

THE VERRINE JURY

It has often been assumed that the jury in the trial of C. Verres was considerably smaller than earlier juries impanelled under the legislation of Sulla. Thus A. H. J. Greenidge, after a discussion of the Junian jury of 74, said: "...in the case of Verres (the jury)...must have been far smaller"¹). This deduction is based on Cicero's statement that when eight jurors who had been elected to office for 69 B.C.²) were eliminated from the jury of 70 B.C. almost the whole panel would be changed (1.30: *prope toto commutato consilio*).

However the circumstances of the case, so notorious and so widely discussed in Rome, the current agitation for reform of the senatorial juries, and the reputations of opposing counsel would lead to the supposition that a decision would be entrusted to a large jury. The only figures for the size of juries while the *lex Cornelia* was in effect are given by Cicero in his references to the notorious trials of 74, and this evidence will be briefly discussed. An analysis of the jury empanelled early in 70, and of the members left after the *reiectiones* by both sides in August is even more significant.

There is no evidence to indicate whether or not Sulla's regulation of the *quaestiones perpetuae* specified the number of jurors necessary in trials before the various courts³). The system of assignment was about as follows. The *album iudicum* was drawn up by the *praetor urbanus* and divided into *decuriae*. Each

1) *The Legal Procedure of Cicero's Time* (Oxford, 1901) 438.

2) Nos. 6, 8-10, 12-14, 16 in the first list below.

3) This reconstruction follows in most details Greenidge, 437-442. I have assumed that the *decuriae* were moderate in size rather than "small" (438). He assumed that in a senate of about six hundred there would be about four hundred senators available for the *album iudicum*, but I would place the figure at least ten per cent higher. The highest figures for attendance at a *frequens senatus* preserved for a period when the senate numbered about 600 are about 415 in 61 (Cic. *Att.* 1. 14. 5) and 417 in 57 (Cic. *Red. sen.* 26); L. R. Taylor and R. T. Scott, *TAPA* 100 (1969) 531f. Surely those available for jury duty were more numerous than those attending even a *frequens senatus*.

decuria was of moderate size, sufficient for one jury, and all grades of senators were included. The urban praetor would assign a *decuria* for a trial and the *iudices* would be chosen by lot. The panel would be larger than the final jury to allow for *reiectio*⁴).

In 66 in his defense of A. Cluentius Habitus Cicero refers frequently to the trials in the *quaestio de sicariis et veneficiis* under the presidency of C. Junius (*iudex quaestionis*). Scamander, C. Fabricius, and Oppianicus were all convicted by the same jury (*Clu.* 55, 67, 76). The number of jurors is specifically attested as thirty-two (74). This number is also attested by the money placed in the hands of Staienus, *iudex* and agent for the bribery: 640,000 HS (69) which at 40,000 apiece (74) for sixteen jurors plus the vote of Staienus gives a majority of seventeen in a jury of thirty-two. To this evidence another less specific example can be added. In 76 at a trial Staienus (*Clu.* 68: *cum causam bonorum Safini Atellae recepisset*; cf. 99) had received 600,000 HS to bribe the jury of which he was a member. If the price per juror was the same as in trials of 74 this would indicate a jury of thirty. Despite the scandalous actions of *rei* and *iudices* in these cases⁵), the rank of the *municipes* involved could not compare with a trial of a *senator praetorius* in the court *de repetundis*. Therefore on the basis of common sense we would expect the Verrine jury to be larger than the *consilium Iunianum*⁶).

4) M. Mummius was probably *praetor urbanus* in 70: cf. Cic. *Verr.* 2. 3. 123 and T. R. S. Broughton, *Magistrates of the Roman Republic* 2 (1952) 127. Abbreviated *MRR* below. Men not of senatorial rank could challenge three jurors (2. 2. 77), and it is quite probable that senators could challenge six (Greenidge, 440). Cicero mentions six who were challenged by Verres (2. 1. 18; 2. 3. 97; 2. 5. 114), and he would surely have mentioned all by name. Cicero certainly challenged six, but does not name them (see below).

5) It must be kept in mind that we cannot trust all of Cicero's statements whether he was prosecuting or defending. He was perfectly capable of obscuring the issue or perverting the evidence. Quintilian's comment on his boast makes this perfectly clear and also indicates that the orator always had the facts in hand even when he twisted them (2. 17. 21): *Nec Cicero, cum se tenebras offudisse iudicibus in causa Cluenti gloriatus est, nihil ipse vidit*. For a cogent statement on the *tenebrae* in this case cf. G. S. Hoenigswald, *TAPA* 93 (1962) 109-123 (especially 123).

6) Q. Calidius, praetor 79 and propraetor of *Hispania citerior* in 78, was prosecuted, probably in 77, by Q. Lollius (*Verr.* 2. 3. 63) *de repetundis*. There is a hint of a large jury in this case. Cicero (*Verr.* 1. 38): ... *Q. Calidius damnatus dixerit minoris HS triciens praetorium hominem boneste non posse damnari*... In the comment on this passage by Pseudo-Asconius (219. 3-9 St.) Calidius bitterly noted that jurors had accepted too low a bribe to

From the seven speeches that Cicero published on this case we have twenty names of those senators who were originally empanelled. Of these fourteen sat on the jury after *reiectiones* by the defense. The six men challenged by Cicero are not named by him. The list that follows is, so far as possible, arranged in descending order⁷).

1. P. Servilius Vatia Isauricus (93), cos. 79. As *iudex* (2. 1. 56; 2. 3. 210; 2. 4. 82). His fame as a general is noted (2. 1. 56; 2. 4. 21 and 2. 5. 66, 79 on pirates). In a fictitious case he is linked with Catulus and L. Octavius Balbus (2. 2. 31) – for Balbus see below. One reference (2. 3. 210: *P. Servilium et Q. Catulum*) is noteworthy since Cicero carefully used the order of consular precedence, despite clear evidence that Catulus was more prominent than Vatia in the year of the trial.
2. Q. Lutatius Catulus (8), cos. 78. As *iudex* (2. 3. 210; 2. 4. 69). I take the reference in *actio prima* (44) to mean that he was *primus rogatus* by Pompey (*maior consul* of 70), not *princeps senatus*⁸). He and Vatia are called *principes civitatis* (2. 3. 210). Other references (2. 2. 31; 2. 4. 37). Especially noteworthy are two references to *Iovis Optimi Maximi templum* (2. 4. 69, 82) which Catulus dedicated in 69 (*Liv. Per.* 98).
- 3.* C. Cassius Longinus (58), cos. 73. After he was challenged he appeared as *testis* against Verres (2. 3. 97).
4. C. Claudius Marcellus (214), praetor 80. As *iudex* (*Div. Caec.* 13; *Verr.* 2. 4. 90). He was not challenged despite the fact that he was proconsul of Sicily in 79. He is frequently mentioned particularly because of his descent from M. Claudius Marcellus, the hero of the

convict him. This fits Cicero's comment, and is an interesting reversal of bribery for acquittal. If in the passage from Cicero we think of Calidius as doing a quick calculation and multiplying by five we have a sum of 20,000 HS per juror and a jury of thirty. Pseudo-Asconius was in error in stating that the prosecutor was Gallius, and we hardly need his final remark *et honeste bironice dictum est*.

7) The starred numbers in this first list are for the men challenged by Verres. The parenthetical numbers here indicate the articles in *RE* (all by Muenzer except Cornificius, and references to Muenzer below are to these items), as also below in the second list.

8) I plan to discuss this point in detail in another context.

- Second Punic War (e.g. 2. 2. 8). His title is specified (2. 3. 212) *cum esses pro consule*.
- 5.* Sex. Peducaeus (5), praetor 77. Challenged (2. 1. 18). He was propraeor of Sicily in 76 and 75. Muenzer listed him as praetor in Sicily in 76, and propraeor in 75, but cf. *MRR* 2. 92, note 2. Cicero who served as quaestor under him in 75 mentioned him frequently and praised his character (2. 3. 216: *nam de Sex. quidem Peducaeo fortissimo atque innocentissimo viro...*) and his administration of Sicily (e.g. 2. 4. 142-143).
 6. M. Caecilius Metellus (78), praetor 69. As *iudex* (1. 30-31). Cicero did not challenge him, but preferred him as a *iudex* under oath to *praetor de repetundis* in 69 B.C. (1. 21) when he would not be under oath (1. 32).
 - 7.* P. Sulpicius Galba (55), curule aedile 71. Challenged (2. 1. 18). Muenzer set 71 for his aedileship. Since it is now clear that Cicero and Caesonius were plebeian aediles⁹), Broughton suggested "69?" (*MRR* 2. 136, note 4). However Verres and Hortensius were using two lines of defense - *reiectiones* of which they seem to have had only six, and postponement until after December 29 of the year 70. Consequently if this patrician noble had been *aedilis curulis designatus*, I suspect that the defense would not have wasted an invaluable *reiectio* on a man who would have been ineligible as a *iudex* in 69.
 8. M. Caesonius (1), *aedilis plebeius* 69. As *iudex* (1. 29). Cicero's colleague in 69. He had been an honest *iudex* in the *consilium Iunianum* of 74 (cf. pseudo-Asconius, 216. 6-14 St.).
 9. Q. Manlius (34), *tribunus plebis* 69. As *iudex* (1. 30). It is uncertain whether he was the same man who was *triumvir capitalis* about 77 (*Clu.* 38-39): cf. *MRR* 2. 92 and note 7 (*s.a.* 77), 132 (*s.a.* 69), 585 ("Index of Careers") where they are identified.
 10. Q. Cornificius (7), *tribunus plebis* 69. As *iudex* (1. 30). I place Manlius ahead of Cornificius since the order in Cicero's comment would indicate that his election to the office was announced first by the consul presiding at the *comitia tribunicia*.

9) Cf. L. R. Taylor, "Cicero's Aedileship", *AJP* 60 (1939) 194-202.

- 11.* P. Cervius (1), *quaestorius*. Challenged (2. 5. 114). He had been *legatus* of Verres. Cicero said that he was the first *relectio*. Muenzer dated his service as *legatus* to 73. Broughton (*MRR*, *s.a.*) lists him for 73, and for 72? with a citation in the latter item of Cicero's note that (2. 2. 49)... *sodales, viri fortes, legati tui primo anno te reliquerunt*... I have assumed that he was quaestor before 73 because of his rank in Sicily.
12. Cn. Tremellius Scrofa (5), quaestor 71. As *iudex* (1. 30). *Tribunus militum* in 69.
13. P. Sulpicius (15), quaestor 69. As *iudex* (1. 30).
14. L. Cassius (13), *quaestorius? tribunus militum* 69. As *iudex* (1. 30). Possibly not yet a quaestor.
- 15.* Q. Considius (7), *quaestorius?* Challenged (2. 1. 18). He had been an honest *iudex* in 74 (*Clu.* 107: ... *quis virtute, consilio, auctoritate praestantior*). Moreover he was very wealthy (Val. Max. 4. 8. 3) and didn't need to make money by accepting bribes. Possibly not yet a quaestor.
16. M. Crepereius (1), *quaestorius? tribunus militum* 69. As *iudex* (1. 30). Possibly not yet a quaestor. Broughton in *MRR* (2. 133) commented thus on these three *tr. mil.* (nos. 12, 14 and 16 in this list): "All were Senators in 70, and presumably, like Tremellius, *quaestorii*,..."
17. L. Octavius Balbus (45), *quaestorius?* As *iudex* (2. 2. 31). In this passage Cicero presents a fictitious legal case in which he pictures Balbus as *iudex* in a dispute between Vatia and Catulus. Balbus is so described *homo et iuris et officii peritissimus*. Here *iudex* is not used as 'juror', and Balbus may have been cited merely as a man learned in the law. However the other two men cited were *iudices*, and it is easy to conjecture, as I have, that Balbus is in addition *iudex* 'juror' in this trial. Pseudo-Asconius said on this passage (263. 9 St.) *Memento omnes iudices praesentes esse quorum nominibus utitur ad exemplum*, but I suspect that this is likewise a conjecture from Cicero's text and that he did not have specific information that we lack. The P. Octavius Balbus who was a *iudex* in 74 (*Clu.* 107) was also learned in the law and has been identified with this man, but he is more probably a brother, as Muenzer suggested (*s.v.* "Octavius 46"). Because of his distinction in the law

- and the mode of reference I suspect he had been quaestor. L. is not cited in *MRR*.
- 18.* Q. Iunius (30), rank uncertain. Challenged (2. 1. 18). Possibly not yet *quaestorius*.
19. M. Lucretius (9), rank uncertain. In the sole reference to him (2. 1. 18) Cicero in speaking of the praise he gained for his own care in *reiectio* continues: *quam iste laudem communem sibi ait esse mecum; qui cum P. Galbam reiecisset, M. Lucretium retinuit*,... Surely these words must mean that both men were honest, and that Verres was running out of challenges. However not so pseudo-Asconius who made a comment, based, I believe, on a false interpretation of Cicero's words that Cicero challenged Lucretius, adding *neque enim praesentem iudicem vituperare fas fuit* (229. 8-10). Muenzer followed the scholiast (... aber von dem Anklaeager Cicero als nicht einwandfrei abgelehnt). Greater caution in *MRR* 1. 492: "Senator and possible juror in 70".
20. Q. Titinius (17), rank uncertain. As *index* (2. 1. 128). In this passage Cicero ironically warns Titinius not to believe the evidence of his brother (*Cn. Fannius eques Romanus, frater germanus Q. Titini, iudicis tui*...) who pretends that C. Verres is avaricious and audacious. Probably Titinius was no more than *quaestorius*, if that.
- 21.-26. I assume that Cicero challenged six members of the original panel. It is not inappropriate to place these *ignoti* whose names and rank are equally unknown at the end of this list. The higher the rank of a senator the less likely he was to be susceptible to a bribe. In some cases this would be due to honesty, but two other factors could contribute - *consulares* and *praetorii* had greater prominence and therefore more to lose if caught taking bribes. Moreover they could look forward to a safer method of making money by looting the provinces.

In summary: three *consulares*, two *praetorii*, seven *aedilicii*, *tribunicii* or *quaestorii*, eight no more than *quaestorii* if that, six of unknown rank.

A second list including all men who had held the consulship, retained rank in the *ordo*, and were alive in 70 is of interest

because of their importance in determining policy, but of special interest in any conjecture on the size of the jury. Since the date of the death of some is uncertain, the list must be based in part on speculation. The number of *consulares* is small in 70¹⁰); in part because of the iterated consulships of C. Marius, L. Cinna and Cn. Carbo; in part because of the high mortality rate among ex-consuls, especially those of the eighties.

There is some room for doubt about the longevity of some of the older men, but I find only one consul before 100 who might have been alive in 70¹¹). One consul of the years 100 to 91 was certainly alive, six others may have been. Of the seventeen consuls from 90 to 81 only the last two may have survived to 70. Of the twenty consuls from 80 to 71 fourteen were alive in 70 and one more may have been. Two were unavailable for jury service: L. Licinius Lucullus (104), cos. 74, was *cum imperio* in the east¹²), and I assume that P. Cornelius Lentulus Sura (240), cos. 71, had already earned the censorial *nota* early in the year.

1. M. Iunius Silanus (169), cos. 109. He is twice mentioned in these orations (*Div. Caec.* 67; *Verr.* 2. 2. 118) for a prosecution unsuccessfully launched by Cn. Domitius Ahenobarbus, *tribunus plebis* in 104. Singularly enough in both passages Cicero has the word *nuper* which usage leads me to believe that this *consularis grandaevus* may have been in the audience during at least the delivery of the *Divinatio*. Cicero mentioned this prosecution again in his *pro Cornelio* (Asconius, 62. 23-30 St.).
2. L. Valerius Flaccus (176), cos. 100. Cicero has an anecdote in his *de divinatione* which he heard from Flaccus (1. 104).

10) Willems drew up lists of all known senators of all ranks for 179 and 55 B.C. These lists are most accurate for ex-consuls, but there his numbers are too high because he tended to include men in each of these two lists who may not have survived to the date he set. For 179 there were listed 43 *consulares*: 1. 308-319. For 55 there were listed 34 *consulares*: 1. 427-448. A more realistic count for 62 B.C. notes 22 *consulares* (losses in the terror of the 80's had not yet been repaired): E. J. Parrish, *CW* 65 (1972) 162-166.

11) I suspect that P. Rutilius Rufus (34), cos. 105, may still have been enjoying exile in Asia. The last datable reference to him as alive is in Cicero's *de natura deorum* which is dramatically dated in the years 78-76. His life in exile was far less dangerous and demanding than life in Rome, but he would have been ineligible for the doubtful pleasures of jury duty.

12) He is mentioned in the speeches (2. 4. 49, 147; 2. 5. 34).

- This gives no date, but does name him as *flamen Martialis*. In this priesthood Flaccus was succeeded by L. Cornelius Lentulus Niger between 73 and 69 (*MRR* 2. 135 and 137, notes 11 and 13). E. Badian after referring to his actions as *interrex* in 82 said "He seems to have died soon after, as he is not mentioned again": *OCD*² s.v. "Flaccus (5)".
3. Cn. Cornelius Lentulus (178), cos. 97. No data after his consulship.
 4. C. Cassius Longinus (57), cos. 96. No data after 87.
 5. C. Coelius Caldus (12), cos. 94. No data after his consulship.
 6. C. Valerius Flaccus (168), cos. 93. No data after his consulship.
 7. M. Herennius (10), cos. 93. No data after his consulship.
 8. M. Perperna (5), cos. 92. He died early in 49 at the age of ninety-eight (*Plin. HN* 7. 156; *Val. Max.* 8. 13. 4). From his censorship in 86 his actions are cited only twice in the sources. E. J. Parrish suggested that he was inactive for reasons of health or he may have withdrawn from public life as a deliberate policy after Cn. Magnus killed his son (praetor 80) in 72: *CW* 65 (1972) 162-3. Cicero cited a *lex censoria* of the censors of 86 (2. 1. 145). If this elderly *censorius* read the *actio secunda* he would hardly have been pleased by the statement (2. 5. 153): *ad Cn. Pompeium, clarissimum virum et fortissimum, permulti occiso Perperna...* In 55 Helvius Mancina recalled the killing of four senators (including Perperna's son), and pictured them as cursing Pompey *quod indemnati sub te adulescentulo carnifice occidissent*: *Val. Max.* 6. 2. 8; *ORF*³ no. 71.
 9. M. Tullius Decula (34), cos. 81. No data after his consulship.
 10. Cn. Cornelius Dolabella (134), cos. 81. No data after his acquittal in 79.
 11. Q. Caecilius Metellus Pius (98), cos. 80. At one point (2. 3. 209) Cicero mentioned him and linked his name with four notable deceased *consulares* (Catulus *pater*, Marius, Scaevola and Scaurus).
 12. P. Servilius Vatia Isauricus (93), cos. 79. See first list, no. 1.
 13. Q. Lutatius Catulus (8), cos. 78. See first list, no. 2.
 14. D. Iunius Brutus (46), cos. 77. In one instance of illegal actions of Verres as praetor Cicero mentioned Brutus (2. 1. 144, 150; cf. ps. *Asconius*, 253. 11 St.).
 15. Mam. Aemilius Lepidus Livianus (80), cos. 77.
 16. Cn. Octavius (22), cos. 76.

17. C. Scribonius Curio (10), cos. 76. Cicero in a vivid passage (1. 18f.) told the jury that as Verres was escorting Hortensius, his *patronus*, just after he had been elected *maior consul*, Curio met them and in a loud voice congratulated, not Hortensius, but Verres! In introducing this scene, which was most offensive to the orator, Cicero said of Curio, *quem ego hominem honoris potius quam contumeliae causa nominatum volo*. For the relations between Curio *pater* and Cicero and the probable reason for Curio's conduct at this time cf. my article in *AJP* 93 (1972) 381-411.
18. M. Aurelius Cotta (107), cos. 74.
19. M. Terentius Varro Lucullus (Licinius 109), cos. 73. The commission to aid L. Lucullus in organizing conquered territory may have been formed and dispatched as early as 70. Two of the ten members are known from a reference in a letter to Atticus in June 45 (13. 6. 4: ... *nos ignari pulcherrimorum institutorum aut negligentis potius M. Lucullum et L. Murenam et ceteros coniunctissimos ad L. Lucullum misimus*). Broughton with some hesitation placed this legation under the year 70 (*MRR* 2. 129 and 131, note 6). An item in the *actio secunda* refers to the case of Q. Caecilius Dio (2. 2. 19-24). In the last paragraph Cicero introduces the reading of testimony by M. Lucullus, Sex. Pompeius Chlorus (Dio's attorney) and Dio. Although Cicero wrote (23) *dixit hoc idem M. Lucullus*, he has the *testimonium* read. The fictitious character of *actio secunda* makes it impossible to tell how many of the items preceded by *recita* represent testimony actually presented orally in the early part of the trial and how many represent written depositions (such as that of L. Luceius in the trial of M. Rufus: Cic. *Cael.* 55). But M. Lucullus may have been already absent from Rome and have left a written deposition. The fact that C. Longinus is cited as a witness specifically (2. 3. 97) would confirm this supposition, since Cicero would be especially careful in his references to these two *consulares* who were *testes* and the contrast in the two references would seem to indicate that Longinus appeared in person and that Lucullus did not.
20. C. Cassius Longinus (58), cos. 73. See first list, no. 3.
21. L. Gellius Publicola (17), cos. 72. He is twice mentioned as a defender of the rights of Sicilians against Verres (2. 1. 125; 2. 2. 95).

22. Cn. Cornelius Lentulus Clodianus (216), cos. 72. He, as is his colleague in the consulship and in the censorship of 70, is twice mentioned as a defender of justice against Verres (2. 2. 95; 2. 5. 15).
23. Cn. Aufidius Orestes (32), cos. 71. No data after his consulship.

This second list probably includes the maximum number of *senatores consulares* at the time when the *praetor urbanus* drew up the *decuria* from which the Verrine panel was drawn. I suspect this *decuria* was so assigned because of the presence of two such distinguished *consulares* as Vatia and Catulus, and of two former Sicilian governors.

The maximum number of twenty-three is too large. Since numbers 1-7, 9-10, and 16 may not have been alive in 70, and number 19 may already have gone to the east, the minimum number is twelve. A median number of eighteen would be a reasonable guess. Hence about one-sixth of the available *consulares* were on the original jury panel.

Iterated praetorships were always rare, and *consulares* were more likely to be in danger than *praetorii* in the years preceding 70 B.C. Since there were six annual praetors before the Sullan revision and eight afterwards, we might expect that there were well over one hundred *praetorii* alive in 70¹³). Consequently the original *consilium iudicum* surely included more than the two named by Cicero. I would expect Cicero to name in one place or another every *consularis* on the panel, but to name a *praetorius* only for some special reason. Both Marcellus and Peducaeus were named as former governors of Sicily, but Marcellus was named also because of the ancestral connection with the Sicilian expedition in the second Punic war, and Cicero had served under Peducaeus. Hence Cicero's failure to mention other *praetorii* is not surprising.

The fifteen men named who were not yet *praetorii* will also represent only a portion of the senators of these lower ranks. In each case there is a special reason for the inclusion of the name. Four were challenged (first list: nos. 7, 11, 15, 18). As in the cases of the *consularis* C. Cassius and *praetorius* Peducaeus *reiectio*

13) Willems was able to list 117 *praetorii* for 179 B.C. (I. 320-341), and 106 for 55 B.C. (I. 449-478). As in his consular lists he may have been too inclusive. However in both years there are many *ignoti* among the praetors.

by Verres was a signal honor. Eight would be ineligible to serve in 69 because of official duties (*Verr.* 1. 29f.). In the case of the remaining three (nos. 17, 19–20) it is clear from the comments above that mention is made because of the context.

Cicero is very careful not to name the six men whom he challenged. He had noted how favorably these *reiectiones* had been received (cf. 1. 16; 2. 1. 18), but was unwilling to pillory the men in the published speeches. I doubt that he challenged any *consulares* or *praetorii* since his own canvass for the two offices *cum imperio* was already uppermost in his mind. Even his stricture on Metellus *praetor designatus* was mild. However six challenges were not enough and there were still jurors whom the prosecutor so distrusted that he gave clear warning to the jury that any dishonorable conduct would be dangerous (e.g. 1. 50). With this warning he also included praise, especially in *actio secunda* (2. 1. 10, 18, 22; 2. 3. 10; 2. 5. 178) when warning was no longer necessary.

A problem remains for final consideration. How could Cicero say that in 69 (1. 30) *prope toto commutato consilio* when referring to replacement of only eight *iudices*? The phrase could mean a majority of the jury after challenges and this interpretation has been common. However it is more probable that Cicero is assuming that the loss of eight honorable jurors could markedly affect the vote of a much larger jury. This becomes increasingly clear when we note that the other jurors named as present on the final panel are mentioned by the prosecutor in the highest terms, especially Vatia and Catulus. Consequently the dire threat to dishonest jurors seems to apply to unnamed *iudices*.

Another approach to the problem is even more conclusive. The *actio prima* was probably published with only the most minor changes from the delivered version¹⁴). Cicero, as any good lawyer, did not hesitate to create a false impression by a bit of ambiguity or even by a clear perversion of the facts. This was especially effective in a Roman court where the jury, impressed by outstanding eloquence, voted so soon after the speeches that it had little time to see the traps of oratorical misdirection. Witness Cicero's boast that he deceived the jury

¹⁴) I have discussed this probability elsewhere, especially in *TAPA* 101 (1970) 327–330 and “Cicero’s Publication of his Consular Orations”, *Philologus* 116 (1972) 277–284.

which acquitted Cluentius in 66. In the present speech the vital aim was to prevent postponement of the verdict into the following year. As a consequence the orator would aim at a vivid presentation of the necessity of not having a verdict from a revised jury panel. Moreover in the first speech of *actio secunda* we find (2. 1. 30):

... deinde ita tempus duceretur ut a M.⁹ Glabrione praetore et a magna parte horum iudicum ad praetorem alium iudicesque alios veniremus.

The phrase *a magna parte* is quite different from *prope toto... consilio*. Here Cicero cleverly retracted the full implication of his earlier phrase.

In view of the discussion above and the inherent probabilities of the situation I conjecture an original panel of over fifty members, and a final jury of over forty members.

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