graduate student at Loyola, he taught courses in Classical Epics (in translation),

Classical Theater (in translation), Introduction to Greek Oratory, Introductory Latin, Intermediate Latin Prose, Intermediate Latin Poetry Age of the Flavians, and The Annals of Tacitus.

While at Loyola, John Thomas earned two teaching fellowships, and a University Dissertation fellowship.

He has published one paper on Tacitus, "Vitellius Germanicus: On Tacitus, Histories 2.70," The Ancient History Bulletin, 2 (1988) 113-117, co-authored with James Keenan. In December of 1992 he presented a paper, "The Legal Structure of Tacitus *Annals* 14," at the conference of the American Philological Association in New Orleans.

APPROVAL SHEET

The dissertation submitted by John Warren Thomas III
has been read and approved by the following committee:

Dr. James G. Keenan, Director
Professor, Classical Studies, Loyola

Dr. John F. Makowski
Associate Professor, Classical Studies, Loyola

Rev. John P. Murphy, S. J.
Associate Professor, Classical Studies, Loyola

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

April 15, 1993
Date

James G. Keenan
Director's Signature