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## **Student Activity 5: Roman Courts**

### **Roman Courts and Judicial Procedure**

*Read the following account of courts in Rome.*

By the 50s the Roman judicial system consisted primarily of several *quaestiones perpetuae* (standing courts) for the more serious crimes. The extortion court (*de repetundis*) was the first to be set up in 149 by L. Calpurnius Piso Frugi. Standing courts were also established for treason (*de maiestate*), bribery (*de ambitu*), embezzlement of public money (*de peculatu*), and violence (*de vi*), the court in which Caelius was brought to trial. A praetor normally presided over the courts, and by the time of Caelius' trial, Juries were composed of senators, equites, and tribuni aerarii (tribunes of the treasury).

There was no public prosecution service in Rome. Prosecutions were brought by individuals. The case would be laid before the praetor and the name of the accused was reported (*nomen deferre*) and the praetor would then decide whether the case should be accepted (*nomen recipere*). The prosecutor then had to swear an oath that he was bringing the prosecution in good faith. Following the acceptance of the case, the prosecutor (and only the prosecutor) had the right to compel witnesses to testify and seal relevant documents, a task that Cicero achieved with remarkable swiftness when prosecuting Verres, confounding the defence team's efforts to frustrate his investigation. A date for the trial would be fixed and the jury sworn in. Each side had the right to reject a certain number of jurors. This remains part of the legal process in the UK (and in the US; either side can raise objections to an individual juror or even the whole panel. Just like today, the jury would be sworn in.

Today in the UK, members of the press and public are able to attend trials in the court gallery. However, at Roman trials public attendance had the potential to be on a much larger scale. Trials took place in the open air in the forum and anyone who wished to could turn up and spectate. The court 'audience' was called the *corona* (crown). The implications of this were highly significant. A speaker, running for election in future years, would surely be thinking about the impression he made on the watching crowd and it may well influence his speech.



Cicero draws attention to the large *corona* that attended the Verres trial in early 70 (*in Verrem*, I.54). When he tells the senatorial jury that convicting Verres is their last chance to prove their integrity, he is also appealing to a disgruntled watching populace, showing that he understands their resentment. The comic flavour of the *pro Caelio* probably entertained a gathered crowd as much as it entertained the jury.

Political conflicts, of course, spilled over into the courts, and this intensified during the late Republic with the courts becoming a second arena in which political tensions, both public and private, were exercised. Ambitious young men might defend someone, whom they believed would be a useful connection in furthering their career, or they might wish to discredit a rival. The events leading up to Caelius' trial were hardly atypical. Following his support of L. Calpurnius Bestia, father of the chief prosecutor Atratinus, for the praetorship of 56, Caelius then turned on Bestia with a prosecution for bribery. When he was acquitted, Caelius re-opened proceedings. In a bid to protect his father, Atratinus then began proceedings against Caelius for violence, a charge which took precedence.

There were normally three speakers in each side, with the final speaker for the prosecution speaking last, Cicero's favoured place. As in modern courts witnesses could be called, evidence presented as documents or testimony *in absentia* (depositions). However, these were not considered as reliable as arguments from character.

The ability to persuade was paramount in ancient courtrooms. There were no 'forensics' in the modern sense with careful testing or CCTV. Witness testimony was considered unreliable as people were regarded as corruptible, so their testimony could be bought. Speaking was, therefore, an essential skill for any courtroom advocate. It was about convincing the jury that their side was correct or, at least, more plausible, especially when character could be so crucial an element in the case of either side.

Speakers did not necessarily write their own speeches. Several of the speeches written by Greek orator Lysias would not actually have been delivered by him. He was known to be very skilled at adapting the tone of his speech to the manner and age of his client. In our own case, *pro Caelio*, Atratinus the prosecutor's speech was written for him by Plotius Gallus, who came in for bitter criticism by Caelius.



- Make a list of similarities and differences between modern court procedure and Roman judicial procedure.

### Discussion Points

- What could you get away with in an ancient court that you could not in a modern court?
- Does character still matter in modern legal cases?
- Should public speaking still be a part of a lawyer or solicitor's training? Should it be taught at school? Explain your answer.
- Roman trials happened in the open space of the forum. How might that have affected/influenced a speaker? Can you find evidence in *pro Caelio* which suggests that Cicero is talking to an audience beyond the jury?

### Suggested Further Reading

May, J. M., (1988) *Trials of Character: The Eloquence of Ciceronian Ethos* (UNC Press)

Especially, chapter I, 'Ethos and Ciceronian Oratory', pp.1-12.

Van der Blom, H., (2016) *Oratory and Political Career in the Late Roman Republic* (Cambridge)

Especially, 'Part I: The Role of Oratory in Roman Politics', pp.23-66.

Vasaly, A., (1993) *Representations: Images of the World in Ciceronian Oratory* (California)

Especially, 'Introduction' and chapter I, 'Ambience, Rhetoric, and the Meaning of Things', pp.1-39.